

DENTAL BOARD OF CALIFORNIA

2005 Evergreen St., Suite 1550, Sacramento, CA 95815

P (916) 263-2300 | F (916) 263-2140 | www.dbc.ca.gov



**DENTAL BOARD OF CALIFORNIA
TELECONFERENCE PUBLIC BOARD MEETING
MEETING MINUTES
FRIDAY, DECEMBER 4, 2020**

NOTE: Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-29-20, dated March 17, 2020, neither a public location nor teleconference locations are provided.

Members Present:

Thomas Stewart, DDS, 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
Mark Mendoza, Public Member
Sonia Molina, DMD, MPH
Alicia Montell, DDS
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
Carlos Alvarez, Chief of Enforcement Field Offices
Bernal Vaba, Chief of Regulatory Compliance and Discipline
Tina Vallery, Chief of Administration and Licensing
Wilbert Rumbaoa, Administrative Services Unit Manager
Jessica Olney, Anesthesia Unit Manager
Emilia Zuloaga, Dental Assisting Program Manager
Steve Long, Budget Analyst
Gabriel Nevin, Legislative and Regulatory Analyst
Pahoua Thao, Administrative Analyst
Danielle Rogers, Regulatory Legal Counsel, Attorney III, Department of Consumer Affairs (DCA)
Helen Geoffroy, Board Legal Counsel, Attorney III, DCA

Tara Welch, Board Legal Counsel, Attorney III, DCA

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

The Board President, Dr. Thomas Stewart, called the meeting to order at 9:06 a.m. The Board Secretary, Ms. Joanne Pacheco, called the roll and a quorum was established.

Agenda Item 2: Discussion and Possible Action Regarding July 24, 2020, August 14, 2020 and October 9, 2020, Dental Board Meeting Minutes

Motion/Second/Call (M/S/C) (Burton/Morrow) to approve the July 24, 2020, August 14, 2020 and October 9, 2020 Board meeting minutes.

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

Nays: None.

Abstentions: Molina.

Absent: None.

Recusals: None.

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

Agenda Item 3: Public Comments on Items Not on the Agenda:

Mr. Gary Pickard, Senior Director of Government and Industry Affairs at Pacific Dental Services, requested for the Board to discuss the scope of practice for dental providers to include the administering of vaccines for Coronavirus (COVID-19) when it becomes available. Ms. Jeri Fowler, Dental Assisting Council member, commented in support of utilizing a typodont for the Registered Dental Assistant in Extended Functions (RDAEF) practical and clinical examination.

Agenda Item 4: Board President Welcome and Report

President Stewart welcomed all attendees and acknowledged the Board's effort in moving its Board meetings to the online WebEx Teleconference format. He expressed his gratitude for the opportunity to work alongside his colleagues and the Board as Board President. He welcomed new members, Mr. Mark Mendoza and Dr. Sonia Molina to the Board. The new Board members provided a brief summary of their background. There were no public comments.

Agenda Item 5: Executive Officer's Report

Ms. Karen Fischer, Executive Officer, provided an update on the impact of the COVID-19 pandemic which included guidelines for Board staff to ensure the safety of their health and the closure of the Dental Board offices to the public beginning December 7, 2020. Additionally, she reported on personnel activities, updates regarding the reduction of paper use, upcoming plans for Board meetings in 2021, the California Dental Association meeting, update on Board committees and Board member terms. Ms. Fischer pointed out that the Board posted an alert on its webpage on November 19, 2020

regarding new requirements for controlled substance prescription forms. Ms. Fischer stated that a representative from the State University of Medicine and Pharmacy “Nicolae Testemitanu” of the Republic of Moldova’s Faculty (School) of Dentistry notified her of legislation that will move forward regarding the approval of foreign dental schools. She reminded the Board members that the Board no longer has the authority to approve foreign dental schools effective January 1, 2020. Ms. Fischer also mentioned that the California Registered Nurse Anesthetists (CRNA) reached out to the Board for permits to administer anesthesia in dental offices. Ms. Fischer stated that legislation will likely come up at a future meeting.

Dr. Steven Morrow expressed his appreciation regarding Ms. Fischer’s leadership. There were no public comments.

Agenda Item 6: Report of the Dental Hygiene Board of California (DHBC) Staffing and Activities

Dr. Timothy Martinez, DHBC President, provided a verbal report on their activities.

Dr. Ross Lai asked how many students are scheduled for exams with the DHBC. Mr. Anthony Lum, Executive Officer of the DHBC, responded that there was a total of five (5) scheduled exams since August 2020. Dr. Lai asked if the DHBC will still administer its examinations through the Western Regional Examining Board (WREB) and the American Board of Dental Examiners (ADEX). Additionally, Dr. Lai asked if the DHBC will consider Objective Structured Clinical Examination (OSCE) for future dental hygiene exams. Mr. Lum reported that the DHBC approved the mannikin based exam and has not approved the OSCE exam. Dr. Lai reported that WREB is working on developing typodonts with calculus. Ms. Abigail Medina pointed out that she personally knows DHBC Board member Denise Davis. There were no public comments.

Agenda Item 7: Report of the Department of Consumer Affairs (DCA) Staffing and Activities

Ms. Carrie Holmes, Deputy Director of Board and Bureau Relations of the DCA, provided a verbal report on their activities which is available in the meeting materials. Ms. Holmes reported on COVID-19 updates and a permanent budget reduction of five percent (5%) for all boards and bureaus by 2021-22. There were no public comments.

Agenda Item 8: Discussion and Possible Action Regarding on the Dental Board of California’s Strategic Plan

Ms. Fischer provided the report, which is available in the meeting materials. Ms. Fischer pointed out that the Board’s current Strategic Plan (Plan) has been delayed due to the impact of COVID-19. A report will be provided at a future meeting.

Dr. Morrow moved to extend the Plan through 2021 and Dr. Molina second the motion. Dr. Molina withdrew her second after a lengthy conversation with other Board members on whether the Plan should be extended through 2021. There were no public comments.

Agenda Item 9: Budget Report

Mr. Steve Long, Budget Analyst, provided a report on the funds the Board manages: the State Dentistry Fund and the State Dental Assisting Fund in the Fiscal Year (FY) 2019-20. As of June 30, 2020, the Board spent approximately \$13.2 million dollars of its total State Dentistry appropriation with a reversion of \$2.1 million dollars for FY 2019-20. Mr. Long reported the State Dental Assisting Fund spent approximately \$1.7 million dollars of its total State Dental Assisting appropriation with a reversion of \$700 thousand dollars for FY 2019-20. Additionally, Mr. Long reported on the Board's current State Dentistry Fund for the FY 2020-21. As of September 30, 2020, the Board spent approximately \$4 million dollars or 22% of its total State Dentistry appropriation for FY 2020-21.

Dr. Lai asked for updates regarding the \$5 million-dollar loan to the general fund and whether it will be paid back in time. Mr. Long responded that the table in the meeting materials displays the transfer of the loans and stated that it will be paid back in time with interest. Dr. Lilia Larin asked for clarification regarding the merging of the State Dentistry Fund and State Dental Assistant Funds. Mr. Wilbert Rumbaoa, Administrative Services Unit Manager, responded that the two funds have been merged into one; however, they are still able to track the expenditures for Dentistry and Dental Assistant separately. There were no public comments.

At 10:30 a.m. the Board recessed for a break.

At 10:45 a.m. the Board reconvened to open session.

Agenda Item 10: Update on Online Renewals

Ms. Jessica Olney, Anesthesia Unit Manager, provided the report, which is available in the meeting materials. Ms. Olney addressed Board member's questions. There were no public comments.

Agenda Item 11(a): Update on New Dental Assisting Program and Course Applications

Ms. Emilia Zuloaga, Dental Assisting Program Manager, provided the report, which is available in the meeting materials. There were no public comments.

Agenda Item 11(b): Update on Registered Dental Assistant (RDA) Program Re-Evaluations

Ms. Zuloaga provided the report, which is available in the meeting materials.

Dr. Lai also pointed out that there looks to be a decline in the RDA profession. Ms. Tina Vallery, Chief of Administration and Licensing, responded that the Board does not track the enrollment statistics for students who are interested in the RDA profession. Ms. Rosalinda Olague responded to Dr. Lai that there was a 50% decline in the dental assisting program across the country since the COVID-19 pandemic.

Dr. Bruce Witcher, former Board member, commented that the American Dental Association (ADA) Center for Healthcare Policy by Marko Vujicic provides statistics around the dental profession. Ms. Claudia Pohl, California Dental Assistants Association

(CDAA) representative, asked if the Board will continue with the evaluation process for the remaining RDA programs. Ms. Vallery responded that an update will be provided at a future meeting. Ms. Melodi Randolph, California Association of Dental Assisting Teachers, California Dental Assistants Association and Dental Assisting Educator's Group representative, asked for the Board to send out notifications regarding the Board's future reevaluation plans. Ms. Mary McCune, California Dental Association (CDA), commented that CDA launched Smilecrew earlier in the year to recruit students for the RDA profession. Additionally, Ms. McCune reported that the CDA submitted a public comment in support of an RDA program at the Foothill College's Apprenticeship Program.

Agenda Item 11(c): Update on Dental Assisting Examination Statistics

Ms. Zuloaga provided the report, which is available in the meeting materials.

President Stewart asked for the passing rate trends compared to historical data. Ms. Vallery responded that it will be provided at a future meeting. Dr. Alan Felsenfeld asked if the Board knows why the fail rate is high for the orthodontic assistant students. Ms. Fischer responded that the Board is unable to determine the reasoning behind the fail rate since the OPES determined the exams are considered psychometrically sound and legally defensible. Dr. Lai asked if students would have to pay a fee to retake an exam. Ms. Vallery responded that students would have to pay another fee to retake an exam.

Dr. Whitcher commented in response to Dr. Lai that the PSI charges a fee in addition to the Board exam fees. Ms. Cara Miyasaki, Dental Assisting Council member, commented for the Board to consider the exams be published in different languages.

Agenda Item 11(d): Update on Dental Assisting Licensing Statistics

Ms. Zuloaga provided the report, which is available in the meeting materials. There were no public comments.

Agenda Item 12(a): Review of Enforcement Statistics and Trends

Mr. Carlos Alvarez, Chief of Enforcement Field Offices, provided the report, which is available in the meeting materials.

Dr. Whitcher pointed out that investigative staff and inspectors are unable to go out to the field to conduct investigations. Mr. Alvarez responded that the Board's enforcement staff is adapting to the COVID-19 crisis and conducting interviews via telephone, email and WebEx teleconference meetings.

Agenda Item 13(a): Diversion Program Report and Statistics

Mr. Bernal Vaba, Chief of Regulatory Compliance and Discipline, provided the report, which is available in the meeting materials. There were no public comments.

Agenda Item 13(b): Controlled Substance Utilization Review and Evaluation System (CURES) Report

Mr. Alvarez provided the report, which is available in the meeting materials.

Ms. Fran Burton commented that there is a great amount of active licensed dentists who are not registered with the Drug Enforcement Administration. Ms. Fischer responded that there are some dentists who may be licensed in California but are not currently practicing in state. There were no public comments.

Agenda Item 13(c): Update Regarding the October 22, 2020, Statewide Opioid Safety Workgroup Meeting

Mr. Alvarez provided the report, which is available in the meeting materials.

Dr. Lai asked if there were any discussions on whether Narcan has been supplied to dental offices and the dangers of it. Mr. Alvarez responded that there have been previous discussions where some dental offices can obtain Narcan but not all. There were no public comments.

At 12:00 p.m. the Board recessed for lunch.

At 12:30 p.m. the Board reconvened to open session.

Agenda Item 14(a): Report on the Results of the Department of Consumer Affairs (DCA) Office of Professional Examination Services (OPES) Review of the Western Regional Examining Board (WREB) Dental Exam as Required by Business and Professions Code Section 139

Ms. Fischer introduced the agenda item. Ms. Heidi Lincer, Chief of OPES, provided the report, which is available in the meeting materials.

Dr. Lai pointed that the State currently tests only three (3) out of the five (5) sections. Ms. Fischer responded that the statute states that the five (5) competencies must be tested and it does not specify which section needs to be clinical. There were no public comments.

Agenda Item 14(b): Western Regional Examination Board (WREB) Report

Dr. Bruce Horn, Director of Dental Examinations for the WREB, provided an update regarding the WREB examination and the passing rates.

Dr. Morrow requested for the WREB to provide the endodontic cumulative scores for the purpose of reviewing why it has a higher fail rate compared to the other sections. Dr. Horn addressed other Board member's questions. There were no public comments.

Agenda Item 14(c): American Board of Dental Examiners (ADEX) Report

Dr. William Pappas, President of the ADEX, provided an update regarding the ADEX examination and the passing rates. Dr. Pappas addressed Board member's questions.

Dr. Whitcher asked which examining agencies are offering the ADEX exams in California. Dr. Pappas responded that the Commission on Dental Competency Assessment is currently the only agency offering the exam. Dr. Horn commented that there are a few

different agencies that provides the ADEX exam and WREB is the only agency that administers and provides its own exam. Dr. Pappas responded that the ADEX examination is offered by administering partners and encouraged the Board to become a member.

Agenda Item 15(a): Review of Dental Licensure and Permit Statistics

Ms. Olney provided the report, which is available in the meeting materials. Ms. Olney addressed Board member's questions. There were no public comments.

Agenda Item 15(b): General Anesthesia and Conscious Sedation Permit Evaluation Statistics

Ms. Olney provided the report, which is available in the meeting materials.

Dr. Witcher pointed out the reduced numbers of evaluations due to the impacts of COVID-19.

Agenda Item 16(a): 2021 Tentative Legislative Calendar

Ms. Burton provided an overview of the 2021 Tentative Legislative Calendar which is available in the meeting materials. There were no public comments.

Agenda Item 16(b): 2020 End of Year Legislative Summary Report

Ms. Burton led the discussion. Mr. Gabriel Nevin, Legislative and Regulatory Analyst, provided an overview of the bills the Board tracked throughout the 2019-2020 Legislative Session. There were no public comments.

Motion/Second/Call (M/S/C) (Burton/Stewart) to adopt the *Legislative Summary for End of Two-Year Legislative Session 2019-2020* and direct staff to post the report on the Board's web site.

Ayes: Burton, Felsenfeld, Lai, Larin, McKenzie, Medina, Mendoza, Molina, Morrow, Montell, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

Agenda Item 16(c)i: Discussion and Possible Action Regarding Legislative Proposals for 2021 – Healing Arts Omnibus Bill

Mr. Nevin provided the report, which is available in the meeting materials. The Senate Business, Professions and Economic Development Committee (Committee) plans to introduce the bills in early 2021 and has requested the Board to submit the proposals to the Committee by early January 2021 for inclusion of the introduced version of the bill. Mr. Nevin reminded the Board that the omnibus bills are an opportunity for boards and bureaus to submit technical, non-controversial proposals and are intended to be used to clean up statute. Mr. Nevin reported that Board staff identified a gap in the statutory structure for anesthesia licenses which was last modified by Senate Bill (SB) 501 (Glazer, Chapter 929, Statutes of 2018).

Dr. Witcher commented in support of the motion.

Agenda Item 16(c)ii: Discussion and Possible Action Regarding Legislative Proposal to Eliminate the Registered Dental Assistant in Extended Functions (RDAEF) Practical and Clinical Examination

Mr. Nevin provided the report, which is available in the meeting materials. There were no public comments.

Dr. Molina asked why the exam cannot be administered with a typodont. Ms. Sarah Wallace, Assistant Executive Officer, responded that there are specific procedures listed in statute which will not give the Board the flexibility to offer the exam with a typodont because the clinical portion requires a live patient. Dr. Lai asked if the exam can be outsourced and administered by other agencies. Ms. Wallace responded that other regional exam agencies do not offer an examination equivalent to the RDAEF practical and clinical exam. Additionally, the OPES recommended that the practical and clinical portion is not necessary since it is a supervised profession.

Motion/Second/Call (M/S/C) (Olague/Felsenfeld) to approve the proposed statutory changes eliminating the statutory authority for the RDAEF practical and clinical examinations and direct staff to find an author to carry legislation to repeal the requirements of the RDAEF clinical and practical examinations permanently.

Ayes: Burton, Felsenfeld, Larin, McKenzie, Medina, Mendoza, Molina, Morrow, Montell, Olague, Pacheco, Stewart.

Nays: Lai.

Abstentions: None.

Absent: None.

Recusals: None.

Ms. Pohl commented in opposition of the elimination of the RDAEF clinical and practical examinations and believes students should be tested. Dr. Witcher pointed out that the duties are supervised by dental providers and they have the option to not delegate duties if they do not feel comfortable. Dr. Witcher commented that the Board will have to go through a development process that has be approved by the OPES if the Board chooses to keep the examination. Ms. Joan Greenfield, RDAEF Association representative, provided a letter on behalf of the RDAEF Association and commented in support of eliminating the RDAEF clinical and practical examinations which is available in the meeting materials.

Agenda Item 16(c)iii: Discussion and Possible Action Regarding California Dental Association's (CDA) Legislative Proposals for 2021

Mr. Nevin provided the report, which is available in the meeting materials. Ms. McCune, CDA representative, addressed Board member's questions. There were no public comments.

Agenda Item 17(a): Discussion and Possible Action to Initiate A Rulemaking to Amend California Code of Regulation, Title 16, Sections §§ 1067, 1068, 1070, 1070.1, 1070.2, 1070.3, 1070.4, 1070.5, 1070.6, 1070.7, 1070.8, 1071, 1076, 1077, 1077.1, 1080, 1080.2, 1080.3, 1081, 1081.2, 1083, 1085, 1087; Repeal Sections §§ 1014, 1014.1, 1069, 1071.1, 1072, 1072.1, 1080.1, 1081.1, 1086; and Add Sections §§ 1070.9, 1077.2, 1077.3, 1081.3, and All Forms Therein Incorporated by Reference Relating to the Dental Assisting Comprehensive Rulemaking

Mr. Nevin provided a brief background regarding the comprehensive rulemaking proposal relative to dental assisting. The proposed rulemaking is based on workshops and public input since 2015.

At the February 2020 Dental Assisting Council (Council) meeting, the Council voted to direct staff to prepare the proposed language in the final format and include all forms to be incorporated by reference, delegate authority to the Executive Officer to make any technical or non-substantive changes to the proposed language, and recommended the proposal be forwarded to the Board to consider initiation of the rulemaking.

The proposal was originally anticipated to be brought before the Board during the May 2020 Board meeting. Despite invaluable assistance from stakeholders and regulatory counsel, this proposal was not completed by staff until the December 2020 meeting.

Motion/Second/Call (M/S/C) (Olague/Stewart) to approve the proposed regulatory language and all forms therein incorporated by reference relative to the dental assisting comprehensive rulemaking, and direct staff to take all steps necessary to initiate the formal rulemaking process, including noticing the proposed language and forms for 45-day public comment, setting the proposed language and forms for a public hearing, and delegating authority to the Executive Officer to make any technical or non-substantive changes to the rulemaking package. If after the close of the 45-day public comment period and public regulatory hearing, no adverse comments are received, delegate authority to the Executive Officer to make any technical or non-substantive changes to the proposed regulations before completing the rulemaking process and adopt the proposed language to Amend California Code of Regulation, Title 16, Sections §§ 1067, 1068, 1070, 1070.1, 1070.2, 1070.3, 1070.4, 1070.5, 1070.6, 1070.7, 1070.8, 1071, 1076, 1077, 1077.1, 1080, 1080.2, 1080.3, 1081, 1081.2, 1083, 1085, 1087; Repeal Sections §§ 1014, 1014.1, 1069, 1071.1, 1072, 1072.1, 1080.1, 1081.1, 1086; and Add Sections §§ 1070.9, 1077.2, 1077.3, 1081.3, and all forms therein incorporated by reference relating to the Dental Assisting Comprehensive Rulemaking as noticed in the proposed text.

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

Nays: None.

Abstentions: Molina.

Absent: None.

Recusals: None.

Dr. Witcher commented in support of moving the rulemaking and recognized Board staff's work. Ms. Randolph thanked the Board for their work and identified some issues that they will comment on during the 45-day public comment period.

Agenda Item 17(b): Discussion and Possible Action to Initiate a Rulemaking to Amend California Code of Regulations, Title 16, Section 1065 Relating to Notice to Patients of Licensure by the Dental Board Rulemaking

Mr. Nevin provided the report, which is available in the meeting materials. There were no public comments.

Motion/Second/Call (M/S/C) (Felsenfeld/Burton) to approve the proposed regulatory language related to Notice to Patients of Licensure by the Dental Board, and direct staff to take all steps necessary to initiate the formal rulemaking process, including noticing the proposed language for 45-day public comment, setting the proposed language for a public hearing, and delegating authority to the Executive Officer to make any technical or non-substantive changes to the rulemaking package. If after the close of the 45-day public comment period and public regulatory hearing, no adverse comments are received, delegate authority to the Executive Officer to make any technical or non-substantive changes to the proposed regulations before completing the rulemaking process and adopt the proposed amendments to California Code of Regulations, Title 16, Section 1065 as noticed in the proposed text.

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

Nays: None.

Abstentions: Molina.

Absent: None.

Recusals: None.

At 2:35 p.m. the Board recessed for break.

At 2:50 p.m. Board reconvened to open session.

Agenda Item 17(c): Update on Pending Regulatory Packages

Mr. Nevin provided the report, which is available in the meeting materials. Ms. Burton acknowledged staff's work. There were no public comments.

Agenda Item 18: Election of 2021 Dental Board of California Officers

Ms. Fischer facilitated the election. She opened the floor for nominations for the position of Secretary.

Dr. Morrow nominated Dr. Felsenfeld. Dr. Felsenfeld accepted the nomination. There were no additional nominations.

Ayes: Felsenfeld, Lai, Larin, McKenzie, Medina, Mendoza, Molina, Morrow, Montell, Olague, Pacheco, Stewart, Yu.

Nays: None.
Abstentions: Burton.
Absent: None.
Recusals: None.

Dr. Felsenfeld was elected Secretary.

Ms. Fischer opened the floor for nominations for the position of Vice President. President Stewart nominated Dr. James Yu. Dr. Yu accepted the nomination. In addition, Dr. Lai nominated Ms. Olague. Ms. Olague accepted the nomination.

Vote for Dr. Yu as Vice President:
Ayes: Burton, Morrow, Pacheco, Stewart, Yu.
Nays: Felsenfeld, Lai, Larin, Medina, Olague
Abstentions: McKenzie, Mendoza, Molina, Montell,
Absent: None.
Recusals: None.

The vote failed.

Vote for Ms. Olague as Vice President:
Ayes: Burton, Felsenfeld, Lai, Larin, McKenzie, Medina, Mendoza, Morrow, Olague, Pacheco, Stewart.
Nays: None.
Abstentions: Molina, Montell, Yu
Absent: None.
Recusals: None.

Ms. Olague was elected Vice President.

Ms. Fischer opened the floor for nominations for the position of President. Ms. Burton nominated Ms. Pacheco. Ms. Pacheco accepted the nomination.

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

Ms. Pacheco was elected President.

Agenda Item 19: Board Member Comment on Items Not on the Agenda
Dr. Yu thanked Dr. Stewart for serving as the President for the Dental Board.

Agenda Item 20: Adjournment

President Stewart adjourned the meeting at 3:09 p.m.