



**DENTAL BOARD OF CALIFORNIA
MEETING MINUTES
June 28, 2022**

The Dental Board of California (Board) met on June 28, 2022, via teleconference at the following locations:

Department of Consumer Affairs
1625 N. Market Blvd., Hearing Room
Sacramento, CA 95834

Dental Board of California
333 S. Anita Drive, Suite 930
Orange, CA 92868

In addition to the physical locations above, this meeting was also held via WebEx Events.

Members Present:

Alan Felsenfeld, MA, DDS, President
James Yu, DDS, MS, Vice President
Sonia Molina, DMD, MPH, Secretary
Steven Chan, DDS
Meredith McKenzie, Esq., Public Member
Steven Morrow, DDS, MS
Rosalinda Olague, RDA, BA
Joanne Pacheco, RDH, MAOB

Members Absent:

Lilia Larin, DDS
Angelita Medina, Public Member

Staff Present:

Sarah Wallace, Interim Executive Officer
Tina Vallery, Chief of Administration and Licensing
Jessica Olney, Anesthesia Unit Manager
Wilbert Rumbaoa, Administrative Services Unit Manager
David Bruggeman, Legislative and Regulatory Specialist
Mirela Taran, Administrative Analyst
Kristy Schieldge, Regulatory Counsel, Attorney IV, Department of Consumer Affairs
(DCA)

10:00 a.m., Tuesday, June 28, 2022

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

The Board President, Dr. Alan Felsenfeld, called the meeting to order at 10:10 a.m. The Board Secretary, Dr. Sonia Molina, called the roll; eight Board Members were present, and a quorum was established.

Agenda Item 2: Public Comment on Items Not on the Agenda

Dr. Nancy Gum, a practicing orthodontist in San Jose, urged that the Board consider the topic of having cognitive bias training as a requirement of dental licensure renewal for a future agenda.

Agenda Item 3: Discussion and Possible Action to Consider Adoption of Proposed Clarifying Amendments Identified by Office of Administrative Law Relating to SB 501 (Anesthesia and Sedation) Rulemaking, Proposed California Code of Regulations, Title 16, Sections 1017.1, 1021, 1043, 1043.1, 1043.2, 1043.3, 1043.4, 1043.5, 1043.6, 1043.7, 1043.8, 1043.8.1, 1043.9, 1043.9.1, 1043.9.2, 1044, 1044.1, 1044.2, 1044.3, 1044.4, 1044.5, and 1070.8

Mr. David Bruggeman, Legislative and Regulatory Specialist, presented the agenda item.

At the November 19, 2021 meeting, the Board approved proposed language for the implementation of Senate Bill (SB) 501 (Glazer, Chapter 929, Statutes of 2018). The language amends California Code of Regulations (CCR), title 16, sections 1021, 1043, 1043.1, 1043.2, 1043.3, 1043.4, 1043.5, 1043.6, 1043.7, 1043.8, 1043.8.1, 1044, 1044.1, 1044.2, 1044.3, 1044.4, 1044.5, and 1070.8, adopts section 1017.1, and adopts a new article 5.1 and sections 1043.9, 1043.9.1 and 1043.9.2 concerning regulations for the permitting, ordering, and administering of sedation for dental purposes.

The Board directed staff to take all steps necessary to initiate the formal rulemaking process, including noticing the proposed language for a 45-day public comment period, holding a public hearing if requested, and authorizing the Executive Officer to make any non-substantive changes to the rulemaking package. During the 45-day public comment period, the Board received both written public comments on the proposed regulations, as well as requests for a public hearing. The hearing was held on February 16, 2022, through WebEx teleconferencing, and seven witnesses offered public comment.

At the March 14, 2022 Board meeting, the Board approved responses to the public comments received during the 45-day public comment period, as well as adopting modified text (this included the decision to no longer repeal section 1044.4). That text was noticed for a 15-day public comment period. One comment was received and subsequently withdrawn. Board staff compiled the rulemaking file and submitted it to the Office of Administrative Law (OAL) on May 2, 2022.

On review of the file, OAL identified areas that required clarification. Addressing these areas required making substantive changes to the regulations and another 15-day public comment period. As a result, Board staff withdrew the file and developed modified text to address the areas of concern. The changes were marked in the proposed modified text presented to the Board with bold italics for new language and bold italics strikethrough for removed language. The changes were also summarized below:

Second Modifications of Regulatory Text

1. Change the word “should” in the first sentence of section 1043.3(a) to shall. This would make the language consistent with language in section 1044.5 and correctly reflect the original intent that the equipment maintenance requirement is mandatory rather than discretionary. The resulting change would read as follow:

All equipment ~~should~~**shall** be maintained, tested and inspected according to the manufacturers’ specifications.

2. Change the word “should” in the second sentence of the introductory paragraph in section 1043.9.2 to shall. This would make the language consistent with the rest of that paragraph and language in section 1044.5 and correctly reflect the original intent that the equipment maintenance requirement is mandatory rather than discretionary. The resulting change would read as follows:

All equipment ~~should~~**shall** be maintained, tested and inspected according to the manufacturers’ specifications.

3. Amend section 1043.9.2(d)(4) to further explain the documentation requirements for adequate supply of drugs. OAL sought greater clarity on the phrase “adequate supply” with respect to the documentation for drugs maintained at the facility. Staff recommended the following amended text (additions are in double underline):

(4) Documentation that all drugs maintained at the facility are checked at least ~~once a~~ **quarterly** for expired drugs and an adequate supply **of drugs based upon patient demographics** for the patient population served, **which includes the number of patients served at the facility and the age of patients served at the facility. For the purposes of compliance with this subsection, documentation of adequate supply shall include a written explanation of how the adequate supply was calculated by the facility.**

4. Amend the forms incorporated by reference to add clarity to the consequences of an incomplete application. In each of the forms included in the rulemaking package (General Anesthesia Permit/GAP-1, Application for Moderate Sedation Permit/MSP-1, Certification of Moderate Sedation Training/MSP-2, Documentation of Deep Sedation and General Anesthesia or Moderate Sedation Cases for Pediatric

Endorsement/PE-1, Application for Pediatric Minimal Sedation Permit/PMSP-1, Certification of Pediatric Minimal Sedation Training/PMSP-2, Application for Use of Oral Conscious Sedation on Adult Patients/OSC-C), there is language that states the form or application must be completed or the application “may be rejected as incomplete.”

OAL believed that language did not represent what would actually happen (that staff would provide the opportunity to address any deficiencies before an application is considered ‘abandoned’ per the Board’s current regulations at Title 16, California Code of Regulations (16 CCR) section 1004). Staff recommended replacing the language “may be rejected as incomplete” with “will not be processed (16 CCR section 1004).” This would clarify that the application would not be processed if deficiencies were not addressed in accordance with the Board’s abandonment regulations at section 1004.

5. Amend the introductory language concerning Facilities and Equipment Requirements in three of the forms incorporated by reference. Change the word should to shall in the first sentence of the introductory matter in the Facilities and Equipment Requirements section of the Application for Moderate Sedation Permit/MSP-1, the Application for Pediatric Minimal Sedation Permit/PMSP-1, and the Application for Use of Oral Conscious Sedation on Adult Patients/OSC-C. This would make the language consistent with sections 1043.3 and 1043.9.2. The resulting change would read as follows:

ALL EQUIPMENT ~~SHOULD~~SHALL BE MAINTAINED

6. Change the language in Question 25(A) of the Application for Use of Oral Conscious Sedation on Adult Patients/OSC-C to align with section 1044.5(d). The text of Question 25 (A) should be amended to read as follows:

THE NECESSARY AND APPROPRIATE ~~EMERGENCY~~ DRUGS AND AGE-
AND SIZE-APPROPRIATE EQUIPMENT TO RESUSCITATE A
NONBREATHING AND UNCONSCIOUS PATIENT AND PROVIDE
CONTINUOUS SUPPORT WHILE THE PATIENT IS TRANSPORTED TO A
MEDICAL FACILITY.

Staff requested that the Board review the proposed modified regulatory text and consider the following motion:

Approve the proposed second modified text and forms and direct staff to take all steps necessary to complete the rulemaking process, including sending out the second modified text notice with these changes for an additional 15-day comment period. 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, and adopt the proposed regulations as described in the

second modified text notice for 16 CCR sections 1021, 1043, 1043.1, 1043.2, 1043.3, 1043.4, 1043.5, 1043.6, 1043.7, 1043.8, 1044, 1044.1, 1044.2, 1044.3, 1044.5, 1070.8, 1017.1, 1043.8.1, 1043.9, 1043.9.1, 1043.9.2.

Board Member, Dr. Steven Chan, asked a clarifying question about the use of the phrase “size appropriate.” Ms. Jessica Olney, Anesthesia Unit Manager, noted that the intent was to accommodate all ages and sizes, including large children and small adults. Board Secretary, Dr. Sonia Molina, asked whether there would be guidelines provided for the calculation of adequate supply of drugs. Mr. Bruggeman indicated that the proposed language was intended to permit facilities the ability to take into account the local characteristics of their patient populations. Board Member, Dr. Steven Morrow, noted that there were non-substantive changes to be made as well.

Motion/Second (M/S) (Chan/McKenzie) to approve the proposed second modified text and forms and direct staff to take all steps necessary to complete the rulemaking process, including sending out the second modified text notice with these changes for an additional 15-day comment period. 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, and adopt the proposed regulations as described in the second modified text notice for 16 CCR sections 1021, 1043, 1043.1, 1043.2, 1043.3, 1043.4, 1043.5, 1043.6, 1043.7, 1043.8, 1044, 1044.1, 1044.2, 1044.3, 1044.5, 1070.8, 1017.1, 1043.8.1, 1043.9, 1043.9.1, and 1043.9.2.

President Felsenfeld requested public comment before the Board acted on the motion. There were no public comments made on the motion.

President Felsenfeld called for the vote on the proposed motion. Secretary Molina took a roll call vote on the proposed motion.

Ayes: Chan, Felsenfeld, McKenzie, Molina, Morrow, Olague, Pacheco, Yu.

Nays: None.

Abstentions: None.

Absent: Larin, Medina.

Recusals: None.

The motion passed.

Agenda Item 4: Recess Open Session

Dr. Felsenfeld recessed Open Session at 10:36 a.m.

Agenda Item 5: Convene Closed Session

At 10:45 a.m., the Board convened Closed Session.

Agenda Item 6: Pursuant to Government Code Section 11126(e)(1) and (2)(A), the Board will Confer with and Receive Advice from Legal Counsel and Deliberate

Regarding *Sulitzer, et al. v. Tippins et al.*, United States District Court, Central District of California, Western Division, Case No. 2:19-cv-08902-GW-MAA

The Board convened in Closed Session to discuss a pending litigation matter.

Agenda Item 7: Adjourn Closed Session

Dr. Felsenfeld adjourned Closed Session at 11:45 a.m.

Agenda Item 8: Reconvene Open Session

At 11:49 a.m., the Board reconvened Open Session.

Agenda Item 9: Adjournment

Dr. Felsenfeld adjourned the meeting at 11:50 a.m.