



**Dental Board of California Meeting  
Tuesday, November 10, 2009  
Los Angeles, CA**

**Members Present:**

Suzanne McCormick, DDS, President  
John Bettinger, DDS, Vice President  
William Baker, Public Member  
Fran Burton, Public Member  
Luis Dominicis, DDS  
Rebecca Downing, Public Member  
Judith Forsythe, RDA  
Huong Le, DDS  
Thomas Olinger, DDS  
Bruce Whitcher, DDS

**Members Absent:**

Stephen Casagrande, DDS, Secretary

**Staff Present:**

Richard DeCuir, Interim Executive Officer  
Nancy Butler, Acting Enforcement Chief  
Lori Reis, Complaint & Compliance Unit Manager  
Dawn Dill, Licensing & Exam Unit Manager  
Sarah Wallace, Administrative Analyst  
Donna Kantner, Legislative & Regulatory Analyst  
Jocelyn Campos, Enforcement Coordinator  
Jessica Olney, Examination & Licensing Analyst  
Karen Fischer, Licensing Analyst  
LaVonne Powell, DCA Senior Staff Counsel  
Kristy Schieldge, DCA Senior Staff Counsel  
Gregory Salute, Deputy Attorney General

President McCormick called the meeting to order at 8:08 a.m. and established a quorum.

**AGENDA ITEM 1: Approval of the Full Board Meeting Minutes from July 22-23, 2009, August 5, 2009, and September 15, 2009**

M/S/C (Dominicis/Downing) to approve the full Board meeting minutes from July 22-23, 2009, August 5, 2009, and September 15, 2009. The motion passed unanimously.

**AGENDA ITEM 2: President's Report**

Dr. McCormick commented that it would be a full day. She hoped to get through most of the agenda items prior to breaking at 2pm to go in to closed session. Interviews of candidates for the Executive Officer position will be held during closed session. Upon completion of the interviews, and if a decision is reached, the Board will reconvene in open session to announce it's decision.

This meeting is Dr. McCormick's last meeting as Board President. She thanked Board members for the opportunity to serve. Reflecting on the past year, and in addition to the usual business, she credited the Board with having been visionary in tackling issues important to the people of California as well as licensees such as access to care (elder care); ethical decision making in

dentistry; and resource and water management. She gave her personal thanks to staff, by name; and to Dean Chalios and Gayle Mathe, California Dental Association, for a good working relationship.

### **AGENDA ITEM 3: Interim Executive Officer's Report**

Richard DeCuir, Interim Executive Officer reported on the Department of Consumer Affairs' (DCA) Enforcement Model. In response to concerns about timeframes to complete enforcement actions, the Department developed an enforcement model which will change how enforcement cases are being handled within DCA's Boards and Bureaus. The goals of the model are: increased accountability, greater efficiency, and putting the consumer first. Process improvements have been implemented through administrative changes such as delegation of authority to DCA Executive Officers and Bureau Chiefs to issue investigative subpoenas to expedite retrieval of needed documents. Some changes may require legislation such as mandatory reporting for all healing arts boards, licensees, and employers. Other changes may require control agency approvals such as allowing the use of non-sworn investigators. DCA continues to work on proposals to obtain resources to complete enforcement actions within 12-18 months, compared to three (3) years under the current system. The Department also is exploring options of a more comprehensive IT solution.

Mr. DeCuir reported that Board staff has completed weekly budget and enforcement drills for the Department. Our enforcement, complaint, and investigative procedures have been scrutinized, reviewed, and streamlined where possible. We are looking at utilizing a blend of sworn and non-sworn investigators depending on the types of cases we handle. There will be some modification to our IT system; and we are implementing a Cite and Fine Program. Change is on the horizon as we deal with our enforcement, complaint, and investigative issues.

Brian Stiger, Director of Department of Consumer Affairs (DCA) will be meeting with staff from all Boards and Bureaus in the coming weeks. He will hold a townhall meeting in Sacramento for Dental Board employees on November 17, 2009. Staff from Tustin will be going to Sacramento to attend the meeting.

The diversion monitoring contract was awarded to MAXIMUS for five years.

Mr. DeCuir also reported that he met with the Dental Association Well-Being Committee at the University of the Pacific. A presentation was given to 150+ second year dental students.

The Law & Ethics, Ortho Assistant, Dental Sedation Assistant, and RDA practical exams have been completed. There are two more Registered Dental Assistant exams along with a beta test to complete.

The vacancy rate at the Board is 12%. The vacant positions are: one investigator in Tustin, one Enforcement Chief/Supervisor 2, three investigators in Sacramento, one manager for the Registered Dental Assistant (RDA) program (still negotiating for approval of this position), one budget analyst, and one IT person. The Board is advertising for all positions and until the positions are filled, will supplement the workforce with seven retired annuitants.

### **AGENDA ITEM 4: Budget Report**

Mr. DeCuir reported on budget fund conditions for both the Dental and Registered Dental Assistant Programs. On July 1, 2009, the Registered Dental Assisting Program, staffing, and funds migrated

under the Dental Board. Assembly Bill 286 requires that the Dental and Dental Assisting Funds be kept separate and be utilized to support only the respective licensing activities.

**Dental Fund:** The revenues to support the dentistry fund primarily come from license renewals. The revenue stream has been and continues to be approximately \$7.9 million per fiscal year (FY). For the current FY year, the Board's budget is \$9.4 million. Last FY, expenditures were \$7.985 million. The difference between last year's actual expenditures and the current year's budget is attributed to funds not spent (called reversion). This is primarily attributed to our high vacancy rate, rent reduction, under expenditures in Attorney General's Office and Office of Administrative Hearings. We ended last year with a fund balance reserve of \$7.322 million, or a 9.3 month reserve.

**Dental Assisting Fund:** On July 1, 2009 we began our dental assisting operating funds with \$3.650 million. Unlike the dental fund, we have no prior FY expenditures because the hygiene and dental assisting funds were not separated. Our budget for the current year which supports the Dental Assisting Program is \$1.766 million. If we fully spend the funds allocated for the Dental Assisting Program, we will end the current FY with a reserve of \$1.884 million, or a reserve of 12.5 months.

Dr. Dominicus asked about licensing examination expenditures. Mr. DeCuir reported that revenues and expenditures have dropped dramatically. The Board tested 1600 candidates in the past, but recently tested only 50 candidates. Exam staff has been redirected to work in other areas. Dr. Dominicus asked that staff keep a close watch on the number of candidates tested next year vs. expenditures.

Rebecca Downing, Public Board Member, pointed out that while the Board has a large reserve, the expenditures are greater than revenues. Mr. DeCuir explained that the annual reversions (money not spent in one fiscal year that goes into the next fiscal year) help offset the difference between expenditures and revenues.

There was no public comment.

#### **AGENDA ITEM 5: Election of Board Officers**

Three positions were considered: President, Vice-president, and Secretary. Dr. McCormick called for nominations. M/S (Dominicus/Downing) to nominate Dr. John Bettinger for President, effective immediately following the end of the meeting. The motion passed unanimously. M/S (Bettinger/Le) to nominate Dr. Bruce Whitcher for Vice-president, effective immediately following the end of the meeting. The motion passed unanimously. M/S (Bettinger/Le) to nominate Dr. Luis Dominicus for Secretary, effective immediately following the end of the meeting. The motion passed unanimously. The newly elected officers, Drs. Bettinger, Whitcher, and Dominicus, will take office at the end of the meeting.

Dr. McCormick indicated that it is the will of the President to establish the committees. Board members will need to communicate with the new President for the committee assignments.

#### **AGENDA ITEM 6: Future Meeting Dates for Board Meetings**

There was discussion about the feasibility of having a meeting in December to finalize the disciplinary guidelines in order to file the final rulemaking by January 9, 2010 deadline. Donna Kantner, Regulation and Legislation Analyst will revise the proposed disciplinary guidelines and will send out the 15 day notice. If there is negative comment, a teleconference will be scheduled on Thursday, December 17<sup>th</sup> at noon.

Dr. Olinger commented that members of the public have approached him asking that Board meetings be scheduled at the end of the week. It is difficult for the public to attend meetings in the middle of the week. For this reason, he asked the Board to consider having the board meetings at the end of the week – Thursday and Friday, to accommodate the public. Legal counsel commented that because of furlough Fridays, it will be difficult to schedule Board meetings at the end of the week.

Sarah Wallace, Administrative Analyst, reported that there are no rooms available in San Diego for the proposed meeting dates of February 10-11, 2010 because there is a conference of The Golf Course Superintendents of America. There was discussion and the Board decided to change the meeting date to February 25-26, 2010. The location will remain in San Diego.

The Board has tentatively scheduled a meeting in San Francisco for May 5-6, 2010.

The July Board meeting will take place in Sacramento during the week of July 26, 2010 and will coincide with the PACT Summit (Professionals Achieving Consumer Trust) sponsored by the Department of Consumer Affairs.

Richard DeCuir, Interim Executive Officer, asked that “future meeting dates” be put on the agenda for the next Board meeting in order to firm up tentative dates.

#### **AGENDA ITEM 7: Report Regarding Continuing Education Random Audits**

Dr. McCormick reported that the Board has been conducting random continuing education audits since January 2009. Dawn Dill, Licensing Manager, reported that at the September meeting, the Board requested specific information on the deficiencies. She was only able to pull deficiencies from the months of May and June. The data shows there are a mixture of deficiencies. Most doctors are completing the 50 units, however the deficiencies are: not approved CE providers, and lack of infection control, basic life support, and the dental practice act courses.

Dr. McCormick asked about the rise in the non-compliance rate in June. Ms. Dill reported that July and August had problems with responses due to vacations. The licensees have been given another opportunity to respond and those statistics will be available at the next Board meeting.

There was discussion about how often to do the audits in order to comply with the mandate. Currently audits are being done each month. Dr. Olinger asked if there was a need to compile data for an entire year in order to decide how often the audits should be administered. From the current data, it is apparent that most licensees are in compliance with the continuing education regulations. Dr. Bettinger suggested that staff be given full latitude to determine the details for completion of audits of ten percent of the license population per year. There was no public comment.

#### **AGENDA ITEM 8: Discussion and Possible Action Regarding New Pocket Licenses**

Dr. McCormick had asked staff to research the process and costs to laminate the dental pocket license. Ms. Dill contacted the Medical Board and reported on it's process and that 120,000 cards cost \$10,000. On the pocket license it states that it should be carried at all times. There was discussion about whether or not there is a requirement to carry the pocket license. Dr. Dominicus asked legal counsel to look in to whether or not there is a requirement to carry the pocket license. If so, staff could consider laminating it. If not, staff could remove the language from the pocket license. Dr. Olinger asked if funds were available to take on this project. Mr. DeCuir responded that

funds are available, however staff resources are limited at this time. The item was tabled until a future meeting. There was no public comment.

#### **AGENDA ITEM 9: Discussion and Possible Action Regarding Implementation of AB 2637**

##### **a)Request for Clarification from California Dental Association Regarding Requirements for Completion of an 8-hour Infection Control course by dental assistants**

Dean Chalios and Gayle Mathe representing the California Dental Association (CDA) expressed two concerns with the implementation of AB 2637. First, the Association believes that the intent of the legislation was to require only people hired on or after January 1, 2010 to take the eight (8) hour infection control course. CDA discussed the issue with the Legislative Counsel, who issued a verbal report that the reasonable construct of the law, although vague, was that the statute applies only to new hires. Barbara Blade, Dental Assistant Alliance does not agree. She feels that the intent of the legislation from the beginning was to ensure public protection by requiring all unlicensed dental assistants to take the infection control course. The Dental Board's legal counsel does not see any ambiguity in the statute. Legal Counsel's view is that the statute becomes effective January 1, 2010 and applies to all unlicensed dental assistants. This is a public protection issue. All unlicensed dental assistants will have one year to complete the course requirements.

There was discussion about whether or not there are enough approved providers to accomplish the training of 50,000 unlicensed dental assistants in one year. Nineteen courses were approved yesterday in Committee and will be voted on by the Board today. Barbara Blade reported that there are currently 40 courses approved throughout the state. Dr. Le expressed concerns about implementation of the statute. Dr. McCormick asked whether or not the logistics were in place for access to the courses. Donna Kantner, Legislative & Regulatory Analyst, responded that courses are accessible in many formats; not only in schools, but employers can make arrangements for staff to be trained on site. The California Dental Association (CDA) questions whether or not 50,000 people can be trained within one year. Dr. Olinger commented that the requirements of AB 2637 actually affect the employers dental license, since unlicensed dental assistants do not carry their own license. Dr. McCormick asked what had been done on the Board's website regarding outreach. Ms. Kantner stated that notification has been on COMDA's website since February 2009. There was also an article in the newsletter. Dr. McCormick asked that staff verify where the notification appears on the website and asked that it be put in a prominent place on the home page. Dr. Le expressed concerns that implementation of this statute across the board to all unlicensed dental assistants would put a huge financial burden on community clinics. Barbara Blade, Dental Assistants Alliance suggested that Dr. Le's clinic apply to become a Board approved provider. This would enable her to offer the course to her employees. Earl Johnson, California Association of Orthodontics stated that his association felt that the statute only applied to new hires. He stated that, in his opinion, the parties of interest agree. If the interpretation is different, he expressed concern with how the information will be disseminated to the appropriate people in a timely fashion.

M/S/C (Olinger/Le) to contact the author of the legislation to determine the intent. Does the statute apply only to unlicensed dental assistants hired on or after January 1, 2010, or does it apply to all unlicensed dental assistants?

Dean Chalios expressed his second concern. The California Dental Association (CDA) believes that the intent of the legislation was to allow two distinct four-hour instruction components that cumulatively result in eight hours of instruction. Barbara Blade with the Dental Assistant Alliance disagrees and testified that the statutes specifically references a "single course". The discussion was tabled for a future meeting. Staff will contact the author of AB 2637 to try to clarify the intent.

**b) Presentation from Endodontic Associates Dental Group Regarding Concerns about Scope of Practice for RDAEF's Under the Business and Professions Code Section 1753.5**

Dr. Kevin Keating spoke about concerns with patient safety relating to scope of practice for Registered Dental Assistants Extended Function (RDAEF), as authorized in AB 2637. He feels the training outlined in statute is insufficient and that the educational requirement needs to be raised. Representatives from the California State Association of Endodontists and Loma Linda Dental School agreed. Dean Chalios, California Dental Association (CDA) expressed support of the Endodontic community's concerns for patient safety and the potential for harm. Dr. McCormick asked what the next step would be. Kristy Schieldge, legal counsel indicated that the Board is constitutionally bound to implement the law. If the parties of interest are unhappy with the statute, they can seek legislative remedy. Dean Chalios asked if the Board has the authority and responsibility to determine if a procedure in law is dangerous to public. Ms. Schieldge replied that in her opinion, the Board is constitutionally required to implement the law, as written, unless determined by a higher court that the law is unconstitutional. Dr. Keating asked that the Board send out a letter to apprise those teaching the course of the risk of permanent damage of performing a root canal obturation.

**AGENDA ITEM 10: Presentation by Mr. Rudy Montalvo, Vice President of the Board of Directors from the Central Basin Municipal Water District, Regarding Water Conservation Advocacy**

Dr. McCormick reported that the Board has a unique opportunity to do outreach to other dentists and to patients about water usage and conservation. Dr. Dominicis introduced Mr. Rudy Montalvo, Vice President of the Board of Directors from the Central Basin Municipal Water District in Los Angeles County and Ms. Sally Flowers, from the Public Affairs Department. Ms. Flowers gave the power point presentation. The Central Basin Municipal Water District covers twenty four cities in Los Angeles County and serves approximately two million people. California is in a very serious drought. This year represents the fourth year of below average rainfall. Currently, reserves are being used every day to supply water to the general public. The Governor's plan is to reduce water usage by twenty percent per capita by year 2020. After the presentation, Dr. Dominicis thanked the guests for coming. He recommended the use of waterless technology when remodeling dental offices.

**AGENDA ITEM 11: Examination Committee Report**

Dr. Bettinger chaired the meeting in Dr. Casagrande's absence. He reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. Examination statistics were reviewed for dental licensure and registered dental assistants (RDAs). The Committee noted that there was a 61% pass rate for the 41 people who took the dental licensure examination; a 99% pass rate for the 989 people who took the law and ethics examination; a 51% pass rate for 3481 candidates who took the RDA written examination; and a 84% pass rate for the 2545 candidates who took the RDA practical examination.

With regard to the licensure by residency requirements, the Committee tabled the topic of allowing eligibility to take the California dental licensure examination to those candidates who were trained at a non-CODA approved dental school but finished a CODA approved graduate program. M/S/C (Dominicis/Whitcher) to accept the Examination Committee report. The motion passed unanimously.

### **AGENDA ITEM 12: Licensing, Certification, and Permit Committee Report**

Dr. Bettinger chaired the meeting in Dr. Casagrande's absence. He reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. The Committee reviewed the dental licensure statistics which show a total of 88,028 licensees. This number includes Dentists, Registered Dental Assistants (RDA), and Registered Dental Assistants Extended Function (RDAEF) licensees. It was noted that there is a high delinquency rate for RDA renewals. This might be attributed to the fact that on-line renewal is not available to RDAs at this time, as it had been in the past when RDAs were part of COMDA. The Committee suggested staff put an insert in with the renewal which explains that on-line renewal is no longer available.

The Committee discussed the "cancelled license" status which appears on the Dental Board website. The concern is that the public doesn't know that a license can be cancelled voluntarily by the licensee. The Committee recommended staff change the language on the website to indicate that a licensee can choose to cancel his/her license.

Dr. Earl Johnson asked that an application form for an individual practitioner to train staff as an Orthodontic Assistant in the office be developed. This item is referred to the Dental Assisting Committee.

In closed session the Committee granted two requests for reinstatement of cancelled license without taking the examination. There was no public comment. M/S/C (Whitcher/Dominicis) to accept the Licensing, Certification, and Permit Committee Report. The motion passed unanimously.

### **AGENDA ITEM 13: General Anesthesia/Conscious Sedation Committee Report**

Dr. Whitcher, Chair, reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. The Committee received an update regarding the 2010 Evaluator Calibration Courses. Courses will be held March 24, 2010 at the Elihu Harris Building in Oakland and at the Embassy Suites on March 31, 2010 in Anaheim. The Committee reviewed the examination statistics for the evaluation process and permits to date. There was a slight decline in permits this year compared to last year: GA went from 782 in 2008 to 769; CS went from 408 in 2008 to 413 in 2009; MGA went from 94 in 2008 to 55 in 2009. Evaluations completed to date were 85 GA, 48CS, and 4 MGA. There were 18 GA permits cancelled, 9 CS permits cancelled, and 15 MGA permits cancelled. These delinquency rates are among the lowest of the permit programs. Dr. Whitcher thanked staff for the good work.

The subcommittee reported on the Sim-Man Project. There will be a site visit to a simulation center in conjunction with the next Board meeting in San Diego. There was no public comment. M/S/C (Bettinger/Dominicis) to accept the General Anesthesia/Conscious Sedation Committee Report. The motion passed unanimously.

### **AGENDA ITEM 14: Cultural Diversity in Dentistry Committee Report**

Dr. Dominicis, Chair, reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. The Committee reviewed statistics collected by the Dental Workforce Survey as required by Business & Professions code section 1715.5. The ethnicity background of the dentistry workforce was not yet available. A full years statistics should be available for the February Board meeting. M/S/C (Bettinger/Whitcher) to accept the Cultural Diversity in Dentistry Committee Report. The motion passed unanimously.

**AGENDA ITEM 15: Preventative Enforcement Committee Report**

Dr. Olinger, Chair, reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. The Committee reviewed statistics compiled by staff pertaining to visitors to the Dental Board website which included valid hits on the top twenty-five pages visited on the website for the last four months. The Committee received an update regarding outreach to dental schools which includes training dental students regarding enforcement issues they could encounter in practice. Public comment was accepted. LaDonna Drury-Klein, President, California Dental Assisting Teachers (CADAT), noted that she had offered booth space at their annual convention to the prior Executive Officer, who had agreed that this type of outreach to dental assisting educators was important. Richard DeCuir agreed that staff resources would be made available for this event. M/S/C (Downing/Whitcher) to accept the Preventative Enforcement Committee Report. The motion passed unanimously.

**AGENDA ITEM 16: Access to Care Committee Report**

Rebecca Downing, Chair, reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. The Committee received a report from staff on the Loan Repayment Program. There were seventeen dentists who utilized the program and worked in the underserved areas in California. SB 599, recently signed by the Governor, will extend this program so that the remaining funds in the Dentally Underserved Account, estimated to be \$1.5million, would be distributed to qualified dentists who agree to practice in a dentally underserved area.

There was brief discussion about access to care in rural communities. No action was taken. Ms. Downing asked to agendize Dr. Geis's request from the July 22, 2009 Board meeting regarding potential quality of care issues that can arise in community clinic settings or other large clinic settings when there is inappropriate pressure by management of the clinic toward dentists. M/S/C (Whitcher/Forsythe) to accept the Access to Care Committee Report. The motion passed unanimously.

**AGENDA ITEM 17: Resource Management in Dentistry Committee Report**

Dr. McCormick, Chair, reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. She thanked Dr. Dominicis for coordinating today's speaker, Rudy Montalvo, Vice President of the Board of Directors from the Central Basin Municipal Water District who will speak on water conservation advocacy. During public comment, Dean Chalios, California Dental Association, stated that the American Dental Association has adopted within its best practices the standards for amalgam separators in dental offices. CDA will bring the same recommendation to its next House of Delegates meeting. M/S/C (Dominicis/Whitcher) to accept the Resource Management in Dentistry Committee Report. The motion passed unanimously.

**AGENDA ITEM 18: Continuing Education Committee Report**

Dr. Olinger, Chair, reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. The Committee discussed initiating a rulemaking to expand the current content of the mandatory California Dental Practice Act Course to include instruction in substance abuse. The Committee recommends to the Board that staff initiate a rulemaking to amend Title 16 of the California Code of Regulations to include education regarding substance abuse within the content of the mandatory California Dental Practice Act course and direct staff to develop regulatory language for adoption at a future meeting.

As a point of clarification, Dr. McCormick asked where we are in the Continuing Education regulatory change process specifically relating to allowing for acceptance of PACE and different providers. Donna Kantner, Legislative and Regulatory Analyst reported that the regulations are

moving forward, but not yet submitted to the Office of Administrative Law (OAL). The one year deadline is up January 9, 2010.

Earl Johnson, California Association of Orthodontists commended staff for developing an application for providers who would be offering courses for the orthodontic assistant permit. However he testified that there is not an appropriate application for practitioners who would be giving the course within an office setting for staff. He asked that this be agendized for a future meeting discussion. There was discussion among the Board members and legal counsel and it was determined that this is a dental assisting issue relating to the implementation of AB 2637 and therefore should be agendized in the Dental Assisting Committee. M/S/C (Dominicis/Downing) to accept the Continuing Education Committee Report. The motion passed unanimously.

#### **AGENDA ITEM 19: Infection Control Committee Report**

Dr. Le, Chair, reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. The Committee reviewed the recommendations from the Subcommittee and the public regarding infection control regulations as required by Title 16, CCR Section 1005(d). The Committee asked staff to obtain additional background information from CALDOSHS, EPA, and other entities mentioned during public comment and bring it back to the Committee. The Subcommittee will rework the document which will be brought back before the Board at a future meeting. Dr. Le is confident that the document will contain very good, appropriate, acceptable, and adoptable guidelines. M/S/C (Forsythe/Whitcher) to accept the Infection Control Committee Report. The motion passed unanimously.

#### **AGENDA ITEM 20: Examination Appeals Committee Report**

Dr. Bettinger chaired the meeting in Dr. Casagrande's absence. He reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. The Committee reviewed five (5) appeals: four (4) were denied and one (1) was allowed to retake the appealed portion of the exam at no cost. M/S/C (Forsythe/Whitcher) to accept the Examination Appeals Committee Report. The motion passed unanimously.

#### **AGENDA ITEM 21: Diversion Committee Report**

Dr. Bettinger, Chair, reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. Diversion statistics were reviewed and it was noted that the biggest problem with abuse is with alcohol; and that there has been an increase in methamphetamine use which has surpassed cocaine. The Diversion Program is in a holding pattern. There are several bills pending that may change or even delete the program.

Of significance, is SB 1441 authority of DEC committee has been passed on to the Board. The DEC has become advisory to the Board, therefore the Board now had the authority to decide who will be removed from practice.

Fran Burton, Board member referred to the Diversion Program Statistical Summary and asked what period of time does the "program to date number" cover. Richard DeCuir, Interim Executive Officer reported that it is a five year period.

Dr. Bettinger thanked Richard DeCuir for his participation as manager of the Diversion Program and for his work in developing the best practices for the Diversion Program. M/S/C (Whitcher/Burton) to accept the Diversion Committee Report. The motion passed unanimously.

Dr. McCormick recognized and welcomed Dr. Alan Kaye, former Board member and Past President of the Board.

### **AGENDA ITEM 22: Enforcement Committee Report**

William Baker, Chair, reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. The Committee reviewed Complaint and Compliance, and Investigation statistics for a six month period – April through September, 2009. During this period, the average closure days for complaints was steadily reduced from 323 days to 160 days. This reduction in case closure can be attributed to the continuation of individual monthly desk audits, increased knowledge base in apprentice level staff, a recent increase of hours spent by consultants reviewing cases, staff overtime and the use of retired annuitants and a student assistant.

Mr. Baker reported that the 30% vacancy rate in investigative positions contributes to the backlog in complaint processing and investigations. A remedial proposal is being reviewed to utilize non-sworn people to supplement the peace officers.

The Committee received an update regarding the recruitment of dental consultants and dental experts. Lori Reis, Complaint and Compliance Manager is actively recruiting for consultant positions and will be conducting interviews the week of November 16<sup>th</sup>. Recruitment and retention of dental experts is more problematic due to the pay disparity between State experts and defendant experts.

Dr. McCormick asked the chair if “improvement to the enforcement process” should be agenized for a future meeting. Mr. Baker responded that he is optimistic that staff is on the right track for reducing the complaint and investigative backlog. There was no public comment. M/S/C (Bettinger/Burton) to accept the Enforcement Committee Report. The motion passed unanimously.

### **AGENDA ITEM 23: Dental Assisting Committee Report**

Judith Forsythe, Chair, reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. The Committee approved the Pit and Fissure Sealant courses, the Infection Control courses, and the Radiation Safety courses as outlined in the agenda. Two proposals relating to the implementation of AB 2637 were reviewed by the Committee. Proposal A: Replacement of regulations that become inoperative January 1, 2011; and Proposal B: Repeal and amendment of current regulations.

The Committee voted to accept Proposal A with modification of the text, slightly, to not allow a newly permitted dental sedation assistant to teach until having had a permit for two years. Additionally, the Committee voted to accept Proposal B. M/S/C (Dominicis/Whitcher) to accept the Dental Assisting Committee Report. The motion passed unanimously.

### **AGENDA ITEM 24: Discussion and Possible Action Regarding Appointments to the Dental Assisting Forum**

Dr. McCormick, Board President, reported that legislation established a voice for the dental assisting community – the Dental Assisting Forum. Dr. Whitcher and Judith Forsythe interviewed candidates and recommend the following five (5) people be appointed to the Forum: Susie Jordan, RDAEF, Lois Parento, RDA, Brenda Gyllenswan, RDA, Barbara Blade, RDAEF, and Pam Baldwin, RDA. M/S/C (Whitcher/Bettinger) to appoint the five candidates to serve as members of the Dental Assisting Forum for a two year term.

Judith Forsythe reported that there are two additional positions yet to be filled on the Forum and that she and Dr. Whitcher will continue to look for candidates. Dr. McCormick suggested that Dr. Whitcher and Judith Forsythe continue as liaisons to the Forum. They will work toward scheduling the first meeting three weeks before the February Board meeting.

### **AGENDA ITEM 25: Legislative and Regulatory Committee Report**

Fran Burton, Chair, reported that a quorum was established and the meeting minutes of July 22, 2009 were approved. Staff provided an end-of-year legislative update summarizing the bills tracked during the last session. Since the status of some bills was not current, a corrected update will be provided for the next meeting. Staff also gave an update on its efforts to find a legislative bill tracking service. This is a work in progress.

The Department of Corrections (CDCR) has requested the Board's input regarding a legislative concept that would allow for an exemption to Business & Professions Code Section 1684.5 regarding unprofessional conduct for dentists who perform or allow any treatment on a patient who is not a patient of record of that dentist. This proposed legislation is the result of a class action suit against CDCR. Neither the California Dental Association (CDA) or the Department of Consumer Affairs (DCA) have taken a position on this concept. Legal counsel will respond in writing to CDCR. The Board will not take a position at this time.

The Committee was asked to recommend that the Board direct staff to develop regulatory language regarding retention of patient records. There was a lengthy discussion on a seven year minimum retention. The Committee directed staff to poll other boards and departments on their retention policies and to determine what malpractice carriers do. CDA has offered to assist with the malpractice carrier information.

Dr. Casagrande previously requested an agenda item to discuss placing an expiration date on the retention and disclosure of citations and fines against licensees who have fulfilled their obligations related to citation. Since Dr. Casagrande was unable to attend this meeting, this item was tabled until such time that Dr. Casagrande can speak to his request.

The Chair provided an illustration to show how the legislative process works. Finally, the Chair reiterated the critical need for the Board to be proactively involved in legislative matters affecting the Board and recommended that the Legislative Committee Chair be made aware of major meetings with legislative members on Dental Board tracked bills. More generally, she went on to request that Committee chairs be apprised of important issues which will come before their committees as soon as possible as there may be matters that need action between regularly scheduled Board meetings. Ms. Burton concluded by asking that the Board begin to build a file of issues for which legislative solutions are needed so that throughout the year, the Board can obtain the required background to create some meaningful legislative proposals. M/S/C (Forsythe/Bettinger) to accept the Legislative and Regulatory Committee Report. The motion passed unanimously.

### **AGENDA ITEM 26: Report by the Portfolio Subcommittee**

Dr. McCormick reported that she and Dr. Casagrande are members of the Portfolio Subcommittee. She reported that Dr. Norman Hertz and his team have completed the framework for the portfolio project and that it is ready to go forward. Dean Chalios, California Dental Association (CDA) commented that this is a monumental public policy program which changes the way dentists are licensed in California and that he was concerned that the legislative time constraints are severe. His organization will work with due diligence along with the Subcommittee and Legislative Committee to move this project forward.

**AGENDA ITEM 27: Report on the November 3, 2009 meeting of the Elective Facial Cosmetic Surgery Permit Credentialing Committee, Discussion and Possible Action to Accept Committee Recommendations for Issuance of Permits, and Appointment of Credentialing Committee Member(s)**

Dr. McCormick, Board Liaison, reported that the Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee met November 3, 2009 in Tustin. Peter Scheer, DDS was sworn in as the fifth Committee member. The Committee began considering regulatory language for the Elective Facial Cosmetic Surgery Permit program. Until regulations can be developed to clarify the application process, the Committee would like to make changes to the information that is currently available on the Dental Board's website. The Board reviewed the proposed changes. M/S/C (McCormick/Bettinger) to accept the Committee's changes to the website. The motion passed unanimously. The future meeting date of January 13, 2010 was chosen. In closed session the Credentialing Committee met to review one (1) permit application. M/S/C (Whitcher/Le) to grant Dr. John R. Gordon a Category I and Category II permit without limitation. The motion passed unanimously.

Dr. McCormick mentioned that Dr. Whitcher will join her as liaison to the EFCS Permit Credentialing Committee. He will attend the January 2010 meeting.

**AGENDA ITEM 28: Discussion and Possible Action Regarding the Implementation of the Registered Dental Assistant Written Examination**

Richard DeCuir, Interim Executive Officer reported that he had discussions with the California Association of Dental Assisting Teachers (CADAT) regarding its concern about the implementation of the registered dental assistant written examination. Specifically CADAT requested a delay in the implementation of the new Registered Dental Assistant (RDA) written examination until after a permanent Executive Officer and RDA Program Manager could be hired. Mr. DeCuir and staff met with LaDonna Drury-Klein, CADAT President to discuss possible options for addressing her concerns. The question for legal counsel is "can RDA candidates who applied to take the examination in 2009 and were approved in 2009 take the 2009 examination in 2010?"

Kristy Schieldge, Legal Counsel, commented that there is new law and ethics education requirement effective in 2010. The 2009 examination does not include this requirement. She feels that candidates taking the 2009 examination will not be grandfathered in and therefore need to complete the exam in 2009. Ms. Drury-Klein, CADAT expressed concern that no application form for the 2010 examination is available on-line, no candidate packet is available, no course outline of the new duties is available, and the examination won't be finalized until November 15<sup>th</sup>. She requested that the examination application filing deadline be extended to December 31, 2009. The Board agreed that staff is able to extend the application filing deadline, if necessary. LaVonne Powell, Legal Counsel reiterated that anyone taking an exam in 2010 must take the new 2010 exam.

The meeting recessed until 2pm.

**CLOSED SESSION: Consider the Appointment of Executive Officer.**

RETURNED TO OPEN SESSION

**ANNOUNCEMENT REGARDING ACTIVITIES OF CLOSED SESSION**

Kristy Schielge, DCA Legal Counsel, was asked to make the following statement on behalf of the Board regarding the activities of closed session: "We have reached a decision to make an offer of appointment to a candidate for the Executive Officer position, subject to the Department of

Consumer Affairs' Director's approval. Appointment to the position will occur once approval has been obtained from the Director and acceptance of the offer and swearing in of the candidate occurs. We will be reporting on the status of the offer and whether the candidate has accepted the offer at the Board's next regularly scheduled Board meeting and when appointment occurs.”

**PUBLIC COMMENT**

There was no public comment.

**ADJOURNMENT**

The meeting adjourned at 5:35 p.m.