



**BOARD MEETING TELECONFERENCE
OCTOBER 9, 2013
MEETING MINUTES**

Members Present:

Huong Le, DDS, MA, President
Fran Burton, Public Member, Vice President
Steven Morrow, DDS, MS, Secretary
Steven Afriat, Public Member
Stephen Casagrande, DDS
Yvette Chappell-Ingram, Public Member
Katie Dawson, RDHAP
Judith Forsythe, RDA
Ross Lai, DDS
Meredith McKenzie, Public Member
Thomas Stewart, DDS
Bruce Witcher, DDS

Members Absent:

Luis Dominicis, DDS
Kathleen King, Public Member

Staff Present:

Karen M. Fischer, MPA, Executive Officer
Jennifer Thornburg, Assistant Executive Officer
Sarah Wallace, Legislative and Regulatory Analyst
Linda Byers, Executive Assistant
Spencer Walker, Senior Legal Counsel

Dr. Le, Board President, called the meeting to order at 12:02 and Dr. Morrow, Board Secretary, called the roll by location and established a quorum.

Agenda Item 2(A): Discussion and Possible Action Regarding Comments Received During the 45-Day Public Comment Period and During the Regulatory Hearing for the Board's Proposed Rulemaking to Amend California Code of Regulations, Title 16, Section 1021 Relevant to a Dentistry Fee Increase

Sarah Wallace, Legislative and Regulatory Analyst, explained that at its March 1, 2013 meeting, the Dental Board of California (Board) discussed and approved proposed regulatory language relative to a fee increase for dentists. The Board directed staff to initiate a rulemaking. Board staff filed the initial rulemaking documents with the Office of Administrative Law (OAL) on July 30th. The rulemaking was published in the California Regulatory Notice Register on Friday, August 9th and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on August 9th and ended on September 23rd, and a regulatory hearing was held in Sacramento on September 23rd to receive verbal and written testimony. The Board received comments from the California Dental Association.

Ms. Wallace explained that the California Dental Association (CDA) submitted a letter containing comments in response to the Board's proposed rulemaking to amend California Code of Regulations, Title 16, Section 1021 relative to the dentistry fee increase.

The CDA commented that its membership makes up approximately seventy (70) percent of licensed dentists in California, and that the Board's oversight of the profession is important to its organization. The CDA recognizes and supports the Board's role in the licensure and enforcement of the practice of dentistry that set the standard of professionalism in California. The CDA agrees that it is necessary for the Board to have resources available to carry out its responsibilities, and that those resources must come from the dentists who benefit from the Board's oversight.

The CDA recognized that the Board had not increased the initial licensure and biennial renewal fees since 1998 and that those fees constitute the largest source of the Board's revenue. Additionally, the CDA commented that it recognized that in addition to the impact of inflation, the Board had been given "spending authority" but no direct revenue source to pay for the additional enforcement program expenses that came as part of the Department of Consumer Affairs' Consumer Protection Enforcement Initiative (CPEI). The CDA commented that it believes that consumer protection is the most important responsibility of the Board, and that it has seen demonstrable improvements in the Board's enforcement caseload management that have been a result of the additional staff. The CDA commented that they do not want to see those gains eroded due to insufficient resources.

The CDA acknowledged the primary importance of the Board's enforcement program as the basis for the proposed fee increase, but expressed disappointment that the supporting rulemaking documents did not address basic customer service. The CDA have expressed multiple times in past public discussions that for the majority of dentists who will never face Board disciplinary action, their only contact with the Board is to solicit answers to licensure questions or to rectify paperwork issues. The CDA commented that the Board's customer service track record in recent years has been dismal and that member dentists routinely turn to the CDA to intervene on their behalf when they are unable to reach Board staff by phone or email. The CDA recognized and appreciates that managerial changes made earlier this year have seemed to reduce the frequency of such occurrences. The CDA notes that it would be difficult to explain to member dentists why they should pay an additional \$85 in licensure fees when they are unable to reach anyone at the Board to answer basic questions.

The CDA commented that without continued demonstrable and sustained improvements in customer service, it will be difficult, if not impossible, for the CDA to support legislation to increase the statutory cap on initial licensure and biennial renewal fees. The CDA notes that such support would be particularly difficult in 2014, when the current regulatory proposed increase of \$85 would just be going into effect. The CDA understands the Board's desire to plan ahead for future fee increases, which would need to be approved via the formal rulemaking process, but is still concerned that 2014 would be too soon to consider additional fee increases without clear evidence that the currently proposed increase will result in overall performance improvements that are visible to the average licensee. The CDA commented that raw numbers alone should

not be used to justify an almost immediate further increase without a thorough examination of the Board's spending priorities and potential for improved efficiencies. The CDA noted that it looks forward to engaging in that discussion with the Board as it moves forward.

The CDA hoped that, in the future, the Board will begin to more carefully forecast its revenue needs on a yearly basis; the CDA believes that dentists would prefer a more incremental approach to fee increases so that this type significant one-time jump would become unnecessary. The CDA recognizes that the board is following the standard budgetary process for all professional licensing boards, but would like to see improved clarity in budget documentation and explanation in the future, so that licensees and Board members may more easily comprehend why fee increases are deemed necessary even when the Board is not spending its entire annual budget augmentation.

Board staff recommended the Board reject these comments because if the Board averts or delays an immediate fee increase, and subsequent fee increase, the Board's State Dentistry Fund will become insolvent and the structural imbalance between its revenue and expenditures will continue to grow.

The Board must assess fees to licensees to sustain the financial resources necessary to carry out the methods of meeting its highest priority of consumer protection. Since 1998, the Board's enforcement program has grown exponentially in (1) response to consumer protection issues that have surfaced, and (2) response to new statutory and regulatory requirements. Over time, the Board has been authorized to increase its staffing resources to meet consumer protection needs in California, without having to increase its licensing fees to offset such expenses; however, the Board cannot continue to absorb additional expenses without increasing fees. In May 2010, the Board's Executive Officer reported at a quarterly meeting, that the Board would need to look at fee increases in Fiscal Year 2012-2013 due to increased enforcement costs.

The CDA's concerns regarding staff resource availability to respond to licensee's questions have been recognized by the Board. However, this proposed fee increase has not been presented as a mechanism to improve customer service. Rather, this fee increase has been proposed to sustain existing resources, especially enforcement related resources. It should be noted that the Board and Executive staff continue to evaluate and develop processes to improve access and communication between staff and licensees on an ongoing basis. Additionally, the Board's Executive Officer maintains open communication with the CDA to address communication issues and immediately resolve CDA members' licensure concerns.

If the Board does not correct the structural imbalance between its revenue and expenditures through this proposed fee increase, and a subsequent fee increase once the Board obtains statutory authority via increasing the fee caps, the Board will be forced to: (1) reduce staffing in licensing and enforcement, and (2) reduce operating resources and equipment to offset expenditures. The Board's licensing and enforcement programs would suffer from reductions in staffing and would result in delayed response times to licensing inquiries, application approvals, processing of consumer complaints, conducting investigations, and referring egregious cases to the Attorney General's Office for prosecution. Such staffing reductions would make

continued demonstrable and sustained improvements in customer service improbable and the Board would be unable to provide efficient and effective consumer protection.

Board staff agrees that “raw numbers alone” do not justify further fee increases, which is the reason that Board staff works in consultation with the Department of Consumer Affairs’ Budget Office to continually analyze the condition of the State Dentistry Fund and annual budget appropriations. Board staff has provided budget reports at quarterly Board meetings to indicate the need for a fee increase, including information regarding the condition of the State Dentistry Fund and the annual budget appropriations. The Board has experienced reversions to the State Dentistry Fund at the conclusion of past fiscal years and such reversions have delayed the need for a fee increase. Previous budget reports have clarified that unexpected restrictions on the spending of budget appropriations produce such reversions (e.g. Executive Orders that have resulted in furloughs, hiring freezes, travel restrictions, etc.); therefore, the Board is unable to depend on reversions to justify the further delay of the proposed fee increase. This proposed fee increase is necessary to support the State Dentistry Fund because it is insufficient to be able to sustain the Board’s annual budget appropriation.

Board staff recognizes that this proposal equates to a 23% overall increase in biennial renewal fees that have been assessed since 1998. However, Board staff concludes that this proposed fee increase, that is the equivalent to an annual increase in the cost of licensure of less than 0.03% of an average dentist’s annual income, is difficult to characterize as a dramatic one-time jump in licensure fees.

The Board’s Executive Officer has previously indicated that she will be working with the CDA and other stakeholder groups to address concerns regarding forthcoming fee increases. Additionally, staff will strive to improve the presentation of budget information to maintain transparency so that necessary budgetary changes in the future may be easier to understand and anticipate by Board members, stakeholders, and members of the public.

Motion/Second/Carried (M/S/C) (Burton/Stewart) to accept staff’s recommendation to reject the comments made by the California Dental Association. Board members expressed confidence that the Executive Officer and Board staff would continue to work to improve customer service for licensees. Bill Lewis, representative of the CDA, thanked staff for the work done to respond to comments. The motion passed unanimously.

Agenda Item 2(B): Discussion and Possible Action Regarding Adoption of Proposed Amendments to California Code of Regulations, Title 16, Section 1021 Relevant to a Dentistry Fee Increase

M/S/C (Afriat/Burton) to 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 amendments to California Code of Regulations, Title 16, Section 1021 relevant to the dentistry fee increase as noticed in the proposed text.

Public Comment for Items Not on the Agenda

Mr. Lewis reiterated that the CDA understands that improvement in customer service was not part of the proposed rulemaking but is still concerned that the average dentist's only interaction with the Board is when they have a licensing issue and they experience difficulty in reaching staff. This leads to the CDA hearing from its members regarding such difficulty. Mr. Lewis commented that the CDA may have difficulty with supporting Board legislation to increase the statutorily authorized maximum fee the Board may assess so soon after this proposed fee increase. Mr. Lewis stated that he looked forward to continuing to work with the Board and staff to resolve customer service issues.

M/S/C (Afriat/Dawson) to adjourn the meeting at 12:32 p.m. The motion passed unanimously.