



**Dental Board of California Meeting
Friday, February 26, 2010
San Diego, CA**

Members Present:

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

Members Absent:

Staff Present:

Richard DeCuir, Executive Officer
Denise Johnson, Assistant Executive Officer
Nancy Butler, Acting Enforcement Chief
Teri Lane, Supervising Investigator 1, Southern California
Dawn Dill, Dental Assisting Unit Manager
Donna Kantner, Licensing & Examination Unit Manager
Jocelyn Campos, Enforcement Coordinator
Karen Fischer, Licensing Analyst
Kristy Schieldge, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

President Bettinger called the meeting to order at 8:08 a.m. Dr. Dominicis called the roll and established a quorum.

AGENDA ITEM 1: Approval of the Full Board Meeting Minutes from November 9-10, 2009 and December 17, 2009 (Teleconference).

M/S/C (Dominicis/McCormick) to approve the full Board meeting minutes from November 9-10, 2009 and December 17, 2009. The motion passed unanimously.

AGENDA ITEM 2: Acceptance of Committee Meeting Minutes of November 9, 2009.

M/S/C (Dominicis/Olinger) to accept the General Anesthesia/Conscious Sedation Committee Meeting Minutes of November 9, 2009. The motion passed unanimously.

M/S/C (Dominicis/McCormick) to accept the Cultural Diversity in Dentistry Committee Meeting Minutes of November 9, 2009. The motion passed unanimously.

M/S/C (McCormick/Whitcher) to accept the Preventative Enforcement Committee Meeting Minutes of November 9, 2009. The motion passed unanimously.

M/S/C (Olinger/Whitcher) to accept the Access to Care, Resource Management in Dentistry, Continuing Education, and Diversion Committees Meeting Minutes of November 9, 2009. Passed unanimously.

AGENDA ITEM 3: President's Report

President Bettinger thanked Board members and staff for a very productive day yesterday. He felt that we got off to a great start by working as a team to update the Board's strategic plan which was last adopted in 2004. The Board's mission, vision, and values statements were revised and he will be looking forward to the May Board meeting when the Board will further discuss its goals and objectives. Dr. Bettinger went on to say that there was meaningful discussion in Committee meetings yesterday and valuable public comment was received. The Board has an ambitious agenda for the rest of the year – to move five (5) regulatory packages forward in a thoughtful and timely way.

Dr. Bettinger said that the future looks bright, despite having had high management turnover the past six years – six different Interim/Acting Executive Officers and three Interim/Acting Enforcement Chiefs. The good news is twelve new employees have been hired since the Board's meeting in November last fall. There are still five vacancies to fill. He went on to thank staff for their hard work and responsiveness to Board member requests; and he welcomed Denise Johnson, Assistant Executive Officer and Teri Lane, Supervising Investigator in Southern California Enforcement Office. Dr. Bettinger concluded by introducing three guests who would be presenting items at the meeting today: Brian Stiger, Director, Department of Consumer Affairs, Rhona Lee, President of the newly formed Dental Hygiene Committee of California, and Dr. Tracy Montez, Applied Measurement Services who will report on the RDA written examination.

AGENDA ITEM 4: Executive Officer's Report

Richard DeCuir, Executive Officer reported that much of his time since the last Board meeting in November had been spent interviewing people to fill the staff vacancies. Twelve vacancies have been filled and there are five more to fill, including the Enforcement Chief position. Mr. DeCuir went on to say that many staff people have been working double duty in order to process the work while the vacancies were being filled. He thanked staff for the effort. He reported that he is operating within a tighter budget and that while the outlook for the remaining fiscal year is OK – next fiscal year, which begins July 1, 2010, expenditures will be frugal.

Mr. DeCuir reported that he and Dr. Le attended an Oral Health Access Counsel meeting in Oakland. The Counsel meets quarterly and appreciated a Dental Board Update, which was given by Dr. Le. She commented that the meeting was well attended by dentists and hygienists and that she and Richard were warmly received.

Mr. DeCuir went on to report that staff is starting up the outreach program. Lori Reis, Manager of the Complaint and Compliance Unit will be heading up this effort.

AGENDA ITEM 5: DCA Director Brian Stiger's Report

President Bettinger introduced and welcomed Brian Stiger, Director of the Department of Consumer Affairs. Mr. Stiger was appointed by the Governor in August 2009. He thanked Board members for allowing him the opportunity to attend the meeting and to update them on important issues that the Board and the Department are and will be facing. He said that he is looking forward to working with Richard DeCuir, Executive Officer and Denise Johnson, Assistant Executive Officer.

Mr. Stiger emphasized that the biggest issue facing the healing arts boards is enforcement. This issue was brought to light when it was discovered, and reported in the newspaper, that the Registered Nursing Board took, on average, three years to revoke a license where egregious violations had occurred. The Governor indicated that this was, and is, unacceptable and had his deputies research eighteen healing arts boards. The results were the same – on average it took three years to prosecute egregious behavior of a licensee.

The Consumer Protection Enforcement Initiative (CPEI) was developed in response to this problem. It is designed to reduce the timeframe for investigating and/or prosecuting complaints from three years down to 12-18 months. Mr. Stiger reported that this would be accomplished by a multi-pronged approach which includes additional staff resources; administrative improvements such as internal audits every three years, process improvements, and subpoena authority to be able to obtain information more quickly; and finally legislation.

The cornerstone of the Consumer Protection Enforcement Initiative (CPEI) is Senate Bill 1111, sponsored by the Department and authored by Senator Gloria Negrete McLeod. This legislation would give Executive Officers the authority and tools to investigate cases more quickly, prosecute cases more quickly, and remove licensees who are a threat to the public. Mr. Stiger encouraged the Board to support this important legislation. He also asked that the Board be diligent in reviewing its enforcement activity, paying particular attention to how long it takes cases to be prosecuted.

Mr. Stiger then reported on SB 1441 – the sixteen uniform standards to protect the public from substance abuse by licensees. He asked the Board to authorize its Executive Officer to immediately implement as many of the proposed sixteen uniform standards as possible that do not require legislation and/or regulations. Additionally, he asked the Board to adopt these uniform standards into its Disciplinary Guidelines as soon as possible; and to keep this item on future agendas for continuous discussion.

He concluded his remarks by honoring Dr. Suzanne McCormick with a plaque for outstanding service as President of the Dental Board of California.

AGENDA ITEM 6: Update on Dental Hygiene Committee of California (DHCC) Activities by Rhona Lee, DHCC President

Rhona Lee, President of the Dental Hygiene Committee of California (DHCC) thanked Board President Dr. Bettinger and Richard DeCuir, Executive Officer for inviting her to attend the Board meeting. She introduced Lori Hubble, Executive Officer of the DHCC. She went on to name the seven Committee members (three public members and four hygienists) and to give a biography of each. The public members are as follows: Alexander Calero (San Diego), Rita Chen Fujisawa (Davis), and Andrew Wong (Diamond Bar). The hygienists are Miriam DeLaRoi (Menifee), Cathy DiFrancesco, (Vacaville), Michelle Hurlbutt (Upland), and Rhona Lee, DHCC President. Each member was appointed for a term which will expire in 2011.

Ms. Lee then reported that DHCC held its inaugural meeting on December 10, 2009. The Committee conducted elections and reviewed and discussed fees and caps for new and renewed licenses. She went on to say that as of January 10, 2010, the DHCC website conveys information on applications and clinical examination testing via the Western Regional Examination Board (WREB). The focus of the DHCC this year will be on its infrastructure: budgetary, regulatory, and statutory issues; as well as developing a strategic plan. She distributed Dental Hygiene Licensure statistics.

Ms. Lee concluded her remarks by offering the skills, experience, and knowledge of the Committee members and staff to work cooperatively on issues with the Dental Board. She invited Board members to attend the upcoming DHCC meetings being held March 22, 2010 in Ontario, July 26, 2010 in Sacramento, and December 6, 2010 in San Diego.

Dr. Dominicis asked Ms. Lee if the DHCC accepted WREB as a pathway for licensure. Ms. Lee responded yes. Dr. McCormick asked whether or not the DHCC would be sending a representative to WREB to participate in the exam development process. Ms. Lee responded that they would like to participate, however, currently DHCC does not have representation on WREB. Dr. Bettinger spoke with WREB about this issue. There is confusion as to the relationship between the Board and the Dental Hygiene Committee. Dr. Bettinger commented that statute shows the Committee is still under the jurisdiction of the Dental Board. Dr. Casagrande asked about the relationship between the Board and the Dental Hygiene Committee. Kristy Schieldge, Legal Counsel will research the question. Dr. Casagrande would like to see the DHCC report on the agenda of each Board meeting.

AGENDA ITEM 7: AGENDA ITEM 7: Budget Report

Mr. DeCuir reported that he hired Angelina Salmos, a new budget analyst who comes from the private sector. She is very qualified. Mr. DeCuir reported that the projected revenues, generated from license renewals and other regulatory licenses and permits, for the Dental Fund for FY 2010-11 are \$7.7M. The budget estimate for this year is \$11.2M which is \$1.6M higher than CY budget. The increase in Board expenditures is attributed to the Consumer Protection Enforcement Initiative (CPEI). This reflects 12.5 positions augmented in the Board's enforcement program.

Mr. DeCuir said that he recently found out that Governor Pete Wilson had borrowed \$10M from the special fund. \$4.5M still needs to be repaid to the Dental Board account. This loan repayment will help to cover the increased enforcement positions and may carry the Board out 3-4 years before the Board would need to look at a fee increase. He then went on to report on the RDA Fund, which is separate from the Dental Fund. The projected revenues for FY 2010-11 are \$1.1M; primarily attributed to license renewals and other regulatory licenses and permits. The annual budget estimate is \$1.8M. Mr. DeCuir suggested that the Board might need to consider a fee increase, by resolution, from \$70 to \$80. Mr. DeCuir concluded his remarks by saying that he intended to reinstitute the internal expenditure report which would assist him in keeping on top of expenditures throughout the rest of the fiscal year.

AGENDA ITEM 8: Future Meeting Dates for Board Meetings

Karen Fischer, Administrative Analyst outlined the options for the upcoming Board meetings. After much discussion, the consensus of the Board was to have a two day meeting May 5-6, 2010 in San Francisco; to have a one day meeting July 26, 2010 in Sacramento in conjunction with the DCA working conference on July 27, 2010, which Board members are encouraged to attend; and a two day meeting November 4-5, 2010 in Los Angeles. Dr. McCormick and Dr. Casagrande asked that the Board consider scheduling Board meetings in 2011 around the California Dental Association (CDA) meetings which are generally held in Los Angeles and San Francisco. They feel that this would afford the Board an opportunity for outreach to a large number of consumers and stakeholders.

AGENDA ITEM 9: Recommendation from the Full Board to Adopt the Amendments to Title 16, CCR Sections 1007, 1008, and 1017.2 (Retroactive Fingerprinting Regulations)

Donna Kantner, former Legislative and Regulatory Analyst reported that currently the Dental Board of California, along with other boards and bureaus, requires applicants to provide fingerprints for a background check before issuance of a license. Although effective since 1986, this requirement

was not retroactive, so licensees who obtained their licenses prior to that date have not been fingerprinted. As a result, the board has no criminal history or subsequent arrest reports on any dentist licensed prior to 1986, or for Registered Dental Assistants and Registered Dental Assistants in Extended Functions licensed prior to 1999, as the Committee on Dental Auxiliaries (COMDA) did not require fingerprinting for licensure until a later date. COMDA's dental assistant licensees came under the jurisdiction of the Dental Board in July, 2009.

Board staff developed regulatory language to require submission of electronic fingerprints for any licensee for whom no electronic record of submission exists, which was approved by the Board in 2009, and noticed for public hearing by staff. On February 4, 2010, a public hearing was held on the proposed amendments.

Dean Chalios, California Dental Association (CDA) outlined four areas of concern regarding these proposed Fingerprinting regulations. The first concern is that the Board allow sufficient and reasonable notice and time to comply with the new requirements. CDA recommends that the Board provide licensees ninety (90) days notice following adoption of the regulations before any licensee must comply. The second concern relates to the costs for re-submission if the record is lost or destroyed. The third concern is relating to Section 1008(b). CDA feels the self-reporting obligation is overbroad and recommends that the Board revise this requirement to require reports of misdemeanor convictions and felony arrests or convictions. The final concern was consideration of mitigating factors. CDA urged the Board to ensure all mitigating factors, including the time, duration, and gravity of any criminal situation, are considered by the Board before pursuing discipline against a licensee. Mr. Chalios went on to suggest that Board staff be present at the CDA meetings (fall meeting, 10,000 people in San Francisco; 25,000 people attend the May meeting in Anaheim) and have the electronic scanner available to take fingerprints.

Dr. Bettinger asked Kristy Schieldge, Legal Counsel for comments about the CDA concerns. Ms. Schieldge addressed the first item relating to reasonable notification after the effective date of the regulations. She suggested that a specific date be inserted in the proposed regulations. Dean Chalios agreed that this would address the association's concern. There was discussion about the date. Dr. McCormick suggested that in light of the enforcement issues surrounding the Board and the Department, a January 1, 2011 date might be perceived by the public as being too far out in addressing such an important and critical issue of public protection. M/S/C (McCormick/Dominicis) to insert the date of December 1, 2010 into proposed fingerprinting regulations section 1008(a). The motion passed unanimously.

Brian Stiger, Director of Department of Consumer Affairs commented about the importance of fingerprinting those licensees who have never been fingerprinted. He went on to say that electronic fingerprinting allows the Board/Department to get conviction information more quickly than the old fingerprinting cards. It allows the Board to investigate and prosecute the cases more quickly.

Greg Salute, Deputy Attorney General reiterated that the purpose of this regulation is to get licensees who were licensed before 1986 fingerprinted. Currently these people are operating "under the radar". If these licensees are not fingerprinted, there is no way to connect them to subsequent arrest information. Mr. Salute went on to talk about the statute of limitations with regard to previous criminal actions: three (3) years after the Board discovers the act, or seven (7) years after the act occurs, whichever is first. There are exceptions for minors and fraud.

With regard to the CDA's second concern about lost or destroyed records and who would be responsible to pay. There was discussion. M/S/C (Downing/Casagrande) to strike the words "no longer exist" and replace it with "does not exist" in section 1008(a). This line would now read "...or

for whom an electronic record of the submission of fingerprints does not exist, ...". The motion passed unanimously.

Ms. Schieldge commented on CDAs third concern regarding the definition of "conviction" and what is reportable. She said that the Department suggested this language because some infractions could rise to the level of conduct that would be substantially related to the profession e.g. disturbing the peace. There was discussion about the dollar threshold. Greg Salute, Deputy Attorney General mentioned that all healing arts boards are adopting this language. He recommended the Board NOT omit any of the proposed language. Rather, consider raising the dollar amount. Dean Chalios reiterated that CDA would rather see the language changed to require reports of misdemeanor convictions and felony arrests or convictions rather than changing the dollar amount of the violation. M/S/C (Dominicis/Forsythe) to raise the dollar threshold from \$300 to \$1000 in section 1008(b) of the proposed fingerprinting regulations. The motion passed unanimously.

Ms. Schieldge commented on CDA's last issue dealing with how the regulations would be implemented. She referred to Mr. Salute's previous explanation about the statute of limitations relating to previous criminal acts and/or violations.

M/S/C (Burton/Forsythe) to direct staff to take all steps necessary to complete the rulemaking process, including preparing modified text for an additional 15-day 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 16 CCR Section 1007, 1008, and 1017.2 of the proposed regulations with the modified text. The motion passed unanimously.

There was no additional public comment.

Dr. McCormick asked to agendaize the following at an upcoming meeting: to look at and review the Board's current scope of ethics training required by the State of California.

AGENDA ITEM 10: Report of the Registered Dental Assistant Written Examination by Tracy Montez, Ph.D - Information Only.

Richard DeCuir, Executive Officer introduced Dr. Tracy Montez of Applied Measurement Services, LLC. Dr. Montez was hired to update the registered Dental Assistant (RDA) examination. She thanked the Board for being able to provide testing services to them and went on to outline her presentation which would include an introduction and scope of the contract, a review of the professional guidelines and technical standards, an update on the Registered Dental Assistant Examination project, and recommended next steps.

Dr. Montez explained the professional guidelines and technical standards that she uses to guide the work she performs. California Business & Professions Code, Section 139 mandates the use of two documents in examination development: Standards for Educational & Psychological Testing (outlines procedures for developing a fair, valid, and legally defensible program) and the Federal Uniform Guidelines for Employee Selection Procedures.

The RDA examination project update included developing an understanding of the RDA licensing examination program, including statutory changes; conducting a modified occupational analysis; conducting examination development; completing an initial statistical analysis of the new RDA examination; and writing the RDA report (in progress).

The modified occupational analysis included gathering existing RDA examination information and statutory changes; conducting focus group meetings; and revising the examination plan, including task and knowledge statements, content area definition and weights. The examination development included reviewing existing RDA examination items; conducting item writing and review workshops; conducting passing score workshops; and revising the Candidate Information Bulletin, including the reference list. The statistical analysis included completing test scoring and item analysis, determining scored versus pilot items, applying a passing score, and calculating a passing rate.

Dr. Montez concluded her presentation by recommending the Board continue examination development, create an item bank for test questions and supporting documentation, continue to monitor RDA examination performance and passing rate, and establish a schedule for the next occupational analysis, which she suggests would be every five (5) years.

Dr. Bettinger asked Dr. Montez what she would expect the fair passing rate would be. She responded that based on her limited exposure, the passing rate could be high 60s or possibly low 70s. Dr. Bettinger asked if the Board should make adjustments for people whose native language is not English. Dr. Montez doesn't recommend modifying the exam, but additional time to take the examination could be granted. Executive Officer Richard DeCuir mentioned that the RDA examination project is not complete yet. The objective was to have three forms from which to pull exam questions. To date, only two forms have been developed.

Public Comment

Dr. Lori Gagliardi commended Dr. Montez for her effort. However, she expressed concern that the old duties remained posted on the Board's website. She requested that the current information be posted as soon as possible for the written and Law and Ethics examination. Dawn Dill, Dental Assisting Unit Manager reported that the Matrix is in the legal department awaiting approval. The old duties will be pulled from the website.

Dr. Earl Johnson, Orthodontic Association asked how the occupational analysis was conducted. Dr. Montez explained that subject matter experts were recruited and trained. Dr. Johnson expressed concern that infection control and occupational safety questions are overweighted. Dr. Casagrande, Board member responded that he thought the examination questions were comprehensive and tested minimum competencies. He feels the questions are very well written.

Dr. Steve Morrow, Loma Linda University, supports the requirements and concepts on infection control and occupational safety. Additionally he commented that the dental education community is challenged by English as a second language (ESL) candidates. Loma Linda University allows ESL students to have extra time in written and spoken exams. The student must request the extra time in writing.

AGENDA ITEM 11: Examination Committee Report

Dr. Casagrande, Chair, reported that a quorum was established and the meeting minutes of November 9, 2009 were accepted. The Committee discussed the Registered Dental Assistant practical and written examination statistics and agreed that the pass rate for the written exam is still too low at 50%. He hopes the new examination will yield better results. The Committee reviewed the calendar of upcoming dental board examinations. There was only one candidate that applied to take the exam, so due to the high costs of administering the exam for only one person, the exam was cancelled and staff was asked to assist the candidate with an application to take the WREB examination. Dr. Casagrande reported that the Committee discussed the licensure by residency requirement for individuals wanting to take the California State Dental Examination. Dr.

Earl Johnson, Orthodontic Association, requested that the Committee consider allowing candidates who graduated from a non CODA dental school, but who had been accepted into a CODA approved residency training program and who completed the program, be allowed to sit for the dental board licensure examination. Dr. Casagrande has asked Dr. Johnson to draft the legislative language with a cover letter outlining his proposal and submit it to the Committee. Dr. Olinger and Dr. Le will take the information and report to the Committee.

The last topic of discussion in Committee was the update regarding Portfolio Examination Pathway to Qualify for a California Dental License (AB 1524), which moved out of the Assembly and into the Senate. Georgetta Coleman Griffith, former Executive Officer of the Dental Board will be working with Dr. Casagrande to put together draft regulations. Dr. Casagrande said that in his opinion, this portfolio examination pathway to qualify for a California dental license will be so much better than other exams out there. California will offer the only examination in the nation that requires a certain number of clinical experience requirements from student as part of their portfolio licensure. Candidates will be tested in six different areas on clinical patients. It is more comprehensive and offers better patient protection. The patients will be patients of record of the schools.

PUBLIC COMMENT

Dr. Lori Gagliardi asked staff when the plan and outline will be available online for the new Registered Dental Assistants Law and Ethics examination which has been administered since January 1, 2010. Dawn Dill, Manager of the Dental Assisting Program will check into this question.

Dr. Steve Morrow, Loma Linda School of Dentistry commented on the patient of record issue; acceptance of non-CODA graduates who attend a CODA approved residency program have been accepted for licensure in other states; and finally, specialty licensure in California.

M/S/C (Whitcher/Olinger) to accept the Examination Committee Report. The motion passed unanimously.

AGENDA ITEM 12: Licensing, Certification & Permits Committee Report

Dr. Whitcher, Chair, reported that a quorum was established and the meeting minutes of November 9, 2009 were accepted. The Committee reviewed and discussed Dental licensure and Registered Dental Assistant licensure statistics; and general anesthesia/conscious sedation evaluation statistics. Additionally, the Committee announced that two General Anesthesia Evaluator Calibration courses that will be held in March, one in Oakland and another in Southern California. The Committee accepted public comment from the California Association of Oral and Maxillofacial Surgeons in support of the calibration courses. Dr. Whitcher reported that in closed session the Committee unanimously approved one request for issuance of a new license to replace a cancelled license. M/S/C (McCormick/Le) to accept the Licensing, Certification, and Permits Committee Report. The motion passed unanimously. There was no additional public comment.

AGENDA ITEM 13: Enforcement Committee Report

Rebecca Downing, Chair, reported that a quorum was established and the meeting minutes of November 9, 2009 were accepted. The Committee received a report from Denise Johnson, Assistant Executive Officer on the Consumer Protection Enforcement Initiative (CPEI). This is an important issue. There were 37 legislative proposals that the Committee reviewed. Of the 37 items, 10 items did not apply to the Dental Board. There were changes ranging from tightening timeframes in the Attorney General's office to streamlining the process for getting records from other departments; and changing the role of the Dental Board in the enforcement process. Some items of concern were giving up authority to adopt stipulations and sunseting of the Diversion

Program in 2013. Ms. Downing emphasized that the Board should look at these changes closely. A number of administrative changes, best practices, addition of staff positions, a new database to track enforcement actions, new reporting, increased use of non-sworn officers, and a more robust web presence to name a few.

The Committee reviewed the Complaint and Compliance, and Investigative statistics. The number of pending complaint cases is going down; and the average number of days to close cases has also gone down. Processing times are directly related to staff vacancies. Dr. McCormick asked if there was a mechanism to track “real time” in the process in order to determine where the bottlenecks lie. Ms. Downing responded that staff has been responsive to any reporting requests, but that there was further work that needed to be done to track from beginning to end what happens to a complaint and how long it takes to resolve.

Ms. Downing reported that the Diversion contract with MAXIMUS has been extended for three years. Dr. Bettinger and Richard DeCuir will be working on modifying the data fields in the statistical reports generated by MAXIMUS in order to more adequately reflect the dental profession. She further reported that two citations were issued for failure to produce records. The law allows the Executive Officer to hear these appeals. Richard DeCuir, Executive Officer will report on the appeals and the appeals process at the next meeting. Greg Salute, Deputy Attorney General clarified that Richard does have the authority to hear informal and formal appeals. The procedure is outlined in Title 16, California Code of Regulations, Section 1023.5. Mr. DeCuir commented that the intent of the use of citations is for compliance – not punishment. Dr. McCormick, Board member, asked if the stakeholders and licensees had been notified of this procedure through the website. A notice appears on the Dental Board’s home page. Dr. Dominicus asked if a citation is considered discipline when answering the question on the renewal form about any convictions or disciplinary actions since the last renewal. Kristy Schieldge, Legal Counsel responded “no”, a citation is not considered disciplinary action.

Ms. Downing reiterated that the most important job of the Board is to keep track of complaint and compliance; and investigative timeframes, from start to finish.

Dr. Bettinger asked Ms. Downing to work with Richard Decuir to develop the procedures for hearing citation appeals. Dr. Casagrande commented that some cases will take longer than others. Not one size fits all. He cautioned everyone to be mindful of due process for everyone.

Dean Chalios, California Dental Association wanted to reiterate what he had said in Committee yesterday regarding SB 1111. It is a monumental change in the way enforcement is being done. He asked the Board to make sure to read and understand the significant changes in the proposed legislation. He requested that the Board keep due process and fairness in mind. Brian Stiger, DCA Director reiterated that the Department is very sensitive to due process and is taking the elements of SB 1111 very seriously.

Fran Burton, Board member, expressed her concern that the Board is just seeing SB 1111 for the first time and has not had any time to review the language. She is not ready to offer a letter of support to the Director. She asked Legal Counsel to review the language and give recommendations to the Board. Ms. Schieldge asked to work through staff to analyze the bill. Dr. Bettinger took Ms. Burton’s comments and will direct staff to work to bring information forward to the Board.

M/S/C (Casagrande/McCormick) to accept the Enforcement Committee Report. The motion passed unanimously.

AGENDA ITEM 14: Dental Assisting Committee Report

Judy Forsythe, Chair, reported that a quorum was established and the meeting minutes of November 9, 2009 were accepted. The Committee voted to approve the following programs and courses: RDA Program: Kaplan-Vista; Infection Control Courses: Tri-Cities Regional Occupational Program – Whittier, Orange Coast College – Costa Mesa, Dental Pros – Temecula, College of Marin – Kenfield; Pit and Fissure Sealant Courses: College of Marin – Kentfield; and Radiation Safety Course: Katie Karzen – Encino.

The Dental Assisting Forum met for the first time on February 10, 2010 in Sacramento. There was a light agenda for this first meeting. The Forum members elected Barbara Blade as Chair and Pam Baldwin as Vice-Chair. The next meeting is scheduled for April 7, 2010 in Los Angeles. The location is yet to be determined.

M/S/C (Burton/Dominicis) to accept the Dental Assisting Committee Report. The motion passed unanimously. There was no additional public comment.

AGENDA ITEM 15: Legislative and Regulatory Committee Report

Fran Burton, Chair, reported that a quorum was established and the meeting minutes of November 9, 2009 were accepted. She reported that the legislative bill tracking services contract is pending. A new legislative/regulatory analyst should be hired soon to replace Donna Kantner. 2009-2010 legislation was reviewed and discussed. Ms. Burton asked that staff prepare analyses on SB 294, SB 442, SB 638, and SB 700 before the next Board meeting. She reminded Board members to be continuing to think about prospective legislative proposals. She updated the Board on the status of various regulatory packages pending. The final discussion was about Portfolio – AB 1524. The Committee accepted public comments from the President-elect of the Academy of General Dentistry.

M/S/C (Burton/Casagrande) to accept the Legislative and Regulatory Committee Report. The motion passed unanimously. There was no additional public comment.

AGENDA ITEM 16: Infection Control Committee Report

Dr. Huong Le, Chair, reported that a quorum was established and the meeting minutes of November 9, 2009 were accepted. The Committee took additional public comment on the proposed minimum standards for Infection Control. After much discussion, the Committee voted unanimously to accept four changes to the language and to direct staff to set the proposed language for hearing. Dr. Le reported that Staff had reached out to many different organizations and stakeholders for input into this process. She said that the Committee had taken all public comments into consideration and felt that they had addressed concerns to this point. M/S/C (Forsythe/Whitcher) to accept the Committee's recommendation to direct staff to take all steps necessary to initiate the formal rulemaking process, authorize the Executive Officer to make any non-substantive changes to the rulemaking package, and set the proposed regulations for hearing. The motion passed unanimously.

Public Comment:

Leslie Canham, Dental Assisting Alliance, submitted language to clarify fragmented language in the Sterilization and Disinfection section of the proposed regulations and asked that it be considered

Noelle Kelch, RDH in Alternative Practice, Columnist, and Consultant expressed strongly that the proposed language, in her opinion, does not meet minimum standards for infection control because it lacks items outlined in the CDC Guidelines. She is concerned about public protection.

She is also concerned about the proposed biennial review. She feels it should be done annually. She feels the language should continue to be reviewed and discussed in the Sub-Committee before going to public hearing.

Dr. Lori Gagliardi, CADAT expressed concern that documents she submitted to Board staff were not included in the Board packets. (The information was received too late to include in the Board packets.) She distributed the information at the meeting and asked that Board members consider her comments before moving the language forward to public hearing. She asked that the term "healthcare personnel" be clarified. She urged the proposed language go back to the Sub-Committee for further revisions.

Dr. Bettinger, Board President reiterated that the Board is very concerned about public protection and for this reason, he would like to see the proposed language moved forward to regulatory hearing. He feels that delaying the regulatory hearing would be harmful to the public. He asked Legal Counsel to explain the next step in the regulatory process. Kristy Schiedge, Legal Counsel explained that this is proposed regulatory language. If the Board votes to send this regulatory package to be publically noticed, by law this gives interested parties 45 days to comment. The Board will then have to address, in writing, any comments and/or concerns that are made during this 45 day comment period.

M/S/C (Whitcher/Olinger) to accept the Infection Control Committee Report. The motion passed unanimously. There was no additional public comment.

Fran Burton, public member, requested to revisit the discussion about SB 1111. She wanted to go on record for requesting that a teleconference be scheduled if necessary, before the May Board meeting, to develop a position on the proposed legislation. Dr. Bettinger agreed that he would consider her request to call for a teleconference or related Sub-Committee meeting prior to the May Board meeting if necessary.

AGENDA ITEM 17: Examination Appeals Committee Report

Dr. Dominicus, Chair, reported that a quorum was established and the meeting minutes of November 9, 2009 were accepted. The Committee reviewed and discussed thoroughly five applications for examination appeals. The Committee denied all appeals unanimously. M/S/C (Forsythe/Casagrande) to accept the Examination Appeals Committee Report. The motion passed unanimously.

AGENDA ITEM 18: Discussion and Possible Action Regarding 8 Hour Infection Control Course

At the November 9-10, 2009 meeting, Richard DeCuir, Executive Officer was directed by the Board to seek legislative clarity surrounding language in AB 2637 from the author, Assembly Member Mike Eng. This clarity was requested to some ambiguity in his bill as it relates to unlicensed dental assistants. Specifically two questions were asked. Question #1: Was the legislative intent that the 8-hour infection control course requirement for unlicensed dental assistants apply to all unlicensed dental assistants currently working in California, or only those unlicensed dental assistants beginning work in such positions on or after the implementation date of the bill – January 1, 2010? Question #2: Was the legislative intent of the 8-hour infection control course for unlicensed dental assistants that the 4-hour didactic instruction and the 4-hour pre-clinical and clinical instruction be taught together, separately, or either method? Mr. DeCuir received Mr. Eng's response along with a Legislative Counsel Bureau legal opinion. Mr. Eng stated that it was his intent that the 8-hour infection control course requirement apply only to those unlicensed dental assistants beginning work in such positions on or after the implementation date of his bill – January 1, 2010. He went further to state that he intended his bill to have the four hour didactic instruction and the four hour

pre-clinical and clinical integrated to constitute an eight hour infection control course. Board discussion of this issue was broken into two segments, A & B.

A. Discussion and Possible Action Regarding the Applicability of the 8 Hour Infection Control Course to Unlicensed Dental Assistants Working Prior to January 1st, 2010.

Kristy Schieldge, legal counsel was asked her legal opinion. She indicated that there are two possible legally tenable and viable interpretations in the Legislative Counsel's opinion. The first interpretation being that only those unlicensed dental assistants beginning work in such positions, or changing employers on or after January 1, 2010, would be required to take the Dental Practice Act course, Infection Control course, and Basic Life Support course. Interpretation #2 would require all unlicensed dental assistants, including people working prior to January 1, 2010, to take the above mentioned courses because all unlicensed dental assistants would be performing the new duties which became effective January 1, 2010. LaVonne Powell, the Board's former legal counsel, expressed at the November 9-10, 2009 Board meeting that in her opinion, interpretation #2 is the most viable and provides the best public protection. Ms. Schieldge supports this position.

There was much discussion by Board members. The question arose about which interpretation is defensible in court. Ms. Schieldge indicated that the author's intent does not control legal interpretation in statute. Rather, plain reading of the statute, and if ambiguous, overall legislative history which has been developed will determine how the statute is interpreted. Dr. Bettinger asked each Board member to participate in the discussion in order to reach a consensus of how to proceed. Each Board member agreed that the statute be interpreted to apply to unlicensed dental assistants who are new hires and anyone who changes employers on or after January 1, 2010. Board members agreed that this was not the interpretation originally envisioned when the bill was first moving through the legislature. M/S/C (Casagrande/McCormick) that the statute will apply only to a person first hired by his/her current employer on or after January 1, 2010. The motion passed unanimously.

Public Comment

Leslie Canham, Dental Alliance believes that the statute should apply to all unlicensed dental assistants.

B. Discussion and Possible Action Regarding Interpretation of Requirements for Completion of an 8 Hour Infection Control Course by Dental Assistants.

Dr. Bettinger began the discussion by saying that he interpreted the statute to mean that one provider would administer an 8-hour course. There was discussion about being able to divide the 8-hour course into two segments of 4-hours didactic instruction and 4-hours pre-clinical and clinical instruction. This would mean that a provider could offer the segments to be taken at different times, such as the didactic could be taken on-line and the pre-clinical/clinical instruction could be taken at another time through the same provider. Dean Chalios, reported that CDA is developing a 4 hour didactic course that could be taken on-line. There was much discussion about provider approval and course development and approval. There was a consensus of the Board that the current application process for a dentist to become a course provider is very lengthy and discouraging. Richard DeCuir expressed concerns about the entire internal process regarding course approval and course provider approval for dental assisting courses and questioned what was the best way to get the courses to the dental assistants. Dr. McCormick stated that she thought the Board could be visionary in developing standardized training opportunities for dental offices. She thinks the Board could be a leader in how to look at preventative enforcement via education. M/S/C (Olinger/Dominicis) to direct staff to review the current complicated procedures for evaluating dental assisting course providers and courses and to simplify the process. The motion passed unanimously.

Dr. Bettinger, Board President recognized Brian Stiger, Director of DCA. Mr. Stiger thanked the Board for allowing him to participate in the meeting. He looks forward to working with the Board on future issues.

Public Comment

Dr. Lori Gagliardi, CADAT, said that it is not clear if dental assistants graduating from a Board approved program need to take the 8-hour infection control course, in addition to the course work already completed in school, in order to apply for a license. She asked for clarification. There was Board discussion. M/S/C (Forsythe/Dominicis) that a Registered Dental Assisting program that meets the requirements of the Dental Practice Act and has been approved by the Board qualifies as a Board approved 8-hour Infection Control Course. The motion passed unanimously. Dr. Gagliardi went on to say that RDA programs offering a stand-alone 8-hour infection control course are required to submit an application. Additionally, RDA programs agree to issue certificates of Infection Control and California Dental Practice Act education for employment upon graduation to work as a dental assistant.

AGENDA ITEM 19: Western Regional Examination Board (WREB) Statistics and Update

Dr. Dominicis reported that WREB had a full Board meeting January 30, 2010 in Phoenix, Arizona. The WREB statistics show that 2500 candidates were tested last year. There were 17 appeals, of which two were granted. The WREB Board is considering restructuring, and for this reason, the same Board members were elected to continue in their terms to see the governance restructuring plan move ahead. The Board is considering establishing a two tier system: an active membership and an affiliate membership. There are 31 member states at this time. Dr. Dominicis reported that WREB posted a position paper on it's website indicating that crown preparation procedures will not be added to the dental clinical examination. The next meeting will be July 10, 2010 in Seattle, Washington.

Public Comment:

Dr. Steve Morrow, Loma Linda University reported that he is the liaison between Loma Linda University and WREB. He participates in the Educators Forum – an opportunity for WREB to discuss ease of conducting exams with schools who administer the WREB exam. He explained that all states which accept WREB are not member states. WREB member states are by application not by invitation. Dr. Morrow asked the Board to get more involved in the examination process by designating California Examiners to participate in the WREB process. WREB Examiners are either Board members from a WREB member states or a dentist approved by the Board of a WREB member state. Currently California has no representation on the WREB Examination Board. He feels the Board is missing an opportunity to have direct input into the examination. He indicated that there are many dentists who would like to serve as WREB Examiners, but they would need to be designated by the Dental Board. Dr. Witcher, Board member commented that with the new governance model, if California is not participating in the process by furnishing examiners, we could find that we have no representation on the Board, even though we are a major player. He expressed that this is a great opportunity to get examiners empaneled and participating. At this point, Kristy Schieldge, Legal Counsel reminded Board members that this item was informational only. For further discussion, it would need to be agendaized for a future meeting.

Point of Personal Privilege: Dr. Casagrande recognized Dr. Bob Blye in the audience. Dr. Blye has been the Board's Chief Examiner for many years. He was welcomed.

AGENDA ITEM 20: Report of Cancelled License Status on Board's Website – Update

Dawn Dill, Manager recapped that Dr. Dominicis had asked for the Board's website to be changed so that when a dentist or assistant voluntarily cancels a license, certification, and/or permit that there be a designation or definition to distinguish this voluntary cancellation from cancellation of a license, certification, and/or permit by the Board for non-renewal for over five years. Ms. Dill was tasked by the Board to find a status code, within the constraints of the computer system, which would clearly show the public, via license verification, why the license, certification, and /or permit was cancelled. She is continuing to work with the Office of Information Services. There is a secondary screen, under license verification on the website, relating to definitions. Dr. Bettinger asked that this information be taken off the website as soon as possible and until the corrected definition of "cancelled", which was approved at the November 2009 Board meeting, can be posted.

Dr. McCormick, Board member, requested that an update on the Board's newsletter be put on the agenda for the May, 2010 Board meeting.

PUBLIC COMMENT

There was no additional public comment.

ADJOURNMENT

The meeting adjourned at 2:33 p.m.