



**Dental Board of California
Meeting Minutes
Friday, May 18, 2012**

Embassy Suites SFO Airport Waterfront
150 Anza Blvd., Burlingame, CA 94010

Members Present:

Bruce Witcher, DDS President
Huong Le, DDS, Vice President
Fran Burton, Secretary
John Bettinger, DDS
Stephen Casagrande, DDS
Luis Dominicis, DDS
Rebecca Downing, Public Member
Suzanne McCormick, DDS
Steven Morrow, DDS
Thomas Olinger, DDS

Members Absent:

Steve Afriat, Public Member
Judith Forsythe, RDA

Staff Present:

Richard DeCuir, Executive Officer
Denise Johnson, Assistant Executive Officer
Kim Trefry, Enforcement Chief
Sarah Wallace, Legislative and Regulatory Analyst
Karen Fischer, Associate Analyst
Linda Byers, Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Dr. Bruce Witcher, President called the meeting to order at 8:30 a.m. Fran Burton, Secretary called the roll and a quorum was established.

AGENDA ITEM 7: Approval of the Full Board Meeting Minutes from February 23-24, 2012, April 11, 2012 Teleconference Minutes, and Acceptance of the Dental Assisting Committee Minutes for February 23, 2012

M/S/C (Dominicis/McCormick) to approve the February 23-24, 2012 Dental Board meeting minutes. The motion passed unanimously. M/S/C (Morrow/Burton) to approve the April 11, 2012 Teleconference minutes. The motion passed unanimously. M/S/C (McCormick/Bettinger) to accept the February 23, 2012 Dental Assisting Committee minutes. The motion passed unanimously.

AGENDA ITEM 8: President's Report

Dr. Witcher reported that he and Dr. Le attended the California Dental Association (CDA) Convention where they volunteered with the Dental Board staff from the Orange office manning the Dental Board's exhibit. Dr. Witcher and Dr. McCormick attended the California Dental Society Anesthesia meeting and gave them an update on the Board's activities. Dr. Witcher conducted a General Anesthesia Evaluator Calibration Course in Union City with Dr. Leighty from the Diversion

Evaluation Committee. He also attended a meeting of the California Association of Oral and Maxillofacial Surgeons (CALOAMS) in Westlake Village and had a conference with them regarding issues relating to the Board then traveled to Anaheim for another General Anesthesia Evaluator Training Course along with Dr. McCormick and Dr. Tracy from the Diversion Evaluation Committee where CDA was kind enough to provide a room where they conducted training concurrent with the CDA Convention. Dr. Witcher reported that many of the discussions regarding the CDA special session were centered on the workforce capacity and SB 694. He reported that the Clearinghouse of Healthcare Occupations annual report will be coming out in June. After the data is collected, there will be an annual report to the Legislature that will identify education and employment trends in healthcare professions and report on current supply and demand for healthcare workers in California. Dr. Witcher appointed a subcommittee of Rebecca Downing and himself to take stock of this information and how it might be useful.

AGENDA ITEM 9: Executive Officer's Report

Richard DeCuir, Executive Officer reported that the Enforcement Unit made some arrests of unlicensed practitioners in Ventura County and insurance fraud arrests in Beverly Hills. The Department eliminated all home storage permits which allowed the investigators to take their work vehicles directly from their residence to work in the field. There is a proposal on the table to reduce the Dental Board's vehicles from 18 to 11. Recently, the Board fought for the 11 vehicles from the originally proposed 4. As part of the budget deficit the board was advised that it will need to cut 2.5 positions. Mr. DeCuir reported that he attended his first Dental Assisting Practical Exam at UOP. He also attended a special meet and greet with the Agency Secretary, Anna Caballero, for all of the Executive Officers of the Department of Consumer Affairs along with staff from the Governor's Appointments Office. The Appointments Office encouraged the Executive Officers to engage with them regarding Board Appointments. The State and Consumer Services Agency will be setting up a program called Vets to Work, within the Department of Consumer Affairs to help veterans return to the workforce. Mr. DeCuir reported that the Registered Dental Assistant (RDA) application requirements will change; beginning August 1, 2012, all application requirements must be met prior to sitting for the examination. Michelle Callaghan, Carrington College asked if the fingerprinting requirement would apply as well. Mr. DeCuir replied that the application would be considered incomplete if the fingerprints weren't done. Dr. Witcher took a moment to thank Kristy Shellans, the Dental Board's Legal Counsel, for her hard work and dedication and to wish her well as this is her last meeting. Ms. Shellans commented that she is leaving us in the capable hands of Spencer Walker but she will be available.

AGENDA ITEM 10: Update on Dental Hygiene Committee of California (DHCC) Activities

Mr. Alex Calero, DHCC President, reported that at the April DHCC meeting the Committee voted to amend their existing retroactive fingerprint regulations to allow licensees who are on inactive status to avoid having to come to California to be LiveScan fingerprinted. The Committee also voted to make some changes to the Sponsored Healthcare Regulations. DHCC Staff is preparing to submit the proposed regulatory changes to their Disciplinary Guidelines. Mr. Calero reported that the Committee has begun discussions about accepting other regional licensing exams in addition to Western Regional Examination Board (WREB). Dr. Olinger asked how many hygienists the DHCC regulates. Lori Hubble, Executive Officer answered about 29,000. Dr. Olinger asked how many disciplinary actions they had had in the past year. Ms. Hubble answered less than 10. Dr. Olinger questioned why the number was so low. Greg Salute, Deputy District Attorney stated that the DHCC licensees are subject to the subsequent arrest reports the same as the Dental Board licensees, they are fingerprinted the same as the Dental Board licensees and they subscribe to the Department of Justice so they are notified of any arrests or convictions of licensees.

AGENDA ITEM 11: Budget Reports: Dental Fund & Dental Assisting Fund

Mr. DeCuir reported that the Boards budgets separated into two appropriation accounts: Dentistry \$11,227,000 and Dental Assisting \$1,673,000 for a total appropriation of \$12,900,000. According to the March 2012 CALSTARS report, as of March 31, 2012, the Dental Board had spent approximately 66% of its FY 2011-12 Dentistry budget appropriations (roughly \$7.4 million). Based

on these expenditures, the Board is projected to revert approximately \$663,000, or 5.6% at the end of this fiscal year (June 30, 2012). For Dental Assisting, the Board has spent approximately 71% of its FY 2011-12 Dental Assisting appropriations (roughly \$1.2 million). Based on these expenditures, the Board is projected to revert approximately \$74,000 or 4.4%. So, for the current fiscal year the Board expects a total reversion of \$737,000 or approximately 5%. Mr. DeCuir had the budget office prepare a report showing reversions by FY from 2006-07 to 2010-11.

AGENDA ITEM 12(A): Discussion and Possible Action Regarding Staff's Recommendation for Appropriate Fee Increases in Dentistry to Sustain Board Expenditures; and

Mr. DeCuir reported that at the February 2012 Board Meeting, discussions began regarding the necessity to propose licensure fee increases to fund the 12.5 new Consumer Protection Enforcement Initiative (CPEI) positions established in 2010. These positions came at a cost of approximately \$1.2 million. Initial licensure fee increases were projected by Mr. DeCuir to be increased to approximately \$405.00 biennially (a \$20.00 per year increase). Current biennial licensure fees are \$365 and were last increased in 1998. Mr. DeCuir reviewed different fee increase scenarios provided by the Department's Budget Office, depicting the Dental Board's projected fiscal solvency through FY 2015-16. Without fee increases, the Board is projected to begin operating in a deficit spending situation in FY 2015-16. Dr. Olinger commented that if the \$4.4 million outstanding loan is paid back; because it must be before fees are increased; and we increase fees, we will have a large surplus. Mr. DeCuir stated that the scenarios were constructed with the \$4.4 million repayment built-in in addition to the fee increases and they still show fiscal insolvency by FY 2015-16. M/S/C (Dominicis/Burton) to accept the staff report. The motion passed unanimously.

AGENDA ITEM 12(B): Discussion and Possible Action Regarding Initiation of a Rulemaking to Amend California Code of Regulations, Title 16, §1021 Relevant to Examination, Permit and Licensure Fees for Dentists

Ms. Wallace reported that staff had prepared proposed regulatory language for the Board's consideration. Mr. DeCuir commented that the proposed language contains provisions for a 23% fee increase and updates the regulatory fee schedule. Dr. Olinger asked if we have discretion on the proposed numbers. Ms. Shellans answered yes, but any fee established must be supported by data showing a workload analysis as to how much it is going to actually cost to process the applications. Dr. Whitcher commented that it would be easier to support this if workload analysis information were available for review. Ms. Shellans recommended that a workload analysis be done on each one of the increases to justify the maximum increase. She stated that the control agencies will scrutinize any proposed fee increases so there must be data to support it. Ms. Shellans suggested that analyses be prepared as it would be for a filing. M/S/C (Olinger/Le) to table the discussion on initiating a proposed rulemaking to increase the fees until the Board can review further data supporting the fee increases at a future Board meeting. Dr. Earl Johnson commented that the increase for a replacement license is outrageous. He further stated that some of the fee increases make sense but this one is just gouging the people who support the Board. Dr. Guy Atchison commented that in looking at the projections within the five scenarios it looks like a fee increase would be required every year to prevent insolvency. Mr. DeCuir stated that the reversions will prevent the need for increases every year. Bill Lewis, CDA, commented that they would support the motion to defer this to a future meeting until a more thorough workflow analysis can be completed. The motion passed unanimously.

AGENDA ITEM 13: Update on Pending Regulatory Packages:

Sarah Wallace, Legislative and Regulatory Analyst gave an update on the pending regulatory packages.

A. Sponsored Free Health Care Events (Cal. Code of Regs., Title 16, §1023.15, 1023.16, 1023.17, 1023.18 and 1023.19)

Ms. Wallace reported that during the February 2012 Board Meeting the Board considered comments received during the 45-day public comment period and had made modifications to the text. As staff

was preparing to notice the modified text for the 15-day public comment period, the Department of Consumer Affairs (Department) contacted all Healing Arts Boards that have proposed regulations relevant to sponsored free health care events, that they may need to further clarify the Department's role in receiving and registering sponsoring entities. The Board held a special Teleconference meeting in April 2012 where they adopted a Resolution to formally delegate authority to the Department to receive and process sponsored entity registration forms and to register sponsoring entities for sponsored free health care events that utilize the services of dentists. The Board directed staff to add the adopted Resolution to the Board's Sponsored Fee Health Care Events rulemaking file. Additionally, the Board voted to modify the text accordingly. That language went out for the 15-day public comment period, during which no comments received. Per the motion at the April Board meeting the Board had already adopted the rulemaking language. Staff is finalizing the rulemaking file and getting ready to submit it to DCA for approval before submission to the Office of Administrative Law (OAL).

B. Notice to Consumers of Licensure by the Dental Board (Cal. Code of Regs., Title 16, §1065)

Ms. Wallace reported that at the November 2011 meeting the Board directed staff to approve regulatory language to initiate a 45-day public comment period. During that comment period there were no comments received so the Board had adopted, through its motion in November that regulatory language. Board staff prepared the final rulemaking file and submitted it to the Department. In late April the Department notified the Executive Officer that they had some concerns with the clarity of what had been proposed in the modified text. Board staff worked with the Department and Legal Affairs to develop amended language which will be discussed in Agenda Item 17.

C. Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines (Cal. Code of Regs., Title 16, §1018 and 1020.5)

Ms. Wallace reported that the Board and staff has been working on this rulemaking file for the past year and received three legal opinions from different legal entities. At the last meeting the Board voted to let the current rulemaking expire until we could develop further regulatory language and seek further clarification from legal. Those legal opinions and additional proposed language will be reviewed in Agenda Item 14.

AGENDA ITEM 14(A): Discussion and Possible Action Regarding Legal Opinions Received Regarding Uniform Standards for Substance Abusing Healing Arts Licensees (SB 1441, Ridley-Thomas, Chapter 548, Statutes of 2008); and

Ms. Wallace reported that at the February Board meeting the Board voted to let the current rulemaking expire, which it did in March, until further clarification could be obtained from the Department of Consumer Affairs (Department) regarding the legal opinions that the Board had already received which included;

- Board's Legal Counsel's Interpretation
- Doreatha Johnson, Deputy Director of Legal Affairs for the Department
- Legislative Counsel
- Kathleen Lynch, Deputy Attorney General, Government Law Section.

Kristy Shellans, Board's Legal Counsel stated that the Board has options regarding implementing these standards, all of which come with differing consequences. The first option is to continue along, based on our Legal Counsel's opinion, with the Board's interpretation that it does retain discretion to alter the standards based upon the facts of any given case which is the way we currently operate. The Department made it clear that any Board's rulemaking package that does not conform, in the Departments opinion, to the Departments memo, which includes no discretion, will be disapproved. Another option is to accede to the Department's suggested Standards which cannot be altered if it is determined that someone is a substance abusing licensee. In this area the Department agrees that you do have the discretion to decide if a licensee is a substance abuser or not. Many of the Boards have struggled with how to implement that aspect of the legislation because there is no agreed upon definition of what constitutes a substance abuser.

AGENDA ITEM 14(B):Discussion and Possible Action Regarding Initiation of a Rulemaking to Amend California Code of Regulations, Title 16, §1018 and 1020.5 and to add a New Section Regarding Implementation of Uniform Standards for Substance Abusing Licensees

Several of the Boards have come up with different ways to implement the Departments suggested “Uniform Standards for Substance-Abusing Licensees” (Standards) with the understanding that you have the ability to define when a “trigger” occurs in other words when those Standards should be applied. Ms. Shellans stated that she drafted some options with the Dental Board in mind. She had them reviewed by Chief Counsel for the Department and all of the options are considered acceptable by the Department.

Option Number 1, the Presumption Trigger says that if the conduct involves drugs or alcohol the licensee would be presumed to be a substance abusing licensee. They would have the opportunity to rebut the presumption. If they don’t rebut that presumption then the Standards would be placed in their probationary order. The positive side of this option is that it is easy to implement and there is not a lot of evaluation up front. The drawback is that it is overly broad. Ms. Downing asked how a licensee would rebut the presumption. Ms. Shellans answered that there would be a variety of ways including but not limited to their own sworn testimony, their therapist’s testimony, test results from rehab etc. Dr. Olinger asked if a licensee who has never had any other problems but is caught once and given a DUI could use the fact that they have never been in trouble before to rebut the presumption that they are a substance abuser. Ms. Shellans answered yes. Dr. McCormick asked how the Standards versus our Guidelines mesh. Is there one that supersedes the other? Ms. Shellans answered that the Board has been directed to use the Standards developed by the Substance Abuse Coordination Committee however, the Board’s Disciplinary Guidelines should still be used in formulating the penalty and in considering additional terms or conditions of probation.

Option Number 2, the Clinical Diagnostic Trigger would apply when there is evidence provided by an expert, usually a clinical diagnostic evaluator, that someone is a substance-abusing licensee. In other words if there is evidence presented at a hearing that the licensee is a substance abuser then the Standards would apply. If evidence is not presented at hearing, any case involving drugs and/or alcohol would mandate that the licensee be referred to a Clinical Diagnostic Evaluator. If the Clinical Diagnostic Evaluator determines that they are a substance abuser, the Standards would apply. The benefit of this trigger is that the expert opinion verifies the condition. The drawback is that the requirement for referral to the Clinical Diagnostic Evaluator includes a 30-day suspension during evaluation. There’s no appeal of the 30-day suspension, it is required with the referral to the Clinical Evaluator. Dr. Bettinger asked if it was a suspension or a cease practice because there is a difference. Mr. DeCuir answered that a suspension does not mean that the entire operation must be shut down just that the individual licensee must cease practice. He also stated that a Clinical Diagnostic Evaluation itself can take anywhere from 2 hours to as much as 3 days. Ms. Shellans stated that the Standards use the term ‘cease practice’ not suspension. Ms. Downing asked who the Clinical Evaluators would be. Mr. DeCuir answered Psychiatrists or Psychologists. Ms. Downing asked if they have a professional standard that allows them to put this particular label on a person. Ms. Shellans stated that as she said before, the Boards of Psychology and Behavioral Sciences have no agreed upon industry standard or definition for what constitutes a substance abuser.

Option Number 3 states that if, after notice and a hearing, the Board finds that the evidence establishes an individual as a substance abuser then the Standards would be applied. This places the burden on the Executive Officer to decide which cases to plead as substance-abusing. The Executive Officer must provide affirmative evidence that the licensee is a substance abuser in order for the Standards to be triggered. Ms. Shellans stated that this trigger is more of a factual analysis up front but more legally defensible because of the burden of proof required to implement it. That way, the licensee is put on notice about what is about to happen, they can provide their own proof if they so choose and they have a chance to defend themselves before the label of drug abuser is put on them and the Standards are applied. Dr. Bettinger stated that just to clarify, with option number 3, if a person has one DUI, there’s no cease practice until a hearing determines the facts and they

have the opportunity to defend themselves and provide evidence at the hearing before the Standards are implemented. Ms. Shellans agreed.

M/S/C (Burton/Bettinger) to accept the proposed regulatory language as outlined in option 3 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 California Code of Regulations, Title 16, § 1018 and 1018.01.

Dr. Morrow stated that his understanding is that using Option Number 3 would leave the determination of who is and who is not a substance abuser to the Board by way of the Executive Officer rather than having an outside determination. Ms. Shellans answered that there must be a factual analysis which may require Clinical Evaluations as part of the Executive Officer's determination. The Executive Officer has the authority to require a licensee to undergo a Clinical Evaluation. Dr. Morrow commented that it appears that this option allows the Board to continue in the manner that most closely resembles current operations. Ms. Shellans stated that with this option you still preserve the ability to decide how to prosecute your cases. Dr. Morrow asked if Option 3 will be acceptable to the Department. Ms. Shellans answered that she ran it by the whole legal office including the Chief Legal Counsel who will be reviewing these for the Department and she was told that all three of these options would be amenable to the Department. Mr. DeCuir asked what the Pharmacy Board did about this at its last meeting. Ms. Shellans stated that the Pharmacy Board withdrew their current package which would have been deemed non-compliant by the Department and asked her, as their Legal Counsel, to bring something back for them at the next meeting. At that time, she stated, she had not yet had a chance to put together these options for discussion. The Pharmacy Board was also concerned about the legal defensibility of the statute so they asked their Executive Officer to seek a formal Attorney General's opinion. Bill Lewis California Dental Association (CDA) asked regarding option 3, at what point, in the evidence gathering process, could a Clinical Evaluation potentially come into play, which would then generate the suspension of practice? Ms. Shellans answered that the suspension only occurs after the evidence presented at the hearing has proven that someone is a substance-abusing licensee. Mr. Lewis then asked if the Standards, in their entirety, were incorporated by reference into the Guidelines. Ms. Shellans stated no, she created her own document titled "Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders" incorporating only those SACC standards that needed to be in regulation for probationary orders. Mr. Lewis asked how the implementation of these standards would affect a self-reporting Diversion candidate. Ms. Shellans stated that they are working on that portion with Richard, staff and other legal counsel. Ms. Downing asked if there is a tool to accommodate stipulated settlements. Ms. Shellans stated that will be something that Mr. DeCuir must decide on a case by case basis as it is not something that needs to be in regulation. Dr. Morrow asked if Ms. Shellans thought that a licensee could self report to the Diversion Program but not be labeled a substance abuser. Ms. Shellans stated that has yet to be determined as the Diversion element of this package is still being worked on. Dr. Olinger asked if a licensee goes to a private rehabilitation Center would they be protected from action by the Dental Board. Ms. Shellans said no, that might lower the testing frequency. If someone were to report them to the Board, the same standards, including the 30 day cease practice, would apply. Dr. Casagrande asked if the Board itself has discretion to direct the Executive Officer as to what they consider a substance abuser. Ms. Shellans said no it does not because there is no definitive definition of a substance abuser. The motion passed unanimously.

AGENDA ITEM 15(A): Discussion and Possible Action Regarding Comments Received During the 15-Day Public Comment Period for the Board's Proposed Rulemaking to Add Title 16, CCR, §1023.15, 1023.16, 1023.17, 1023.18, and 1023.19 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events

Ms. Wallace reported that there is no Board action required on this item. It was placed on the Agenda in the event that any adverse comments were received during the 15-day public comment period however, none were received. Since no comments were received, as of the April 2012 meeting the Board had adopted all amendments in the modified text. The Board will be moving forward with the final rulemaking process.

AGENDA ITEM 15(B): Discussion and Possible Action Regarding Adoption of Proposed Additions to Title 16, CCR, §1023.15, 1023.16, 1023.17, 1023.18, and 1023.19 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events

No action necessary.

AGENDA ITEM 16: Discussion and Possible Action to Consider Initiation of a Rulemaking to Amend California Code of Regulations, Title 16, §1004 Regarding Abandonment of Applications

Ms. Wallace reported that Board staff and legal counsel worked together to develop proposed regulatory language relevant to abandonment of applications. At previous meetings, the Board had discussed the Dental Assisting Forum's recommendation to split the existing Registered Dental Assistant in Extended Functions (RDAEF) examination into two separate components. Board staff and Legal Counsel have developed proposed regulatory language to clearly specify that any applicant for a license who fails to complete application requirements within a specified amount of time shall be deemed abandoned and will be required to file a new application. In addition, due to the exorbitant number of incomplete or deficient applications, Board staff and Board legal Counsel have developed proposed language to clearly specify that any deficient application will be deemed to be abandoned if the applicant has not responded within one year of the date of notice of deficiency and will be required to file a new application and meet all of the requirements which are in effect at the time of reapplication. This proposal would apply to any application for a license issued by the Board. M/S/C (McCormick/Morrow) to accept the proposed regulatory language relevant to the abandonment of applications, and direct staff to take all steps necessary to initiate the formal rulemaking process, including noticing the proposed language for 45-day public comment, setting the proposed language for a public hearing, and authorize 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 California Code of Regulations, Title 16, §1004 as noticed in the proposed text. The motion passed unanimously.

AGENDA ITEM 17(A): Discussion and Possible Action to Consider Recommendations from the Department of Consumer Affairs to Modify the Board's Proposed Rulemaking to Add California Code of Regulations, Title 16, §1065 Regarding Requirements for Posting Notice to Consumers of Licensure by the Dental Board:

Ms. Wallace reported that, after the November 2011 meeting, staff noticed the Notice to Consumers regulatory package for 45-days and held a public regulatory hearing to accept comments. The Board did not receive comments in response to the proposed regulation. Since there were no adverse comments received in response to the proposed text, the Board adopted the final text as noticed in the proposed text at its November 7, 2011 meeting.

Staff submitted the final rulemaking package to the Department of Consumer Affairs (DCA) on March 12, 2012 to begin the review process. On April 26, 2012, DCA notified Board staff of concerns that the proposed language was not legally consistent with Business and Professions Code Section 1611.3. Board staff worked with Legal Counsel and DCA to develop proposed modified text to address DCA's concerns. Business and Professions Code Section 1611.3 provides that the Board shall require the notice to be posted in a conspicuous location accessible to public view; therefore, staff recommended that subdivisions (b)(2) and (b)(3) should be stricken because providing notice in the patient's record or on a statement on letterhead, discharge instructions, or

other document may not be accessible to public view.

M/S/C (Dominicis/Bettinger) to accept staff's recommendation to modify the text as proposed. Dr. Morrow asked if it was necessary to list each faculty member if they are supervising students who are providing care. Ms. Shellans stated that she thought that yes this would apply to them as well. Ms. Shellans commented that no names are required just the notice itself that states that Dentists are licensed and regulated by the Dental Board of California with the phone number and email address in at least 48-point type font. The motion passed unanimously.

AGENDA ITEM 17(B): Discussion and Possible Action to Consider Adoption of Proposed Amendments to California Code of Regulations, Title 16, §1065 Regarding Requirements for Posting Notice to Consumers of Licensure by the Dental Board

M/S/C (Le/McCormick) to modify the text in response to the Department's concerns and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the Board at this meeting. If after the 15-day public comment period, 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 California Code of Regulations, Title 16, §1065, as noticed in the modified text, relevant to requirements for posting notice to consumers of licensure by the Dental Board. The motion passed unanimously.

AGENDA ITEM 18: Dental Assisting Council Report

Denise Romero, newly elected Vice-Chair of the Dental Assisting Counsel (DAC) reported that the new Council members were introduced and took the Oath of Office. A quorum was established and an election was held where Judith Forsythe was elected Chair and Denise Romero was elected Vice-Chair of the Dental Assisting Council. There was an overview of the rules and responsibilities of a Dental Assisting Council member. An update on the status of Dental Assisting Courses and Programs was given. Dental Assisting Program examination statistics were discussed and it was decided that at the next Board Meeting the Dental Assisting Committee would meet jointly with the Examination Committee to discuss these statistics. There was a public request for the examination statistics to be separated by on the job trained candidates versus candidates trained in an approved program. There was also a public request that the statistics on the website be updated more frequently. M/S/C (Casagrande/Dominicis) to accept the Dental Assisting Council report. The motion passed unanimously.

AGENDA ITEM 19: Examination Committee Report

Dr. Casagrande, Examination Committee Chair, reported that a quorum was established and the minutes of the February 23, 2012 meeting were approved. Dr. Casagrande reported that the committee discussed the low pass rate on the RDA exam and agreed to meet jointly with the DAC at the next Board meeting. Dr. Casagrande referred to the letter from Tracy Montez PhD., with Applied Measurement Services who created the new RDA examination stating that he disagrees with her assessment that a 75% pass rate for first time test takers is a "reasonable pass rate given the multiple pathways to licensure". Dr. Casagrande reported that there is no need for concern regarding the Integrated National Board Dental Examination (INBDE) until 2017. He stated that the Board will need to make some minor statute changes to reflect the integration of the two tests into one. Dr. Morrow asked that the Dental Board take a more active role in the American Association of Dental Boards (AADB) as they select 6 of the 12 members of the Joint Commission on National Dental Examinations (JCND E) who are developing the Integrated Examination. Dr. Casagrande reported that the Examination Committee agreed to meet jointly with the Dental Assisting Council at the next Board meeting to discuss the Dental Assisting Program examination statistics. M/S/C (Burton/McCormick) to accept the Examination Committee report. The motion passed unanimously.

AGENDA ITEM 20: Update on Portfolio Licensure Examination for Dentistry (AB 1524, Stats 2010 ch 446)

Dr. Casagrande reported that a consensus was reached by the schools and psychometricians regarding the scoring process. He stated that it is a very complete, comprehensive way to score the exams. They have moved on to the calibration portion. All of the schools will have a standardized calibration course that they will give to their examiners. The Board will be auditing the Portfolio process on a regularly scheduled basis. Dr. Casagrande stated that they would like to put this item on the August agenda to begin the regulatory process. Ms. Wallace stated that she, Dr. Whitcher and Mr. DeCuir will need to contact the contractor to see where they are in the process. Ms. Shellans stated that this is a very ambitious regulation package and due to its complexity we might want to hold a Full Meeting Workshop with the stakeholders before we start the regulatory process. Dr. Whitcher commented that we all want to see this move forward so Dr. Casagrande should stay in touch with him and when it's ready we will move forward.

AGENDA ITEM 21: Examination Appeals Committee Report

There were no exam appeals.

AGENDA ITEM 22: Licensing, Certification & Permits Committee Report

Dr. Olinger, LCP Committee Chair, reported that the LCP Committee met in Closed Session to consider 1 candidate for a license to replace cancelled license. The LCP Committee recommends approval of the issuance of a new license to replace cancelled license for candidate KC. M/S/C (Dominicis/Bettinger) to accept the Examination Committee's recommendation to issue a new license to replace cancelled license for candidate KC. The motion passed unanimously.

Dr. Olinger reported that the Committee met in open session, a quorum was established and the minutes from the February 7, 2012 meeting were approved. Dr. Olinger stated that statistics were reviewed and there was a discussion surrounding the difficulty in obtaining Examiners for the General Anesthesia/Conscious Sedation Permit. There was discussion regarding the trends in licensing and the utilization of licenses. M/S/C (Burton/Bettinger) to accept the LCP Committee report. The motion passed unanimously.

AGENDA ITEM 23: Legislative and Regulatory Committee Report

Ms. Burton, Legislative and Regulatory Committee Chair, reported that a quorum was established and the minutes from the February 23, 2012 meeting were approved. Ms. Burton reported that there were 36 bills relating to the Dental Board. There were 7 of the most important bills discussed in Committee with recommendations to the Full Board.

The Legislative and Regulatory Committee recommended support of AB 1588 (Atkins) Professions and Vocations: Reservist Licensees. M/S/C (Downing/Casagrande) to accept the committee's recommendation. The motion passed unanimously.

The Legislative and Regulatory Committee recommended a watch position on AB 1932 (Cook) U.S. Armed Services: Healing Arts Boards. M/S/C (Dominicis/Morrow) to accept the Committee's recommendation. The motion passed unanimously.

The Legislative and Regulatory Committee recommended a watch position on AB 1976 (Logue) Licensure and Certification: Military Experience. M/S/C (Bettinger/Morrow) to accept the committee's recommendation. The motion passed unanimously.

The Legislative and Regulatory Committee recommended continuing with the previously adopted watch position on SB 694 (Padilla) Dental Care. There was discussion about whether there was a need to develop a new provider when the current workforce isn't being fully utilized. Dr. Le commented that 30 other states have Dental Directors and she thinks it is a good idea to have a leader to coordinate this study and the efforts of all the different organizations. Dr. Sun Costigan,

California Academy of General Dentists President, added her support to using the workforce that we already have. She stated that as an instructor, many of her graduate students are moving out of state because they can't find work here. M/S/C (Morrow/Olinger) to accept the committee's recommendation. The motion passed unanimously.

The Legislative and Regulatory Committee recommended support of SB 1186 (Steinberg/Dutton) Disability Access: Liability. M/S/C (Casagrande/Olinger) to accept the committee's recommendation. The motion passed unanimously.

The Legislative and Regulatory Committee recommended a watch position on SB 1202 (Leno) Dental Hygienists. M/S/C (Le/Morrow) to accept the committee's recommendation. The motion passed unanimously.

The Legislative and Regulatory Committee recommended taking an oppose unless amended position on SB 1575 (Sen. BP& ED) Professions and Vocations. Ms. Burton reported that some of the provisions in this bill directly relate to the Dental Board. She stated that some clean-up language was suggested to clarify that the Board is responsible for collecting licensing data for Dentists and Dental Assistants. There was further discussion relating to B & P Code §1950.5 Unprofessional Conduct. Ms. Burton reported that after a lot of discussion it was decided not to oppose the entire bill because there are some other important provisions in it. Ms. Wallace stated that the Board will seek clarification with the authors' office regarding licensure data clean-up language in §1715.5 as it applies to the Board and also seek clarification regarding infection control regulations as it relates to the Board and the Dental Hygiene Committee. M/S/C (Olinger/Morrow) to accept the committee's recommendation. The motion passed unanimously.

Ms. Burton reported that the final issue for the committee was the CDA Legislative Proposal to clarify that a dentist who received his/her initial dental degree from a foreign dental school but who completed a Commission on Dental Accreditation (CODA) approved advanced residency program is eligible to obtain a special permit to practice as a California dental school faculty member in the permit category that is not numerically capped. After lengthy discussion the Legislative and Regulatory Committee recommended a position of support for this proposal. M/S/C (Olinger/Morrow) to accept the committee's recommendation. The motion passed unanimously. M/S/C (Dominicis/McCormick) to accept the Legislative and Regulatory Committee report. The motion passed unanimously.

AGENDA ITEM 24: Enforcement Committee Report

Ms. Downing, Enforcement Committee Chair, reported that a quorum was established and the minutes from the February 23, 2012 meeting were approved. She stated that Ms. Trefry reported on the key projects and improvements within the Enforcement Unit including implementation of a new process to issue probationary licenses which is projected to save a lot of time and money for both the Dental Board and the Attorney General's office. Ms. Downing reported that the Diversion Evaluation Committee held interviews to fill the public member vacancy in Southern California. The committee recommended Janis Thibault be appointed to the Southern California Diversion Evaluation Committee. Ms. Burton commented that she would request that we clean-up the language regarding those individuals that stipulate to a probationary license. Ms. Trefry stated that they will be working on that. M/S/C (Burton/Olinger) to accept the Enforcement Committee report. The motion passed unanimously. M/S/C (Morrow/Casagrande) to accept the Enforcement Committee's recommendation to appoint Janis Thibault to fill the public member position on the Southern California Diversion Evaluation Committee. The motion passed unanimously.

PUBLIC COMMENT

There was no further public comment.

The meeting adjourned at 1:47 p.m.