



LEGISLATIVE AND REGULATORY COMMITTEE MEETING MINUTES

**Thursday, February 24, 2011
San Diego**

Members Present:

Fran Burton, Public Member, Chair
Stephen Casagrande, DDS, Vice Chair
John Bettinger, DDS
Luis Dominicus, DDS
Huong Le, DDS
Suzanne McCormick, DDS
Steven Morrow, DDS

Members Absent:

Steven Afriat, Public Member

Staff Present:

Richard DeCuir, Executive Officer
Donna Kantner, Licensing & Examination Unit Manager
Kim A. Trefry, Enforcement Chief
Jocelyn Campos, Enforcement Coordinator
Karen Fischer, Licensing Analyst
Sarah Wallace, Legislation and Regulations Analyst
Linda Byers, Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

ROLL CALL AND ESTABLISHMENT OF QUORUM

Ms. Burton, chair called the meeting to order at 9:30 a.m. Roll was called and a quorum was established.

LEG 1 – Approval of the November 4, 2010 Legislative and Regulatory Committee Meeting Minutes

M/S/C (McCormick/Le) to approve the November 4, 2010 Legislative and Regulatory Committee meeting minutes. The motion passed unanimously.

LEG 2 – 2011 Tentative Legislative Calendar – Information Only

The 2011 Tentative Legislative calendar was enclosed for informational purposes.

LEG 3 – Discussion and Possible Action on the Following Legislation:

Sarah Wallace, Legislative and Regulatory Analyst reported that after this meeting packet was put together, there were several new bills of interest to the board that were just introduced which she has included in the handout.

- **AB 28 (Huber) – State agencies: repeals**
This bill will establish repeal dates for various agencies that would be eligible for review by the Joint Sunset Review Committee. At this time, this bill does not directly affect the Dental Board of California. M/S/C (Burton/Forsythe) to “Watch” this bill. The motion passed unanimously.
- **AB 127 (Logue) - Regulations: effective date**
This bill would require that a regulation or an order of appeal of a regulation become effective on January 1 next following a 90-day period after the date it is filed with the Secretary of State, except

as provided, instead of the current 30th day after it is filed with the secretary of State, except as provided.

Richard DeCuir, Executive Officer, stated that this bill as proposed could extend the already lengthy rulemaking process which in turn could endanger the public.

Kristy Shellans stated that this bill, as written, would still allow you to prescribe an earlier effective date for your regulations but you would have to order that every single time that you adopted regulations. As we've seen in the past, sometimes things take longer than the date you've set which may add confusion to the process. M/S/C (Casagrande/Morrow) to "Oppose" this bill and get a letter off to the author right away. The motion passed unanimously.

- **SB 100 (Price) – Healing Arts**

As it applies to the Dental Board of California, this bill requires dentists to use the designation of "DDS" or "DMD" immediately following the dentist's name in all advertising. This bill may affect the Dental Board's Oral and Maxillofacial Surgery (OMS) holders who own or are employed by ambulatory surgical centers. This bill only affects the permit for the site and not the permit holder. Kristy Shellans, Legal Counsel, stated that this bill contains many different issues that it is trying to address. As far as the Dental Board is concerned it might be a good idea to watch the advertising section of this bill. M/S/C (Burton/Bettinger) to "Watch" this bill. The motion passed unanimously.

- **SB 103 (Liu) - State government: meetings: teleconferencing**

This bill urges state bodies to hold teleconference meetings when legally and financially possible. Dr. Morrow stated that as he understands it, this bill is urging not requiring. Ms. Wallace confirmed this. M/S/C (Burton/Bettinger) to "Watch" this bill. The motion passed unanimously.

- **Other legislation impacting the Board that staff becomes aware of between the time the meeting notice is posted and the Board meeting.**

Ms. Wallace stated that there are an additional 9 bills which could have some impact on the Dental Board. The majority of these bills make only technical not substantive changes.

AB 536 regarding the Department of Consumer Affairs makes technical changes to the language. M/S/C (Burton/Bettinger) to "Watch" this bill. The motion passed unanimously.

AB 675 regarding the general provisions pertaining to all healing arts boards would provide that continuing education courses that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting requirements for licensure renewal. M/S/C (McCormick/Morrow) to "Support" this bill. Ms. Burton asked if this was a "spot" bill. Ms. Wallace stated that at this point this bill would make substantive changes to the statute because the Dental Board already has pretty specific continuing education requirements in regulation. Kristy Shellans asked if there was a copy of the text that the Board could see and Ms. Wallace stated that it was not available. Kristy Shellans stated that she would be uncomfortable on the Board voting on something that they hadn't actually had the text for. Ms. Burton stated that as long as the hearing is still pretty far away, she would caution against taking a position now that we can't change later. Dr. McCormick stated that she would be happy to withdraw her motion but that perhaps the same should be done for the other 8 bills the board does not have the language for. Ms. Shellans stated that the Board does have the language for SB 540 and 694. M/S/C (McCormick/Dominicis) that the Board take a "Watch" position on the remaining bills of interest AB 675 Continuing Education, AB 958 Regulatory Boards: limitations periods, AB 1207 Department of Consumer Affairs, AB 1328 Professions and Vocations, SB 227 Business Professions: licensure, SB 231 Regulatory boards: healing arts, SB 399 Healing arts: advertising and SB 544 Healing arts with the exceptions being SB 540 and SB 694. The motion passed unanimously with Ms. Burton abstaining.

SB 540 regarding extending the repeal date of the Dental Board of California until January 1, 2016. Dr. Bettinger moved to support. Mr. DeCuir asked the board to proceed with caution on this bill because this could be the caveat for the committee to load in language during Sunset Review.

There may be some provisions that come about as a result of Sunset Review that the Board may not want to accept. Dr. Bettinger offered to amend his motion. Bill Lewis with California Dental Association (CDA) commented that it makes the most sense to not take a position until more details are known. Dr. Bettinger withdrew his motion. M/S/C (Bettinger/Le) to remain "Neutral" on this bill. The motion passed unanimously.

SB 694 regarding access to dental care. Dr. Bettinger stated that this may be a bill that will allow the creation of mid-level providers. Dr. Le stated that this bill was actually introduced by the Children's Partnership. They are working on proposing a new category of dental people. Dr. Bettinger stated that this is another bill where we don't have the language and we don't know where they're going with it. Bill Lewis CDA commented that they have been in some preliminary discussions with Children's Partnership regarding where everyone is on the issue at this point. CDA has previously worked with Senator Padilla the author of this bill and takes no position at this time but watch closely. Dr. Le would like to recues herself as she has been in some discussions with Children's Partnership. Katie Dawson from the California Dental Hygienists Association stated that as a profession, they are also looking at this mid-level provider. There are many different models all over the country and we should get as much input as possible especially from dental hygienists and possibly dental assistants who would be used to create this new position. We have not been involved with other organizations officially but we would like to encourage as much input as possible when coming to any decisions. M/S/C (Burton/ McCormick) to "Watch" this bill. The motion passed unanimously with Dr. Le abstaining.

LEG 4 – Update on Pending Regulatory Packages:

A. Disciplinary Guidelines (California Code of Regulations, Title 16, Section 1018)

Sarah Wallace reported that the Disciplinary Guidelines were approved by the Office of Administrative Law and filed with the Secretary of State on Dec. 14, 2010. The regulation became effective on January 13, 2011. A copy of these guidelines can be found can be found on the Boards website at: http://www.dbc.ca.gov/formspubs/pub_dgml.pdf

B. Retroactive Fingerprinting (California Code of Regulations, Title 16, Sections 1007,1008 and 1017.2)

Ms. Wallace reported that this rulemaking was signed by the appropriate parties and turned in to the Office of Administrative Law (OAL) on January 28, 2011. OAL has 30 working days to either approve or disapprove the file. If the file is approved, it will be filed with the Secretary of State and the regulation will become effective 30 days later. Staff anticipates that the file will be approved and the regulation will become effective sometime in mid-April. Dr. Morrow asked if these regulations also pertain to dentists. Ms Wallace said yes, they pertain to all licensees of the Dental Board.

C. Dental Assisting Educational Programs and Courses (California Code of Regulations, Title 16, Sections 1070, 1070.1, 1070.2, 1070.6, 1070.7, 1070.8 and 1071)

Ms. Wallace reported that since the last meeting the Dental Assisting Educational Programs and Courses regulatory package had gone out for a third modified text. The board received 1 comment in support and 1 adverse comment. Those comments were discussed during Friday's board meeting.

D. Minimum Standards for Infection Control (California Code of Regulations, Title 16, Section 1005)

Ms. Wallace reported that the final text was adopted by the board at the December teleconference. Staff is currently working on the final statement of reasons for this rulemaking to turn in to the Office of Administrative Law before the one year deadline which is August 26, 2011.

E. Consumer Protection Enforcement Initiative (California Code of Regulations, Title 16, Sections 1018.05 and 1020)

Ms. Wallace reported that the Consumer Protection Enforcement Initiative (CPEI) regulations which were approved by the board in November have been filed with the Office of Administrative Law (OAL). They were published by OAL on February 18, 2011. The 45 day public comment period began on 2/18/2011 and will end on April 4, 2011. A regulatory hearing has been scheduled for April 4, 2011 at 10:00 a.m. at the DBC Sacramento office on Evergreen Street.

Ms. Wallace stated that a couple of items that were not included in this package but that are currently being worked on include the Sponsored Healthcare Event Regulations which comply with AB 2699 provisions that will be discussed on Friday. We are also working on the Uniform Standards for substance abusing licensee's regulatory package that will be discussed on Friday. In addition, we are working with the subcommittee on the Portfolio regulations for drafting. Mr. DeCuir commented that from his past experience, he has never seen a board work on more than one or two regulatory packages through the course of a year. Before this meeting is through, we will be trudging through eight regulatory packages. Mr. DeCuir wanted it to be clear about the workload being placed on Sarah in particular and staff in general and on the board. He said he felt obligated to make everyone aware of this. Dr. Bettinger commended the staff for their hard work and Richard for his leadership in dealing with so many regulatory packages. Everyone on the board and in the Legislative and Regulatory committee appreciates all the hard work that everyone has put into it.

LEG 5 – Prospective Legislative Proposals

(A) Discussion and Possible Action to Recommend Statutory Amendments to Business and Professions Code Section 651 Regarding Advertising of Specialty Licensure

Ms. Wallace reported that in February 2001 AB 1026 was introduced and sponsored by the California Dental Association (CDA). The bill was similar to the board's prior regulatory language that had been deemed unconstitutional in a previous lawsuit. The bill was enacted into law ON September 23, 2002 and was chaptered as B & P code Section 651(h)(5)(A). As a result of the enactment of AB 1026, a lawsuit was filed challenging the constitutionality of this law. The board attempted to settle the case and the threat of any future litigation by pursuing statutory amendments. However, the board was unsuccessful in finding an author to sponsor the legislation. In October of 2010 a United States District Court Judge ruled that section 651(h)(5)(A) violates the First Amendment and must be invalidated. The board is constitutionally obligated to appeal that decision and the issue is currently on appeal in the Ninth Circuit Court of Appeals. At this time, staff is again seeking an author to carry new language to repeal the B & P Code Section 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii). Ms. Burton stated that there had been a meet and greet at Senator Price's office where some preliminary discussions on this issue were brought up. It is her understanding that this is something that is in the Sunset Review process. The committee thinks it is possible to take care of this issue through those Sunset Review hearings making it unnecessary for us to carry a bill as this would be loaded into whatever legislation is done as a result of Sunset Review. Ms. Burton stated that she thinks that we don't need to do anything at this point. We need to wait to see the outcome of the Sunset Review hearing on March 14, 2011. Bill Lewis, CDA, stated that they wish they were not in the position to have to take this action since they were the sponsors and worked hard to get this enacted but clearly the tide has been running against us on this particular issue. We recognize the burden put upon the board in trying to defend this statute. We are in agreement with the board on moving forward with this. He asked legal counsel if they thought that just waiting to see what would happen after Sunset Review was the appropriate action. Kristy Shellans stated that it is a policy call by the board in how they want to pursue it. Does the committee agree with this approach? Dr. Bettinger stated that all three attorneys agree on this language. Kristy Shellans stated that she thinks it would solve the problems of future litigation for the board. M/S (Bettinger/Forsythe) that the language be forwarded to the full board for approval and direct the Executive Officer to seek an author to introduce this language as an urgency measure during the 2011-2012 Legislative session to repeal Business and Professions Code Sections 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii). Mr. DeCuir stated that he thinks we need to take a step back because we're not going to get an urgency bill through and as long as the sunset Review process includes this language then this motion would be incorporated into the Sunset Review process. Ms. Burton stated that the motion is that we want to move this language forward to the full board tomorrow for approval and we want to ask that this language either be incorporated into the Sunset Review process or into a bill for which we will seek an author. Ms. Burton stated that the reason she wanted to add that last part is that she wants to be sure that we are finally going to get a solution to this problem. Ms. Burton stated that she also wanted to be sure

that when we get into Sunset Review things don't get out of hand with some other provisions that we had not considered or had an opportunity to talk about. Dr. Bettinger asked to amend his motion. M/S/C (Bettinger/Forsythe) to move the language be forwarded to the full board for approval and incorporation into the Sunset Review process or direct the Executive Officer to seek an author to introduce this language during the 2011-2012 Legislative session to repeal Business and Professions Code Sections 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii). The motion passed unanimously.

(B) Request for proposals - Stakeholders Are Encouraged to Submit Proposals in Writing to the Board Before or During the Meeting for Possible Consideration by the Board at a Future Meeting

Ms. Burton reminded everyone that the clock is ticking on this so if there are things that the committee needs to be aware of they need to be brought forward.

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

Ms. Burton thanked Sarah Wallace for all her hard work on these many regulations. The committee adjourned at 10:21 a.m.