



DENTAL BOARD OF CALIFORNIA MEETING MINUTES

Thursday, February 28, 2013

Holiday Inn on the Bay

1355 North Harbor Drive, San Diego, CA, 92101

Members Present:

Huong Le, DDS, President
Fran Burton, Vice President
Steve Afriat, Public Member
Luis Dominicus, DDS
Judith Forsythe, RDA
Kathleen King, Public Member
Suzanne McCormick, DDS
Steven Morrow, DDS
Thomas Stewart, DDS
Bruce Whitcher, DDS

Members Absent:

Stephen Casagrande, DDS

Staff Present:

Karen Fischer, Interim Executive Officer
Kim Trefry, Enforcement Chief
April Alameda, Investigative Analysis Unit and Dental Assisting Unit Manager
Lori Reis, Complaint and Compliance Unit Manager
Jocelyn Campos, Enforcement Coordinator
Linda Byers, Executive Assistant
Spencer Walker, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

ROLL CALL AND ESTABLISHMENT OF QUORUM

Dr. Huong Le, President, called the meeting to order at 8:31 a.m. Fran Burton, Vice President, called the roll and a quorum was established.

The Board immediately went into closed session.

The Board returned to open session at 10:31 a.m.

Dr. Huong Le, President, recognized members of the audience including Dr. Alan Felsenfeld from the California Dental Association (CDA), Dr. Guy Acheson from California Association of General Dentists (CAGD), Katie Dawson and Vickie Campbell from the California Dental Hygienists Association (CDHA), Lori Gagliardi, Lindsay Shubin, and Shelly Sorenson from the California Association of Dental Assisting Teachers (CADAT) and welcomed them to the meeting.

AGENDA ITEM 1: INTRODUCTION OF NEW BOARD MEMBERS AND OATH OF OFFICE

Dr. Le introduced the two (2) new Board Members, Dr. Thomas Stewart from Bakersfield and Kathleen King from San Jose. She also announced the reappointment of Dr. Dominicis and Fran Burton. Dr. Le administered the oath of office to new and reappointed members. She asked Kathleen King and Dr. Thomas Stewart to say a few words. Dr. Le went on to say that the Governor appointed Dr. Ross Lai to replace Dr. Tom Olinger on the Board.

AGENDA ITEM 2: APPROVAL OF THE DECEMBER 3-4, 2012 FULL BOARD MEETING MINUTES

M/S/C (Afriat/Dominicis) to approve the minutes of the December 3-4, 2012 Dental Board Meeting. Bill Lewis, CDA, stated that the American Dental Association contacted CDA to clarify that the portion of the minutes on Tuesday, December 4, 2012, Agenda Item 14 – Examination Committee Report relating to the progress of the Dental Board’s Portfolio Pathway to Licensure, the ADA stated that a more accurate reflection of ADA’s position is that “The American Dental Association is waiting for the Dental Board of California to complete their Portfolio program so they can consider it as one of the national models for a pathway to licensure”. The motion passed unanimously.

AGENDA ITEM 3: PRESIDENT’S REPORT

Dr. Le reported that on February 6, 2013, she met with Fran Burton, Sarah Wallace and Karen Fischer to attend a meet and greet at the Capitol with Senator Emmerson followed by a quick drive over to the California Dental Association for a wonderful presentation by Dr. Witcher. She reported that on February 25th she met Ms. Fischer and Ms. Burton at the Capitol to meet the new Chair of the Health Committee, Assemblyman Rich Gordon. Dr. Le announced that she had recently completed her Master’s Degree from the University of the Pacific. Mr. Afriat wanted to acknowledge another colleague’s accomplishment; Dr. Steven Morrow received Loma Linda University’s “Alumni Distinguished Service” award.

AGENDA ITEM 4: UPDATE ON PENDING REGULATORY PACKAGES:

In the absence of the Dental Board’s Legislative and Regulatory Analyst, Sarah Wallace, Fran Burton reported that at the May 18, 2012 meeting, the Board discussed and approved new proposed regulatory language relative to uniform standards for substance abusing licensees. The Board directed staff to initiate a rulemaking. As the rulemaking documents were being prepared, staff became aware of necessary substantive amendments to the proposed language. The Board will be reconsidering approval of the proposed language later today. If the Board accepts staff’s recommended changes, the rulemaking documents will be filed with the Office of Administrative Law on Tuesday, March 5th. The rulemaking would be published in the California Regulatory Notice Register on Friday, March 15th; the 45-day public comment period would begin on March 15th and end on April 29th. A regulatory hearing would be held on Monday, April 29th. The Board would be able to consider comments received during the public comment period and at the hearing at its next meeting in May.

Ms. Burton reported that at the August 17, 2012 meeting, the Board discussed and approved proposed regulatory language relative to examination, permit, and license fee increases for dentists. The Board directed staff to initiate a rulemaking. Staff is currently drafting the initial rulemaking documents and will be filing the proposed language with the Office of Administrative Law in the near future.

Ms. Burton stated that at the May 18, 2012 meeting, the Board discussed and approved proposed regulatory language relative to the abandonment of applications. The Board directed staff to initiate a rulemaking. At the December meeting, the Board deemed three

other regulatory packages as top priority; those regulatory packages were relative to the fee increase, the Uniform Standards for Substance Abusing Licensees, and the Portfolio Examination Requirements. Staff will continue working on the initial rulemaking documents in priority order.

AGENDA ITEM 5: DISCUSSION AND POSSIBLE ACTION REGARDING RECONSIDERATION OF PROPOSED LANGUAGE AND INITIATION OF A RULEMAKING TO AMEND §1018 AND ADOPT §1018.01 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS RELEVANT TO UNIFORM STANDARDS FOR SUBSTANCE ABUSING LICENSEES

Board members were asked to review the revision and to ask for clarification if necessary. There were no additional questions. M/S/C (Afriat/Morrow) to accept the recommended revised proposed regulatory language relevant to the Uniform Standards for Substance-Abusing Licensees and direct staff to take all steps necessary to initiate the formal rulemaking process including noticing proposed language for 45-day public comment, setting proposed language for public hearing and authorizing the Executive Officer to make any non-substantive changes to the rulemaking package. If, after the close of the 45-day public comment period and public regulatory hearing, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process and adopt the proposed amendments to §1018 and proposed addition of §1018.01 of Title 16 of the California Code of Regulations. There was no public comment. The motion passed unanimously.

AGENDA ITEM 6: DISCUSSION AND POSSIBLE ACTION REGARDING THE SUBCOMMITTEE'S REVIEW OF § 1005 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS RELEVANT TO THE MINIMUM STANDARDS FOR INFECTION CONTROL CONDUCTED BY THE DENTAL BOARD OF CALIFORNIA AND THE DENTAL HYGIENE COMMITTEE OF CALIFORNIA

Karen Fischer, Interim Executive Officer, together with Lori Hubble, Executive Officer Dental Hygiene Committee of California, reported that a subcommittee was formed consisting of one representative from the Dental Board, Dental Assisting Council and the Dental Hygiene Committee of California to conduct the required annual review of the regulation relative to the minimum standards for infection control.

Ms. Fischer reported that the subcommittee met on February 4, 2013 via teleconference to review Section 1005 and established a consensus to bring the following findings forward to the Board and Committee for review. The Executive Officers of the Board and Committee worked to form a consensus on staff recommendations regarding the subcommittee's findings.

The subcommittee noted that Section 1005 requires all dental health care personnel to comply with infection control precautions and enforce the minimum precautions established in Section 1005 to protect patients and dental health care personnel and to minimize the transmission of pathogens in health care settings as mandated by the California Division of Occupational Safety and Health (Cal/OSHA). Section 1005 does not preclude any of the DBC's or the DHCC's licensees from complying with laws and regulations governed by other State and Federal agencies (i.e., Cal/OSHA).

The subcommittee established a consensus that Section 1005(a)(12)(C), relative to the definition for "Other Potentially Infectious Material (OPIM)", may need to be revised to clarify the definition relating to HIV, HBV and HCV. The subcommittee questioned if the

current definition contradicts universal precautions. The subcommittee determined that this finding should be forwarded to the Board and the Committee for consideration.

The definition currently found Section 1005(a)(12)(C) was derived from the Cal/OSHA definition to ensure dental offices are in compliance with Cal/OSHA's regulations.

At this time, staff did not recommend that the Board or the Committee amend the language currently found in Section 1005(a)(12)(C) as this language is consistent with Cal/OSHA's definition of OPIM. However, should the CDC or Cal/OSHA amend their definitions in the future, the Board and Committee may find it necessary to amend the definition of OPIM found in Section 1005(a)(12)(C) at that time.

The subcommittee established a consensus that Section 1005(b)(8), relative to gloves, may need to be revised to specify that gloves are required to be puncture-resistant. The subcommittee members noted that there have been some instances when dental health care personnel have not utilized puncture-resistant gloves when processing sharp instruments, needles, and devices. The subcommittee determined that this finding should be forwarded to the Board and the Committee for consideration.

Currently, Section 1005(b)(8) specifies that when processing contaminated sharp instruments, needles, and devices, dental health care personnel shall wear heavy-duty utility gloves to prevent puncture wounds.

At this time, staff did not recommend that the Board or the Committee amend the language currently found Section 1005(b)(8) relating to gloves. Staff did not believe it necessary, at this time, to amend the language as the current language is clear that the heavy duty gloves are to be worn to prevent puncture wounds, thus implying the gloves be "puncture-resistant". Adding the term "puncture-resistant" would be considered duplication. Staff recommended keeping note of this subcommittee finding and including it as part of a future regulatory proposal at a time when the Board and the Committee deem it necessary to amend Section 1005.

M/S/C (Burton/King) to accept staff's recommendations, which do not pose a threat to public safety, that no formal regulatory amendments be promulgated at this time. However, staff will maintain records of this subcommittee's review and findings for consideration by the Board, the Dental Assisting Council and the Dental Hygiene Committee of California during future annual reviews. There was no public comment. The motion passed unanimously.

AGENDA ITEM 7: DISCUSSION AND POSSIBLE ACTION REGARDING BOARD POLICY DECISION TO AUTHORIZE THE USE OF ALL IMAGE RECEPTORS TO CAPTURE RADIOGRAPHS DURING RADIATION SAFETY INSTRUCTION AND CERTIFICATION PROVIDED BY EDUCATIONAL PROGRAMS AND COURSES IN COMPLIANCE WITH CALIFORNIA CODE OF REGULATIONS, TITLE 16, SECTIONS 1014 AND 1014.1

Karen Fischer, Interim Executive Officer, reported that the California Association of Dental Assisting Teachers (CADAT) submitted proposed regulatory amendments to the California Code of Regulations, Title 16, Sections 1014 and 1014.1 relative to radiation safety courses for the Dental Assisting Council (Council) to review and provide recommendations to the Board to promulgate a formal rulemaking. Those proposed amendments were reviewed by an appointed subcommittee of the Council and will be considered by the full Council at this meeting.

During discussions with representatives of CADAT, it became evident that the current regulatory requirements regarding traditional film and computer digital radiographic equipment found in Sections 1014 and 1014.1 was not conducive to the technologically advanced environment currently used by dental professionals. During the December 2012 Board meeting public comment agenda item, representatives of CADAT raised concerns regarding the current radiographic technology used by programs and courses during instruction in radiation safety as being outside the scope of the currently effective regulatory requirements. Additionally, CADAT submitted a letter to the Board requesting this issue be placed on the February agenda.

Lori Gagliardi, on behalf of CADAT requested that the Dental Board adopt a formal policy interpretation of California Code of Regulations, Title 16, Sections 1014 and 1014.1 to authorize the use of all "image receptors" (e.g. traditional film, digital device, etc.) to capture radiographs during radiation safety instruction and certification provided by educational programs and courses and deem the use of all "image receptors" in compliance with the laboratory and clinical instruction requirements until the proposed amendments to Sections 1014 and 1014.1 become effective in accordance with the Administrative Procedure Act to replace the word "film" in its regulations with the word "image receptor".

Spencer Walker, Senior Legal Counsel, advised the Board that doing so would be an underground regulation. However, upon adoption of the proposed regulations, the issue will be resolved. Programs being approved will still be required to comply with the current law until the issue can be resolved in updated regulations. Dr. Morrow stated that radiation safety needs to be consistent no matter what device is used to acquire the image. M/S/C (Morrow/King) to direct staff to treat this issue as a very low level Enforcement matter. There was no public comment. The motion passed unanimously.

COMMITTEE/COUNCIL MEETINGS

The Full Board reconvened at 3:01 p.m.

Roll was called and a quorum established.

AGENDA ITEM 8: Report on the January 16, 2013 Meeting of the Elective Facial Cosmetic Surgery Permit Credentialing Committee; Discussion and Possible Action to Accept Committee Recommendations for Issuance of Permits; and Update on the Board's Report to the Legislature January 1, 2013

Dr. Whitcher, Board liaison, reported that the Board's Report to the Legislature was reviewed at the January 16, 2013 meeting of the Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee. The EFCS committee recommended accepting the report.

Dr. Whitcher reported that the EFCS committee met in closed session to review three (3) applications, one of which was deferred to a future meeting because the Committee requested the applicant submit additional information. The Committee's Recommendations to the Board were as follows:

1. Applicant: Dr. Jeffrey D. Politz. - Requested unlimited privileges for Category II (cosmetic soft tissue contouring or rejuvenation, which may include, but not limited to, facelift, blepharoplasty, facial skin resurfacing, or lip augmentation).

The Committee recommended the Board issue Dr. Jeffrey D. Politz a permit limited to the following Category II procedures: facial fillers and facial neurotoxins.

2. Applicant: Dr. Sanford L. Ratner. - Requested unlimited privileges for Category I (cosmetic contouring of the osteocartilaginous facial structure, which may include, but not limited to, rhinoplasty and otoplasty).

The Committee recommended the Board issue Dr. Sanford L. Ratner a permit limited to the following Category I procedures: Genioplasty and chin implants.

M/S/C (Afriat/Morrow) to accept the Committee's recommendation to issue applicant one (1), Dr. Jeffrey D. Politz, a permit limited to the following Category II procedures: facial fillers and facial neurotoxins. There was no public comment. The motion passed unanimously.

M/S/C (Morrow/McCormick) to accept the Committee's recommendation to issue applicant two (2), Dr. Sanford L. Ratner a permit limited to the following Category I procedures: Genioplasty and chin implants. There was no public comment. The motion passed unanimously.

M/S/C (Burton/Afriat) to accept the Committee's recommendation to accept the Board's report to the Legislature. There was no public comment. The motion passed unanimously.

AGENDA ITEM 9: Update on the Patient Protection and Affordable Care Act

Fran Burton reported that the California Health Benefits Exchange, now known as Covered California, issued its first annual report regarding implementation of the provisions of the federal Patient Protection and Affordable Care Act (PPACA) to Governor Brown in January 2013.

She went on to report that on February 13, 2013, Covered California issued a press release announcing standard benefit plans for consumers.

Ms. Burton informed the Board that staff is currently tracking legislation related to health benefits and changes to Medi-Cal eligibility and will keep the Board apprised of any changes impacting dentistry in the State of California.

Dr. Le, Board President, re-established the Access to Care Committee. She appointed Fran Burton as the Chair and asked Board members who are interested in serving on this committee to contact Karen Fischer, Interim Executive Officer, or herself in the next couple of weeks.

AGENDA ITEM 10: Discussion and Possible Action Regarding Changing the Dates and Locations of Dental Board Meetings in 2013

There was discussion regarding the proposed changes. During Closed Session the Board agreed to hold an additional meeting, April 4, 2013 in Sacramento.

The Board agreed to the following dates and locations:

May 16-17	Oakland
August 26-27	Sacramento
November 21-22	Los Angeles

AGENDA ITEM 16: Enforcement Committee Report

Steven Afriat, Chair, reported that the Enforcement Committee approved the December 3, 2012 minutes. He stated that staff gave a report on the Enforcement unit's projects and improvements. Statistics and status were reviewed and it was noted that there is a larger caseload in the south. Additional staff is being added in the south. There was discussion surrounding the appointment of a new Diversion Evaluation Committee member. The committee agreed to recommend that the Board approve the appointment of Dr. Gregory Pluckhan to the Diversion Evaluation Committee. M/S/C (Burton/Dominicis) to accept the Enforcement Committee report and to approve Dr. Gregory Pluckhan as a new Diversion Evaluation Committee member. There was no public comment. The motion passed unanimously.

AGENDA ITEM 17: Legislative and Regulatory Committee Report

Fran Burton, Chair, reported that the minutes of the December 3, 2012 Legislative and Regulatory Committee meeting were approved unanimously. She stated that six (6) bills were reviewed and discussed. The consensus of the Committee was to take no action on any of the bills at this time as they are so new. M/S/C (Afriat/McCormick) to approve the committee recommendation to watch all bills reviewed. There was no public comment. The motion passed unanimously.

AGENDA ITEM 18: Examination Committee Report

Dr. Morrow, Vice Chair, reported that the December 3, 2012 minutes were approved unanimously. He stated that a report was submitted by the Office of Professional Examination Services (OPES) regarding the review of Western Regional Examiners Board (WREB). The final report should be submitted by the end of the fiscal year (June 30, 2013). Dr. McCormick gave a report on WREB activities. Dr. Morrow gave update on the progress of the Portfolio pathway to licensure. M/S/C (Afriat/McCormick) to accept the Examination Committee report. There was no public comment. The motion passed unanimously.

AGENDA ITEM 19: Licensing, Certification & Permits Committee Report

Dr. Suzanne McCormick, Chair, reported that the December 3, 2012 minutes were approved unanimously. She stated that the statistics that were provided were reviewed and discussed. The need for Evaluators and Evaluator Calibration Training Courses was discussed. She reported that Dr. Whitcher suggested the possibility of a web-based or online training course to try to recruit evaluators from areas that may be underserved due to inaccessibility. Dr. McCormick stated that the committee is considering forming a subcommittee to evaluate the methods by which the calibration course is given and the recruitment of evaluators.

Ms. King commented that within the data by county she would like to see the ratio of dentists per population by 1000's.

Dr. Guy Acheson commented that the California Dental Association used to calibrate the certification courses. He stated that there has been tremendous improvement since Dr. Whitcher took over the calibration process.

M/S/C (Morrow/Afriat) to accept the Licensing, Certification and Permits Committee report. There was no public comment. The motion passed unanimously.

AGENDA ITEM 20: Dental Assisting Council Report

Judith Forsythe, Council Chair, reported that a quorum was established and the December 3, 2013 Dental Assisting Council minutes were approved. She stated that April Alameda, Dental Assisting Unit Manager, gave an update regarding the status of the dental assisting programs and courses, and an overview of the licensure and permit statistics. Ms. Forsythe reported that the Council agreed to schedule a separate Dental Assisting Council meeting aside from the Board meeting. The Council also voted to recommend the Board approve and adopt the Council's amended regulations and ask the Board to move forward with the regulatory process. Fran Burton asked for clarification regarding the Council's discussion to require a two (2) hour Dental Practice Act course and a basic life support (CPR) course prior to taking the Radiation Safety Course.

Dr. Whitcher explained that one of the items proposed for discussion in the original Board packet was whether or not the 8-hour Infection Control course should be required prior to taking the Radiation Safety Course. The Council agreed that the 8-hour Infection Control course should be a prerequisite. He further explained that there was another discussion surrounding whether or not the two (2) hour Dental Practice Act course should be required prior to taking the Radiation Safety Course but the Council rejected that proposal. Dr. Whitcher stated that at this point the directive is for staff to put together all the amendments and bring it back at the May meeting for the Council to review and make recommendations to the Board. There was discussion regarding the requirement for Infection Control prior to the Radiation Safety course and the possibilities surrounding this requirement that may create a barrier to licensure. There was more discussion regarding the issue of public safety and the possibility that without the requirement of Infection Control prior to Radiation Safety, a student may be putting objects into people's mouths before they have the benefit of Infection Control knowledge. Dr. Whitcher mentioned that there is a provision for infection control within the course, relevant to radiation safety technology. The question is; is that adequate? Dr. Le stated that she would like to review the provision for infection control in the Radiation Safety course regulations prior to adopting the amendments. Spencer Walker, Senior Legal Counsel, stated that the Board would have to table this, additional information would have to go before the Council for consideration and if necessary, the Council would make additional recommendations. He stated that the recommendation that the Council made today would be tabled. Lori Gagliardi, CADAT, commented that her group supports the proposal to make the 8-hour Infection Control course a prerequisite to the Radiation Safety course. There was lengthy discussion about the pros and cons of this issue.

Dr. Whitcher asked that staff draft all the changes into an understandable document for the Council and Board to review in order to make an informed decision before directing staff to move forward with the regulatory process. Mr. Walker clarified that this item would have to go back to the Dental Assisting Council for their recommendation before coming back before the Full Board.

M/S/C (Afriat/King) to accept the report and continue the regulatory matter to the May meeting. Dr. Whitcher commented that he felt at a severe disadvantage being handed amendments at the last minute with no time for study or review. There was no public comment. The motion passed unanimously.

M/S/C (Afriat/Morrow) to recess the meeting until 8:30 a.m. the next day. There was no public comment. The motion passed unanimously.