



DENTAL HYGIENE FULL COMMITTEE MEETING MINUTES

**Evergreen Hearing Room
2005 Evergreen Street, 1st Floor
Sacramento, CA 95815
Tuesday, December 13, 2011**

FULL 1 – Roll Call

The Dental Hygiene Committee of California (DHCC) President called the meeting to order with roll call at 9:17 a.m. With eight committee members present, a quorum was established.

Committee members present: Alex Calero, Public Member, Miriam DeLaRoi, RDHAP, Cathy Di Francesco, RDH, Rita Chen Fujisawa, Public Member, Michelle Hurlbutt, RDH Educator, William Langstaff, DDS, Rhona Lee, RDH, RDHEF, and Andrew Wong, Public Member.

Staff present: Lori Hubble, Executive Officer (EO), Anthony Lum, Administration Analyst, Traci Napper, Legislation and Regulatory Analyst, Tom Jurach, Enforcement Analyst, Shirley Moody, Enforcement Coordinator

Department of Consumer Affairs' (DCA) legal representative present: Claire Yazigi

Public present: Katie Dawson, California Dental Hygienist Association (CDHA), JoAnne Galliano, CDHA, Georgia Gebhardt, University of San Diego law student, Carol Lee, CDHA, Bill Lewis, CDA, Kim Laudenslager, Central Region Dental Testing Service (CRDTS), Susan Lopez, CDHA, Lisa Okamoto, CDHA, Justin Paddock, DCA Division of Legislative and Policy Review, Ellen Stanley, CDHA, and Jennifer Tannehill, Aaron Reed & Associates

President's Announcements –

- Ms. Lee announced that agenda item 10, Annual Election of Officers, would be taken out of sequence;
- She announced that agenda item 2, Ethical Decision Making, would be presented later in the meeting; and
- She stated that the meeting would not be webcast due to a scheduling conflict.

***FULL 3 – Public Comment for Items Not on the Agenda**

Ms. Okamoto thanked DHCC for all of its work and requested future clarification of whether RDH's can work as independent contractors.

Ms. Lee stated that Ms. Okamoto had been serving as the CDHA's President for 2011 and that the President-elect, Susan Lopez, was also present. She added that the association president serves a one-year term from June of the current year to June of the following year.

FULL 4 – Approval of April 29, 2011 Minutes

- **William Langstaff moved to approve the April 29, 2011 Committee Meeting Minutes.**

Rita Chen Fujisawa seconded the motion.

Ms. Lee asked for any public comment. There was no public comment.

She called for the vote to approve the April 29, 2011 meeting minutes. She explained that since Ms. Chen Fujisawa and Ms. DeLaRoi were not present at the April 29, 2011 meeting, in concept, they could accept but not approve the minutes.

The motion passed 6-0-2 (Rita Chen Fujisawa and Miriam DeLaRoi accepted, but did not approve the meeting minutes).

FULL 5 – President's Report

Ms. Lee thanked Dennis Patzer for his efforts as the DHCC Enforcement Analyst prior to his retirement in August 2011. She welcomed new staff, Anthony (Tony) Lum, DHCC Administrative Analyst, and Claire Yazigi, DCA legal counsel. She announced that Ms. DeLaRoi was resigning from DHCC effective after the meeting and that she had been an integral part of the creation and ongoing progress of DHCC, particularly in regards to updating the dental profession's infection control regulations in collaboration with the Dental Board.

Ms. Lee reported that there is an updated comparison of the DHCC and Western Regional Examination Board (WREB) clinical exams that was started in 2010. She stated that a budget change proposal (BCP) was submitted to DCA regarding validation of DHCC and WREB's clinical examinations; however, due to the current budget restrictions, the BCP was not approved, but baseline information has been drafted to be utilized for DHCC's sunset review in 2015 (which was changed from 2014).

Ms. Lee reported that there are graphically enhanced versions of the RDH license applicant and DHCC clinical examination information, including downloads of school maps, and applications to improve access.

Ms. Lee reported that WREB adopted a new governance structure specifically related to dental hygiene which allowed one vote with the Hygiene Exam Review Board (HERB). She stated that in light of this new governance structure, Beth Cole, the WREB Director, will forward a new membership application for DHCC consideration at its next meeting. She indicated that there are five testing agencies across the United States which are: WREB, CRDTS, Counsel of Interstate Testing Agencies (CITA), Southern Regional Testing Agency (SRTA), and the North East Regional Board (NERB) of Dental Examiners.

Ms. Lee stated that her next update item was regarding CRDTS. She introduced Kim Laudenslager, the Director of Dental Hygiene Examinations for CRDTS to brief DHCC about their program's updates. Ms. Laudenslager stated that she had attended and presented at prior DHCC meetings and that the first time she spoke, it was an educational overview of the concept of CRDTS' program. She indicated that CRDTS was started 40 years ago in the midwestern states so that each state did not need to administer an individual exam. She stated that CRDTS has expanded to 17 member states and is currently accepted by over 40 states for initial licensure. She explained that member states are different than the states that simply accept the exam for initial licensure as they have a voice in the concept, construction, and development of the exam. She continued that CRDTS received interest from candidates in some non-member states (i.e., Texas, Tennessee, and Florida) and will be administering the exam in those states to accommodate the interested candidates.

Ms. Laudenslager stated that a highlight for CRDTS is that they will be the only exam administrator to issue standardized instruments (mirror probe and explorer) to maintain consistency. She reported that CRDTS completed an occupational analysis and that the information is available to DHCC.

Ms. Laudenslager indicated that within DHCC's current statutes, Business and Professions Code section 1917(b) under new licensure requirements, she believed that DHCC could accept CRDTS examination for initial licensure. She extended an invitation to DHCC to observe a CRDTS exam administration, but understood that it may be impossible due to the state's travel restrictions.

Ms. Lee thanked Ms. Laudenslager for updating the Committee and indicated that over the past year, there have been efforts by the five national exam administering groups to consolidate their work into a single examination; however, to date, it has not been accomplished.

Ms. Lee stated that for 2011, DHCC was defined as a functioning and solvent board. Despite restrictions placed on its budget, hiring, outreach, and use of staff for administration of its licensing exams, DHCC managed to prioritize and meet many of its goals. She thanked DHCC staff, especially Ms. Hubble, for their efforts.

***FULL 2 – Ethical Decision Making – Presentation by Claire Yazigi**

Ms. Yazigi stated that her presentation is one that is given department-wide on the topic of ethical decision making. She indicated that the purpose of the training is two-fold in order to: 1) identify ethical dilemmas that face Committee members; and 2) provide strategies on how to deal with those ethical dilemmas that are inherent to the job. She stated that the presentation would focus on two major parts – the Bagley-Keene Open Meetings Act and conflict of interest. Highlights of each section are:

A) Bagley-Keene Open Meetings Act:

- Is the meeting laws for boards and committees to follow for transparency to the public;

- Is Government Code section 11120;
- Is comprised of three components: 1) to provide adequate notice to the public of a meeting; 2) to conduct discussions in an open public format; and 3) to provide an opportunity for the public to participate and comment on the issues that were discussed by the Board or Committee at the meeting.

Ms. Yazigi stated that another important issue for a board or committee to consider is that of public perception and how a government body conducts its business. She indicated that the issue of public perception is extremely important and that as government officers, members must always remember that in all of their actions and words as representatives of the state. She continued that as a public official, they not only protect the public, but also ensure public trust in the DHCC.

Ms. Yazigi stated that the Bagley-Keene Open Meetings Act applies when there is a majority of the DHCC members present (in person or over the phone) who are discussing matters within the jurisdiction of DHCC. She indicated that this has changed from the past where a collective decision by the members had to be rendered in order for a violation to occur, whereas now, any discussions within the jurisdiction of DHCC are prohibited. She clarified that a majority refers to the number of members that are currently appointed, not the total number of members provided by statute. She also stated that serial discussions between members are also prohibited including emails, phone messages, personal intermediaries (i.e., secretary, assistant, or other, etc), or direct conversation to discuss, deliberate, or take action on any DHCC item of business.

Ms. Yazigi explained that exceptions to the definition of a meeting are: 1) when there is a meeting of a committee that consists of less than three persons as long as it the discussion is not a part of a serial discussion. She stated that the law pertains to committees, subcommittees, and non-members who are a part of a sub-committee; 2) when multiple members attend a convention or meeting of another state or legislative body, there should be no items of business discussed, especially if there is an overlap of the issue at the meeting and DHCC issues; and 3) when multiple members attend ceremonial or social functions. She suggested that to avoid any issues of inappropriate discussions, do not engage in communications with other DHCC members about items of business (unless at a noticed meeting) and when in doubt, contact DCA legal or the EO.

B) Conflicts of Interest or Disqualification and Abstentions:

Ms. Yazigi stated that there were four components regarding this issue that she will discuss and they are: discipline and licensing, relationship with the professional association, financial interests and contracts, and gifts.

1. Discipline and Licensing Issues – Ms. Yazigi stated that when acting on disciplinary and licensing issues, DHCC is acting as the judge and must be fair, objective, and unbiased. She defined disqualification as being ineligible to act on a specific matter before DHCC generally due to an actual or perceived bias or conflict of interest. She indicated that disqualification is mandatory, while abstention is voluntary. She stated that abstention is when a member chooses

not to vote on a particular case even though the law allows the member to participate and vote. She provided examples of situations and questions in which a member should disqualify or abstain from a vote and offered further details in the handout (handout #2) provided at the meeting. She recommended that if a member is uncomfortable participating in a case or vote to disqualify, abstain, or recuse themselves for the record, or they may discuss the issue with DCA legal before deciding.

2. Relationship with the Professional Association – Ms. Yazigi stated that when members are participating in DHCC meetings, the primary objective should be protection of the consumer public and should not advocate for the profession's licensees. She indicated that externally, the member can participate in professional association activities; however, if there is an instance of a conflict between the two entities, she recommends that the member disclose (state the member's position or role within the association for clarity) and disqualify themselves from any vote or decision on the issue before DHCC.

3. Financial Interests and Contracts – Ms. Yazigi stated that this is another issue where a member should consider recusal and disqualification and may include contracts that DHCC is requested to approve or requirements DHCC may impose on its licensees. She stated that the meeting agenda should be reviewed in advance of the meeting to determine whether a member may have a disqualifying financial interest. She indicated that the rules regarding financial conflict of interest are very complex and qualifying members and staff must complete the Form 700 annually from the Fair Political Practices Commission (FPPC). She stated that DCA has an ethics attorney on staff to address any possible conflict of interest issues and suggested that if there are any financial conflict of interests identified by a DHCC member, disclose it to the DHCC EO in advance and confer with DCA legal or the DCA ethics officer.

4. Gifts – Ms. Yazigi stated that to address the issue of gifts, the Form 700 must be completed annually and the ethics training must be completed every two years. She recommended to review the FPPC's website in order to obtain information of what gifts are acceptable and their value. She warned the members to be wary of parties that offer to pay for any travel costs (whether in-state or out of state) and indicated that if members are traveling as a delegate or speaker to a meeting at that party's expense, it must be disclosed on the Form 700.

Ms. Yazigi reminded the members that any discussions that take place in open session are not confidential and if there are any questions to either contact DCA legal or the EO.

FULL 6 – Executive Officer's Report

Ms. Hubble reported that the Governor's Executive Order mandating staff furloughs had ended. For the past seven months DHCC was understaffed and had difficulty filling vacant positions due to the Governor's hiring freeze. She acknowledged that the two remaining full time staff worked extremely hard and long hours to ensure that DHCC programs continued to function. She reported that in March 2011, hiring freeze exemption requests were submitted to DCA; however, no status updates were provided and when the Department of Finance

(DOF) received them, the hiring freeze was lifted. She stated that after Nicole Johnston formally resigned in November 2011, DHCC advertised to fill the vacant receptionist and examination analyst positions. She described DCA's hiring process including the required use of the department's surplus personnel list prior to other hiring strategies in order to fill its vacancies.

Ms. Hubble reported that back in July 2011, she participated in a position description questionnaire that was required by DCA in order to assess all of the EO positions. She stated that the purpose of the questionnaire was to reclassify the EO positions and adjust the salaries accordingly since they have not had an adjustment for many years. She reported that in lieu of the current state budget environment, DCA will not approve any EO salary adjustments at this time.

Ms. Hubble reported that as of July 2011, she has served the state for 25 years (16 years with the Dental Board and nine years with Dental Auxiliaries) and enjoys her position and the people she works with.

Ms. Hubble reported that the BreEZe project is continuing to progress to replace the current antiquated computer systems throughout DCA and indicated that Mr. Jurach will be working with the BreEZe team at DCA a few days a week to assist with the transition process for DHCC.

Ms. Hubble reported that there will be new legislation created to mandate boards and bureaus to suspend an individual's license that appears on the Franchise Tax Board or the Board of Equalization's list of the top 500 individuals that are delinquent with their taxes. She stated that the information has been posted on DHCC's website and will be dealt with in the same manner as family support issues. DCA will address these issues with the licensees affected by the new legislation. She indicated that she is unaware of any DHCC licensees being affected by this issue.

Ms. Hubble updated DHCC on the status of the retroactive fingerprint program. She stated that Mr. Jurach established the parameters of the program and as of July 1, 2011, the program went into effect. She continued that Mr. Jurach mailed thousands of notices to licensees that do not have electronic fingerprint clearances. Referring to the information in the meeting packet, she indicated that Mr. Jurach mails approximately 2,500 notices each quarter, which generates a substantial workload with phone calls, letters, and email inquiries.

Ms. Hubble highlighted the accomplishments of DHCC's President, Ms. Lee, and stated that she served under four Governors, is the first RDHEF licensed (license number one), served as the RDHEF subcommittee chair for the Committee on Dental Auxiliaries from 1993 – 2003, and from 2005 – 2009, was the Extended Functions (EF) exam coordinator where she was responsible for the calibration process, continued examination development, and maintained examiner statistics for the EF category. Ms. Lee also served as DHCC President from 2009 – 2011 and contributed in many other ways for a total of 16 years of state service. In appreciation for Ms. Lee's service, she (Ms. Hubble) presented Ms. Lee with a plaque stating:

Rhona Lee, RDH, RDHEF
In recognition and sincere appreciation of your dedicated service and
leadership as the first President of the Dental Hygiene Committee of California
December 2009 – December 2011

(An inscribed photo of all the current DHCC members was also presented to Ms. Lee)

FULL 7 – Budget Report

Mr. Lum reviewed DHCC's latest budget projections for fiscal year (FY) 2011-12 and explained the budget projection spreadsheet to provide an understanding of how DHCC's budget is monitored annually. He stated that projections are completed monthly to anticipate the amount of program expenditures for the remainder of the year. He indicated that the annual budget for the next FY is created by January 10th of each year at the release of the Governor's budget and changes in expenditures for specific line items can change by the time the new FY begins in July.

Ms. Lee inquired as to what a healthy reserve percentage is for the budget. Mr. Lum stated that maintaining the remaining percent of the budget in double digits (i.e., at least 10 percent) keeps the budget at a healthy level. He explained that DHCC is authorized for \$1.3 million in expenditures in FY 2011-12, so having roughly \$130,000 remaining at the end of the fiscal year for any unexpected expenditures is safe.

Ms. Hurlbutt inquired whether there would be any expenses from the BreEZe project this FY and where would it be charged to DHCC. Mr. Lum indicated that he does anticipate expenses for the BreEZe project this year and the cost could be charged to a couple of line items like Consultation and Professional Services Internal or DHCC's Pro Rata (Departmental Services). Ms. Hurlbutt asked whether the BreEZe costs were included in the projections. Mr. Lum stated that he did not incorporate the BreEZe cost within the current projections because DHCC only has preliminary cost numbers available and did not want to report inaccurate expenditures. He continued that once DHCC is informed of the cost for the BreEZe project, he will include those figures into the budget projections and inform the members. He explained that there is a formula DCA utilized to calculate the cost of BreEZe per program, but he was not included in those discussions. He stated that formulas for projects in the past have been based upon the number of licensees a program has, but is not sure that this methodology was used for BreEZe.

Mr. Wong inquired as to the amount of printing and postage cost savings DHCC is experiencing by changing all of the meeting packets to an electronic format, as he did not identify any cost savings for those line items on the projection sheet. Mr. Lum stated that there could be a couple of reasons that there is no cost savings identified for these line items. He indicated that one could be that there are new costs that DHCC had incurred or will incur on the line items that simply divert the savings to other expenditures like an upcoming 30,000 envelope order for Employment Development Department to send out licenses. He continued

that he also occasionally over-projects for certain frequently used line items (i.e., printing and postage) in order to accommodate for any possible unexpected expenses which result in the line item balance being in the “red (negative balance).” He emphasized that there can be multiple line items in the “red” but so long as the total budget remains in the “black (positive balance)” is what is significant.

Ms. Hurlbutt inquired as to why DHCC cannot purchase certain items (i.e., iPads) if it wants them. Mr. Lum indicated that there is a process in order to purchase state-of-the-art equipment such as the iPad; however, if DCA’s Office of Information Systems does not support or approve the purchase, it is difficult to obtain such items. Ms. Hubble understood Ms. Hurlbutt’s position; however, she explained that there are proper procedures all programs must go through and utilize for procurement in order to obtain purchases.

Ms. Chen Fujisawa inquired whether there was any information about DHCC revenue. Mr. Lum indicated that revenue projections and the amount received to date are shown in the same report (CALSTARS) as the expenditures and that for the next meeting he would create a revenue spreadsheet to go along with the expenditure projection report. He reported that for the first quarter, the revenue received is the amount that was projected for a part of the year.

Mr. Calero stated that he understood that all boards and bureaus under DCA are required to maintain a fund reserve and inquired as to whether DHCC had a reserve, if the reserve is reflected in the projection sheet, and whether the 20 percent or above that was referred to earlier in the report is a separate reserve. Mr. Lum stated that the reserve DHCC is required to maintain is a separate reserve and is indicated on the fund condition, not the projection sheet. He indicated that the reason he did not present the fund condition for the budget update is because the numbers for the BreEZe project are not final and he did not want to report inaccurate information and then have to revise and redistribute the fund condition to the members. He explained that the DHCC fund can be considered its savings account, while the expenditure projection sheet can be considered the checkbook. He indicated that the fund maintains all of DHCC’s reserve funding; however, DHCC cannot spend any of it because there is no expenditure authority to spend it and DHCC would need a BCP in order to increase its expenditure authority. He stated that the fund condition will be presented at the next DHCC meeting.

Ms. DeLaRoi inquired as to whether there could be a tracking mechanism to show how WREB has or will affect DHCC’s revenue. Mr. Lum indicated that he would need to research the issue and bring it back for DHCC to review at its next meeting.

Ms. Lee asked for any public comment. There was no public comment.

FULL 8 – Strategic Plan – Informational Only

Ms. Lee stated that the Strategic Plan (Plan) is a working document that was developed in 2010 by all of the members, sans one member (Mr. Langstaff), but in the future, the Plan will reflect all of the current members. She stated that

Ms. Hubble will utilize the Plan document as a standing agenda item for each meeting to show the progress that is being made on the Strategic Plan.

Mr. Lum reviewed DHCC's Strategic Plan and indicated that many of the objectives had been completed, but due to limited staff, budget reductions, and other issues, many of the remaining objectives are pending until staff vacancies can be filled to address the increased workload. In review of the first goal, Legislation and Regulations, he stated that regulations take over a year to implement and the Plan review sheet indicated the phase of each regulatory proposal. For goal number two, Licensing and Examinations, he indicated that a couple of the objectives were completed and the rest appeared to be ongoing issues. Under goal number three, Outreach and Communication, he indicated that once again, some of the objectives were completed, but many of them are ongoing objectives and until additional staff resources are available, some objectives will be pending. For goal number four, Organizational Development, he stated that the objectives are ongoing until staff resources are obtained.

Mr. Lum inquired about objective 4(C) on DHCC exploring alternative funding sources. He stated that he did not understand this objective and where DHCC was looking for funding. Ms. Lee stated that the concept of additional revenue sources was tied to various venues such as the processing fees for continuing education, initial and renewal approval permits for RDH programs, and other sources that are currently not identified, but DHCC could accept.

Mr. Lum proceeded to review goal number five, Enforcement, where he indicated that most of the objectives had been completed and a couple of them were ongoing. He continued onto goal number six, Access to Care, where he identified that most of the objectives were ongoing and that staff would work on them once staffing resources became available.

Mr. Lum inquired as to whether the Strategic Plan timeline could be extended in order for staff to complete more of the objectives when resources became available. Ms. Yazigi indicated that such a request is a substantive change and needs to be agendaized for a meeting in order for DHCC to consider the recommendation. Ms. Hubble stated that the issue could be brought back to the next DHCC meeting to consider the staff recommendation.

Ms. Lee asked for any public comment.

Ms. Galliano indicated that within DHCC's Strategic Plan, there are no specific completion dates for the objectives to ensure adequate follow-through or to make sure performance goals are met. She suggested including specific dates to meet objective goals (even if they need to be modified to a later date) when DHCC next discussed its Strategic Plan.

FULL 9 – Update on the Office of Statewide Health Planning and Development (OSHDP) Health Workforce Pilot Project (HWPP#172)

Ms. Hubble indicated that DHCC supported this program at its September 2010 meeting. She stated that OSHPD sent an invitation to DHCC to have a representative serve on the site evaluation committee and Ms. Hurlbutt was

appointed by DHCC President, Ms. Lee. She stated that Ms. Hurlbutt attended the first meeting in November 2011 (as well as Mr. Langstaff as a private dentist) and requested her to provide an update to DHCC.

Ms. Hurlbutt indicated that she attended the first evaluation in November 2011 as part of an evaluation team. She stated that the program currently consists of seven sites of operation and that they visited one site which was Twin Rivers Elementary School in Sacramento and interviewed other participants in the project. She stated that the project had evolved to cover two areas to be evaluated which are: 1) the ability of the participants (i.e., one RDA, multiple RDHs and RDHAPs) to choose the correct projection for a dental X-ray or dental radiograph; and 2) the ability of the allied health professional to apply an interim restoration utilizing a specific technique that they have been trained to use. She stated that these were the two goals to review at an evaluation site for the project and the program will take at least two to three more years to complete.

FULL 11 – Proposed DHCC 2012 Meeting Calendar

Ms. Hubble stated that there are two proposed dates for the 2012 meetings – one in April (April 16-17, 2012) and one in December (December 2-4, 2012) for DHCC's consideration.

- **William Langstaff moved to approve the two 2012 Committee Meeting Dates for April and December.**

Miriam DeLaRoi seconded the motion.

Ms. Hurlbutt stated that she was concerned that the length of time between DHCC meetings is too great and suggested to move the meeting earlier to November 2012 after the last examination cycle or in the fall rather than December 2012. Ms. Di Francesco commented that DHCC already discussed manipulating the meeting dates last year due to events that are already scheduled or other conflicts, which was the reason why December was recommended.

Mr. Wong suggested incorporating teleconferencing as an option for the meetings from various sites throughout the state. He indicated that there could be two sites, one in Northern California and one in Southern California for convenient access.

Ms. Lee asked for any public comment. There was no public comment.

Ms. Lee called for the vote to accept the proposed meeting dates and locations.

The motion passed 8-0.

FULL 12 – Regulations Update, Review and Action as Necessary

Mr. Calero indicated that DHCC would address three proposed regulations, but started with the disciplinary guidelines and uniform standards of substance abuse (Agenda Item 12-A). He referred to Traci Napper for an update on the issue.

Ms. Napper stated that at the April 2011 meeting, DHCC directed staff to collaborate with Mr. Calero and DCA legal counsel to prepare the non-substantive changes to the disciplinary guidelines. She reported that the changes to the guidelines have been completed and are ready for a 15-day notice for public comment; however, she indicated that there may be some minor grammatical revisions needed prior to the comment period.

- **Alex Calero moved to direct DHCC staff to include language with regard to the additional terms of a physical examination, clinical diagnostic evaluation, and the worksite monitor contained in the disciplinary guidelines be amended to include the prohibition language prohibiting a familial, financial, and personal or business relationship between the two parties (i.e., physician, evaluator, or monitor and the probationer).**

Miriam DeLaRoi seconded the motion.

Mr. Calero stated that the current documents are a compilation of two separate documents. He stated that there are the disciplinary guidelines that apply to all of the disciplinary cases and there are the uniform standards that deal with substance abuse. He indicated that there are situations where only the disciplinary guidelines would apply to the discipline of a licensee and the uniform standards would not apply. He stated that the uniform standards discuss worksite monitors as well as clinical diagnostic evaluators for probationers. He continued that within the uniform standards, the prohibition (i.e., probationer not having a current or prior familial, financial, or personal relationship with overseers) that he would like to incorporate into the disciplinary guidelines already exists. He explained that his motion would add the prohibition that exists within the uniform standards to the disciplinary guidelines. He added that his motion would also add the prohibition to the physician responsible to administer the probationer a physical exam. He stated that the purpose for the prohibition is so the physician, clinical diagnostic evaluator, or worksite monitor is unbiased by any pre-existing relationship between the individuals.

Ms. Hurlbutt inquired as to whether the prohibition motion is for the probationer not to have a relationship with the physician, evaluator, or monitor or whether the physician, evaluator, or monitor cannot have a relationship with the probationer, which is how the current language in the uniform standard reads. Mr. Calero stated that his motion is meant to direct staff to apply the existing prohibition language within the uniform standards to the disciplinary guidelines and to add in the prohibition for the physician that is required to provide the physical exam for the probationer.

Ms. Lee asked for any public comment.

Ms. Galliano inquired as to how personal relationship is defined for this purpose as her concern is that for the requirement, she, or any probationer, would not be able to utilize their own personal physician and have to go to another physician for the physical examination. Mr. Calero stated that with regard to any of the third parties that may be involved in the probation process, the probationer is required to submit the third party's name to DHCC and staff will determine whether to accept the individual to provide the services needed. Ms. Hubble opined that a

personal relationship is one that is outside of the professional relationship and Ms. Yazigi (DCA legal counsel) concurred.

Ms. Lee called for the vote to approve Mr. Calero's motion.

The motion passed 8-0.

Mr. Calero indicated that in regard to the disciplinary guidelines, any non-substantive changes by DHCC can be forwarded to staff for changes as they do not affect the purpose or intent of the proposed disciplinary guidelines. He stated that after all of the changes are made, staff will notice the changes for a 15-day public comment period.

Public comment - Mr. Lewis, CDA, inquired as to what the Dental Board of California's position is on the uniform standards as they and DHCC are working to appropriately implement the standards. He stated that at the last DHCC meeting, there was a discussion about this issue of DHCC's discretion in disciplinary matters to deviate from the uniform guidelines. He recalled that DHCC took the action at the request of DCA to delete the language in question (on page four) and it appears after a review of the meeting materials that the language is still present. Mr. Calero asked what specific language Mr. Lewis was referring to in his statement. Mr. Lewis stated that the language that the Dental Board was dealing with was a sentence in the middle of the paragraph where it states, "...deviation from the disciplinary guidelines according to the standard is appropriate where the Committee has sole discretion and determines that the facts and figures of the case warrants such a deviation." He stated that the Dental Board has spent a lot of time with DCA, DCA legal counsel, and the Senate Business, Professions and Economic Development Committee (B&P Committee) staff to obtain insight on this issue. He indicated that prior to the Dental Board's November 2011 meeting, the B&P Committee sought a legislative counsel opinion on the issue of discretion and it determined two issues. He stated that the issues presented from the opinion indicated that boards or committees should not have discretion to deviate from the uniform guidelines, but it also suggested from the same opinion that the substance abuse committee that developed the uniform standards should first develop its own regulations. He continued that this opinion raised issue with the Dental Board causing them to postpone the progression of their regulations pending additional consultation with staff and DCA. He stated that he brought the issue to DHCC's attention to make them aware of the Dental Board's position.

Mr. Calero clarified that DHCC has two separate documents – the uniform standards relating to substance abuse and the disciplinary guidelines. He stated that DHCC can deviate from the disciplinary guidelines; however, he believed that there is no language in the current draft that allows DHCC to deviate from the uniform standards.

Ms. Lee stated that after Mr. Lewis quoted from California Code of Regulations (CCR), section 1138, the following sentence states, "...however, neither the Committee nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the uniform standards related to substance abuse." She stated that this sentence does not provide DHCC with any form of discretion whether or not to impose the uniform standards. She reiterated what

Mr. Calero stated in that when it comes to the uniform standards, they automatically apply. She continued that there is a subsequent sentence that states, "The disciplinary guidelines apply to all disciplinary matters. The uniform standards describe the consequences that apply to a substance abusing licensee." She added that if there is a substance abusing licensee, the uniform standards apply.

Ms. Hurlbutt inquired that if the B&P Committee legal counsel has issued a legal opinion, is DHCC bound to follow the opinion or can DHCC choose in good faith to continue forward. Ms. Yazigi stated that DHCC is not bound by the B&P Committee legal counsel's opinion and, similar to DCA counsel's opinions, they are advisory. She stated that DHCC is the decision-making body and DCA legal is present to offer advisory legal opinions.

Ms. Yazigi stated that her advice would depend upon what stage each board or committee is at in the rulemaking process regarding the uniform standards. She indicated that DHCC has probably discussed the issue numerous times and spent hours of work time and resources to produce a product that has been edited, revised, and is in its final form to proceed with the rulemaking process. She stated that it would be DHCC's decision to move forward and with staff ready to issue a 15-day notice, the process is closer to being complete. She continued that if in the future, the Substance Abuse Committee (SAC) created regulations, DHCC could then propose "clean-up" language after comparing DHCC's uniform standard regulations with SAC's uniform standard regulations to find inconsistencies and revise DHCC's regulations accordingly.

Ms. Hubble indicated that staff's recommendation is to move forward with the uniform standard regulations because currently, DHCC does not have any disciplinary guidelines in place.

Ms. Lee asked for any further public comment. There was no additional public comment, so DHCC moved on to Agenda Item 12-B (Cite and Fine – Sections 1139 – 1144, Title 16, of the CCR).

Ms. Napper stated that at the April 2011 meeting, DHCC directed staff to take all of the necessary steps to complete the rulemaking process for citation and fine of licensees. She indicated that all of the changes have been made to the documents within the rulemaking file and that it is currently under review at DCA legal. She stated that once DCA legal approves the rulemaking file, she will forward it over to the Office of Administrative Law (OAL) for their review.

Ms. Lee asked if there were any public comment. There was no public comment, so DHCC moved on to Agenda Item 12-C (Sponsored Free Healthcare Clinics – Sections 1149 – 1153, Title 16, of the CCR).

Ms. Napper stated that at the April 2011 meeting, DHCC directed staff to move forward with the necessary regulatory procedures for sponsored free healthcare clinics. She provided an update and stated that the rulemaking file has been completed and forwarded to OAL for their review and the 45-day notice of hearing for public comment is set for January 6, 2012.

Ms. Lee asked for any public comment. There was no public comment.

FULL 13 – Statutory Update, Review, and Action as Necessary

Ms. Napper stated that at the April 2011 meeting, staff provided an update on DHCC's "clean up language." She reported that DCA had submitted some legislative language in response to Senate Bill 943, which was the DCA Omnibus legislation and for SB 540, which was the Dental Board's sunset legislation. She indicated that there is a chart of DHCC accomplishments to date, and issues that DHCC will need to pursue legislation for in the meeting packet. She explained that the chart is a snapshot of what DHCC has accomplished, contains the language that will go into effect as of January 1, 2012 from the Omnibus bill (SB 943), and indicates the language to be utilized once an author is found for the proposed DHCC legislation.

Ms. Lee asked for any public comment.

Ms. Galliano stated that CDHA believes that DHCC should have the necessary statutory authority required to move forward to be a functioning committee. She indicated that the CDHA board of trustees approved to move forward with language to approve the statutory changes detailed in the meeting packet that DHCC has already approved. She stated that CDHA is pursuing an author for the statutory changes that DHCC has already approved and plans on obtaining an author and introducing a bill in January 2012. She stated that once the bill is introduced, CDHA will approach DHCC to request its support of the legislation.

Ms. Lee thanked Ms. Galliano for all of her work efforts and involvement in helping DHCC.

Ms. Lee asked for any further public comment. There was no further public comment.

FULL 14 – Committee Member Administrative Procedure Manual – Review and Update as Necessary

Ms. Lee stated that the proposed highlighted changes include: 1) the addition of a table of contents; 2) edits in chapter two reflective of statutory changes regarding member composition discussed in the prior agenda by Ms. Napper; 3) edits in chapter two reflective of the ethical presentation regarding general rules of conduct by Ms. Yazigi; and 4) edits in chapter three regarding presidential appointments. She explained that the proposed changes were a result of legislation, DCA and DHCC's policy and procedures.

- **Cathy Di Francesco moved to approve the proposed changes in the Committee Member Administrative Procedure Manual as presented.**

Rita Chen Fujisawa seconded the motion.

Ms. Hurlbutt requested that if the manual is created in an electronic format, that there be bookmarks inserted throughout the manual, or preferably links set up in the table of contents for easier navigation.

Ms. Lee asked for any public comment. There was no public comment.

Ms. Lee called for the vote to approve the proposed changes in the Committee Member Administrative Procedure Manual as presented.

The motion passed 8-0.

FULL 15 – Enforcement Subcommittee Report

Mr. Calero stated that the Enforcement Subcommittee met the day before the full meeting where they approved the prior meeting minutes and reviewed the agenda items. He reported that although staff made the proposed revisions to the DHCC complaint form, updating is ongoing. Currently, DHCC is utilizing a standard DCA form. When the updated form is implemented, it will ease the transition to BreEZe. He indicated that staff is working to revise the complaint and disciplinary process information on the complaint forms so it is more user friendly. He reported that the subcommittee received a presentation from staff in regard to the enforcement statistics and performance measures that are reported to DCA and indicated that DHCC is well within DCA's performance measure goals for this issue. He stated that although understaffed, enforcement staff has been doing a great job as shown by the enforcement statistics.

- **Alex Calero moved to submit the Enforcement Subcommittee report to DHCC for approval.**

Cathy Di Francesco seconded the motion.

Ms. Lee asked for any public comment. There was no public comment.

Ms. Lee called for the vote to approve the Enforcement Subcommittee Report.

The motion passed 8-0.

FULL 16 – Legislation and Regulation Subcommittee Report

Mr. Calero indicated that the subcommittee met the day prior to the full meeting and approved the prior meeting's minutes. In his chairperson's report he stated that by statute DHCC is required to submit a report, outlining statistics regarding the licensure by credential program, by January 1st, 2012 to the Legislature and other stakeholders. He stated that staff is preparing the report and plans to submit it at the April 2012 meeting to the Legislative and Regulatory subcommittee. He reported the subcommittee reviewed the tentative legislative and regulatory calendars in order to effectively monitor dates and deadlines regarding the legislative and regulatory processes. Also, he stated that staff prepared a report on legislation monitored by DHCC in 2011 during the Legislative session. He reported one item requiring DHCC's approval and requested adopting the subcommittee's recommendation to update the rulemaking process for DHCC.

Mr. Calero stated that the subcommittee reviewed a number of proposed regulations, articles one through twelve, which are DHCC regulation proposals, and due to the size of the proposals and the lengthy regulatory process, the subcommittee recommended separating the articles into three phases. He stated that the timeline to complete the regulations for phases one and two would be by the end of 2012 and the third phase would address regulations that DHCC currently does not have statutory authority to implement. He indicated that under the recommendation of the subcommittee, staff was directed to divide the articles into three phases and to authorize staff to begin the regulatory process for phases one and two. He stated that the subcommittee submits this recommendation along with his report for the full committee's approval.

Ms. Lee indicated that DHCC will consider the subcommittee's recommendation in parts.

- **Alex Calero moved for DHCC to accept the Legislation and Regulation Subcommittee report.**

William Langstaff seconded the motion.

Michelle Hurlbutt amended the motion to accept the report inclusive of the Legislation and Regulation Subcommittee's recommendations. Mr. Calero accepted Ms. Hurlbutt's amended motion.

William Langstaff seconded the amended motion.

Ms. Lee clarified the motion to accept the Legislation and Regulation Subcommittee report and to accept the adoption of the three regulatory phases with staff in charge of the phases.

Mr. Wong requested clarification on the subcommittee's recommendation that the regulatory phase portion of the recommendation is to charge staff to help develop the process to deal with the additional regulations. Mr. Calero stated that the recommendation is technically two parts where the regulations are separated into the three phases and then actually begin the regulatory process for those regulations categorized in phases one and two.

Ms. Lee asked for any public comment. There was no public comment.

Ms. Lee called for the vote to accept Mr. Calero's report inclusive of the Legislation and Regulation Subcommittee's recommendation.

The motion passed 8-0.

FULL 17 – Licensing and Examination Subcommittee Report

Ms. Hurlbutt reported that the subcommittee met the day before the full meeting and approved the prior meeting's minutes. She commended DHCC examination staff on their efforts for the clinical examination and licensing. She reported that the subcommittee was informed that due to budget restrictions and staff time

constraints, the task force to develop the alternative pathways to licensure had not been appointed.

Ms. Hurlbutt stated that the subcommittee reviewed the clinical and written examination statistics and the licensure statistics and the clinical statistics reflect a pass rate of 86% and a failure rate of 14%.

Ms. Hurlbutt indicated that the subcommittee went into closed session to evaluate examiner performance, orientation, calibration validation, and the licensing exam. The subcommittee recommended advancing the five in-training clinical examiners to full examiner status and requested staff to send congratulatory letters to those individuals.

Ms. Hurlbutt stated that upon the return to open session, the subcommittee discussed appointment of examination personnel and that the subcommittee requested DHCC appoint Kerri Brumbaugh, RDH, as Chief Examiner, and PJ Attebery, RDH, as Assistant Chief Examiner for 2012.

Ms. Hurlbutt reported that the subcommittee had additional recommendations for DHCC to consider, including: 1) send a letter to current eligible clinical examination recorders to invite participation in the examiner-in-training program; 2) request staff to solicit new clinical examination recorders by placing information on DHCC's website; 3) contact CDHA to request advertising space in their publications and website to solicit new clinical examination recorders; 4) establish a permanent chief examiner position by 2013; and 5) appoint an interview panel comprised of an educator, a past chief examiner, and the exam statistician to review the applications and conduct the interviews; and 6) accept the document regarding the duties of the clinical chief examiner in concept, allowing for editorial changes by the interview panel and the EO.

Ms. Hurlbutt stated that the subcommittee reviewed the current exam candidate guide (examination information) and directed staff to make revisions that are acceptable to the subcommittee and post the 2012 examination information on the DHCC website.

- **Michelle Hurlbutt moved for DHCC to accept the Licensing and Examination Subcommittee's report and all of its recommendations.**

Alex Calero seconded the motion.

Ms. Lee asked for any public comment. There was no public comment.

Ms. Lee called the vote to accept the Licensing and Examination Subcommittee's report and all of its recommendations.

Motion passed 8-0.

FULL 18 – Education and Outreach Subcommittee Report

Ms. Chen Fujisawa stated that the subcommittee met the day before the full meeting (Monday, December 12, 2011) and staff provided reports and updates

regarding DHCC's website statistics as well as outreach events. She indicated that due to the current travel restrictions, DHCC was unable to participate in many of the outreach events planned for 2011. She reported that there are no additional recommendations or action to be submitted by the Education and Outreach Subcommittee.

- **Rita Chen Fujisawa moved for DHCC to accept the Education and Outreach Subcommittee's report.**

William Langstaff seconded the motion.

Ms. Lee asked for any public comment.

Ellen Stanley noted that on the DHCC outreach calendar, the Dental Hygiene Educators' Association Meeting is indicated for February 3-4, 2012; however, she indicated that the meeting is actually the following weekend (February 10-12, 2012).

Ms. Lee asked for any further public comment. There was no further public comment.

Ms. Lee called the vote for DHCC to accept the Education and Outreach Subcommittee's report.

Motion passed 8-0.

***FULL 10 – Annual Election of Officers**

- **Rita Chen Fujisawa moved to approve the following proposed slate of officers:**

President: Alex Calero, Public Member
Vice President: William Langstaff, DDS
Secretary: Cathy Di Francesco, RDH

Andrew Wong seconded the motion.

Ms. Lee asked for any other nominations. There were none.

Ms. Lee asked for any public comment.

Ms. Galliano voiced that she was opposed to the nomination of William Langstaff, DDS for Vice President because he is a new member and has minimal experience with DHCC. She stated that she would like someone with more experience to take the Vice President position since that individual would take over the President's duties if the current President was incapable of carrying out the duties. She requested to have a member with more experience with DHCC take the Vice President position.

Ms. Lee asked for any further public comment. There was no further public comment.

Ms. Lee called for the vote to approve the proposed slate of officers.

Motion passed 8-0.

FULL 19 – Closed Session – Evaluate the Performance of the DHCC Executive Officer

The Committee went into closed session to discuss the performance of the DHCC EO. The Committee approved the performance of the EO and elected to continue Ms. Hubble as the EO. As decided by the Committee, Ms. Lee met with Ms. Hubble immediately following the meeting to review her evaluation.

FULL 20 – Open Session Resumed & Adjournment

Ms. Lee asked if there was any further public comment. There was no further public comment.

The meeting adjourned at 1:19 p.m.

**Agenda items taken out of sequence at the request of the DHCC President and to accommodate presentation by DCA legal counsel.*