



LEGISLATIVE AND REGULATORY COMMITTEE MEETING MINUTES
Thursday, November 4, 2010
El Segundo, CA

Members Present:

Fran Burton, Public Member, Chair
Steven Afriat, Public Member
Luis Dominicis, DDS
Huong Le, DDS
Suzanne McCormick, DDS
Steven Morrow, DDS

Members Absent:

Stephen Casagrande, DDS, Vice Chair

Staff Present:

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

Ms. Burton, chair called the meeting to order at 10:56am. Roll was called and a quorum was established.

LEG 1 – Approval of the May 5, 2010 Legislative and Regulatory Committee Meeting Minutes

M/S/C (Dominicis/Morrow) to approve the May 5, 2010 Legislative and Regulatory meeting minutes. The motion passed unanimously with 1 abstention.

LEG 2 – 2011 Tentative Legislative Calendar – Information Only

The 2011 Tentative Legislative Calendar was not available. Staff will notify the Board once the calendar is available.

LEG 3 – End of 2-Year Legislative Session Summary

Sarah Wallace, Legislative and Regulatory Analyst provided a summary of the Legislation affecting the Board in the past 2 year session. AB 1524 Hayashi (Chapter 442) is currently being sponsored by the Dental Board of California regarding Examination Requirements in Dentistry.

The bills signed by the Governor:

AB 171 Jones (Chapter 418, Statutes of 2009)

DENTAL SERVICES: CREDIT

AB 171, sponsored by the Western Center on Law and Poverty, prohibits a dentist, or an employee of a dentist, from arranging for credit extended from a third party for a patient without providing a written notice and a written treatment plan. This bill prohibits the dentist, or dentist's employees, from arranging for credit while a patient has been administered or is under the influence of general anesthesia, conscious sedation, or nitrous oxide. The bill also prohibits a dentist, or employee, from charging for treatment not yet provided or for costs not yet incurred to a third party creditor without providing the patient with information regarding the treatment and services that are to be rendered and ensure that the patient receives the treatment plan. Dentists are required to refund the creditor any payment for any treatment that has not been rendered within 15 business days of the patient's request. A person who willfully violates the provisions of this bill is subject to specified civil liability. Because a willful violation of these requirements would be a crime, the bill imposes a state-mandated local program. This bill provides that no reimbursement is required by this act for a specified reason.

AB 403 Fuller (Chapter 104, Statutes of 2009)

DENTAL HYGIENISTS: EXAMINATION AND LICENSURE

AB 403, sponsored by the California Dental Hygienists Association, provides that satisfactory performance on the state clinical examination, or satisfactory completion of the dental hygiene examination given by the Western Regional Examining Board or any other clinical dental hygiene examination approved by the Dental Hygiene Committee of California satisfies the clinical examination requirement for licensure as a dental hygienist. The bill also provides that satisfactory completion of the National Dental Hygiene Board examination satisfies the national testing examination requirement for licensure as a dental hygienist.

AB 583 Hayashi (Chapter 436, Statutes of 2010)

HEALTH CARE PRACTITIONERS: DISCLOSURE OF EDUCATION

AB 583, co-sponsored by the California Medical Association and the California Society of Plastic Surgeons, requires health care practitioners to disclose the type of license and the highest level of academic degree he or she holds either in a prominent display in their office or in writing, in a specified format given to a patient on his or her initial office visit. The bill requires a physician and surgeon, and an osteopathic physician and surgeon, who are certified in a medical specialty, to also disclose, in either of those manners the name of the certifying board or association. The bill exempts specified health care practitioners, including persons working in certain licensed laboratories and health care facilities from these requirements.

AB 667 Block (Chapter 119, Statutes of 2009)

TOPICAL FLUORIDE: APPLICATION

AB 667, sponsored by the California Dental Association, specifies that services that are provided to elementary or postsecondary pupils specifically include fluoride varnish in the topical applications that may be used and allow application by any person, including a dental assistant. The bill also permits any person, including a dental assistant, to apply topical fluoride, including fluoride varnish, to the teeth of a person being served in a public health setting or program that is created or administered by a state or local governmental entity, as specified. It requires, with respect to services to which the bill applies, that they be provided in accordance with a prescription and protocol issued and established by a physician or dentist.

AB 1116 Carter (Chapter 509, Statutes of 2009)

COSMETIC SURGERY

AB 1116, sponsored by the author, enacted the Donda West Law, which prohibits the performance of an elective cosmetic surgery procedure on a patient unless, within 30 days prior to the procedure, the patient has received an appropriate physical examination and has received written clearance for the procedure from, a licensed physician and surgeon, a certified nurse practitioner, or a licensed

physician assistant, as specified, or, as applied to an elective facial cosmetic surgery procedure, a licensed dentist or licensed physician and surgeon. The bill requires the physical examination to include the taking of an appropriate medical history, to be confirmed on the day of the procedure. The bill provides that a violation of these provisions would not constitute a crime.

AB 1524 Hayashi (Chapter 446, Statutes of 2010)

DENTISTRY: EXAMINATION REQUIREMENTS

AB 1524, sponsored by the Dental Board of California, abolishes the clinical and written examination administered by the Dental Board of California board and replaces that examination with a portfolio examination of an applicant's competence to enter the practice of dentistry. The portfolio examination is conducted while the applicant is enrolled in a dental school program at a California board-approved dental school. The bill requires this examination to utilize uniform standards of clinical experiences and competencies, as approved by the board. At the end of that dental school program, the bill requires the passage of a final assessment of the applicant's portfolio, subject to certification by his or her dean and payment of a \$350 fee. The Board is required to adopt regulations to implement the portfolio examination before it may be conducted. The Board is required to provide specified notice on its Internet Web site and to the Legislature and the Legislative Counsel when the regulations have been adopted. The Board is required to oversee the portfolio examination and final assessment process, and to biennially review each dental school with regard to the standardization of the portfolio examination. The bill specifies examination standards. The Board is required to review the examination to ensure compliance with certain requirements applicable to all board examinations under the department's jurisdiction by December 1, 2016. The bill provides that the examination shall cease to be an option for applicants if the Board determines the examination fails to meet those requirements. The bill requires the board to submit its review and certification or determination to the Legislature and the department, by December 1, 2016.

AB 1659 Huber (Chapter 666, Statutes of 2010)

STATE GOVERNMENT: AGENCY REPEALS

AB 1659, sponsored by the author, creates the Joint Sunset Review Committee to identify and eliminate waste, duplication, and inefficiency in government agencies and to conduct a comprehensive analysis of every "eligible agency," as defined, to determine if the agency is still necessary and cost effective. The bill defines an "eligible agency" as an entity of state government, however denominated, for which a date for repeal has been established by statute on or after January 1, 2011. The bill requires each eligible agency scheduled for repeal to submit a report to the committee containing specified information. The bill requires the committee to take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed, and requires that an eligible agency be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the agency. The bill specifies the composition of the committee, to be appointed by the Senate Committee on Rules and the Speaker of the Assembly, and certain aspects of its operating procedure.

AB 2130 Huber (Chapter 670, Statutes of 2010)

PROFESSIONS AND VOCATIONS: SUNSET REVIEW

AB 2130, sponsored by the author, abolishes the Joint Committee on Boards, Commissions, and Consumer Protection and makes other conforming changes. The bill requires the Joint Sunset Review Committee to review all eligible agencies, as specified. The bill requires the committee to evaluate and make a report on whether an agency should be terminated or its functions revised or consolidated. The bill requires that the report shall be available to the public and the Legislature and imposes a sunset date of January 1, 2013, on the State Race Track Leasing Commission, the Capitol Area Committee, the Continuing Care Advisory Committee, and the California Recreational Trails Committee. The bill provides that its provisions would not become operative unless AB 1659 of the 2009-10 Regular Session is enacted and establishes the Joint Sunset Review Committee.

Kristy Shellans, Legal Counsel, reiterated that if the Board fails its Sunset Review, it will be abolished. Unlike years before, when if it failed it became a "Bureau", now, it requires a Bill to be authored in order to reinstate the Board.

AB 2699 Bass (Chapter 270, Statutes of 2010)

HEALING ARTS: LICENSURE EXEMPTION

AB 2699, sponsored by the author, provides an exemption, until January 1, 2014, from the licensure and regulation requirements for a health care practitioner, licensed or certified in good standing in another state or states, who offers or provides health care services for which they are licensed or certified through a sponsored event, as defined, (1) to uninsured or underinsured persons, (2) on a short-term voluntary basis, (3) in association with a sponsoring entity that registers with the applicable healing arts board, and provides specified information to the county health department of the county in which the health care services will be provided, and (4) without charge to the recipient or a 3rd party on behalf of the recipient, as specified. The bill also requires an exempt health care practitioner to obtain prior authorization to provide these services from the applicable licensing board, and to satisfy other specified requirements, including payment of a fee as determined by the applicable licensing board. The bill requires the applicable licensing board to notify the sponsoring entity, of the sponsored event whether the board approves or denies a request for authorization to provide these services within 20 days of receipt of the request. The bill prohibits a contract of liability insurance issued, amended, or renewed on or after January 1, 2011, from excluding coverage of these practitioners or a sponsoring entity for providing care under these provisions.

SB 294 Negrete McLeod (Chapter 695, Statutes of 2010)

PROFESSIONS AND VOCATIONS: REGULATIONS

SB 294, sponsored by the author, specifies that the provisions relating to the California Board of Occupational Therapy become inoperative and be repealed on January 1, 2014, and the provisions concerning the Physician Assistant Committee of the Medical Board of California become inoperative and be repealed on January 1, 2013. The bill specifies that the provisions related to the Medical Board of California, the State Board of Optometry, and the Respiratory Care Board of California are repealed on January 1, 2014. The bill specifies that the provisions related to the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board and the Board of Psychology are repealed on January 1, 2014. The bill specifies that the provisions related to the Acupuncture Board and the Board of Behavioral Sciences are repealed on January 1, 2013. The bill specifies that the provisions related to the Board of Registered Nursing are repealed on January 1, 2012. The bill specifies that the provisions related to the Naturopathic Medicine Committee within the Osteopathic Medical Board of California are repealed on January 1, 2014. The bill specifies that the provisions relating to the California Board of Accountancy, the California Architects Board, the Landscape Architects Technical Committee, Professional Fiduciaries Bureau, the Board for Professional Engineers and Land Surveyors, and the State Board of Guide Dogs for the Blind are inoperative and repealed on January 1, 2012. The bill authorizes the California Architects Board to implement an intern development program until July 1, 2012. This bill specifies that the provisions related to the Department of Pesticide Regulation a Structural Pest Control Board are inoperative and repealed on January 1, 2015. The bill specifies that the provisions related to the Contractors' State License Board are repealed on January 1, 2012. The bill specifies that the provisions related to the Board of Barbering and Cosmetology are repealed on January 1, 2014. The bill specifies that the provisions related to the Court Reporters Board of California are repealed on January 1, 2013. The bill specifies that the provisions related to the State Athletic Commission are repealed on January 1, 2012. The bill specifies that the California Private Postsecondary Education Act of 2009 is repealed on January 1, 2015.

SB 442 Ducheny (Chapter 502, Statutes of 2010)

CLINIC CORPORATION: LICENSING

SB 442, co-sponsored by the California Family Health Council, the California Primary Care Association, and the Planned Parenthood Affiliates of California, defines a "clinic corporation" as a

nonprofit organization that operates one or more primary care clinics or mobile health care units. This bill allows a clinic corporation, on behalf of an eligible primary care clinic, to submit an affiliate clinic application, to license a primary care clinic or a mobile health care unit as an affiliate clinic if certain conditions are met. The bill designates the clinic corporation as the administrative headquarters for specified purposes for all of the affiliated clinics operated by that clinic corporation and allows the clinic corporation to submit a single report of change and a single payment for all clinic license renewal fees that are due within the same license renewal month for all of the primary care clinics operated by the clinic corporation.

SB 599 Negrete McLeod (Chapter 642, Statutes of 2009)

WORKFORCE DEVELOPMENT

SB 599, sponsored by the author, requires the successor agency to the former Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs to transmit any available data regarding school performance it receives from any schools under its jurisdiction to the California Postsecondary Education Commission. This bill, for purposes of disbursing economic recovery funds recently made available as part of the American Recovery and Reinvestment Act of 2009 to workforce development programs, authorizes local workforce investment boards to work directly with institutions of higher education and other training providers approved by state or federal agencies, including private postsecondary institutions that participate in certain federal student financial aid programs, to quickly design education and training to fit the needs of the job seekers and employers they are serving. The bill requires, for purposes of the California Workforce Investment Act and any laws governing workforce development programs provided for under the federal American Recovery and Reinvestment Act of 2009, that entrance into a registered apprenticeship program is to be considered placement into a job. Existing law creates the California Dental Corps Loan Repayment Program of 2002 in the Dental Board of California, and transferred \$3,000,000 from the State Dentistry Fund to the Dentally Underserved Account of that fund for 3 specified fiscal years, through the 2005-06 fiscal year for purposes of the program. The program assists dentists who practice in an underserved area with loan repayment pursuant to an agreement between the board and the dentist, as specified. This bill requires the board, on or after July 1, 2010, to extend the program and distribute the money remaining in the account until July 1, 2012.

SB 630 Steinberg (Chapter 604, Statutes of 2009)

HEALTH CARE COVERAGE: CLEFT PALATE RECONSTRUCTIVE SURGERY: DENTAL AND ORTHODONTIC SERVICES

SB 630, sponsored by the California Society of Plastic Surgeons, defines reconstructive surgery, as of July 1, 2010, to include medically necessary dental or orthodontic services that are an integral part of reconstructive surgery for cleft palate procedures. Because a willful violation of this provision by a health care service plan would be a crime, the bill imposed a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill provides that no reimbursement is required by this act for a specified reason.

SB 700 Negrete McLeod (Chapter 505, Statutes of 2010)

HEALING ARTS: PEER REVIEW

SB 700, sponsored by the author, defines the term "peer review" for purposes of those provisions. This bill requires specified persons to file an "805" report with a licensing board within 15 days after a peer review body makes a decision or recommendation regarding the disciplinary action to be taken against a licensee of that board based on the peer review body's determination, following formal investigation, that the licensee may have engaged in various acts, including incompetence, substance abuse, excessive prescribing or furnishing of controlled substances, or sexual misconduct, among other things. The bill authorizes the board to inspect and copy certain documents in the record of that investigation. This bill requires the board to maintain the "805" report electronically. The bill specifies that the boards have the authority to also inspect, as permitted by other applicable law, any certified copy of medical records in the record of the disciplinary

proceeding. Under this bill, if a court finds, in a final judgment, that the peer review resulting in the "805" report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board is required to include that finding in the licensee's central file.

SB 1172 Negrete McLeod (Chapter 517, Statutes of 2010)

REGULATORY BOARDS: DIVERSION PROGRAMS

SB 1172, sponsored by the author, specifies individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs are required to keep records and documents related to the treatment and rehabilitation for three years. The bill also specifies that the records and documents are required to be kept confidential and are not subject to discovery or subpoena unless otherwise expressly provided by law. This bill requires a healing arts board to order a licensee to cease practice if the licensee tests positive for any prohibited substance under the terms of the licensee's probation or diversion program. The bill authorizes a healing art board to adopt regulations authorizing it to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation, as specified. The provisions of this bill do not affect the Board of Registered Nursing.

The enrolled Bills:

Bill Number	Author	Final Status	Chapter Number	Statute Year	Page Number
AB 171	Jones	Sign	418	2009	1
AB 403	Fuller	Sign	104	2009	1
AB 583	Hayashi	Sign	436	2010	1
AB 667	Block	Sign	119	2009	2
AB 745	Coto	Veto			----
AB 1116	Carter	Sign	509	2009	2
AB 1235	Hayashi	Veto			----
AB 1524	Hayashi	Sign	446	2010	3
AB 1570	Salas	Veto			----
AB 1659	Huber	Sign	666	2010	3
AB 2130	Huber	Sign	670	2010	4
AB 2699	Bass	Sign	270	2010	4
SB 294	Negrete McLeod	Sign	695	2010	5
SB 442	Ducheny	Sign	502	2010	6
SB 599	Negrete McLeod	Sign	642	2009	6
SB 630	Steinberg	Sign	604	2009	7
SB 674	Negrete McLeod	Veto			----
SB 700	Negrete McLeod	Sign	505	2010	7
SB 1172	Negrete McLeod	Sign	517	2010	8

LEG 4 – Update on Pending Regulatory Packages

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

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

- During the September 16, 2010 meeting, the Board adopted the amendments to the Disciplinary Guidelines to incorporate the Board's response to comments as specified in the November 9, 2009 meeting minutes. Staff prepared the re-submittal documents and delivered them to the Department of Consumer Affairs on October 12, 2010 for the Director's review. The package was returned to the Board on October 25, 2010. Staff will deliver the re-submittal documents to OAL on October 28, 2010. OAL will have 30 working day to review the final rulemaking file. If the package is approved, OAL will file it with the Secretary of State and the regulations will become effective 30 days after filing
- B. *Retroactive Fingerprinting (California Code of Regulations, Title 16, Section 1007, 1008 and 1017.2)*
Board staff prepared the final rulemaking file to be submitted to the Office of Administrative Law (OAL). The rulemaking file was delivered to the Department of Consumer Affairs for the Director's review on July 9, 2010. The file is currently being reviewed by the State and Consumer Services Agency Secretary. Once Agency and DCA complete the review of the final rulemaking, staff will submit the file to OAL. Once submitted, OAL will have 30 working days to either approve or disapprove the Retroactive Fingerprinting rulemaking file. If the package is approved, OAL will file it with the Secretary of State and the regulations will become effective 30 days after filing.
- C. *Dental Assisting Educational Programs and Courses (California Code of Regulations Title 16, CCR, Sections 1070, 1070.1, 1070.2, 1070.6, 1070.7, 1070.8 and 1071)*
At the September 16, 2010 meeting, the Board reviewed the comments received during the 45-day comment period. The Board voted to accept modified text and directed staff to notice the modified text for 15-day public comment. The comment period began on September 28, 2010 and ended on October 12, 2010. Comments were received from the Butte Sierra District Dental Society, the California Association of Dental Assisting Teachers, the California Dental Association, and the Dental Assisting Alliance. The comments will be addressed by the full board on November 4, 2010.
- D. *Infection Control (California Code of regulations, Title 16, Section 1005)*
At the July 26, 2010 Board meeting, the board directed staff to initiate the formal rulemaking process. The proposed regulatory language was noticed on the Board's web site and mailed to interested parties on August 26, 2010. The 45-day public comment period began on August 27, 2010 and ended on October 11, 2010. The regulatory hearing was held on October 11, 2010. Comments were received from the Dental Hygiene Committee of California, the California Dental Association, the California Association of Dental Assisting Teachers, the Dental Assisting Alliance, OSHA Review Incorporated, and Dr. Earl Johnson. The comments will be addressed by the full board on November 4, 2010.

LEG 5 – Request for Prospective Legislative Proposals

There were no requests made.

LEG 6 – Regulatory Priorities for 2011

Sarah Wallace, Legislative and Regulatory Analyst, presented the pending regulatory items to the Board and asked them to prioritize them. The Board discussed them and ultimately came to an agreement.

M/S/C (Burton/Le) to prioritize the pending regulatory items as:

1. Consumer Protection Enforcement Initiative (CPEI) Proposed Changes (SB 1111)
2. New Regulations to Implement the Portfolio Examination
3. Uniform Standards Regarding Substance-Abusing Healing Arts Licensees Proposed Changes (SB 1441)
4. Revise Current Regulations for Use of Conscious Sedation, Use of Oral Conscious Sedation for Pediatrics Patients, and Use of Oral Conscious Sedation for Adult Patients
5. Teaching Methodology Regulations
6. New Regulations for Elective Facial Cosmetic Surgery Permit
7. Licensure Exemption for Out-of-State Healthcare Providers for a Short-Term, Voluntary Basis (AB 2699)
8. Minimum Standards for Infection Control (Required by Statute to review this regulation annually)
9. Mobile Dental Clinics

PUBLIC COMMENT

There was no public comment

ADJOURNMENT

The committee adjourned at 11:25 a.m.