



DENTAL BOARD OF CALIFORNIA MEETING MINUTES

Friday, May 17, 2013

Waterfront Hotel
10 Washington Street, Oakland, CA 94607

Members Present:

Huong Le, DDS, President
Fran Burton, Vice President
Steven Morrow, DDS, Secretary
Steve Afriat, Public Member
Yvette Chappell-Ingram, Public Member
Katie Dawson, RDH
Luis Dominicus, DDS
Judith Forsythe, RDA
Meredith McKenzie, Public Member
Thomas Stewart, DDS
Bruce Whitcher, DDS

Members Absent:

Stephen Casagrande, DDS
Kathleen King, Public Member
Ross Lai, DDS

Staff Present:

Karen Fischer, Executive Officer
Kim Trefry, Enforcement Chief
Dawn Dill, Licensing 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 8:30 a.m. Dr. Steven Morrow, Secretary, called the roll and a quorum was established.

The Board immediately went into closed session.

The Board returned to open session at 11:07 a.m.

AGENDA ITEM 6: Executive Officer's Report

Karen Fischer, Executive Officer of the Dental Board reported that there is one vacancy on the Dental Board for a dentist. She gave an overview of staffing. Ms. Fischer reported that staff is working with the Department of Consumer Affairs on a succession plan and she noted that furloughs will be ending June 30. The Dental Board is in Phase II of the new BreZE computer project which will replace the current, out-dated CAS/ATS programs. Ms. Fischer stated that our request to keep our retired annuitants is currently being evaluated. She commented that our Strategic Plan, which is our roadmap to the future, contains 8 goals and 36 objectives. The process of outlining work projects for the three (3) year plan has proven to be quite ambitious. In the future

staff may request that the Board consider changing it to a four (4) or even five (5) year plan to accomplish all of the goals and objectives set forth. Ms. Fischer gave an overview of the updates to the Dental Board's phone system.

Agenda Item 5 was held over from Thursday's meeting. It was addressed on Friday, May 17, 2013 following Agenda Item 6.

AGENDA ITEM 5: Legislative Process Overview and Discussion and Possible Action on the Following Legislation:

Donna Kantner, former Legislative and Regulatory analyst for the Dental Board, gave an overview of the Legislative process. Fran Burton, Chair of the Legislative and Regulatory Committee, explained the possible positions the Board may take on each of the bills.

AB 291 (Nestande): Sunset Review Committee

Ms. Burton gave an overview of the bill and staff's recommendation.

Motioned/Seconded/Carried (M/S/C) (Dominicis/Whitcher) to accept staff's recommendation to take a watch position at this time. There was no public comment. The motion passed unanimously.

AB 318 (Logue): Medi-cal: teledentistry

Dawn Dill, Licensing and Examination Unit manager, gave an overview of the bill and staff's recommendation. M/S/C (Whitcher/Afriat) to accept staff's recommendation to take a watch position at this time. Guy Atcheson, California Association of General Dentists (CAGD), asked how this bill differed from AB 1174. Ms. Dill responded that they go hand in hand. The motion passed unanimously.

AB 496 (Gordon): Medicine: Sexual Orientation, Gender Identity, and Gender Expression

Ms. Burton gave an overview of the bill and staff's recommendation. M/S/C (Afriat/Whitcher) to accept staff's recommendation to take a watch position at this time and review the status at the next meeting. There was no public comment. The motion passed unanimously.

AB 512 (Rendon): Healing Arts: Licensure Exemption

Ms. Burton gave an overview of the bill and staff's recommendation. M/S/C (Afriat/Morrow) to accept staff's recommendation to take a watch position at this time. There was no public comment. The motion passed unanimously.

AB 809 (Logue): Healing Arts: Telehealth

Dawn Dill, Licensing and Examination Unit manager, gave an overview of the bill and staff's recommendation. M/S/C (Burton/Afriat) to accept staff's recommendation to take a watch position at this time. There was no public comment. The motion passed unanimously.

AB 827 (Hagman): Department of Consumer Affairs

Ms. Burton gave an overview of the bill and staff's recommendation. M/S/C (Morrow/Forsythe) to accept staff's recommendation to take a watch position at this time and review the status at the next meeting. There was no public comment. The motion passed unanimously.

AB 836 (Skinner): Dentists: Continuing Education

Dawn Dill, Licensing and Examination Unit manager, gave an overview of the bill and staff's recommendation. Mr. Afriat commented that the bill doesn't specifically state that these licensees cannot practice full time. Bill Lewis, California Dental Association (CDA), commented that the bill was recently amended to specify that in order to qualify for the reduced continuing education units; licensees must be providing either no-cost or low-cost care. He stated that essential courses would still be required but non-essential courses such

as business management would no longer be required. Ms. Burton stated that this bill was currently amended to include a provision that the Dental Board would have to provide a status report regarding the progress of this change. She also stated that passage of this bill would require the Dental Board to promulgate regulations. Dr. Morrow commented that reducing the number of continuing education units may not be in line with the Board's mission of public protection. Bill Lewis commented that the intent is not to create a lower standard of competency but to add incentives to volunteer. He reiterated that essential courses would still be required. Mr. Lewis stated that the bill could possibly be amended to specify which courses would be required and that care must be no-cost. Katie Dawson asked how the staff would monitor whether or not all care provided by this category of licensees would be at no-cost. Ms. Fischer stated that as with other areas monitoring is complaint driven and the assumption is that these professionals are practicing ethically. Spencer Walker, Senior Legal Counsel stated that the concerns raised by the Board members could be addressed in regulations should the bill pass.

M/S (Stewart/Burton) to support this bill. Dr. Morrow commented that he is opposed to supporting this bill until amendments have been made as a result of the discussion today. Ms. Burton stated that the Board shouldn't lose sight of what this bill intends to do which is providing more care for the underserved. Ms. McKenzie asked if the type of hours could be addressed through regulation rather than amending the statute. Mr. Walker answered that he did not think that the percentage of units could be changed by regulation but the type of units required could be. Dr. Guy Acheson, California Academy of General Dentistry (CAGD) commented that as an educational body, they have the same concerns as Dr. Morrow with regards to reducing the number of continuing education units but would possibly agree to support the bill if the type of units were specified. Darcy Trill, Registered Dental Hygienist (RDH), commented that her concern is that the public will be confused and it will create two standards of care. She stated that if the Board has deemed 50 units of continuing education the standard for competency, that standard should apply to everyone.

A vote was taken, the motion carried (8 aye/2 no). Ms. Burton asked that a letter of support be drafted and sent to the author of the bill and the committee where the bill currently resides.

AB 1174 (Bocanegra): Dental Professions: Teledentistry under Medi-Cal

Ms. Burton gave an overview of the bill and staff's recommendation. M/S/C (Afriat/Morrow) to accept staff's recommendation to take a watch position at this time. There was no public comment. The motion passed unanimously.

AB 1231 (Perez): Regional Centers: telehealth and teledentistry

Dawn Dill, Licensing and Examination Unit manager, gave an overview of the bill and staff's recommendation. M/S/C (Morrow/Afriat) to accept staff's recommendation to take a watch position at this time. There was no public comment. The motion passed unanimously.

SB 456 (Padilla): Health Care Coverage

Ms. Burton gave an overview of the bill and staff's recommendation. M/S/C (Dominicis/Morrow) to accept staff's recommendation to take a watch position at this time. There was no public comment. The motion passed unanimously.

SB 562 (Galgiani): Dentists: Mobile or Portable Dental Units

Dawn Dill, Licensing and Examination Unit manager, gave an overview of the bill and staff's recommendation. Bill Lewis, CDA commented that the bill enlarges the vision from "mobile vans" to units that can be brought into schools and other facilities to provide care. Dr. Le stated that she has a concern about the limitations to one unit. Mr. Lewis stated that they are looking at how to address this issue. Katie Dawson asked if there is any possibility of different regulations for hygienists and dentists. Mr. Lewis stated that those areas are being

discussed and will be addressed. M/S/C (Afriat/Dominicis) to accept staff's recommendation to take a watch position at this time. There was no further public comment. The motion passed unanimously.

SB 690 (Price): Licenses

Ms. Burton gave an overview of the bill and staff's recommendation. M/S/C (Afriat/Morrow) to accept staff's recommendation to take a watch position at this time. There was no public comment. The motion passed unanimously.

SB 809 (DeSaulnier): Controlled Substances: reporting

Kim Trefry, Enforcement Chief, gave an overview of the bill and staff's recommendation. Ms. Burton asked about the fee increase involved and the impact it would have on the Board. Ms. Fischer stated that with the Board's proposed fee increase to the statutory cap, the Board would need regulations to increase the cap in order to accommodate the fee increases imposed by this bill. Dr. Stewart commented that he feels that it is important to support this bill. Ms. Burton stated that she feels it is a little early to support this bill as there will be lots of amendments. She recommends a watch position. M/S/C (Afriat/Morrow) to accept staff's recommendation to take a watch position at this time. Bill Lewis, CDA, commented that they have not taken a formal position on this bill. Their biggest concern is the use of licensure fees for funding. He stated that there are many other funding sources being investigated. Dr. Morrow expressed his support for the objectives and the purpose of the bill but stated he had some concerns about the implementation of it. The motion passed unanimously.

SB 821 (Committee on Business, Professions and Economic Development): Healing Arts

Ms. Burton gave an overview of the bill and staff's recommendation. Ms. Fischer commented that she feels it would be appropriate to write a letter to the author thanking them for including the Dental Board's request in the bill. M/S/C (Morrow/Stewart) to accept staff's recommendation to take a neutral position at this time and send a letter of thanks to the author. There was no public comment. The motion passed unanimously.

Dr. Le, Board President, called for a short recess for lunch at 12:55 p.m.

The Board returned to open session at 1:30.

AGENDA ITEM 7: Budget Process Overview and Report

Karen Fischer, Executive Officer, gave an overview of the state budget process. She reviewed the Dental and Dental Assisting budgets. She reported that the Dental Assisting Program received an augmentation to their funds this year. She has submitted a request to have the augmentation become permanent.

AGENDA ITEM 8: Update from the Dental Hygiene Committee of California (DHCC)

Michele Hurlbutt, President of DHCC, thanked Ms. Fischer and Dr. Le for attending their meeting. She reported that they have three new public Committee members. She also reported that their Disciplinary Guidelines and Uniform Standards are submitted for Agency approval, they have promulgated regulations for Sponsored Free Health Care Events. They are also looking at increasing their fees to remain solvent. Ms. Hurlbutt stated that DHCC voted to accept the recommendation of the Infection Control Standards subcommittee to make no changes at this time. They would however, like to collaborate with the Dental Board in discussing the possibility of changing the statute to a review every two years instead of yearly. She reported that their Sunset Review Report is due in November.

Dr. Le agreed that we should look at changing the collaborative review of the Infection Control Standards to every two years.

AGENDA ITEM 9: Update from the Department of Consumer Affairs Executive Office

There was no representative from the Executive Office available to give a report.

AGENDA ITEM 10: Regulatory Process Overview

Donna Kantner, former Legislative and Regulatory Analyst for the Board, gave an overview of the regulatory process.

AGENDA ITEM 11(A): Discussion and Possible Action Regarding Comments Received During the 45-day Public Comment Period for the Board's Proposed Rulemaking to Amend § 1018 and Adopt § 1018.01 of Title 16 of the California Code of Regulations Regarding Uniform Standards for Substance Abusing Healing Arts Licensees

Ms. Lori Reis, manager of the Complaint and Compliance Unit, gave an overview of the Uniform Standards process and progress.

Ms. Reis reported that at the February 28, 2013 meeting, the Board accepted proposed revisions to amend § 1018 and adopt § 1018.1 of Title 16 of the California Code of Regulations, relative to Uniform Standards for Substance Abusing Healing Arts Licensees. The Board directed staff to notice the text for the 45-day comment period and set a regulatory hearing.

The proposed revisions were mailed to interested parties and posted on the Board's web site. The 45-day public comment period began on March 15, 2013 and ended on April 29, 2013. The regulatory hearing was held on April 29, 2013. The Board received written comments from the California Dental Association (CDA). The comments received from CDA were not considered adverse but staff prepared a response in an effort to provide clarification to questions the CDA had regarding the Board's proposed regulation relating to uniform standards for substance abusing licensees. Staff's response was:

The Board's Uniform Standards Related to Substance-Abusing Licensees would not apply to a licentiate who self-refers to the Board's Diversion Program, unless he or she tests positive for a banned substance, and the Board finds there is evidence that the licentiate is a substance-abusing licensee.

Pursuant to Business and Professions Code section 1695.5, subdivision (b), a licentiate who is not the subject of a current investigation may self-refer to the board's diversion program on a confidential basis, except as provided in subdivision (f). Subdivision (f) provides, in part, that "[i]f a licentiate in a diversion program tests positive for any banned substance, the board's diversion program manager shall immediately notify the board's enforcement program and provide the documentation evidencing the positive test result to the enforcement program. This documentation may be used in a disciplinary proceeding." Once the board is notified of a positive test for a banned substance, the self-referring licentiate would, therefore, lose his or her confidential status, and the board would be allowed to initiate a disciplinary proceeding. Pursuant to the provisions of the proposed CCR section 1018.01, the uniform standards would apply to such a licentiate only after notice and a hearing has been conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), and the Board finds that the evidence establishes that the licentiate is a substance-abusing licensee. There was no public comment.

AGENDA ITEM 11(B): Discussion and Possible Action Regarding Adoption of Proposed Amendment of §1018 and Addition of §1018.01 of Title 16 of the California Code of Regulations Relevant to Uniform Standards for Substance Abusing Licensees

M/S/C (Morrow/Forsythe) to accept staff's recommended response to comment, and to adopt the final text as noticed, and direct staff to take all steps necessary to complete the rulemaking process, including the filing of the final rulemaking package with the Office of Administrative Law; and authorize the Executive Officer to make any non-substantive changes to the proposed regulations

before completing the rulemaking process, and adopt the proposed amendment to § 1018 and the proposed addition of § 1018.01 of Title 16 of the California Code of Regulations. Bill Lewis, CDA, thanked the Board members and staff for the completion of this regulatory process and for clarifying CDA's question related to self referral. There was no additional public comment. The motion passed unanimously.

AGENDA ITEM 12: Licensing, Certification and Permits Program Report:

A. Dental and Dental Assisting Licensure and Permit Statistics

Dawn Dill, Licensing and Examination Manager, reviewed the statistics provided. She explained the new format of the statistics and pointed out that there are over 100,000 license holders. Dr. Morrow asked if there was any data on the number of licenses that have been surrendered for one reason or another. Ms. Dill responded that there are categories for voluntary surrender and revoked. She stated that these statistics could be made available if the Board wishes to have that information.

B. General Anesthesia/Conscious Sedation Evaluation Statistics

Dr. Bruce Whitcher, Chair of the Licensing, Certification and Permits Committee, gave an overview of the statistics provided.

C. The Board may take action on recommendations by the Licensing Certification and Permits Committee regarding issuance of new licenses to replace cancelled licenses

Dr. Whitcher reported that the LCP Committee met in Closed Session to review one application for a license to replace a cancelled license for candidate LCM. He reported that the candidate met all the requirements and the LCP Committee recommended that the Board grant a new license to candidate LCM. M/S/C (Afriat/Morrow) to accept the LCP Committee's recommendation to grant candidate LCM a new license. There was no public comment. The motion passed unanimously.

AGENDA ITEM 13: Enforcement Program Report:

A. Program Status

Kim Trefry, Enforcement Chief, reviewed the current Enforcement Efforts, Outreach and Staffing within the Enforcement Program. There was no public comment.

B. Enforcement Statistics (Complaints and Investigations)

Ms. Trefry, Enforcement Chief, gave an overview of the statistics provided. There was no public comment.

C. Performance Measures

Ms. Trefry, Enforcement Chief, gave an overview of the third quarter performance measures of the Enforcement Unit. There was no public comment.

D. Diversion Program Report

Lori Reis, Complaint and Compliance Unit and Diversion Program Manager, gave an overview of the Diversion statistics provided.

AGENDA ITEM 14: Report on the April 19, 2013 Meeting of the Elective Facial Cosmetic Surgery Permit Credentialing Committee; Discussion and Possible Action to Accept Committee Recommendations for Issuance of Permits

Dr. Bruce Whitcher, liaison to the Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee, reported that the EFCS Permit Credentialing Committee met on April 17, 2013 by teleconference.

In closed session, the Credentialing Committee reviewed two (2) applications.

The Committee recommended the Board issue Dr. Kurt G. Hummeldorf a permit for unlimited Category I & Category II procedures.

M/S/C (Afriat/Morrow) to accept the Committee's recommendation to issue Dr. Kurt G. Hummeldorf a permit for unlimited Category I & Category II procedures. There was no public comment. The motion passed unanimously.

The Committee recommended the Board issue Dr. Eric M. Scharf a permit for unlimited Category I & Category II procedures.

M/S/C (Morrow/Forsythe) to accept the Committee's recommendation to issue Dr. Eric M. Scharf a permit for unlimited Category I & Category II procedures. There was no public comment. The motion passed unanimously.

M/S/C (Forsythe/Dominicis) to accept the Elective Facial Cosmetic Surgery Permit Credentialing Committee report. There was no public comment. The motion passed unanimously.

PUBLIC COMMENT:

Frank Castillo, a student from the Dental Board's program at Universidad De La Salle in Mexico, commented that he would like to bring to the attention of the Board issues that are causing distress in the personal and professional lives of himself and eight (8) fellow students of the class of June 2012, Universidad De La Salle. He stated that he and his fellow students are still attending De La Salle in their fifth year of school and are in fear of having to attend a sixth year. Mr. Castillo asked the Board to investigate the Dean of the Dental Program at De La Salle and the sporadic changes that have been made making it impossible for his colleagues and him to graduate. Mr. Castillo states that the Dean has failed to respond to eight (8) verbal and written requests for information over three (3) months time. He stated that he would be willing to discuss this matter in a more private setting. Mr. Castillo thanked the Board for their time and attention and commented that he and his fellow colleagues look forward to the time when they can use the knowledge they have gained to provide services throughout the state of California.

Bill Lewis, California Dental Association (CDA), commented that CDA has been monitoring the actions of the Berkeley City Council since last October when an anti-amalgam group brought a resolution to them and encouraged them to take action on behalf of the city to ban or limit the use of dental amalgam. At that time the city council referred the issue to two (2) advisory commissions. The Health Commission developed a resolution requiring all dentists to provide an informed consent form which must be signed by any patient considering an amalgam filling. The Environmental Commission put forth a resolution that would require the dentist to provide the Dental Materials Fact Sheet every time an amalgam filling is being discussed instead of only on the patient's first visit. Both commissions are requesting the Dental Board update the Dental Materials Fact Sheet.

Mr. Lewis stated that CDA has referred the commissions to Section 460 of the Business and Professions Code that prohibits local entities, cities or counties from taking any action that regulates a state licensed professional or that prohibits certain practices by a state licensed professional that is inconsistent with their license. CDA has requested that Senator Emmerson get an opinion from the State Legislative Counsel that concurs with CDA's opinion that the proposed informed consent requirement would be illegal under Section 460 of the Business and Professions Code. The commissions are moving forward with their resolutions.

There was no further public comment. The meeting adjourned at 3:07 p.m.