



DENTAL HYGIENE JULY 2012 TELECONFERENCE MEETING MINUTES

**Silverwood Lake Room
2005 Evergreen Street, 1st Floor
Sacramento, CA 95815
Monday, July 9, 2012**

ITEM 1 – Roll Call – Establishment of a Quorum

The Dental Hygiene Committee of California (Committee) President Alex Calero called the meeting to order with roll call at 12:10 p.m. He asked Cathi Di Francesco, Committee Secretary, to take the roll to establish a quorum. With five committee members present via teleconference, a quorum was established.

Committee members present: Alex Calero, Public Member, Cathy Di Francesco, RDH, William Langstaff, DDS, Evangeline Ward, RDH, and Andrew Wong, Public Member.

Committee members absent: Rita Fujisawa, Public Member, Michelle Hurlbutt, RDH Educator

Staff present: Lori Hubble, Executive Officer (EO), Anthony Lum, Administration Analyst, and Donna Kantner, Legislation and Regulatory Subject Matter Expert.

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

Public present: Sarah Wallace, Legislation and Regulatory Analyst, Dental Board of California.

President's Comments - Committee President Alex Calero welcomed all of the participants to the teleconference meeting and requested that when each party speaks to identify themselves so that the other participants know who is making the comment.

ITEM 2 – Public Comment for Items Not on the Agenda

Mr. Calero asked whether there was any public participants and comment at each of the teleconference sites. There was no public comment.

ITEM 3 – Discussion and Possible Action Regarding:

(A) Comments Received During the 15-Day Public Comment Period for the Committee's Proposed Rulemaking File to Add Title 16, Division 11 of the California Code of Regulations (CCR), § 1149 et. seq Relating to Sponsored Free Health Care Events;

**(B) Adoption of Proposed Changes to Title 16, Division 11, CCR, § 1139 et. seq
Relating to Sponsored Free Health Care Events.**

Mr. Calero stated that Traci Napper, who normally processes the regulatory packages, has been out on leave from the office and in her absence; Lori Hubble recruited the services of Donna Kantner to oversee the process. He indicated that Ms. Kantner has extensive knowledge in the regulatory process after years of working in this program area for the Dental Board and the Committee on Dental Auxiliaries. He deferred to Ms. Kantner for an update on the agenda item.

Ms. Kantner stated that at its last meeting, the Committee adopted the modifications to the proposed regulatory text due to concerns from the Office of Administrative Law (OAL) regarding other boards' regulations on this subject which were communicated through DCA to all boards currently pursuing regulations regarding sponsored free healthcare events in response to new statutory requirements. She stated that the Committee adopted a resolution to delegate authority to DCA to receive and process sponsored entity registration forms for events and adopted modified language with amendments. She continued that the language and the forms were noticed for a 15-day public comment period where the public had the opportunity to comment on the language and forms.

Ms. Kantner stated that during the 15-day comment period, DHCC did receive an adverse comment from the DCA's Legislative and Policy Review and Legal Offices expressing concerns that the proposed regulatory language contained a fee that did not reflect the actual cost to process the application. She indicated that the proposed application listed a fee that was \$31.08 less than the actual projected cost to process the application.

Ms. Kantner stated that the second comment from the DCA Legal Office pertained to the "Request for Authorization to Practice without a License at a Registered Free Health Care Event," which is the form that a licensee from another state would complete for the event, included a hard-card fingerprint option which is not accepted by the Committee. She explained that hard fingerprint cards are not accepted under CCR Section 1132 as well as the proposed CCR Section 1151 of the regulation package. She stated that the Committee does not accept the hard fingerprint cards due to the lengthy processing time through the Department of Justice and also that there is a high rate of rejection of the fingerprints resulting in additional processing delays.

Ms. Kantner indicated that there are a few modifications made to the regulatory package's text which are:

- 1) In §1150(a), the word "Form" was added, there was a change from "delegatee" to "delegate," and language was added to reference the form;
- 2) In §1150(b), the word "Form" was added, the word "delegate" changed to "delegatee," and there is an additional quotation mark at the end of the title of the form.
- 3) In §1151(a), the amount of the processing fee was changed from \$55.00 to \$86.00 and the origination date (4/2012) of the form was added.

Ms. Kantner stated that the remaining changes to the regulatory language were completed on the document in the meeting materials packet titled "Request for Authorization to Practice Without a License at a Registered Free Health Care Event."

She explained that there are a number of changes to the form that are in red color to mainly delete any reference to the allowance of a hard fingerprint card option because only electronic fingerprinting (livescan) is accepted.

Mr. Calero asked whether there was any further clarification from staff on the agenda item. There was no further clarification on the agenda item.

Mr. Calero inquired as to the actions that staff is requesting the Committee to complete for the agenda item. Ms. Kantner indicated that there is a proposed request for the Committee to approve the modified regulatory language and form with amendments and direct staff to take all necessary steps to complete the rulemaking process including the preparation of the modified text and form for a 15-day comment period which must be done by law, and includes the amendments accepted by the Committee at this meeting. She stated that if no adverse comments are received during the 15-day comment period, to authorize the EO to make any non-substantive changes to the proposed regulations before completing the rulemaking process and adopt the proposed amendments to CCR, Title 16, Sections 1149 – 1153.

Mr. Calero asked for any comments from the Committee members. Ms. Di Francesco commented that the regulations would require an out-of-state licensee to come to California to be electronically fingerprinted, go back home, and then return to California all within 90 days of participating in the healthcare event.

Mr. Calero asked for any public comment. There was no public comment.

Claire Yazigi clarified that normally, she would not have waited until the 15-day comment period to voice her concerns with the Committee's regulation package. She stated that the usual process is for her to review the regulation package prior to noticing it for a comment period. She continued that in this situation with receiving an adverse comment from the DCA Legislative and Policy Review Office in regard to the fee, it allowed her an opportunity to review the form more thoroughly and identify its content's inconsistencies. She added that the 15-day notice offered the opportunity for her to suggest a method to rectify the inconsistency in the form.

Ms. Yazigi concurred with Ms. Di Francesco's statement that an out-of-state licensee would need to come to California in order to be livescanned for fingerprints if the licensee chose to participate in one of the healthcare events because of the livescan provision in the Committee's regulations. She stated that the reason out-of-state licensees need to be livescanned is so that they can practice on California consumers at the healthcare events since there is the potential for consumer harm. She added that by allowing out-of-state licensees to submit hard fingerprint cards, it would favor them, as they would not have the requirement or expense of the livescan process for fingerprint clearance that California licensees do.

There was a public comment from Sarah Wallace of the Dental Board of California; however, all comments on this issue were not required for the meeting minutes as they addressed issues with a prior version of the form to Register A Sponsoring Entity. This form was inadvertently included in the meeting materials, but has subsequently been removed and replaced with the proper version of the form. The revised meeting materials have been posted on the Committee's website replacing the prior meeting materials.

Mr. Calero asked whether there were any further comments on the agenda item from the public or the Committee. There were no further comments.

Mr. Calero asked for a motion to proceed with the staff's requested action as outlined in the meeting materials (Approve modified regulatory language and form with amendments and direct staff to take all necessary steps to complete the rulemaking process including preparing the modified text and form for a 15-day comment period which includes the amendments accepted by the committee at this meeting. If no adverse comments are received during the 15-day comment period, authorize the EO to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to California Code of Regulations, Title 16 Sections 1149 – 1153).

- **William Langstaff moved to approve the modified regulatory language and form with amendments, direct staff to complete the rulemaking process, and direct the Executive Officer to make any non-substantive changes to the proposed regulations in lieu of any adverse comments received.**

Cathy DiFrancesco seconded the motion.

Mr. Calero asked if there were any questions or comments from the public or the Committee members. There were no questions.

Ms. Yazigi instructed that because the vote is being conducted by teleconference, it should be done by roll call.

Vote: 5 - 0 to approve the motion passed via roll call of all participating members.

ITEM 4 – Discussion and Possible Action to Adopt Modifications to Proposed Amendments to Title 16, Division 11, CCR, § 1139 et. seq Relating to Citations and Fines Subsequent to the Disapproval of the Regulatory File by the Office of Administrative Law.

Mr. Calero deferred to Ms. Kantner for an overview of the agenda item.

Ms. Kantner stated that the cite and fine regulatory package was submitted to OAL on April 20, 2012 and while Ms. Napper was out of the office on leave, the Committee was notified on June 7, 2012 that OAL had the intention of disapproving the regulation package due to concerns relating to the necessity and clarity of the regulations. She reported that Ms. Hubble and Yazigi did contact OAL Senior Staff Counsel who was reviewing the rulemaking package to clarify the issues; however, OAL disapproved the rulemaking package on June 14, 2012. She explained that by law, the Committee has 120 days to address the concerns identified by OAL and resubmit the rulemaking package. She stated that she and Ms. Yazigi have been working on amendments to the text and an addendum to the Initial Statement of Reasons (ISR) that will address OAL's concerns. She indicated that the Committee needs to consider the modifications to the text and if acceptable, adopt the proposed language and direct staff to take all necessary steps to complete the rulemaking. She explained that it will include a 15-day comment period for both the text and the ISR.

Mr. Calero asked for any comments from the public or the Committee members. There were no comments.

Ms. Yazigi stated that all of the changes contained in the meeting materials are as a result of the OAL disapproval decision. She explained that the OAL disapproval was

a multi-page letter where the senior reviewing attorney reviewed the rulemaking package thoroughly and outlined the concerns contained in the regulations. She stated that one clarity concern OAL had in the rulemaking file was the timeline for an informal conference with the EO to occur on a citation versus a formal hearing with an Administrative Law Judge (ALJ). She indicated that these two procedures run on “parallel tracks,” but the OAL reviewer determined that more definitive language was necessary for clarity. She explained that a person who is cited would not need to request a formal hearing prior to requesting an informal conference with the EO since they run on parallel tracks. She stated that all of the corrections that were made to the rulemaking file are detailed in the meeting materials.

Ms. Yazigi indicated that she did make one substantive change to the rulemaking file that she would like to address. She explained that in the prior regulations, the language states that if an individual goes to an informal conference with the EO and the EO affirms the citation so it is not dismissed or modified, the individual would need to return to the Committee and apply for a formal hearing with an ALJ even if they did this prior to the informal conference with the EO. She believed that the original intent of the language was to notify the Committee of a cited person’s intent to pursue a formal hearing with an ALJ even after the informal conference with the EO. She continued that unfortunately, the language caused a clarity issue and took the liberty to modify the language so that the only instance a cited individual would need to reapply for a formal hearing is if the citation was modified in any way. She explained that the new language indicates that if the original citation is modified in any way, it is considered withdrawn and a new citation is issued and the timeline for the citation starts anew. She continued that if the individual wanted a formal hearing, they could request it from the Committee after the new citation is issued. She added that the language she modified helps to resolve the clarity issue.

Mr. Calero asked for a motion to proceed with the staff’s requested action as outlined in the meeting materials (Approve modified regulatory language with amendments and direct staff to take all necessary steps to complete the rulemaking process including preparing the modified text for a 15-day comment period which includes the amendments accepted by the Committee at this meeting. If no adverse comments are received during the 15-day comment period, authorize the EO to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to CCR, Title 16 Sections 1139-1144).

- **Cathy Di Francesco moved to approve the modified regulatory language with amendments, direct staff to complete the rulemaking process, and direct the Executive Officer to make any non-substantive changes to the proposed regulations in lieu of any adverse comments received.**

William Langstaff seconded the motion.

Mr. Calero asked if there were any questions or comments from the public or the Committee members. There were no questions.

Vote: 5 - 0 to approve the motion passed via roll call of all participating members.

ITEM 5 – Adjournment: 12:48 p.m.