

Dental Hygiene Committee of California

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***Dental Hygiene Committee of California
Enforcement Subcommittee Meeting***

*Department of Consumer Affairs
Evergreen Hearing Room
2005 Evergreen Street
Sacramento, CA 95815*

Sunday, December 05, 2010

1. Roll Call/Establishment of Quorum

Members Present

Alex Calero, Public Member & Chair
Miriam DeLaRoi, RDHAP
Cathy DiFrancesco, RDH

Staff Present

Lori Hubble, Executive Officer
Shirley Moody, Enforcement Coordinator
Dennis Patzer, Enforcement Analyst

Legal Counsel

Norine Marks

The meeting began at 10:57 a.m. Roll was called and a quorum established.

2. Public Comment

There was no public comment.

3. Approval of September 27, 2010 Minutes

It was m/s/c (DeLaRoi/DiFrancesco) to approve the September 27, 2010 Enforcement Subcommittee minutes as submitted. Motion passed unanimously.

4. Chairperson's Report

There was no Chairperson's report.

5. Enforcement Statistics

Shirley Moody, DHCC Enforcement Chief, presented the enforcement report for the month of December 2010. She reported the following:

- 12 Field and 16 Records investigations were open

- 12 licensees were on probation of which seven were active and five were tolling

6. *Discussion and Consideration of Peer Review*

Dennis Patzer, DHCC Enforcement Officer, reported what peer review was under existing law as well as the definition of what constituted a peer review body. Mr. Patzer reported that all peer review and peer review bodies existed outside the board or committee structure and that some of the outcomes of actions by the peer review were required to be reported by law. During his research Mr. Patzer found that for the practice of dental hygiene, peer review did not exist on the West Coast. He felt the first place to start with peer review would be at the association level.

Ms. Moody stated that if the Dental Hygiene Committee wanted to participate in the 805 reporting process it would have to be accomplished through legislation. Staff recommended that if the association wanted peer review, it should be done by the association through legislation.

Mr. Calero asked if there were any questions from the subcommittee.

Ms. DiFrancesco asked if the Dental Hygiene Committee was listed in Senate Bill 700. Mr. Patzer stated that it was not. Ms. Moody stated that currently a facility or dentist may not report adverse decisions to the Dental Hygiene Committee because they are not required to submit an 805 form. If they filed a complaint with the committee it would be investigated through the normal process.

Ms. DiFrancesco asked if peer review was done just for persons working independently. Ms. Moody stated that generally peer review was done by facilities or the associations when patient safety may have been jeopardized. Ms. Moody stated that the Dental Hygiene Committees enforcement process is somewhat like peer review. Mr. Patzer stated that in regards to expert determinations, two opinions are sought and if the opinions concur, the opinion is accepted. If the opinions do not concur, a third opinion is sought and that opinion would be used along with the other concurring opinion for investigative determination. Mr. Patzer stated that in regards to using expert opinions the process is much like peer review.

Ms. DiFrancesco asked if peer reviews were accepted in the enforcement process. Ms. Moody stated that they would still have to be completely investigated in the enforcement process and expert reviewers would still have to be used.

Ms. Moody stated that because most dental hygienists work under the supervision of a dentist she did not see why peer review would be beneficial.

For clarification purposes Mr. Calero commented that peer review is done by some kind of internal body of a hospital or association and that law mandates reporting to the appropriate board when adverse action occurs and this gives a

regulatory board a heads up. Mr. Calero discussed the 805 participants described in the agenda package.

Kimberly Kirchmeyer, Deputy Director for Board and Bureau Relations stated that because the 805 reporting process is controversial in the medical boards she felt that if a registered dental hygienist was disciplined by a peer review, the committee probably would not send one to the Dental Hygiene Committee. Ms. Kirchmeyer stated that if there are instances where peer review for dental hygienists is occurring, the committee should look into legislation for reporting outcomes.

Ellen Standley, California Dental Hygienists' Association President (CDHA), stated that the association would like to monitor the peer review action by the Dental Hygiene Committee of California and would be willing to provide input at a later date.

JoAnn Galliano, Educator, stated the California Dental Hygienists' Association would have to set up the peer review structure in accordance with existing requirements and submit it for legislation. Ms. Galliano stated the one question that would be asked is, is the Dental Hygiene Committee in support of it.

Mr. Calero asked legal counsel if it was appropriate for the subcommittee to provide a consensus on peer review instead of taking a formal vote.

Ms. Marks stated that the subcommittee could provide consensus if it wanted to.

Mr. Calero stated that if it helps to protect consumers of dental hygiene services, the subcommittee would definitely like to look into it further and would be interested in hearing back from any interested organization.

7. *Review of DHCC's Consumer Complaint Form*

Mr. Calero commended committee staff for their work on the Consumer Complaint form, especially the brief summary of the complaint process. Mr. Calero said he had a few non- substantive changes that he would share with staff later.

Ms. Kirchmeyer stated that under the BreEZe Project the Department of Consumer Affairs had developed a standardized complaint form and encouraged the committee to use it now. She stated that when BreEZe is operational, the department will push all the boards to use it.

Ms. Standley commended the committee for its work in the development of a complaint form to meet the needs of the consuming public as well as dental practitioners.

8. *Proposed regulations to implement DCA recommendation to strengthen DHCC's enforcement program pursuant to Consumer Protection Initiative (CEPI)*

Mr. Calero stated that he was under the impression that not only was the Enforcement Subcommittee going to look at this agenda item but the Legislation and Regulation Subcommittee would also be addressing the issue. Mr. Calero stated that any substantive and non-substantive changes coming from the Enforcement Subcommittee should be given to the Legislation and Regulation Subcommittee.

Ms. DiFrancesco questioned language in section 1138.2(a)(2) regarding the word "revoked" and "Promptly." It was determined that the word "revoked" be changed to "revoke." Ms. DiFrancesco questioned whether the word "Promptly" in the section was definitive enough. Ms. Marks stated the word "Promptly" would provided by prior counsel was probably from model language.

Ms. Kirchmeyer stated that the word "Promptly" was used because of the Administrative Procedure Act requirements regarding time line issues.

Mr. Calero directed the subcommittee to section 1138 Delegation of Functions. He stated that this section gave authority to the Executive Officer to perform all functions necessary to do the business of the committee in connection with investigative and administrative proceedings as well as being able the approve settlement agreement for the revocation, surrender, or interim suspension of a license. Mr. Calero stated that there had been concerns that there may be a conflict of interest as the Executive Officer makes the initial decision to proceed with disciplinary action. He stated that prior legal counsel stated that there would not be a conflict of interest. Ms. Marks agreed that there would not be a conflict of interest.

Ms. Kirchmeyer encouraged the committee to take out the verbiage "including but not limited to" because it was too broad. She stated that language had been an issue with another board in their proposed regulation. Mr. Calero stated that there was not a motion to change the verbiage on the floor.

Mr. Calero stated that he had noticed while reviewing the statutory cleanup language under tab 8 of the Legislation and Regulatory Subcommittee agenda items, that in section 1958.1(the sex offender language) is the same as the sex offender language of the proposed regulation. He said he wanted clarification of what was the purpose of having the same language in the statute as the regulation.

Ms. Napper stated that the committee may not need the language referred to in the statute in its proposed regulation. She stated that the language cleanup was acceptable at the time it was submitted.

Ms. Marks stated the statute always trumps the regulation.

Ms. Galliano stated that the language in the legislation had inadvertently left out what the California Dental Hygienist Association had submitted, including the sex offender language, and that is why it is now in the cleanup language.

Ms. Kirchmeyer stated that if the committee has the authority to strike language from the legislation cleanup and put it in proposed legislation, then it should consider doing it. She said that leaving the language in both legislation cleanup and proposed regulation could be problematic.

Erica Eisenlauer, Legislative Analyst, Department of Consumer Affairs, stated that having the language in both the statutory cleanup and regulation proposals could raise issues. She said it would probably be easier to do it through regulation.

Mr. Calero stated that the subcommittee was asked to determine whether it was a good idea to have the legislative language placed in legislation or regulation. He thought the subcommittee should make a recommendation to the full committee as to where the language should be placed.

Mr. Calero stated that he wanted to explore whether the subcommittee wanted to make all four categories addressed in section 1138.3(e)(2), unprofessional conduct. The subcommittee agreed that all four categories were unprofessional conduct.

It was m/s/c (DiFrancesco/DeLaRoi) that the Enforcement Subcommittee recommend to the Full Committee that the Full Committee begin the regulatory process with respect to 1138, 1138.2, and 1138.3 including all substantive (deleting the language "including but not limited to") and non-substantive changes. The motion passed unanimously.

Agenda Item 9 – Future Agenda Items

There were no suggestions for future agenda items.

Agenda Item 10 – Adjournment

The subcommittee meeting adjourned at 12.22 p.m.