



DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P (916) 263-2300 F (916) 263-2140 www.dbc.ca.gov

DENTAL ASSISTING COUNCIL
Meeting Minutes
Monday, December 3, 2012
Embassy Suites LAX/South
1440 East Imperial Avenue, El Segundo, CA 90245

Members Present

Judith Forsythe, RDA – Chair
Denise Romero, RDA – Vice Chair
Anne Contreras, RDA
Pamela Davis-Washington, RDA
Teresa Lua, RDAEF
Emma Ramos, RDA
Bruce Witcher, DDS

Members Absent

Staff Present

Richard DeCuir, Executive Officer
Denise Johnson, Assistant Executive Officer
Kim Trefry, Enforcement Chief
April Alameda, Investigative Analysis Unit Manager
Jocelyn Campos, Enforcement Coordinator
Sarah Wallace, Legislative and Regulatory Analyst
Karen Fischer, Special Assistant to the Executive Officer
Linda Byers, Executive Assistant
Spencer Walker, DCA Senior Staff Counsel

ROLL CALL AND ESTABLISHMENT OF QUORUM

Judith Forsythe, Chair, called the Dental Assisting Council meeting to order at 11:29 a.m. Roll was called and a quorum established.

DAC 1 - Approval of the August 16, 2012 Dental Assisting Council Meeting Minutes.

M/S/C (Contreras/Davis-Washington) to approve the August 16, 2012 Dental Assisting Council Meeting minutes. The motion passed unanimously.

DAC 2 - Staff Update Regarding the Dental Assisting Unit

April Alameda, Dental Assisting Unit Manager, reported that she has been working closely with staff to familiarize herself with the duties and responsibilities of each of her staff members. She has been assessing the operation and putting together improvement ideas for future

implementation. She is utilizing members of her Investigative Analysis Unit to update the website to make it more user friendly. Due to the high volume of calls, she is trying to address as many of the frequently asked questions as possible on the website.

Subject Matter Experts have been trained in course approvals and will be trained in program approvals as soon as they gain a little more experience.

DAC 3 - Report on the November 9, 2012 Special Training Session

Sarah Wallace, Legislative and Regulatory Analyst, reported that staff, legal counsel and Dr. Whitcher provided a special training course for the five new Dental Assisting Council members to provide them with additional background and clarification relating to the functions of the Council including:

- The Board's and the Council's Role in the Protection of the Public
- The Bagley-Keene Open Meeting Act
- Conflicts of Interest
- What is the Difference Between a Statute and a Regulation?
- California's Legislative Process and Council Involvement
- California's Regulatory Process and Council Involvement

All five of the newest members attended. The training was well received and helped to provide clarity to a series of procedural questions. Dr. Whitcher complimented staff and legal counsel on the high level at which the training was given. There were many commendations and kudos for the very interesting and informative training session put on by staff, legal counsel and Dr. Whitcher.

DAC 4 - Update Regarding Status of Dental Assisting Programs and Courses

Judith Forsythe, Committee Chair, gave an overview of the status of Dental Assisting Programs and Courses. Dr. Whitcher commented that he has had some feedback about the length of time it takes to gain approval after having a deficiency. Denise Johnson responded that the schools do have a provisional approval which allows them to teach. The provisional approval is good for one year. Anne Contreras asked if there was a notification of deficiencies that goes out to the program. Denise Johnson answered yes, but she is going to follow up on that due to Dr. Whitcher's comment. Dr. Lori Gagliardi representing the California Association of Dental Assisting Teachers (CADAT), commented that she was aware of a private college that submitted an application on October 1, 2012 with the same curriculum that has already been approved just for a different location. They received an initial letter stating that their application had been received but have had no communication since. She asked if the Dental Board reviews the applications differently if the same curriculum has already been approved. Ms. Johnson stated that she will follow up on that question. Dr. Earl Johnson, California Association of Orthodontists (CAO), asked how a school is notified that they are provisionally approved. Ms. Denise Johnson stated that when all of the application criteria has been met, "programs" are notified that they are provisionally approved while they wait for their site visit to be scheduled. "Courses" do not require a site visit.

Dr. Earl Johnson suggested that the Dental Assisting Council adopt the CAO's boiler plate training program for orthodontic assistants and just approve it once. Ms. Denise Johnson stated that the Dental Board has approved CAO's Orthodontic Assistant course and is in the process of

approving the many applications that have recently been received. Mr. DeCuir added that if there are issues specific to an office such as staffing, those issues are reviewed individually during the approval process.

DAC 5 - Dental Assisting Program Licensure and Permit Statistics

Judith Forsythe, Committee Chair, gave an overview of the statistics provided. She noted that there are currently sixteen active Dental Sedation Assistant Permits and forty-nine Orthodontic Assistant Permits. Dr. Whitcher mentioned that he is getting feedback that there have been some problems getting licensure due to issues with CPR cards. Dr. Lori Gagliardi commented that this issue has come up before because of the way the regulation is written. She stated that she provided the Board with a list of CPR providers that are approved for renewal of licenses but the same CPR provider criteria does not apply for initial licensure. Ms. Denise Johnson stated that she will check with staff to see if there is a problem with CPR providers.

DAC 6 - Review and Discussion of the Dental Assisting Program Examination Statistics

Judith Forsythe, Committee Chair, gave an overview of the Dental Assisting Program examination statistics noting that the updated RDA Written examination was implemented in March 2012.

The updated Law and Ethics examination was just implemented in November 2012 so the examination results are being withheld from the candidates until the examination has been validated by the Department of Consumer Affairs, Office of Professional Examination Services (OPES). The normal validation period is approximately 30 days or the first 100 candidates.

The Orthodontic Assistant written examination is in the final stages of being updated. There will be an item bank of approximately 130 questions and multiple versions of the examination will be tested. The anticipated implementation of the examination should be before the end of the year.

Staff has contacted the Department of Consumer Affairs, Office of Professional Examination Services (OPES) to begin the process to review and possibly update the Registered Dental Assistant in Extended Functions and the Dental Sedation Assistant (DSA) written examinations. Dr. Whitcher commented that he was getting feedback from the DSA course providers that the candidates were saying that the examination did not necessarily reflect the scope of their duties. He does not recommend changing anything right now. He stated that the candidates are just getting used to this new type of examination and we should give it time.

Dr. Lori Gagliardi, CADAT, asked again that the statistics for the RDA Written exam be broken out into the pathways by which the candidates are applying for the exam i.e. on the job training (OJT) versus an approved Dental Assisting program. She commented that most of the community colleges that she is aware of have close to a 100% pass rate but when all the numbers are combined the way that they are the pass rate percentages are much lower. She stated that they use the statistics to determine if there are weaknesses in the programs they are teaching. When all the numbers are combined it is hard to tell if the schools are doing a good job of preparing the candidates or not. Mr. DeCuir stated that there is a contract pending to determine the rate of passing via each pathway to licensure. He stated that in order to obtain the number of OJT candidates versus approved programs you can look at the numbers by school site and draw conclusions by adding up those numbers. Denise Romero, as an educator, gave an explanation as to why the statistics are important to the schools as far as their funding goes.

Dr. Earl Johnson, CAO, asked if the old exam material is analyzed before the new exams are created. Mr. DeCuir stated that prior to creating a new exam, all of the questions are reviewed to see whether or not they are relevant.

Recess for lunch 12:11 p.m.

Return from lunch 1:34 p.m.

DAC 7 - Discussion and Possible Action Regarding the Merits of Retaining a Registered Dental Assistant (RDA) License While Holding a Registered Dental Assistant in Extended Functions (RDAEF) License

Spencer Walker, Senior Legal Counsel, reported that during the review of the dental assisting licensure and examination statistics at the August 2012 meeting, a question arose as to why there appeared to be trend of declining Registered Dental Assistant (RDA) licensees and an increase in RDA license renewal delinquencies. Staff explained that once a RDA becomes licensed as a Registered Dental Assistant in Extended Functions (RDAEF), it is no longer necessary for the licensee to maintain the RDA license since those duties are included within the scope of practice of a RDAEF. Therefore, RDAEF's tend to allow their RDA licenses to go delinquent rather than renewing. If a license is delinquent for five (5) years, then the license goes into a cancelled status. The Council Chair asked if a process could be developed by which a RDA may cancel their license rather than have it fall to a delinquent status. Staff informed the Council that it may be possible to include a form with the results of a RDAEF exam so that a RDA license could be cancelled. Mr. Walker clarified that a regulation would be required to make that change as well as to clarify that maintaining both licenses is not necessary.

Following that discussion, a member of the public inquired about the legality of a RDAEF performing only RDA duties in an office where there are more than three (3) RDAEF's. Business and Professions Code (Code) Section 1753.7 specifies that, as of January 1, 2010, a licensed dentist may simultaneously utilize in their practice no more than three (3) RDAEF's or Registered Dental Hygienists in Extended Functions (RDHEF). Staff consulted with Board Legal Counsel and determined the following:

(1) Since Code Section 1753 authorizes the Board to license as a RDAEF a person who is currently licensed as a RDA or has completed the requirements for licensure as a RDA, and does not require a RDAEF to maintain the RDA license if the RDAEF license was issued based on possession of a RDA license at the time the application for a RDAEF license was made, a RDAEF may cancel his or her RDA license and still perform the duties of a RDA, as provided in Code Section 1752.4. This finding is predicated on the fact that licensure as a RDA is not required to obtain a license as a RDAEF. It is at the discretion of the licensee if they wish to maintain the RDA license after being licensed as a RDAEF.

(2) Furthermore, if a dentist simultaneously utilizes four RDAEF's in their office, the dentist would be in violation of Business and Professions Code section 1753.7, even if one of them also holds an RDA license and only performs the duties of an RDA.

For example, if a dentist simultaneously utilizes four (4) RDAEF's in their office and one of them also holds a RDA license and performs only RDA duties, the RDAEF who also holds a RDA license cannot say that he or she is performing the duties under his or her RDA license

only. Since both licenses authorize the performance of RDA duties, the duties would actually be performed under both licenses. This is why the dentist would be in violation of the statute.

From an enforcement point of view, if a RDAEF, who also holds a RDA license and only performs RDA duties, causes an injury to a patient, both licenses would be subject to discipline. If the RDA license is only disciplined, the RDAEF would still be able to perform the duties of a RDA, thus creating a public protection issue.

Mr. Walker commented that a “voluntary surrender” of the RDA license might be the answer. Ms. Trefry stated that a “voluntary surrender” is a disciplinary action used only within the disciplinary process. Mr. Walker mentioned that some boards allow licensees to surrender their licenses when they don’t want them anymore.

Mr. Walker further suggested that the DAC may want to promulgate regulations allowing the “voluntary surrender” of a RDA license once a RDAEF license has been issued. Ms. Fischer stated that this issue has come before the Board regarding other licensees who want to surrender their licenses and/or permits. Mr. Walker suggested the Board promulgate a regulation whereby all licensees and permit holders can “voluntarily surrender” a license and/or permit.

Mr. Walker stated that another option might be a notation next to the delinquent status on the Board’s website under License Verification, clarifying that the RDA license is no longer necessary because the license holder is now licensed as a RDAEF. Ms. Fischer stated that we were unable to do that in the current system but may be able to do that when the new BreZE system is implemented. Judith Forsythe directed staff to discuss the recommended changes with Dawn Dill, BreZE liaison, to determine if it is possible to make these changes with the implementation of BreZE and report back at the next meeting.

DAC 8 – Subcommittee Report and Possible Action Regarding the California Association of Dental Assisting Teacher’s (CADAT) Proposed Regulatory Amendments to Radiation Safety Course Requirements

Sarah Wallace reported that at the August 2012 meeting, the Board President appointed a two-person subcommittee of Anne Contreras and Emma Ramos to review proposed regulatory amendments to dental assisting courses provided by the California Association of Dental Assisting Teachers (CADAT). Since the last meeting, CADAT submitted proposed regulatory amendments to the California Code of Regulations, Title 16, Sections 1014 and 1014.1 relative to radiation safety course requirements.

Staff and the subcommittee conducted a preliminary review of the proposal and noted some initial comments. The proposal and subcommittee/staff comments were included for review and may be found on the Board’s website

http://www.dbc.ca.gov/about_us/materials/20121203mm.pdf .

The subcommittee and staff will continue reviewing the proposal and will be setting up a meeting with CADAT representatives to review comments and concerns. Additionally, Board Legal Counsel will be conducting a review for compliance with existing law and the Administrative Procedure Act. Staff anticipates a final proposal will be available for the Council’s review at the February Board meeting.

Ms. Wallace requested that comments, questions or concerns be addressed to Ms. Karen Fischer or Ms. Sarah Wallace by December 28, 2012.

Spencer Walker, Senior Legal Counsel commented that going back to DAC 7, he reviewed the Dental Practice Act (DPA) regulations and nowhere does it state that “surrender” is only a disciplinary action. Mr. Walker stated that he will get back to the Committee and staff regarding whether or not the “voluntary surrender” of a license and/or permit can be implemented with the new BreEZe program.

Returning to DAC 8, Ms. Wallace noted that it is her understanding that there are public protection issues surrounding radiation safety and film versus digital radiography and they will be addressing those issues. In addition, this regulation falls under §1014 which is applicable to General Provisions and applies to all licensees of the Board and Dental Hygiene. Staff is working with all parties involved to determine if §1014 is the appropriate place for this regulatory document. A recommendation will be brought forward at the February meeting as to where the Radiation Safety regulation should reside.

Dr. Witcher commented about his concerns with the proposed changes and will submit them to the appropriate parties.

Pamela Davis-Washington commented that analog film is still the most viable option on small children where the digital sensors are too large.

Dr. Lori Gagliardi, CADAT, commented that it was the intent to have either/or for radiographs not limit it to one or make one obsolete.

There was discussion regarding radiography for children and pregnant women.

Bill Lewis asked what the dates were for the comment period. Sarah Wallace answered December 5th through December 28th.

Dr. Lori Gagliardi, CADAT, requested an agenda item to discuss the word “film” versus “image receptor” as it applies to the General Provisions of the Regulation §§1040 and 1041. She stated that her rationale is that the General Provisions include all providers; Dental schools, Dental Hygiene schools, Dental Assisting schools and stand alone providers who would all be subject to compliance under this regulation. Therefore further clarification may be needed if it only needs to apply to Dental Assisting. Ms. Forsythe asked what the basis for this request was. Dr. Gagliardi answered that using the term “image receptor” would allow either film or digital to capture the image.

There was no further public comment.

The Dental Assisting Council meeting adjourned at 2:11 p.m.