



LEGISLATIVE AND REGULATORY SUBCOMMITTEE MEETING MINUTES

Monday, December 3, 2012
Department of Consumer Affairs Headquarters
El Dorado Room
1625 North Market Blvd., Room 220
Sacramento, CA 95834

LEG - 1 Roll Call

The Legislative and Regulatory Subcommittee Chair, Timothy Martinez, called the meeting to order with roll call at 1:45 p.m. With all four subcommittee members present, a quorum was established.

Subcommittee members present:

Michelle Hurlbutt, RDH Educator
Noel Kelsch, RDHAP
Timothy Martinez, DMD
Evangeline Ward, RDH.

Subcommittee members absent:

None.

Staff present:

Lori Hubble, Executive Officer
Nancy Gaytan, Enforcement Analyst
Donna Kantner, Retired Annuitant
Anthony Lum, Administration Analyst
Traci Napper, Program Analyst
Eleonor Steiner, Examination Analyst

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

LEG - 2 Public Comment for Items Not on the Agenda

Chair Martinez asked for any public comment for items not on the agenda.

There was no public comment for items not on the agenda.

LEG - 3 Approval of April 16, 2012 Minutes

Chair Martinez asked for a motion to accept the April 16, 2012 Legislative and Regulatory Subcommittee meeting minutes.

- **Michelle Hurlbutt moved that the Subcommittee accept the April 16, 2012 Legislative and Regulatory Subcommittee meeting minutes as presented.**

Evangeline Ward seconded the motion.

Chair Martinez asked for any comments from the public, staff, and subcommittee members on the April 16, 2012 subcommittee meeting minutes. There were no comments from the public, staff, or subcommittee members.

Chair Martinez called for the vote to accept the April 16, 2012 Legislative and Regulatory Subcommittee meeting minutes as presented.

Vote: The motion passed unanimously (4- 0).

Leg - 4 Chairperson's Report

As Chair Martinez is newly appointed, there was none.

LEG - 5 Statutory Update

Ms. Hubble reported that regulations to implement statutory changes to the law regarding the waiver of renewal fees and continuing education for licensees on active military duty will be considered by the Subcommittee in item LEG 8 later in the agenda.

She reported on statutory changes coming from SB 1575 that require dental hygiene licensees to provide an email address and any address changes must be made within 30 days, clarified the survey requirements that formerly were part of the Dental Board's statutes, and other technical changes.

She reported that SB 1202 utilized an immense amount of staff time and resources to move the bill through the Legislature and thanked CDHA for all of their efforts in sponsoring it. She reported that the bill contained multiple provisions for DHCC that made a number of statutory changes as follows:

- Allows DHCC to issue Special permits for out of state hygienists to teach in California dental hygiene programs either full or part time;
- Clarifies the requirement for all applicants to complete courses in soft tissue curettage, administration of local anesthesia, and administration of nitrous oxygen that are approved by the DHCC;
- Requires that the practice hours for Licensure by Credential applicants must be immediately preceding the application, and allows for the Committee to recognize other clinical dental hygiene examinations;
- Requires registration with the DHCC of mobile clinics operated by Registered Dental Hygienists in Alternative Practice (RDHAPs);
- Requires remedial education for applicants who have failed the clinical examination three times or caused gross trauma during the exam;
- Requires RDHAPs to register their place of practice and any additional office;
- Defines as unprofessional conduct an RDHAP's failure to obtain a prescription within 18 months of the initial visit and provides for penalty;
- Requires registration with DHCC of extramural dental hygiene facilities;

- Requires new dental hygiene educational programs to provide a feasibility study demonstrating the need for a new program prior to seeking approval for initial accreditation; and
- Addresses various fee changes and other technical clean up.

Ms. Hubble noted that regulations will be needed to implement some of these new provisions and staff will be working on drafts.

Member Kelsch stated that there are some RDHAPs who have set up and have been practicing in underserved areas, but those areas are no longer considered underserved. She asked whether the Committee could address this issue.

Ms. Hubble said this would require a future agenda item in order to be discussed.

Ms. Kantner reported on changes to the law according to SB 1099 that will change the effective dates of regulations from 30 days after the date of approval to quarterly, January 1, April 1, July 1 or October 1, of each year subsequent to approval.

Ms. Kantner noted that regulations will take longer to be effective with this new approval schedule.

Chair Martinez asked whether there was any comment from the public or subcommittee members regarding the statutory update. There was none.

LEG - 6 Statutory Language for Inclusion in DCA's Omnibus Bill

Ms. Kantner reported that each year, the Department submits an omnibus bill that contains various technical and noncontroversial changes requested by individual boards. Staff has submitted five proposals hoping to be included in the omnibus bill this session. She reported that staff proposed a technical change to correct the license type listed in Business and Professions Code Section 1915 from "registered dental hygienist in alternative functions" to "registered dental hygienist in alternative practice" stating that there is no such category of licensee and it is a typographical error.

Ms. Kantner reported that another proposed technical change would correct the Sections of statutory law referenced in Business and Professions Code Section 1926.2(b) from "Article 3.5" to "Article 9" and "Section 1658" to "Section 1925" to conform the Code to existing law. She noted these sections are incorrectly referenced because they formerly existed in the sections of law relating to dentists and now are located in the statutes governing dental hygiene licensees.

Ms. Kantner reported that another technical change requested by Mr. Lum, who handles budgeting functions, combines two appropriations for the DHCC budget, one for the main budget and a separate legislative licensing appropriation in the amount of \$264,000, into a single budget act appropriation for easier management.

She reported that a proposed addition to the Code discussed in the Enforcement Subcommittee would allow the Committee to issue a probationary license to a new applicant. Currently, the Committee only has the power to issue applicants a clear and unrestricted license or none at all. At this time, probationary licenses can only be issued to individuals who hold a California dental hygiene license.

She reported that the final proposal would allow an RDH who works in a public health setting to bill and be paid for their services. She noted that currently, only RDHAPs

are allowed by the Welfare and Institutions Code to do so, although Section 1911 of the Business and Professions Code allows a registered dental hygienist working in a public health setting to bill and be paid for services. She noted that this change would conform the Welfare and Institutions Code with existing dental hygiene law.

She stated that staff requests a motion to approve these legislative proposals as presented, or to suggest any changes to the language, as appropriate.

Legal counsel suggested two changes to the text of proposed Section 1917.4 relative to issuance of an initial probationary license presented in the package, the first to eliminate the words “in its sole discretion” and replace with “or its designee” after the word committee in the first line, and to strike all of subsection (d) and replace it with “The terms of a probationary license shall include, but not be limited to the following:”. Ms. Hubble noted that the Enforcement Committee already approved this language as presented. Andrew Wong stated that this Subcommittee’s action can stand on its own and the Enforcement Subcommittee’s action can be discussed in the full Committee meeting tomorrow and the two can be reconciled. Legal counsel agreed.

- **Michelle Hurlbutt moved to amend Section (a) to strike “in its sole discretion” and insert “or its designee” after the word committee and amend Section (d) by striking the section and replacing it with “The terms of a probationary license shall include, but not be limited to”.**

Evangeline Ward seconded the motion.

Chair Martinez asked for the vote.

Vote: The motion to amend the proposed text of Business and Professions Code Section 1917.4 passed unanimously (4-0).

Gail Mathe, representing the California Dental Association (CDA), asked in what circumstance an RDH or an EF working in a public health setting would have a need to bill and whether the public health entity they work for would also be the billing entity. Ms. Hurlbutt noted that when she was formerly employed by the Fontana School District, the District was not a biller, therefore, this would allow her to bill for RDH services. Ms. Mathe asked if the funds would go to her or to the District. Ms. Hurlbutt replied that it would depend on the terms of the contract as to who would receive the funds; either the District or the hygienist if that is how the hygienist is compensated for the work.

- **Michelle Hurlbutt moved to accept staff’s recommendation to approve the text of the legislative proposals as amended.**

Evangeline Ward seconded the motion.

Chair Martinez asked for the vote.

Vote: The motion to accept the proposed text of the legislative proposals as amended passed unanimously (4-0).

LEG - 7

Update on Phase I of the Transfer and Possible Amendment of Dental Hygiene Regulations into Title 16, Division 11, Articles 1-12 of the California Code of Regulations (CCR)

Chair Martinez asked Ms. Kantner to present the agenda item. Ms. Kantner reported that at its December 2011 meeting, the Committee approved staff's recommendation that regulations be pursued in three phases. She reported that many of the regulations used by the Committee are actually Dental Board's regulations. She noted that the regulations listed in Phase can be done in a group, and though arduous, the process will set in place regulations for dental hygienists that mirror existing regulations in the Dental Practice Act. She requested to move items 1129 (Remedial Education), 1133 (Infection Control) and 1146 (Additional Offices) into Phase I now that statutory changes have been passed to give the Committee the ability to pursue these regulations. She further requested that Section 1108 (Requirements for Courses in Soft Tissue Curettage, Administration of Local Anesthesia and Administration of Nitrous Oxide), currently a placeholder, be moved to Phase 2 with Section 1107 regarding approval of these courses.

- **Michelle Hurlbutt moved to accept staff's recommendation to move Sections 1129, 1133 and 1146 to Phase I and to move Section 1108 to Phase 2.**

Evangeline Ward seconded the motion.

Chair Martinez asked for public comment, and as there was none, called for the vote.

Vote: The motion to move Sections 1129, 1133 and 1146 to Phase I and to move Section 1108 to Phase 2 passed unanimously (4-0).

Chair Martinez asked whether there was any public comment for the agenda item. There was no public comment.

LEG - 8

Discussion on Potential Regulations to Implement Business and Professions Code Section 114.3 (AB 1588) Regarding Military Reservist Licensees; Fees and Continuing Education

Chair Martinez asked Legal counsel Claire Yazigi to present this item. Ms. Yazigi reported that this bill adds Section 114.3 to the Business and Professions Code to give something to our service member licensees. If a licensee who is a service member is called to active duty, they are not obligated to pay renewal fees or complete continuing education requirements for the period of active duty.

She reported that certain areas need clarification prior to drafting regulations, such as:

- Should the licensee service member communicate with the Committee every two years (at the time of renewal) or may they elect to be designated as active military and keep that designation until the time of discharge?
- Should the fee and continuing education requirements be pro-rated or waived after discharge, and if so, what would be the criteria?
- What documentation of active service would be acceptable?

There was discussion as to how continuing education requirements could be pro-rated, if the requirements should simply be waived until the next renewal period, how to handle mandatory courses, what other boards do and the intent of the legislation.

Ms. Hurlbutt felt that fees could be waived, but mandatory units must be taken, and asked for examples of what other boards do. Mr. Wong felt that a one-year basis could be used to waive fees and require continuing education to ensure public protection. Ms. Ward felt that waiver of fees is reasonable, but she was not comfortable with waiving the mandatory courses, noting that units are readily available online. Ms. Yazigi said that some boards require documentation of active duty status through a copy of the orders; others simply require an affidavit from the licensee. Mr. Wong felt that a one-time checkbox affirmation of active service is acceptable instead of requiring notice every two years. Ms. Hurlbutt favored a specialized bill be sent to maintain communication with licensees. Ms. Yazigi advised regular communication, as some individuals may be inadvertently dropped out of the system. Mr. Wong believed that some active duty service members on confidential missions should not be burdened or compromised with requirements for contact, especially since there is no risk to the public since they are not able to practice. Ms. Ward noted that renewal notices are automatically sent to licensees' address of record, so there is no breach of confidentiality or need to specify an exact location, and no additional workload is placed on staff.

- **Michelle Hurlbutt requested that staff and legal counsel bring proposed draft language and examples of options used by other boards for the Subcommittee's discussion and consideration at the next meeting.**

Chair Martinez asked whether there was any further discussion from the subcommittee members or any public comment, as no vote is needed. There was no further discussion or public comment.

LEG - 9 California Notice Register Schedule

Chair Martinez asked Ms. Kantner to present this item. Ms. Kantner stated that when any regulatory change is proposed, it must be first noticed to the public, through a Notice of Regulatory Action which begins the 45-day public notice prior to the regulatory hearing. She indicated that every Friday, the Office of Administrative Law publishes the California Notice Register, directing the subcommittee's attention to the schedule in the packet for 2013, which provides the deadlines for submission and publication dates. She noted that this item is informational only.

Chair Martinez asked for any comment from the members or the public. There was no comment from the members or the public.

***LEG - 10 Future Agenda Items**

Chair Martinez asked if there were any future agenda items. Ms. Yazigi noted that a bill was recently passed requiring an expedited process for applicants who are spouses of military personnel. If the spouse is stationed in California, these individuals will be working in California on a long-term temporary basis and need a mechanism to do so, suggesting a future item.

Ms. Yazigi noted that there was an issue earlier of RDHAP licensees practicing in underserved areas that seems to need clarification, adding that other future agenda items may also be added at tomorrow's meeting.

LEG - 11 Adjournment

The Legislative and Regulatory Subcommittee adjourned at 3:10 p.m.