



DENTAL HYGIENE COMMITTEE MEETING MINUTES

Saturday, May 7, 2016
Marriott Hotel – Los Angeles International Airport
Atlanta/Boston Room
5855 West Century Blvd.
Los Angeles, CA 90004

Roll Call – Noel Kelsch, President of the Dental Hygiene Committee of California (DHCC), called the full committee meeting to order at 9:05 a.m. Anthony Lum took roll and a quorum was established with six DHCC members present.

DHCC Members Present:

Noel Kelsch, President, Registered Dental Hygienist in Alternative Practice (RDHAP)
Michelle Hurlbutt, Registered Dental Hygienist (RDH) Educator
Sandra Klein, Public Member
Timothy Martinez, Doctor of Dental Medicine (DMD)
Edcelyn Pujol, Public Member
Garry Shay, Public Member

DHCC Members Absent:

Evangeline Ward, RDH
Susan Good, Public Member
Nicolette Moultrie, RDH

DHCC Staff Present:

Lori Hubble, Executive Officer (EO)
Anthony Lum, Assistant EO
Estelle Champlain, Legislative and Regulatory Analyst
Nancy Gaytan, Enforcement Analyst
Kelsey Pruden, Department of Consumer Affairs (DCA) Legal Counsel

Public Present:

Jonnathan Burke, Boards and Bureau Relations Manager, Department of Consumer Affairs (DCA)
Karen Fischer, EO, Dental Board of California (DBC)
JoAnn Galliano, Education Consultant, California Dental Hygienists' Association (CDHA)
Lygia Jolley, President, CDHA
Vickie Kimbrough, Southwestern College
Ken Guerrero, President, Concorde College, Southern California
Gayle Mathe, California Dental Association (CDA)
Steven Morrow, Doctor of Dental Surgery (DDS), Board President, DBC

FULL 1 – Public Comment for Items Not on the Agenda

There were no public comments.

FULL 2 – Update on the Implementation of the BreEZe Computer System

Lori Hubble stated that BreEZe offers licensees the ability to renew their license, change their address, request license certification, initiate name change, request a duplicate license, and activate or inactivate a license. For applicants, BreEZe allows them to apply for licensure, submit their requirements, and view the status of their application anytime.

She also reported the following statistics:

Number of licensees using BreEZe through April 30, 2016:

- January renewal applications: 159
- February renewal applications: 461
- March renewal applications: 442
- March renewal applications: 442
- April renewal applications: 372

Number of online applications for Western Regional Examination Board (WREB) and Central Regional Dental Testing Services (CRDTS) examinations:

- January: 5
- February: 25
- March: 6
- April: 11

Numbers for other types of applications:

- Licensure by Credential (LBC): 6
- Fictitious Name Permits (FNP): 4
- RDHAP: 5

Ms. Hubble explained that although the DHCC is successfully transitioning to BreEZe as a step toward conducting business in a paperless environment, there are still several hurdles that must be overcome. She explained that DHCC staff spent months in testing to refine the program,

but now many of the same functions that worked in the test environment are not working in the delivered product. DCA is working to correct the problems.

Michelle Hurlbutt asked about green cards (pocket licenses) not having the expanded procedures listed on them. Ms. Hubble replied that pocket licenses used to have the specific procedures each licensee is authorized to perform listed, but the authorized procedures are not printing on the new pocket licenses. DHCC staff submitted a fix request for this problem. Ms. Hubble also pointed out that employers can verify online which procedures a licensee is authorized to perform. Online checks such as this carry the additional advantage of safeguarding against forged pocket licenses. She noted that there seems to be a recent spike in pocket license forgeries.

Mr. Lum stated that fixes to the BreEZe system can take a long time due to current procedures. He said that programs must prioritize each fix and that patches are implemented every other month, except in emergency cases in which the fix gets top priority.

Nancy Gaytan added that even for areas of BreEZe that do work, there are sometimes significant issues. For example, when a probationer on a payment plan attempts to make a payment online (payment plans can recur monthly or quarterly and can range from three to five years in duration), BreEZe automatically checks the box for every remaining installment of the payment plan, meaning that for a probationer to pay only the current installment, that probationer must manually uncheck up to 59 fields. A fix request has been submitted for this problem. Nevertheless, a positive outcome from using BreEZe is that DHCC staff can easily and quickly see when a fee is paid and know that licensees are in compliance.

Public Comment: Gayle Mathe stated that CDA is currently producing an article to direct RDAs and hygienists to resources for licensure and career development. The article is expected to appear in CDA's July 2016 publication. Ms. Mathe offered to accept emailed suggestions for the article.

There were no further comments from members or the public.

FULL 3 – Update on the Little Hoover Commission Hearings

Mr. Lum reported that the Little Hoover Commission (LHC) is an independent state oversight commission created in 1962 to investigate state government operations, promote efficiency and economy, and improve service. The LHC is currently in the fact-finding stage of a project to review occupational licensing. They recently sent DHCC a letter requesting information on occupational licensing pertinent to dental hygienists.

Mr. Lum reported the project's goals:

- Determine the impact of occupational licensing on upward mobility and opportunities for entrepreneurship as well as opportunities for Californians of modest means.
- Examine the impact of occupational licensing on cost and availability of services provided by licensed practitioners to consumers.
- Assess the connection between occupational licensing regulation and the underground economy.
- Explore the balance between protecting consumers and enabling Californians to enter the occupation of their choice.

Mr. Lum explained that some participants in LHC's project propose that certification may be preferable to licensure because they suggest that licensing segregates and discriminates against those without the means to obtain a license. He added that in his opinion licensure is preferable to certification because licensure creates a vetting process that ensures key qualifications are met. Ms. Hurlbutt remarked that in some cases certification is more costly to the applicant than is licensure.

There were no further comments from members or the public.

FULL 4 – Budget Report

Mr. Lum summarized DHCC's yearly expenditures and projected budget through the end of the 2015/2016 fiscal year (FY). He reported that DHCC expenditures have increased due to implementation of BreEZe and the subsequent need for more personnel. He added that most of DHCC's current projected budget reversion is a result of salary savings. In fact, this year DHCC is saving around 25% of its budget, mostly from salary savings, and this will go back into the fund (savings account) as the reverted amount. However, DHCC recently hired Estelle Champlain to fill its vacant Associate Government Program Analyst position and there are still two unfilled positions to go: one Staff Services Analyst and one Enforcement Special Investigator. When all of the vacant positions are filled, there will be a minimal reversion.

Mr. Lum reported that if no action is taken to increase revenue, DHCC will be threatened with insolvency by FY 2017/2018. In fact, assuming DHCC's vacant positions are filled by then, at that time, there would be less than one month's worth of expenditures in reversion. Mr. Lum stated that the 2014 fee increase to \$160 would only sustain the DHCC for 4-5 years, which has come to fruition. He suggested a new fee cap be \$300. He explained that this is not the actual projected amount of the license fee, just the maximum cap DHCC would be able to potentially charge. President Kelsch asked how many years an increase to \$300 would sustain the DHCC. Mr. Lum estimated five years.

Public Comment: JoAnn Galliano suggested that CDHA may support DHCC in asking for a fee ceiling higher than \$300 because this would

prevent DHCC having to return to the legislature to request another increase in the next several years. She pointed out that continued requests to the legislature could result in the DHCC budget being held in suspense, leaving DHCC unable to fulfill its duties. President Kelsch agreed that a higher request would be preferable. She noted that if a higher fee ceiling were approved it would remain possible for DHCC to raise the fee incrementally within the boundary instead of spiking all at once. Garry Shay commented that he agreed as well.

Mr. Lum also stated that BreEZe bills DHCC quarterly and that this is reflected in the monthly expenditure fluctuation, namely, it creates an apparent spike in monthly expenditures when only the billed month is examined in isolation from the other months of the quarterly cycle. He continued that due to the current billing scheme, it would be impossible to include the BreEZe monthly cost in the expenditure projection report as requested by the DHCC.

Mr. Lum explained that DHCC had to increase its expenditure authority to pay for its portion of DHCC's transition to BreEZe. Maintenance costs for BreEZe are rolled into pro rata and will vary depending on how many fixes are required. Ms. Hurlbutt asked who is responsible to pay for the fixes to BreEZe when those fixes derive from malfunctions on BreEZe's part. Mr. Lum responded that DHCC is required to pay for all fixes DHCC submits to DCA Office of Information Systems, regardless of fault. Ms. Hurlbutt stated concern that pro rata needs may continue to increase, thereby extending the costs of BreEZe indefinitely.

Mr. Lum recommended to the DHCC that, in light of the fiscal situation, they carefully select which projects to pursue and which to delay. Things like alternative pathways to licensure that would require an additional position, with entailed costs, may be better initiated at a later time. He also cautioned against comparing the DHCC to other DCA programs as these programs likely have more time in service, more staff, and significantly higher budgets. DHCC is still in emerging stages, having only existed for six years. Considering all this, it may not be a fair comparison between the DHCC and another DCA program.

Ms. Hurlbutt reminded that for some projects, such as alternate pathways to licensure, there can be fees associated. She commented that the additional fees would perhaps cover the costs of the new program. Mr. Lum replied that the increase in cost would need to include not only additional personnel but also adjustment costs to BreEZe.

There were no further comments from members or the public.

FULL 5 – Discussion and Possible Action on Proposed Strategic Planning Dates

Mr. Lum stated that DHCC is currently operating under the original strategic plan created in FY 2009/2010. DHCC has undergone many

changes since that time and would benefit from an updated strategic plan. Mr. Lum requested that DHCC approve a strategic planning session with the DCA SOLID Strategic Planning staff for Saturday, September 24, 2016 to create a new draft plan. The draft would then be presented to the full committee at the December 2016 meeting.

Ms. Hurlbutt stated that she has a prior commitment on September 24, 2016. Mr. Shay said he would be able to attend. Sandra Klein inquired if there would be more than one meeting. Ms. Hubble responded that at this time only one meeting is proposed but that there will be several opportunities for involvement outside of attending the meeting.

There were no further comments from members or the public.

Motion: Garry Shay moved to approve a strategic planning session with the DCA SOLID Strategic Planning staff for Saturday, September 24, 2016 to create a new draft plan.

Second: Edcelyn Pujol.

Vote: The motion passed 6-0 (Susan Good, Nicolette Moultrie, and Evangeline Ward were absent).

| NAME | Minutes VOTE: | | OTHER |
|--------------------|------------------|-----|-------|
| | Aye | Nay | |
| Susan Good | | | X |
| Evangeline Ward | | | X |
| Nicolette Moultrie | | | X |
| Sandra Klein | X | | |
| Noel Kelsch | X | | |
| Michelle Hurlbutt | X | | |
| Timothy Martinez | X | | |
| Edcelyn Pujol | X | | |
| Garry Shay | X | | |

FULL 6 – Ethical Decision Making Presentation for Members

Kelsey Pruden indicated that statute requires that protection of the public be paramount in actions taken by the DHCC. She explained that the purpose of a disciplinary hearing is not to punish licensees, but rather to promote the protection of the public. This pertains to two types of scenarios: one is determining the fitness of an applicant for licensure, and the second is the discipline of a person who already holds a license. Ms. Pruden summarized the necessary steps in an administrative proceeding. She described the role of the administrative law judge as well as the role of DHCC members.

Ms. Pruden stated that “stipulated settlement” is the term used when the licensee and EO agree to a particular enforcement outcome prior to a formal hearing. She noted that conditions of the stipulated settlement may

allow the licensee to continue to practice during the course of the administrative action.

Ms. Pruden also described the due process requirement and noted that adherence to due process is essential for ethical decision making. When the DHCC is deciding a case, its members must base their decision solely on the facts presented in the case; outside fact-finding and ex parte communications are strictly prohibited. The only case-related communication the DHCC is permitted with staff is to ask the Enforcement Analyst (Nancy Gaytan) procedural questions. If a stipulated settlement is in place, and if it allows for additional communication, then that communication is permissible.

Ms. Pruden presented information concerning burden of proof standards. She stated that applicants for initial licensure bear the burden of proof to show that by a “preponderance of evidence” he or she is fit for licensure. However, for disciplinary actions the burden of proof is on the DHCC to demonstrate by “clear and convincing evidence of reasonable certainty” that the respondent (licensee or applicant) is guilty of the charge. The variance in burden of proof standards is due to the licensee possessing a vested property right in his or her license. She also stressed that DHCC members are required to examine the entire record of evidence before coming to a decision.

Ms. Pruden advised that each DHCC member has the duty to disqualify or recuse himself or herself when there is an actual or apparent bias or a conflict of interest. If this occurs, the DHCC member should disclose the recusal as soon as possible. Also, statute requires that if a decision will have a material effect on a DHCC member’s finances then that member must recuse himself or herself.

Ms. Pruden finished her presentation by outlining various procedural matters on how to formulate and submit a judgement. President Kelsch requested for Ms. Pruden to provide a written copy of the presentation for the DHCC to keep as a reminder during their tenure.

There were no further comments from members or the public.

FULL 7 – Update on Pending Regulatory Packages

Mr. Lum presented a status report on the following regulatory packages:

- Administration and Examinations, California Code of Regulations (CCR), Title 16, Division 11, §§1101, 1121, 1122, 1124, 1126, 1127, and 1133. This package was submitted to the Office of Administrative Law (OAL) on April 26, 2016 and is currently under review.
- Definitions – CCR, Title 16, Division 11, §1101. This package was submitted to OAL on April 26, 2016.

- Educational Programs, CCR, Title 16, Division 11, §§1103, 1105, 1105.1, 1105.2, 1105.3, 1105.4, and 1106. This package was approved by OAL on April 20, 2016.
- Feasibility Study, CCR, Title 16, Division 11, §§1104, 1104.1, 1104.2 This package went to OAL on April 26, 2016 and is currently under review.
- Remedial Education, CCR, Title 16, Division 11, §1108. This package was approved by OAL on February 19, 2016.

Public Comment: Gayle Mathe stated that she had requested the final revisions to the Definitions package be sent to the Dental Board of California before being finalized. President Kelsch thanked Ms. Mathe for disclosing the request.

There were no further comments from members or the public.

FULL 8 – Legislative and Regulatory Subcommittee Report

Ms. Hurlbutt reported the following outcomes from the Legislative and Regulatory Subcommittee meeting:

- Acceptance of May 2, 2015 Minutes;
- Review of 2016 Tentative Legislative Calendar ; and
- Action to Amend CCR, Title 16, Article 13, Section 1151, Out-of-State Practitioner Authorization to Participate in Sponsored Free Healthcare Events.
 - 1) She described the addition of language requiring each out-of-state participant to wear a badge during the event. This badge would list the name of the practitioner and the procedures that practitioner is authorized to perform. Additionally, the name of the application was amended for clarity. The new name is “Request for Authorization to Volunteer to Practice Without a California License at a Sponsored Free Health Care Event.”
 - 2) Also, the subcommittee agreed with staff’s recommendation on how many days would be allowed to approve procedures.

There were no comments from members or the public.

- **Motion: Michelle Hurlbutt moved to approve the proposed regulatory language as amended and direct staff to take all necessary steps to initiate the rulemaking process and set the proposed regulations for a 45-day public hearing and authorize the Executive Officer to make any non-substantive changes to the rulemaking package.**

Second: Legislative and Regulatory Subcommittee.

Vote: The motion passed 6-0 (Susan Good, Nicolette Moultrie, and Evangeline Ward were absent).

| NAME | Minutes VOTE: | | OTHER |
|--------------------|------------------|-----|-------|
| | Aye | Nay | |
| Susan Good | | | X |
| Evangeline Ward | | | X |
| Nicolette Moultrie | | | X |
| Sandra Klein | X | | |
| Noel Kelsch | X | | |
| Michelle Hurlbutt | X | | |
| Timothy Martinez | X | | |
| Edcelyn Pujol | X | | |
| Garry Shay | X | | |

Ms. Hurlbutt reported that the subcommittee also took action to amend CCR Title 16, Section 1107, RDH Course in Local Anesthesia, Nitrous Oxide-Oxygen Analgesia, and Soft-Tissue Curettage. The changes are meant to increase clarity.

There were no comments from members or the public.

- **Motion: Michelle Hurlbutt moved to approve the proposed regulatory language as amended and direct staff to take all necessary steps to initiate the rulemaking process and set the proposed regulations for a 45-day public hearing and authorize the Executive Officer to make any non-substantive changes to the rulemaking package.**

Second: Legislative and Regulatory Subcommittee.

Vote: The motion passed 6-0 (Susan Good, Nicolette Moultrie, and Evangeline Ward were absent.)

| NAME | Minutes VOTE: | | OTHER |
|--------------------|------------------|-----|-------|
| | Aye | Nay | |
| Susan Good | | | X |
| Evangeline Ward | | | X |
| Nicolette Moultrie | | | X |
| Sandra Klein | X | | |
| Noel Kelsch | X | | |

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| Michelle Hurlbutt | X | | |
| Timothy Martinez | X | | |
| Edcelyn Pujol | X | | |
| Garry Shay | X | | |

Ms. Hurlbutt reported that the subcommittee recommends to the full committee the following positions:

- AB 12, Cooley. Watch;
- AB 648, Low. Watch;
- AB 1868, Wagner. Watch;
- AB 2701, Died, so no position was taken;
- AB 2859, Low. Support;
- SB 1033, Hill. Watch;
- SB 1155, Morrell. Watch; and
- SB 1217, Stone. Support.

There were no comments from members or the public.

Motion: Michelle Hurlbutt moved that the full committee adopt a support position for AB 2859 (Low) and SB 1217 (Stone); further, that the full committee maintain a watch position on AB 12 (Cooley), AB 648 (Low), AB 1868 (Wagner), SB 1033 (Hill), and SB 1155 (Morrell).

Second: Legislative and Regulatory Subcommittee.

Vote: The motion passed 6-0 (Susan Good, Nicolette Moultrie, and Evangeline Ward were absent).

| NAME | Minutes VOTE: | | OTHER |
|--------------------|------------------|-----|-------|
| | Aye | Nay | |
| Susan Good | | | X |
| Evangeline Ward | | | X |
| Nicolette Moultrie | | | X |
| Sandra Klein | X | | |
| Noel Kelsch | X | | |
| Michelle Hurlbutt | X | | |

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| Timothy Martinez | X | | |
| Edcelyn Pujol | X | | |
| Garry Shay | X | | |

Ms. Hurlbutt stated that the subcommittee did not receive any future agenda item suggestions. President Kelsch thanked Ms. Hurlbutt for her report.

There were no further comments from members or the public.

Motion: Michelle Hurlbutt moved that the full committee accept the subcommittee’s report.

Second: Legislative and Regulatory Subcommittee.

Vote: The motion passed 6-0 (Susan Good, Nicolette Moultrie, and Evangeline Ward were absent).

| NAME | Minutes VOTE: | | OTHER |
|--------------------|------------------|-----|-------|
| | Aye | Nay | |
| Susan Good | | | X |
| Evangeline Ward | | | X |
| Nicolette Moultrie | | | X |
| Sandra Klein | X | | |
| Noel Kelsch | X | | |
| Michelle Hurlbutt | X | | |
| Timothy Martinez | X | | |
| Edcelyn Pujol | X | | |
| Garry Shay | X | | |

FULL 9 – Licensing and Examination Subcommittee Report

Ms. Hurlbutt reported the following outcomes from the Licensing and Examination Subcommittee meeting:

- Acceptance of May 2, 2015 Minutes;
- Review of Licensure and Examination Statistics; and
- Proposal of Future Agenda Item: FNP/Practitioner’s True Name Disclosure Compliance.

There were no comments from members or the public.

Motion: Michelle Hurlbutt moved that the full committee accept the subcommittee’s report.

Second: Licensing and Examination Subcommittee.

Vote: The motion passed 6-0 (Susan Good, Nicolette Moultrie, and Evangeline Ward were absent).

| NAME | Minutes VOTE: | | OTHER |
|--------------------|------------------|-----|-------|
| | Aye | Nay | |
| Susan Good | | | X |
| Evangeline Ward | | | X |
| Nicolette Moultrie | | | X |
| Sandra Klein | X | | |
| Noel Kelsch | X | | |
| Michelle Hurlbutt | X | | |
| Timothy Martinez | X | | |
| Edcelyn Pujol | X | | |
| Garry Shay | X | | |

FULL 10 – Enforcement Subcommittee Report

Mr. Shay reported the following outcomes from the Enforcement Subcommittee meeting:

- Acceptance of May 2, 2015 Minutes; and
- Review of Enforcement Statistics and Performance Measures.
 - He noted that all statistics, with the exception of the formal discipline cycle, were below targets but that this is largely outside the control of DHCC because of delays in processing cases at the Attorney General’s office.

There were no comments from members or the public.

Motion: Garry Shay moved that the full committee accept the subcommittee’s report.

Second: Enforcement Subcommittee.

Vote: The motion passed 6-0 (Susan Good, Nicolette Moultrie, and Evangeline Ward were absent).

| NAME | Minutes VOTE: | | OTHER |
|--------------------|------------------|-----|-------|
| | Aye | Nay | |
| Susan Good | | | X |
| Evangeline Ward | | | X |
| Nicolette Moultrie | | | X |
| Sandra Klein | X | | |
| Noel Kelsch | X | | |
| Michelle Hurlbutt | X | | |
| Timothy Martinez | X | | |

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| Edcelyn Pujol | X | | |
| Garry Shay | X | | |

FULL 11 – Education Subcommittee Report

Ms. Hurlbutt reported the following outcomes from the Education Subcommittee meeting:

- Acceptance of May 2, 2015 Minutes;
- Review of Current Educational Trends in Interim Therapeutic Restorations (ITR) and Determination of Radiographs; and
- Review Update on Alternative Pathways to Licensure.

There were no comments from members or the public.

- **Motion: Michelle Hurlbutt moved that the full committee accept the subcommittee’s report.**

Second: Education Subcommittee.

Vote: The motion passed 6-0 (Susan Good, Nicolette Moultrie, and Evangeline Ward were absent).

| NAME | Minutes VOTE: | | OTHER |
|--------------------|------------------|-----|-------|
| | Aye | Nay | |
| Susan Good | | | X |
| Evangeline Ward | | | X |
| Nicolette Moultrie | | | X |
| Sandra Klein | X | | |
| Noel Kelsch | X | | |
| Michelle Hurlbutt | X | | |
| Timothy Martinez | X | | |
| Edcelyn Pujol | X | | |
| Garry Shay | X | | |

Mr. Lum revisited the tabled agenda item number six item from the prior day. Mr. Lum stated that staff recommends a motion to approve a revised fee resolution to include a feasibility study with a curriculum review and site evaluation in the fee description to minimize any confusion from new dental hygiene educational program applicants. Mr. Lum clarified that this is an update to SB-1202 (Statutes of 2012, Chapter 331) and it is for record keeping purposes. Ms. Hurlbutt asked for clarification on whether this would expand the fees agreed upon in 2012. Mr. Lum answered that this would keep the fees in place but would clarify the language of the regulation to erase ambiguity.

There were no further comments from members or the public.

- **Motion: Garry Shay moved to approve a revised fee resolution to include a feasibility study with a curriculum review and site evaluation in the fee description to minimize any confusion from new dental hygiene educational program applicants.**

Second: Sandra Klein.

Vote: The motion passed 6-0 (Susan Good, Nicolette Moultrie, and Evangeline Ward were absent).

| NAME | Minutes VOTE: | | OTHER |
|--------------------|------------------|-----|-------|
| | Aye | Nay | |
| Susan Good | | | X |
| Evangeline Ward | | | X |
| Nicolette Moultrie | | | X |
| Sandra Klein | X | | |
| Noel Kelsch | X | | |
| Michelle Hurlbutt | X | | |
| Timothy Martinez | X | | |
| Edcelyn Pujol | X | | |
| Garry Shay | X | | |

President Kelsch announced that the committee would not move into Closed Session, (FULL12), as it was conducted the day before as time permitted.

FULL 13 – Future Agenda Items

- President Kelsch proposed discussing the prior day’s public comment (from Francine Small) requesting a review of policies for out-of-state licensure candidates and the requirement for a California-based SLN course.
- President Kelsch requested discussion regarding site reviews for existing approved schools.
- Ms. Hurlbutt requested updates on SB 1098 and AB 1863.
- Ms. Hurlbutt requested an update on FNP status.
- Public Comment: Lygia Jolley requested the DHCC to review AB 2207.
- Ms. Jolley requested DHCC’s consideration on how the DHCC might be able to impose fines or other punitive measures on noncompliant dental education programs.

FULL 14 – Adjournment

President Kelsch thanked participants for their contributions. She reminded all interested entities to keep their Internet Web sites up to date. She adjourned the full committee meeting at 11:20 a.m.