

CALIFORNIA DENTAL ASSOCIATION®

Report of the Meeting of the Dental Board of California August 17-19, 2005 Burlingame, California

This report summarizes the significant activities of the Committee on Dental Auxiliaries (COMDA), the Dental Board of California, and its committees during the meetings of August 17-19, 2005. More information may be obtained by calling Edmund Carolan in the Public Policy Division at (916) 554-4987 or sending an e-mail to edmund.carolan@cda.org.



CDA®

Committee on Dental Auxiliaries (COMDA):

Members Present: Wallace (Chair); Churchill; Gipson; Savio
Members Absent: Biggers; Dale; Molina; Hiroto

Roll call was taken and a quorum was not present. The committee held the meeting as a subcommittee.

Chair's Report: Nothing significant reported.

Report of the Executive Officer: Ms. Wyant gave an update on the Committee's budget and noted that the Committee was very close to having expenditures match the allocated appropriation. Ms. Wyant noted that the pending changes as a result of SB 1546 would impact the revenue flow for COMDA and some critical thinking on this issue must take place. In addition to the fiscal changes resulting from SB 1546, COMDA will be looking at the fee structure for dental auxiliaries at the November meeting. Finally, Ms. Wyant noted that the Board failed to properly notify stakeholders for the education regulations related to SB 1546, and the regulations would have to be re-noticed with the Office of Administrative Law (OAL) in order to have them heard in November.

Legislation of Interest to COMDA:

SB 248 (Figueroa): Staffed reported that Senator Figueroa has introduced legislation that will, as amended, extend the sunset date of the Dental Board until 2011. However, the Governor has indicated that he is opposed to SB 248 unless it is amended to change the number of seats on the Board to seven with four of the seven seats filled by public members, and that COMDA become a bureau of the Department of Consumer Affairs.

SB 1111 (Figueroa): This bill is slated to be the clean-up vehicle for SB 1546 that created new licensure categories and duties for dental assisting (DAs). However, the language as it related to DAs has yet to be established.

AB 1334 (Salinas): Would remove the requirement that a dentist or physician write a prescription for a patient before receiving treatment from a registered dental hygienist in alternative practice (RDHAP). Would also allow RDHAPs to provide all the duties that an RDH can currently provide. However, the bill has been moved to the inactive file.

RDA Educational Programs: Subcommittee voted to recommend to the Board the provisional approval of the RDA program, radiation safety course and coronal polishing course at United Education Institute of Chula Vista. Subcommittee voted to recommend to the Board the approval of RDA programs at Bryan College in the City of Industry and West Los Angeles. Subcommittee voted to recommend to the Board that the radiation safety course at California Dental Certifications of Del Mar and the pit and fissure sealant course at Health Personnel Resources in Anderson be approved.

Discussion of Changes to Regulatory Language to Reflect Pending Changes in Dental Assisting: Staff reported that there was a need to modify some existing regulations that pertain to dental assisting (Title 16 CCR, Sections 1070, 1070.1 & 1070.2) to reflect the changes brought about by SB 1546. These changes would include modifying the minimum number of required hours for RDA programs from 720 to 800 hours, listing the new RDA duties that RDA education programs do not have to teach (i.e. patient monitoring) and stating that RDA programs must teach the procedures that unlicensed dental assistants are allowed to perform as part of their curriculum. Several dental assistant educators spoke about the need to have a large window (upwards to a one year) of opportunity from the date regulations are adopted to the time that the new curriculum can be put into place. CDA noted that they are working diligently with the Dental Assisting Alliance on the SB 1546 regulations are well aware of the time frame constraints placed on the educational programs when required to make changes. Subcommittee did not take any action on this item.

Discussions of Two Paths to RDA Educational Program Approval: Staff raised the issue of whether the Board should continue to recognize RDA programs that are accredited by the Commission on Dental Accreditation (CODA) but not approved by the Board. Staff noted that the standards used by CODA and those used by the Board to approve RDA programs differ substantially. Given that the clinical exam for RDAs will disappear with the implementation of SB 1546, staff felt that it was necessary to consider this issue in order to ensure equal educational standards. Individuals spoke in favor of the CODA accreditation process and noted that the CODA standards measures the ability of each program to teach all the duties that RDAs are allowed to be performed in that state. In addition, it was pointed out that this fall CODA will be reviewing its standards for RDA accreditation and that COMDA can provide input into that process. CDA concurred with the issues raised by the individuals as well as highlighted that the CODA standard is the professional standard for RDH and dental school programs in California and not allowing it as a standard for RDA programs could be awkward. Subcommittee did not take any action on this item.

Discussion of the Establishment of an Ad Hoc Committee to Review EF Clinical Examination: Staff reported that with the pending changes to the duties in EF category (as a result of SB 1546) there is a need to review the RDAEF clinical examination requirements. This review is needed to ensure that the exam is a valid measurement of the applicant skills and knowledge in relation to the allowable duties for this licensure category. Staff recommended that COMDA allow the Chair to appoint an ad hoc subcommittee to begin the review process and that representative from the two approved programs and the current EF exam coordinator be part of this subcommittee. CDA stated that the make-up of the subcommittee should include at least one dentist. Subcommittee did not take any action on this item.

Discussion of COMDA's Strategic Plan: Staff gave a brief overview of the revised version of the committee's strategic plan. No action was taken.

DENTAL BOARD COMMITTEE MEETINGS:

Continuing Education Committee

Members Present: Osuna (Chair), Turchi

Members Absent: Hernandez, Sahabi

A quorum was not present so the Committee met as a subcommittee. Ms. Osuna noted that she had been appointed as chair of the committee by the Board president. This appointment comes as a result of the resignation of LaDonna Drury-Klein from the Board.

Minutes of the previous meeting were approved once corrections were adopted.

Proposal to Allow Continuing Education (CE) credit for GA/CS on-site

Evaluations: This issue was heard at the previous meeting and the committee was to meet with the California Association of Oral and Maxillofacial Surgeons (CALAMOS) before the August meeting to discuss this issue. However, as noted above, the chair of the committee resigned from the Board and this business was left unfinished. Ms. Osuna stated she will be working to schedule the meeting.

Consideration of a Mandatory CE Course on DPAV: During the May Board meeting, Dr. Shanel-Hogan gave a presentation on the merits of improving dental provider awareness of violence by requiring that all licensed dental providers take a mandatory course in this subject. Both CDA and CDHA spoke in support of having the class offered as a CE subject but opposed the classification of this class as a mandatory CE subject. Lacking a quorum, the committee took no action.

Audits of Providers for CE Requirements: The chair discussed the possibility of having the Board do random audits of providers to see if the license holders are in fact complying with the requirements for CE as a condition of licensure

renewal. The Board staff noted that they currently look at an individual's CE records only as part of a formal investigation. Staff noted a random audit program would require additional resources and staff. The subcommittee took no action on this item.

Examination Committee Meeting:

Members Present: SooHoo (Chair), Gordon, Kaye, Seldin

Members Absent: none

Minutes of the previous meeting were approved.

Appointment of New Dental Examiners: The committee had two applicants seeks appointments as examiners. However, there was some concern and discussion around the fact that one of the applicants had been on probation during a period of his professional career. There was some uncertainty surrounding the Board's ability to approve this individual and therefore no action was taken on either one of the appointments.

Consideration of support/funding for ADEX Examination: Dr. Terlet, having participated in many of the national meetings surrounding ADEX, gave a brief overview of where ADEX is heading in its pursuit of a national exam. Dr. Terlet asked for the Board's support in having the State of California play an official role in the development of the ADEX's national exam. Dr. Terlet thought that the state could play an official role in the ADEX process by appointing an official representative to the ADEX national exam process. However, there was concern among Board members and the public over the request to have California officially working on the ADEX national exam when there has been no official recognition from the state that California is interested in a national exam. Furthermore, the question was asked that even if such a position had been taken, why would the ADEX model automatically be the front runner? With Dr. SooHoo recusing himself from the vote, the committee voted to have a subcommittee headed by Dr. Seldin look at all the national/regional exams for dentistry and hygiene.

Funding for Additional RT Examinations: Staff gave a report which broke down the cost associated with holding an RT exam for dental students who have been trained outside of CODA accredited programs. Given the cost and the Board's budget, staff noted that it would be feasible to offer two additional RT exams next year (2006). The committee agreed with the recommendation. Dr. Terlet noted that the Board should impose a "no-show penalty" for students who fail to show up for their examinations as a way to ensure that only the most motivated and interested students are filling exam slots. CDA offered assistance to the Board in the form of working with the Administration to ensure that budget change proposals (BCPs) are approved for the additional exams. A husband of a foreign trained dentist asked that a large window of notice be developed between the time the student is notified of their acceptance to sit for the RT exam and the actual exam. According to this person, the current window is often too short for the

student to make arrangement to attend. The Board noted that they will consider his comments. Dr. SooHoo also asked that the CDA assist the Board in recruiting new examiners by running an advertisement in one of its publications.

Segmented Licensure Examination Format: Dr. SooHoo reported that he had met with the CDA licensure taskforce and the deans of the dental schools to discuss the concept of the segmented licensure format or curriculum integrated format for licensure. Everyone is in agreement that the concept is worth exploring and work will continue in this area. Dr. SooHoo noted that this format may be gaining acceptance given that there are now three different routes to licensure in California.

Auxiliary Examination Statistics: An updated report on all dental auxiliary examination results was given.

Dental Examination Statistics: Pass/fail data was provided for each of the five exams offered in May and June of this year. Pass rates at each school varied from a high of 89 percent to a low of 59 percent. Overall, 71 percent of the 629 applicants passed the examination.

Discussion of Infection Control Policy for Examinations: Issue was tabled.

Licensing Committee:

Members Present: SooHoo, Kaye

Members Absent: none

The Committee approved the minutes of the May 5 meeting.

Approval of Extramural Facilities: The committee approved the request of the UOP Art Dugoni School of Dentistry to operate an extramural facility at the San Mateo Medical Center and the request of the UCLA School of Dentistry to operate extramural facilities at the student health center at CSU Northridge and Mission Community Hospital in San Fernando.

Proposed Changes to Business and Professions Code Section 1701.5: This section of law requires that any association or partnership or corporation or group of three or more dentist obtain a fictitious business permit that contains one of the following designations: "Dental Group," Dental Practice," or "Dental Office." Staff reported that this standard was originally applied to group practices and corporate practices operating under a fictitious business permit. However, once the law was amended to require all dentists who use fictitious names to obtain permits, there were already dentists who had well-established practices based on fictitious names that do not include the one of the designations listed above. Therefore, little effort was made by the Board to enforce the standard listed in Section 1701.5. Staff reported that this lack of uniformity in enforcement is causing problems and would like to move forward in amending this law to strike the requirement that one of the three terms listed above be used. CDA stated

that they support the concept of modifying the law but thought that the fictitious business permits should be required to include the word “dental” or a similar term so it would be readily understood that the business was providing dental services. Board members agreed that the law should be amended but should require that the fictitious name include some reference to dental.

Licensure by Credential: Board staff reported that since January 1, 2003 through June 2005, 1163 applications have been received by dentists seeking licensure through credential (LBC). Of the 1163 received, 1038 have been approved.

For the dental hygienist LBC program, from January 1, 2003 through July 2005, 158 applications have been received with 141 being approved and 13 pending.

Dr. Terlet asked that if the Board could provide data on how many of the RDHs who have obtained license through LBC are actually residing and practicing in California. Dr. Terlet has asked for this information because many dentists who have obtained license through LBC are not actually in California and she is interested in seeing if the same pattern is developing for hygiene.

General Anesthesia Committee Meeting

Members Present: Kaye (Chair) Gordon, Hundley

Members Absent: Biggers

The Committee approved the minutes of the May 5 meeting with a minor grammatical correction

On Site Inspection Pass/Fail: During the May meeting, the Board voted to delete regulatory language that governs the situation when one inspector passes a provider during a conscious sedation permit inspection and the other inspector fails the same provider, the inspection be treated as a fail. However, the issue is being revisited during this meeting because it was unclear to the Board’s legal counsel how the Board is going to deal with situations as described above if the regulatory language is eliminated. CDA and others point out that the expertise need to evaluate this decision was too technical in nature to leave a pass/fail scenario to the discretion of the Board’s staff. The accepted recommendation was that language would be adopted that would require a third inspector to visit the site and based on his/her report, the site would either pass or fail. Staff will bring proposed regulatory language back to the Board to reflect this change.

Discussion of Conscious Sedation (CS) Evaluation: The discussion centered on an individual dentist who had written to the Board to protest the fact that she had requested a select inspector not be sent to her practice because that inspector had a conflict of interest because the dentist and inspector were currently engaged in a business transaction. However, the Board’s contractor for the in-site inspections did not honor the dentist’s request and sent two inspectors to include the one this dentist had requested not be sent. The dentist failed the inspection and protested that the examination was biased. The dentist was

therefore requesting that the Board not suspend her CS permit. The Board recognized that the subcontractor should have honored the request of the dentist since all parties acknowledge there was a business arrangement between the two dentists. Therefore, the Board ordered that a new inspection, with different inspectors, take place and that the fee for the inspection be waived.

Legislative Committee Meeting

Members Present: Kaye (Chair), Osuna, Turchi, SooHoo, Yokoyama
Member Absent: Baron

Committee approved the minutes of the May meeting.

Staff gave an update on legislation of interest to the Board

SB 248 (Figueroa) Establishing the sunset date for the Board out to the year 2011. Staff noted that the Governor has taken an *oppose unless amended* position on the bill and was seeking an amendment to change the Board's composition to seven members with four of the seven being public members, and that COMDA become a bureau within the Department of Consumer Affairs. Board has a support position on this bill. This bill is currently moving through the legislative process.

*SB 299 (Chesbro)** Would modify existing licensure by credential (LBC) law by allowing a dentist with a license in another state, regardless of experience, to be allowed to practice in California, if the dentist agrees to practice for 2 years in a defined safety-net setting. *Board had agreed to support if amended.* Amendment was taken to clarify that the dentist would agree to practice for two years and not be required to provide proof of a two-year contract. There was some discussion around whether the dentists under the LBC provision could be treated differently than a dentist who is issued a license under other provisions of law. This bill is currently moving through the legislative process.

*SB 438 (Migden)** Would allow an oral surgeon, who meets specified criteria, to apply to the Board for a permit that authorizes the surgeon to perform elective facial cosmetic surgery. *Board took a support position. This bill is being held on the Assembly Floor pending the outcome of the occupational analysis of oral surgery being performed by the Department of Consumer Affairs.*

*SB 683 (Aanestad)** Would allow a dental student who completes a CODA-approved dental residency program to be issued a license to practice dentistry in California without having to take the an exam. *Board has taken an oppose unless amended position.* Position was based on the fact that there is no provision of the residency program that demonstrates minimum competency. This bill has become a two year bill.

AB 205 (Ruskin). Would disallow a dentist placing the social security number on a patient's denture, but would require the dentist to mark either the patient's name or initials on the denture. Current law allows the patient to choose not to have their dentures marked. *Board changed from an oppose position to a watch position*. This bill is currently moving through the legislative process.

AB 319 (Chan). Bill originally would have prohibited the use of bisphenol-A in any product that is intended for use by a child under the age of three. Bill was amended to outlaw the use of this product only in any toy or child care product. With the amendments, *board maintained its watch position*. This bill is being held in the Assembly Appropriations Committee.

AB 929 (Oropeza) Bill would have originally required physicians and dentists to educate their patients about the potential dangers to radiation exposure that might occur in a medical or dental office. Bill was amended to require the California Research Bureau and others to conduct a study on best practices to limiting exposure to radiation in medical and dental offices and how best to education consumers about radiation exposure. *Board retained a watch position on the bill*. This bill is currently moving through the legislative process.

AB 1077 (Chan) * Would require children in kindergarten, second and sixth grades to complete an oral health assessment as part of the school year. *Board retained its support position*. This bill is being held in the Assembly Appropriations Committee.

AB 1143 (Emmerson)* Would allow the dean from each of the state's dental schools to select up to five specialist and five general dentists with skills or knowledge in emerging fields, who do not meet the academic requirements for the existing special permit program, to apply for a special permit. *Board changed its position from oppose unless amended to support if amended*. The amendments sought are: 1) clarify that the deans are not "certifying" these special permit holders, 2) that the Board be allowed to define the criteria that these special permit holders must meet and, 3) remove the set number of permits allowed under this section and allow the Board to approve the total number of permits based on need. This bill is currently moving through the legislative process.

AB 1268 (Oropeza)* Related to advertising by dentists. Would require dentists, who claim to offer a specialty service, and that service is not recognized by the ADA as a specialty, to disclose that the service is not a recognized ADA specialty. Would also require a disclaimer for general dentist who are providing an ADA specialty service such as orthodontics, that they are a general dentist. This bill will be a two-year bill to await the outcome of the Board's appeal of Potts v. Hamilton which annulled part of the existing law related to dental specialty advertising. *Board maintained its watch position*. This bill is being held in the Assembly Appropriations Committee.

AB 1334 (Salinas). Would remove the requirement that currently mandates that a patient be given a prescription from a physician or dentist before being seen by a registered dental hygienists in alternative practice (RDHAP). The Board had sent a letter to COMDA in March, outlining the reasons the Board was opposed to the removal of the prescription requirement. These reasons included that a RDHAP cannot diagnose a patient and therefore cannot determine the appropriate treatment as well as that the sample size being used from the manpower pilot project, to claim no harm being done to patients, was too small to make conclusions on patient safety. However, despite CDA reminding the Committee that the Board took a position of opposing the removal of the prescription requirement, the legislative committee debated what duties the RDHAP would be performing since there are RDH duties that require general supervision and those that require direct supervision. *The Committee voted to support if amended to reflect that the RDHAP can only do those duties that require general supervision.* This Bill was moved to the inactive file.

AB1386 (Laird)* Would implement the recommendations of the Board's Blue Ribbon Panel on Anesthesia related to oral conscious sedation for adults. Would require education and a certificate that mirror the current requirements for dentist who use oral conscious sedation on minors. *Board is a co-sponsor.* This bill is currently moving through the legislative process.

*Indicates CDA-sponsored legislation.

Board staff also gave an update on regulatory proposals that the Board had submitted to the Office of Administrative Law (OAL). Two regulatory proposals that the staff noted as needing attention were:

1) *General Anesthesia and Conscious Sedation*: The Department of Consumer Affairs had questions regarding the use of the word "moderate" to describe this type of sedation and the reasoning why it was added to regulatory title. Staff, while not aware of why this word was added, note that the American Society of Anesthesiologists defines the difference between monitored anesthesia care from moderate sedation is that moderate sedation still allows the patient to maintain the integrity of his/her own airway. The staff noted that the Board voted to revise the section of this regulatory proposal as it relates to the pass/fail on-site evaluation (see notes from anesthesia committee above).

2) Staff stated that the OAL had rejected the regulations related to CE that would have created class I & II categories for CE courses as well as would have required licensed dental professionals to complete 80 percent of their CE units from the class I category. The reason for OAL rejecting the proposal were not insurmountable and if the Board had 120 days to try to correct the deficiencies and resubmit the proposal. The Committee agreed to recommend that the Board make the need corrections and resubmit the proposal.

Exam Appeals Committee Meeting

Members Present: Hundley (Chair), Gordon, SooHoo

Members Absent: Sahabi

Committee met in closed session to discuss 5 appeals for the dental licensure exam and two appeals for the restorative technique exam.

Committee returned to open session and then adjourned.

Full Dental Board Meeting

Members Present: Gordon (President), SooHoo (Vice President) Hundley, Seldin, Kaye, Osuna,

Members Absent: Baron, Biggers, Hernandez, Turchi, Sahabi,

Meeting was called to order at 9:00 A.M on Friday May 6, 2005 and a quorum was not established. They then met as a subcommittee of the Board and noted that the Board would meet on August 31 in Los Angeles so that a quorum could be established and action taken.

Board made some changes to the minutes.

President's Report: Dr. Gordon thanked everyone for attending the meeting and touched on the following topics:

Changes in Board Members: Welcomed new Board members, Drs. Harriett Seldin and Lewis Turchi. Thanked Dr. Yokoyama for his work on the Board. Noted that LaDonna Drury-Klein had resigned her position on the Board and that position had yet to be filled.

Board Member Attendance: Noted that the public members are not attending meeting regularly and stated that one public member has only been at one meeting in the last year. This lack of participation by the public members makes it difficult to establish a quorum and thus conduct business. Dr. Gordon noted he will be involved in making sure public members show up for future meetings.

Selection of New Executive Officer: The 30 applicants for the position have been screened down to 6 applicants. The Board plans to interview 3 of the 6 applicants. These interviews will be conducted at the August 31 meeting and a decision will be made shortly after the interviews.

Examination Process: Thanked Dr. SooHoo for all the work he has put into the exam process and his concern to makes sure students are treated fairly. Dr. Gordon noted that Dr. SooHoo ability to recognize the need for fairness is reflected in the method that exam appeals are handled.

Retirement: Thanked Alan Mangels for his 30 years of service with the Attorney General's office and the Dental Board and wished him well with his retirement.

Interim Executive Officers Report Stated that 24 applicants had applied for the Dental Loan Repayment program and 13 of those applicants were eligible for funding. This grant should be awarded in the immediate future.

Budget Report: The Budget report showed that the Board had a reversion of \$328,825 which in large part came from unfilled staffed positions and under spending by the Attorney General's Office. Savings were also achieved through less demand for the diversion program. CDA spoke to the issue of having so many staff vacancies and the impact these vacancies were having on the Board's ability to perform the day-to-operations that impact the profession. CDA stated that the Board should make it a priority to get the key positions filled and offered any assistance that they could provide in this arena. Board staff noted they have borrowed hiring list from other agencies in an attempt to fill positions but hiring qualified staff is becoming very difficult. Staff also pointed out that 3 of the 5 manager positions at the Board are now vacant.

The Board staff also reported that they had received a budget augmentation of \$757, 422 from a requested \$1.2 million. These augmentations were for staff, examiners, expert witnesses, changes to exam process and cost associated with WREB. Staff noted that the occupational analysis for the WREB should be completed by September 30, 2005.

Calendar of 2006 Board Meetings: Due to a lack of a quorum, the subcommittee decided to wait until the August 31 meeting to set the calendar for the following year.

COMDA REPORT: (For additional background information, see COMDA report above). Due to a lack of a quorum, no action was taken. However, Rosalie Thompson from Senator Aanestad office read a letter to from the Senator to the Board in which the senator expressed his concern over a specific issue with the dental assistant educational regulations. The Senator's concerns are that the Board had proposed regulations that did not preserve or give credit for existing ROP programs that provide instruction in the dental assistant profession. Copies of the letter were distributed to the Board members.

Continuing Education Committee Report: (See Committee report above)
Report given, Due to a lack of a quorum, no action was taken.

Examination Committee Report: (See Committee report above)
Report given. Due to a lack of a quorum, no action was taken. There was additional discussion surrounding the WREB and the audit that the Department of Consumer Affairs, Office of Examination Review was doing on the WREB. Board members thought it would be important to have staff from OER present when the Board discusses the audit.

Licensing Committee Report: (See Committee report above) Report given. Due to a lack of a quorum, no action was taken.

General Anesthesia Committee Report: (See Committee report above) Report given. Due to a lack of a quorum, no action was taken

Legislative Committee Report: (See Committee report above) Report Given. Due to a lack of a quorum, no action was taken

Exam Appeals Committee Report: (See Committee report above) Report Given. Due to a lack of a quorum, no action was taken

Public Comment: Dr. Tanner (sp?) stated that he had received a letter from the Dental Board earlier in the year that notified him that Board staff had lost a laptop computer which contained information about him and other dentists. Dr. Tanner had replied to the Board, in writing, and requested that he be provided with a copy of the police report, and the type of information about him/ his practice that was contained on the lab top. To date, he had yet to receive a response and was now demanding that the Board provide this information before August 31. The Board thanked him for his presentation and had no comment.

Joanne Galliano of CDHA stated that there was not a RDH on the Examination committee and if that committee was going to look at national exams for dentists and hygienist it would seem beneficial to have a hygienist's perspective on this committee.

Dr. Felsenfeld, speaking on behalf of the California Association of Oral and Maxillofacial Surgeons, wanted to bring to the attention of the Board, an emerging health problem that dentists are confronting. The problem is found in patient who taking the prescription drug Fosamax (and other similar drugs) for osteoporosis or are being treated for breast or prostate cancer with other like drugs. The problem with this drug is that it is not allowing the bones to heal in a proper manner and a simple tooth extraction or sore in the mouth can become major health problems for patients. This problems are often further compounded when dentists perform procedures trying to correct the ailment. Dr. Felsenfeld noted that the CDA Journal, of which he is the editor, will be running a story on this problem and he encouraged the Board to notify all dentists of this problem. Some members of the Board asked that the item be agenized for the November meeting for further discussion.

Meeting Adjourned