

DENTAL BOARD OF CALIFORNIA

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**DENTAL BOARD OF CALIFORNIA
TELECONFERENCE PUBLIC BOARD MEETING
MEETING MINUTES
THURSDAY, MAY 14, 2020**

NOTE: Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-25-20, dated March 12, 2020, neither a public location nor teleconference locations are provided.

Members Present:

Thomas Stewart, DDS, President
Steven Chan, DDS, Vice President
Joanne Pacheco, RDH, MAOB, Secretary
Fran Burton, MSW, Public Member
Alan Felsenfeld, DDS, MA
Ross Lai, DDS
Lilia Larin, DDS
Meredith McKenzie, ESQ, Public Member
Abigail Medina, Public Member
Steven Morrow, DDS, MS,
Rosalinda Olague, RDA, BA
James Yu, DDS, MS

Members Absent:

None.

Staff Present:

Karen M. Fischer, MPA, Executive Officer
Sarah Wallace, Assistant Executive Officer
Tina Vallery, Chief of Administration and Licensing
Wilbert Rumbaoa, Administrative Services Unit Manager
Gabriel Nevin, Legislative and Regulatory Analyst
Pahoua Thao, Associate Governmental Program Analyst
Michael Kanotz, Legal Counsel
Danielle Rogers, Legal Counsel

Agenda Item 1: Call to Order/Roll Call/Establishment of a Quorum

The Board President called the meeting to order at 9:30 a.m. The Board Secretary called the roll and a quorum was established.

Agenda Item 2: Discussion and Possible Action Regarding February 27-28, 2020, Board Meeting Minutes

Motion/Second/Call (M/S/C) (Morrow/Chan) to approve the February 27-28, 2020 Board meeting minutes.

Ayes: Burton, Chan, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: Felsenfeld.

Absent: None.

Recusals: None.

The motion passed and the minutes were approved with no changes. There were no public comments.

Agenda Item 3: President's Report

President Stewart welcomed all attendees and acknowledged the challenges presented by the Coronavirus (COVID-19) pandemic. Dr. Stewart acknowledged and thanked Governor Newsom, the California Department of Public Health (CDPH), the Department of Consumer Affairs (DCA) Director, Kimberly Kirchmeyer, for their leadership in facilitating the continued provision of care to individuals affected by the COVID-19 outbreak. Dr. Stewart thanked the Board's Executive Officer, Karen Fischer, and Board staff for maintaining Board operations while maintaining flexibility in their changing work environment. Dr. Stewart acknowledged the hardship of office closures, postponement of examinations, and impacts to licensure relating to the dental profession. Dr. Stewart reminded all attendees that the highest priority of the Board is maintaining the protection of the public. Dr. Stewart recognized and acknowledged the leadership of the deans for the six (6) dental schools in California. There were no public comments.

Agenda Item 4: Executive Officer's Report

Ms. Karen Fischer, Executive Officer, provided a report on the impact of COVID-19 on Board operations. Additionally, she reported on the Budget Act for Fiscal Year (FY) 2020-21, personnel activities, and a Controlled Substance Utilization Review and Evaluation System (CURES) fee increase to be implemented by the Department of Justice effective January 1, 2021. There were no public comments.

Agenda Item 5: Discussion and Possible Action Regarding Dental Assisting Council Member(s)

Ms. Karen Fischer, Executive Officer, reported that Dental Assisting Council (DAC) member Ms. Anne Contreras provided a letter of her resignation. A recruitment to fill her position will be posted on the Board's website. No action was required. President Stewart commented that Ms. Contreras will be missed. There were no public comments.

Agenda Item 6(a): Discussion and Possible Action Regarding Comments Received During the 45-day Comment Period for the Board's Proposed Rulemaking to Amend California Code of Regulations, Title 16, Sections 1019 and 1020 Relating to Substantial Relationship and Rehabilitation Criteria

Gabriel Nevin, Legislative and Regulatory Analyst, reported that the Board previously approved regulatory language to implement Assembly Bill (AB) 2138 (Chui, Chapter

995, Statutes of 2018) at its February 7-8, 2019 and August 15-16, 2019 meetings. The provisions of the bill become effective on July 1, 2020.

The Board noticed the regulatory proposal on March 13, 2020 and gave the public forty-five (45) days to provide public comment ending on April 28, 2020. No public hearing was requested or conducted.

Danielle Rogers, DCA Legal Counsel, provided recommendations to the Board to modify the proposed text to address concerns of compliance with the Administrative Procedure Act relating to necessity, authority, reference, clarity, consistency, and non-duplication. Ms. Rogers recommended the Board make the following modifications to the proposed text:

Section 1019

- Insertion in subdivision (a) of “,” after “141”, and deletion of “or.” Board staff recommended the addition of the Business and Professions Code (BPC) sections enumerated in 2., infra, staff proposed adding comma after “141, and eliminating “or” since the amendment outlined in 2. creates an additional list item.
- Insertion in subdivision (a) of “or Sections 1670.1, 1680(e), 1681(c).” The cited section referred to grounds for discipline listed in the Board’s practice act for “substantially related” offenses. This modification was added here so that references to substantial relationship were addressed together in one regulation. This amendment would add clarity to this subdivision.
- Insertion in Note of Reference sections 1670.1, 1680, and 1681. Board staff recommended adding these sections to the Reference section of the regulation because the regulation, as modified, implements, interprets, and/or makes specific to these additional BPC sections.

Section 1020

- Insertion in re-numbered subdivision (b) of “Denial of a license.” Board staff recommended adding this category because it lends greater organization and clarity to the regulation.
- Re-numbering of subdivision (b)(1)-(5) to subdivision (1)(A)-(E) and re-numbering of subdivision (c)(1)-(6) to subdivision (2)(A)-(F). The re-numbering was necessitated by the creation of new subdivision (b).
- Deletion in subdivision (b)(1) of “was” and insertion of “has been.” Board staff proposed deleting “was” and replacing it with “has been” because “has been” is

used to refer to something which started in the past and is still continued in the present tense. "Was," on the other hand, is used to refer to some action which was going on at some time in the past. Staff recommended using "has been" to include the present tense so the relevant time period for a conviction includes up to the present.

- Deletion in subdivision (b)(1) of "and is presently eligible for a license." Staff recommended deleting this phrase from subdivision (b)(1) of section 1020 because "eligible" could be seen as referring to other eligibility requirements for licensure, rather than referring to fitness or suitability for licensure. Deletion of this phrase would clarify the regulation.
- Insertion in subdivision (b)(2) of "If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (b)(1), the denial is based on professional misconduct, or the denial is based on the ground specified in Section 1687," deletion of "If subdivision (b) is inapplicable, or the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (b)," and deletion of "The board shall find that the applicant made a showing of rehabilitation and is presently eligible for a license if, after considering of the following criteria, the board finds that the applicant is rehabilitated." The original text of subdivision (b)(2) was unclear in specifying the circumstances when the regulation would apply. Instead of catch-all language, staff recommended deleting the former preface to the regulation and enumerating each specific instance when subdivision (b)(1) would not apply, and proposed to include all of the specified categories. Staff recommended citing to BPC section 1687 since it is in the Board's practice act and authorizes the Board to deny a license. This would make the regulation inclusive of all of the instances in which the Board could deny a license. Staff recommended deleting the final sentence of subdivision (b)(2) for clarity and brevity.
- Insertion in subdivision (b)(2)(A)-(C) of "professional misconduct." The addition of "professional misconduct" to subdivision (b)(2)(A) through (C) was made necessary by the addition of "professional misconduct" in subdivision (b)(2).
- Deletion in subdivision (b)(2)(B) of "under Section 480 of the Code." Staff recommended adding "professional misconduct" to subdivision (b)(2), which necessitated the removal of this phrase because the amended subdivision now encompasses more than crimes and acts enumerated in section 480.

- Re-numbering of (1) and (2) in subdivision (b)(2)(C) to (A) and (B). This re-numbering was necessitated by the creation of new subdivision (b).
- Deletion in subdivision (b)(2)(E) of "-" and insertion of "through." Staff recommended this amendment to lend greater clarity to the subdivision.
- Insertion in re-numbered subdivision (c) of "Suspension or revocation of a license." Staff recommended adding this category because it lends greater organization and clarity to the regulation.
- Deletion in subdivision (c)(1) of "and is presently eligible for a license." Staff recommended the deletion of this phrase from subdivision (c)(1) of section 1020 because "eligible" could be seen as referring to other eligibility requirements for licensure, rather than referring to fitness or suitability for licensure. Deletion of this phrase will clarify the regulation.
- Re-numbering of subdivision (d)(1)-(5) to subdivision (1)(A)-(E) This re-numbering was necessitated by the creation of new subdivision (c).
- Insertion in subdivision (c)(2) of "If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (c)(1), the suspension or revocation is based on a disciplinary action as described in Section 141 of the code, or the suspension or revocation is based on one or more of the grounds specified in Sections 1611.5, 1638.1, 1646.7, 1647.9, 1647.17, 1647.25, 1647.34, 1670, 1670.1, 1680, 1681, 1682, 1683, 1683.1, 1684, 1684.1, 1684.5, 1685, 1687," deletion of "If subsection (d) is inapplicable, or the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subsection (d)," and deletion of ". The board shall find that the licensee made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the board finds that the licensee is rehabilitated." The original text of subdivision (c)(2) was unclear in specifying the circumstances when the regulation would apply. Instead of catch-all language, staff recommended the deletion of the former preface to the regulation and enumeration of each specific instance of when subdivision (c)(1) would not apply, and including all of the specified categories. Staff recommended citing BPC sections 1611.5, 1638.1, 1646.7, 1647.9, 1647.17, 1647.25, 1647.34, 1670, 1670.1, 1680, 1681, 1682, 1683, 1683.1, 1684, 1684.1, 1684.5, 1685, 1687 since they are in the Board's practice act and authorize the Board to discipline a license. This would make the regulation inclusive of all of the

instances in which the Board could discipline a license. Staff recommended deleting the final sentence of subdivision (c)(2) for clarity and brevity.

- Re-numbering of subdivision (e)(1)-(7) to subdivision (2)(A)-(G). This re-numbering was necessitated by the creation of new subdivision (c).
- Insertion in subdivision (b)(2)(A) and (b)(2)(C) of “disciplinary action(s).” The addition of “disciplinary action(s)” to subdivision (c)(2)(A) and (c)(2)(C) was made necessary by the addition of “disciplinary action” in subdivision (c)(2).
- Deletion in subdivision (c)(2)(F) of “-” and insertion of “through.” Staff recommended this amendment to lend greater clarity to the subdivision.
- Re-numbering of (d)(1)-(5) in subdivision (c)(2)(F) to (c)(1)(A)-(e). This re-numbering was necessitated by the creation of new subdivision (c).
- Re-numbering of subdivision (f) to (d) and re-numbering of (e) to (c)(2) in renumbered subdivision (d). This re-numbering was necessitated by the creation of new subdivision (c).
- Insertion in Note of Reference sections 1611.5, 1638.1, 1646.7, 1647.9, 1647.17, 1647.25, 1647.34, 1670, 1670.1, 1680, 1681, 1682, 1683, 1683.1, 1684, 1684.1, 1684.5, 1685, and 1687. Staff recommended adding these sections to the Reference section of the regulation because the regulation, as modified, implements, interprets, and/or makes specific these additional BPC sections.

(M/S/C) (Larin/Burton) to accept the proposed modifications to the proposed text as recommended by DCA Legal Counsel.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed. There were no public comments.

On April 28, 2020, the Board received written comments in a joint letter from A New Way of Life Reentry Project, Californians for Safety and Justice, Center for Employment Opportunities, Center for Living and Learning, Community Legal Services in East Palo Alto, Criminal Justice Clinic, UC Irvine School of Law, East Bay Community Law Center,

Legal Aid at Work, Legal Services for Prisoners with Children, All of Us or None, Los Angeles Regional Reentry Project, National Association of Social Workers, California Chapter, REDF, The Record Clearance Project, San Jose State University, Root and Rebound, Rubicon Programs, and Underground Scholars Initiative outlining their concerns regarding the implementation of AB 2138.

Mr. Nevin presented each comment and staff's recommendation related to the 45-day Comment Period for the Board's Proposed Rulemaking to Amend California Code of Regulations, Title 16, Sections 1019 and 1020 Relating to Substantial Relationship and Rehabilitation Criteria.

The joint letter stated that the proposed regulations left some gaps in the regulatory scheme pursuant to the changes to Business and Professions Code (BPC) section 480, 481, 482, and 493 as modified by AB 2138. The comment stated that the proposed regulations failed to meet and implement these statutes. Additionally, the comment stated that the proposed regulations fall short of the intent of the bill, which included combating discrimination against people with records who have demonstrated rehabilitation and seek to establish themselves professionally. Board staff recommended the rejection of the comment. The purpose of the proposed regulations was to clarify substantial relationship criteria and criteria for rehabilitation, as required by AB 2138. (BPC, § 481.) Consistent with the requirements enacted by AB 2138, these regulations would adopt all of the following criteria, which would assist the Board in the implementation of a balanced approach to evaluating an applicant's eligibility for licensure: the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of a dentist or dental auxiliary.

Clarifying how to determine whether a crime is substantially related and clarifying the factors that will be considered when evaluating rehabilitation should assist applicants and licensees with demonstrating their rehabilitation.

(M/S/C) (Morrow/Lai) to accept staff's recommendation to reject the joint letter's comment.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed. There were no public comments.

Additionally, the joint letter stated that the regulations did not comply with AB 2138 because proposed section 1019(c) states that certain violations were substantially related regardless of the time that has passed or the nature and gravity of the offense in contravention of BPC section 481. AB 2138 allows the Board discretion to determine which

crimes are substantially related on an individual basis. Section 1019(c) failed to note that criminal history that resulted in the applicant obtaining a certificate of rehabilitation, pardon, dismissal per Penal Code section 1203.4 et seq., or an arrest that resulted in a disposition other than a conviction shall not be denied a license. Board staff recommended the rejection of the comment. Subdivision (c) of section 1020 provides that substantially related crimes, professional misconduct, or acts shall include: any violation of Article 6, Chapter 1, Division 2 (hereinafter, "Article") of the Code except Sections 651.4, 654 or 655. (§ 1020, subd. (c)(1).) and any violation of the provisions of Chapter 4, Division 2 (hereinafter, "Dental Practice Act") of the Code. (§ 1020, subd. (c)(2).) Violations of the Article and violations of the Dental Practice Act are committed by licensees in performing the functions and duties of the dental profession. (See, for example, Bus. & Prof. Code, § 652 [violations of the Article "constitutes unprofessional conduct and grounds for suspension or revocation of his or her license by the board by whom he or she is licensed[.]"].) Accordingly, they evidence the present or potential unfitness of a person holding such a license to perform the functions authorized by the license. Furthermore, a violation of the Dental Practice Act does not become "no longer" substantially related due to the passage of time. Passage of time for such violations would be reviewed under rehabilitation criteria, section 1020.

As for the comment in the second paragraph (noting that section 1019(c) fails to note that criminal history that resulted in the applicant obtaining a certificate of rehabilitation, pardon, dismissal per Penal Code section 1203.4 et seq., or an arrest that resulted in a disposition other than a conviction shall not be denied a license), staff referenced the response to Comment 5 as place where the response to this comment would be located.

(M/S/C) (Burton/Yu) to accept staff's recommendation to reject the joint letter's comment.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed. There were no public comments.

In addition, the joint letter commented that Section 1020 relied too heavily on law enforcement's reports and determination of the applicant's progress. Rehabilitation can and does take many forms that the current language does not fully embrace. The comment referred the reader to Comment 8 below for examples of rehabilitation to expand the regulations. Board staff recommended the rejection of the comment. As addressed more fully in the Board staff's recommended response to Comment 8, section 1020 permits the applicant to offer evidence of rehabilitation that can encompass any of the

forms of rehabilitation proposed in the letter. Accordingly, the Board believes that the proposed language is consistent with legislative intent.

(M/S/C) (Morrow/Yu) to accept staff's recommendation to reject the joint letter's comment.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed. There were no public comments.

Furthermore, the joint letter requested for the proposed language to include a "7-year washout period" for consideration of convictions or discipline which are not statutorily considered serious felonies under Penal Code section 1192.7. (BPC, § 480, subd. (a)(1), effective July 1, 2020.) Board staff recommended the rejection of the comment. Staff argued that regulations should not indiscriminately incorporate statutory language. (Gov. Code, § 11349, subd. (f).) The seven-year period during which a board can deny a license for a conviction or formal discipline is fully described in BPC section 480(a)(1)(A) and (B), effective July 1, 2020. As this is already included in statute, adding this provision would be duplicative of section 480(a)(1). Therefore, it was not necessary to repeat it in the regulations.

(M/S/C) (Burton/Chan) to accept staff's recommendation to reject the joint letter's comment.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed. There were no public comments.

Additionally, the joint letter also stated that the regulations should provide that a person with a criminal history shall not be denied a license if the applicant has obtained a certificate of rehabilitation, dismissal per Penal Code section 1203.4, 1203.4a, 1203.41, or 1203.42, or an arrest which led to an infraction/citation or a disposition other than a conviction, or juvenile adjudication. (BPC, § 480, subds. (b)-(d).) Board staff recommended the rejection of the comment. Regulations should not indiscriminately incorporate statutory language. (Gov. Code, § 11349, subd. (f).) BPC section 480(c), effective July 1, 2020, already states that a license may not be denied based on a conviction, or on the

basis of the underlying acts, if it has been dismissed pursuant to Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425, or otherwise dismissed or expunged. In addition, BPC section 480(b), effective July 1, 2020, prohibits license denial if the applicant has obtained a certificate of rehabilitation, was granted clemency or a pardon, or has made a showing of rehabilitation per BPC section 482. BPC section 480(d), effective July 1, 2020, prohibits license denial based on an arrest that resulted in something other than a conviction, such as an infraction, citation, or juvenile adjudication. Since these provisions were specifically addressed in statute, adding them again in regulation would be duplicative.

(M/S/C) (Larin/Yu) to accept staff's recommendation to reject the joint letter's comment.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed. There were no public comments.

Furthermore, the joint letter stated that the regulations fail to state that the Board shall not require an applicant to disclose any information or documentation regarding the applicant's criminal history. (BPC, § 480, subd. (f)(2).) Board staff recommended the rejection of the comment. Section 480(f)(2), effective July 1, 2020, provides that a board cannot require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history. As this is already provided by statute, adding this provision would be duplicative of section 480(f)(2). Therefore, it was not necessary to repeat it in the regulations.

(M/S/C) (Morrow/Chan) to accept staff's recommendation to reject the joint letter's comment.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed. There were no public comments.

Additionally, the joint letter stated that the proposed language failed to include that the Board must notify the applicant in writing if the applicant is denied a license or is disqualified from licensure. The comment stated that the Board must provide procedures describing the process for an applicant to challenge a decision or request consideration,

a procedure stating that the applicant has a right to appeal the Board's decision and provide a process for requesting a complete conviction history. (BPC, § 480, subd. (f)(3).) Board staff recommended the rejection of the comment. BPC sections 480(f)(3), 485 through 487, and the Administrative Procedure Act, at Government Code section 11500, et seq., already contain these requirements, including requirements for providing the legal and factual basis for the denial, service of the denial on the applicant, and notice to the applicant regarding the opportunity to request a hearing to challenge the decision. Restating these requirements would be duplicative of the statutes. (Gov. Code, § 11349, subd. (f).)

(M/S/C) (Burton/Yu) to accept staff's recommendation to reject the joint letter's comment.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed. There were no public comments.

Next, the joint letter stated that the intent of AB 2138 was not to incorporate mere probation or parole reports into the occupational licensing determinations. The letter stated that rehabilitation can and does take many forms that extend beyond law enforcement supervision. Therefore, the letter recommended that the Board consider adding the following rehabilitation criteria which included: volunteer service, successful employment in a related field, history of work experience in an employment social enterprise, unpaid work in the community; furthered education, abstinence from controlled substances and/or alcohol, stability of family life, fulfillment of parental and familial responsibilities, new and different social and business relationships from those which existed at the time of the underlying charges at issue, change in attitude of the applicant (as evidenced by: personal testimony; evidence of rehabilitation submitted by the applicant; and evidence from family, friends and/or other persons familiar with the applicant's previous behavior patterns and subsequent attitude and behavioral changes), and other markers of rehabilitation. Board staff recommended the rejection of the comment. BPC section 482, effective July 1, 2020, requires boards to develop criteria to evaluate rehabilitation and to consider whether an applicant or licensee has made a showing of rehabilitation if either the criminal sentence has been completed without violation of probation or parole, or if the board otherwise finds the applicant rehabilitated. The final text for proposed section 1020 articulated a two-step process for evaluating rehabilitation: First, the Board must determine if the completion of the criminal sentence with no violations constitutes rehabilitation. Consistent with the direction in AB 2138, to consider rehabilitation if an applicant completes the criminal sentence at issue without a violation of parole or probation, specific criteria were added to section 1020(b) to help the Board determine whether sentence completion demonstrates rehabilitation. Criteria include the nature and gravity

of the crime(s), the length(s) of the applicable parole or probation period(s), the extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified, the terms and conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation, and the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification. If the Board finds rehabilitation, no further information needs to be provided. Second, if rehabilitation is not demonstrated based on sentence completion, the Board is required to consider certain other criteria to evaluate rehabilitation. A general category permitting submission of any rehabilitation evidence allows an applicant to offer evidence relating to the proposed categories suggested above. As the Board can and already does give serious consideration to these factors when considering whether an applicant is rehabilitated, the Board believes that the proposed language is consistent with legislative intent.

(M/S/C) (Chan/Larin) to accept staff's recommendation to reject the joint letter's comment.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed. There were no public comments.

Finally, the joint letter stated that the proposed regulations failed to state the requirements set forth in BPC section 480(g)(2), effective July 1, 2020, including, that a board retain the number of applicants with a criminal record who received notice of denial or disqualification of licensure, the number of applicants with a criminal record who provided evidence of mitigation or rehabilitation, and the final disposition and demographic information. Board staff recommended the rejection of the comment. These requirements were already set forth in statute. (BPC, § 480, subd. (g)(2), effective July 1, 2020.) Stating them in regulation would be duplicative of the statute. (Gov. Code, § 11349, subd. (f).)

(M/S/C) (Yu/Lai) to accept staff's recommendation to reject the joint letter's comment.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

At 10:50 a.m. the Board recessed for a break.

At 11:02 a.m. the Board reconvened to open session.

Agenda Item 6(b): Discussion and Possible Action Regarding Adoption of Proposed Amendments to California Code of Regulations, Title 16, Sections 1019 and 1020 Relating to Substantial Relationship and Rehabilitation Criteria

Gabriel Nevin, Legislative and Regulatory Analyst, provided an overview of the agenda item which is available in the meeting materials on the Board's website. Based on the actions taken in the previous agenda item, the Board took the following action:

(M/S/C) (Chan/McKenzie) to modify the text in response to staff's recommendations received and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public 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 the proposed amendments to California Code of Regulations, Title 16, Sections 1019 and 1020 relating to substantial relationship and rehabilitation criteria as noticed in the modified text.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed. There were no public comments.

Agenda Item 7(a): Discussion and Possible Action on Legislation

Gabriel Nevin, Legislative and Regulatory Analyst, provided an overview of the bills the Board has currently been tracking: Assembly Bill (AB) 2028, AB 2185, AB 2549, AB 2631, AB 2704, AB 3045, AB 3315, Senate Bill (SB) 1168. Summary of the bills are available in the meeting materials. Ms. Fran Burton led the discussion and pointed out that some of the bills discussed will not be moving forward due to impacts of COVID-19 and budget limitations. Ms. Burton commented that the chairs of each committee will choose which bills will be heard. She reported the Policy Committee will hold one hearing for the month of May.

(M/S/C) (McKenzie/Yu) to take an "oppose" position on AB 2028 and send a letter to the author outlining concerns regarding the Board's inability to discuss updated bills and new materials sent from stakeholders and the public within the 10-day timeframe.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.
Absent: None.
Recusals: None.

The motion passed. There were no public comments.

(M/S/C) (Burton/Morrow) to take a “watch” position on AB 2185 and send a letter to the author outlining concerns regarding the requirement of a rulemaking, assessment of applicants, implementation of online processes, and how it interacts will AB 2631 (Cunningham Coauthors: Horvath, Fong, Lackey, Mayes and Sens Jones and Wilk).

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.
Nays: None.
Abstentions: None.
Absent: None.
Recusals: None.

The motion passed. There were no public comments.

(M/S/C) (Burton/Yu) to take an “oppose” position on AB 2549 and send a letter to the author outlining concerns regarding the competency of practitioners who will be issued a temporary license.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.
Nays: None.
Abstentions: None.
Absent: None.
Recusals: None.

The motion passed. There were no public comments.

(M/S/C) (Burton/McKenzie) to take a “watch” position on AB 2631.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.
Nays: None.
Abstentions: None.
Absent: None.
Recusals: None.

Ms. Fran Burton pointed out that the AB 2631 has not been scheduled for hearing.

The motion passed. There were no public comments.

(M/S/C) (Lai/Larin) to take a “watch” position on AB 2704.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed. There were no public comments.

(M/S/C) (Burton/Lai) to take an “oppose” position on AB 3045 and send a letter to the author outlining concerns regarding the assessment of applicants, the inability to provide temporary licenses for specialty licensees, and issues relating to reciprocal licensure.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed. There were no public comments.

(M/S/C) (Burton/Morrow) to take an “oppose” position on AB 3315 and send a letter to the author indicating that the Board will be able to focus on its primary duty of protecting California consumers through the administration and enforcement of the Dental Practice Act if the responsibility for approving foreign dental schools was delegated to the Commission on Dental Accreditation (CODA).

Ayes: Burton, Chan, Felsenfeld, Lai, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: Larin.

Absent: None.

Recusals: None.

Francisco Leal, The State University of Medicine and Pharmacy “Nicolae Testemitanu” of the Republic of Moldova representative, commented that Assembly Bill 3315 is an expensive, time-consuming, and cumbersome process and can take up to eight (8) years. He believes that it will lead to a path of non-accreditation for its students who are scheduled to graduate in June 2024. Mr. Leal encouraged the Board to reassess the renewal accreditation for the State University of Medicine and Pharmacy “Nicolae Testemitanu” of the Republic of Moldova and the University of De La Salle Bajio in Mexico.

The motion passed.

(M/S/C) (Burton/Larin) to take a “watch” position on AB 1168.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed. There were no public comments.

At 12:06 p.m. the Board recessed for a break.

At 12:15 p.m. the Board reconvened to open session.

Agenda Item 8: Discussion and Possible Action Regarding Directing the Department of Consumer Affairs’ Office of Professional Examination Services to Review the WREB Mannikin Based Examination and the ADEX CompeDont Examination

Ms. Karen Fischer, Executive Officer, provided an overview of the agenda item which is available in the meeting materials on the Board’s website.

(M/S/C) (Morrow/Felsenfeld) to direct staff to contact the Department of Consumer Affairs’ Office of Professional Examination Services to review the WREB Mannikin Based Examination and the ADEX CompeDont Examination.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The Board members had a lengthy discussion regarding the validity and ability to utilize the WREB Mannikin Based Examination and the ADEX CompeDont Examination as a licensing examination.

Mary McCune, California Dental Association (CDA) representative, strongly urged the Board to move for the permanent approval of the WREB and ADEX mannikin based examination. CDA believes that the licensing exams are a final but limited evaluation of the candidate’s readiness to practice and does not pose a patient safety risk. Ms. McCune commented that the Dental Practice Act does not require the periodontics exam to be on a live patient. Shelby Maurice, dental student at Western University of Health Sciences College of Dental Medicine, urged the Board to establish a timely

pathway for this year's school graduates to obtain a dental licensure and believes it does not compromise patient safety. Dr. Steven Friedrichsen, Dean at the College of Dental Medicine at Western University of Health Sciences, thanked President Stewart and members of the Board for considering a solution to the issue and expressed his support regarding Ms. McCune and Dr. Maurice's comment. Mourad Fawzy, commented that he provides services to dental schools and believes that the examinations proposed is sufficient enough to assess dental students. Anthony Lum, Executive Officer of the Dental Hygiene Board of California (DHBC), commented that DHBC be discussing their issue to modify the WREB clinical examination to a written format as a temporary basis at their Board meeting scheduled on May 29, 2020. Dr. Bruce Horn, Director of Dental Examinations for the WREB, commented that the psychometric overview provided is intended to be an interim dental examination. Dr. Horn mentioned that the periodontal scaling on a plastic tooth is not a reliable assessment. Dr. Guy Champagne, Vice President of the ADEX, commented that the CompeDont is a simulation tooth that required three (3) years of development and was not developed in response to COVID-19. Eddie Sandoval, student at the University of Moldova Dental School, expressed his support in the temporary approval of the mannikin based examination. William Pappas, DDS, President of the ADEX, addressed Board members concerns and commented that dentists are not responsible for performing the periodontal scaling procedure. Additionally, he commented that the preparation of operative procedure is covered in the Objective Structure Clinical Examination (OSCE). Dr. Huong Le, former Board member, commented that dentists should understand the diagnosis and treatment plan for periodontics. She commented that if students can successfully demonstrate the preparation for a plastic tooth, then it displays hand skills and clinical knowledge in the dental profession. Dr. Le encouraged the Board to think creatively regarding non-patient examinations. Gary Pickard, Pacific Dental Services representative, commented his support on CDA's position.

The motion passed.

Agenda Item 9: Update Regarding Impact of COVID-19 on Licensing

Tina Vallery, Chief of Administration and Licensing, provided the report, which is available in the meeting materials published on the Board's website.

Denise Romero, Program Director of the Dental Assisting Program at Pasadena City College, commented that the lab and clinical courses were suspended for the summer and would impact students who are scheduled for graduation in 2020.

Agenda Item 10: Public Comment on Items Not on the Agenda

Gary Pickard, Senior Director of Pacific Dental Services, requested for the Board to allow dentists to administer diagnostic testing as a scope of practice in light of the COVID-19 pandemic. He commented that American Dental Association (ADA) and American General Dentistry (AGD) recommended similar action.

Agenda Item 11: Board Member Comment on Items Not on the Agenda

There were no Board member comments for items not on the agenda.

At 1:25 p.m. the Board recessed to convene in closed session as a full Board to deliberate and take action on disciplinary matters and to discuss litigation.

At 3:44 p.m. the Board returned to open session.

Agenda Item 12: Adjournment

The Board President adjourned the meeting at 3:45 p.m.