



Legislative & Regulatory Subcommittee Minutes Saturday, May 6, 2017

Primary Location:
Atrium Hotel at Orange County Airport
18700 MacArthur Blvd.
Irvine, CA 92612

Teleconference Location:
Catalano-Fenske and Associates
1401 Fulton St., Ste. 801
Fresno, CA 93721

DHCC Members Present:

Susan Good, Chairperson, Public Member (Via Teleconference Location in Fresno)
Michelle Hurlbutt, Registered Dental Hygienist (RDH) Educator
Nicolette Moultrie, RDH
Garry Shay, Public Member

DHCC Staff Present:

Anthony Lum, Interim Executive Officer
Estelle Champlain, Legislative and Regulatory Analyst
Nancy Gaytan, Enforcement Analyst
Adina Pineschi-Petty, RDH and Doctor of Dental Surgery (DDS), Education Specialist
Michael Santiago, Department of Consumer Affairs (DCA) Legal Counsel for the DHCC

Public Present:

Luisa Bransford, Fresno City College
Julie Coan, California Dental Hygienist's Association (CDHA)
Pat Connolly-Atkins, American Board of Dental Examiners (ADEX)
Natalie Ferrigno, West Los Angeles College
Mariann Fujimoto, RDH
JoAnn Galliano, RDH, Education Consultant
Mary Johnston, ADEX
Lygia Jolley, CDHA
Vickie Kimbrough, Purple Pen Seminars and CDHA
Mary McCune, California Dental Association (CDA)
Sharon Osborn Popp, Western Regional Examining Board (WREB)
Tricia Osuna
Joanne Pacheco, Fresno City College
Laurie Petralia, Concorde Career College
Kelly Reich, WREB
Sabrina Santucho, Concorde Career College, San Bernardino
Maureen Titus, CDHA
Bruce Whitcher, DDS, California Dental Board (CDB)

Roll Call and Establishment of a Quorum

Susan Good, Chairperson of the Legislative and Regulatory Subcommittee, called the meeting to order at 10:20 a.m. She took roll call and a quorum was established with all four members present.

Public Comments for Items Not on the Agenda

There were no comments from the public.

Chairperson's Report

Chair Good expressed her appreciation to the staff and to the Subcommittee members for their continued hard work.

Chair Good asked if any member of the Subcommittee or the public would like to comment. There were no comments.

Approval of the December 3, 2016 Legislative and Regulatory Subcommittee Minutes

When the item was open for discussion, Estelle Champlain, Legislative and Regulatory Analyst for the DHCC, requested that the Subcommittee accept amendments for clarity and specificity in sections pertaining to the Subcommittee's discussion on the upcoming retired licensure rulemaking file.

Motion: Garry Shay moved to adopt the December 3, 2016 Legislative and Regulatory Subcommittee Meeting Minutes as amended.

Second: Nicolette Moultrie

Chair Good asked if any member of the public or the Subcommittee would like to comment. There were no comments.

Vote: The motion to adopt the December 3, 2016 Legislative and Regulatory Subcommittee Meeting Minutes as amended passed 4:0.

Name	Aye	Nay	Abstain
Susan Good	X		
Michelle Hurlbutt	X		
Nicolette Moultrie	X		
Garry Shay	X		

Discussion and Possible Action to Adopt Positions on Current Legislation

Ms. Champlain presented the staff's recommended positions on current bills before the California Legislature. The Subcommittee considered each bill and decided to vote to adopt the suggested positions for the bills they had agreed on, and then to further discuss the remaining bills one by one.

Motion: Garry Shay moved to adopt staff's recommendation on Assembly Bills 703, 706, 753, 1277; and Senate Bills 300, 508, 572, and 700 as follows:

Bill	Position
AB 703, Professions and Vocations: Licenses: Fee Waivers	Support
AB 706, Medical Board of California: Licenses	Watch
AB 753, Denti-Cal: Improved Access	Watch
AB 767, Master Business License Act	Oppose
AB 1277, Dental Board of California	Support
SB 300, Sugar-Sweetened Beverages: Health Warnings	Watch
SB 508, Medi-Cal: Dental Health	Watch
SB 572, Healing Arts Licensees: Violations: Grace Period	Oppose
SB 707, Medi-Cal: Denti-Cal Advisory Group	Support

Second: Nicolette Moultrie

Chair Good asked if any member of the public or the Subcommittee would like to comment. There were no comments.

Vote: The motion to adopt staff's recommendation on Assembly Bills 703, 706, 753, 1277; and Senate Bills 300, 508, 572, and 700 passed 4:0:

Name	Aye	Nay	Abstain
Susan Good	X		
Michelle Hurlbutt	X		
Nicolette Moultrie	X		
Garry Shay	X		

The Subcommittee discussed Assembly **Bill (AB 15), Maienschein. Denti-Cal Program: Reimbursement Rates**. This bill would double the reimbursement rates for the 15 most common covered procedures. It would also appropriate funds from the Healthcare Treatment Fund and federal matching funds.

The Subcommittee received public comments from JoAnn Galliano and Maureen Titus, both of whom noted the procedures listed in the bill did not include some of the most important preventative procedures performed by dental hygienists.

Motion: Michelle Hurlbutt moved to support Assembly Bill 15 if amended to include all periodontal codes that dental hygienists perform.

Second: Garry Shay

Chair Good asked if any member of the public or the Subcommittee would like to comment. There were no further comments.

Vote: The motion to support Assembly Bill 15 if amended to include all periodontal codes that dental hygienists perform passed 4:0.

Name	Aye	Nay	Abstain
Susan Good	X		
Michelle Hurlbutt	X		
Nicolette Moultrie	X		
Garry Shay	X		

The Subcommittee discussed **AB 224, Thurmond. Dentistry: Anesthesia and Sedation.** This bill would extend a current elevated licensing criterion in place for dentists who administer or order general anesthesia to also apply to dentists who administer or order deep sedation. This bill was proposed as a result of the death of a pediatric patient during a dental procedure.

Public Comment: Ms. Galliano pointed out that the language in the bill describing “mild sedation” would include administration of nitrous oxide and oxygen, which is a duty that dental hygienists perform; therefore, this bill could extend a more burdensome training requirement to dental hygienists before allowing them to continue to administer nitrous oxide and oxygen. Ms. Galliano clarified that she had received information indicating that the intent of the author was not to impact training requirements for dental hygienists so it may be more prudent to watch the bill for changes, rather than to support it as written.

At least one Subcommittee member expressed that “watch” may be not be a strong enough position to take due to the seriousness of the underlying issue. The Subcommittee also considered that the bill seemed to be likely to undergo further amendments before passing through the Legislature and that the DHCC would like to evaluate those amendments.

Motion: Michelle Hurlbutt moved to watch Assembly Bill 224.

Second: Garry Shay

Chair Good asked if any member of the public or the Subcommittee would like to comment. There were no further comments.

Vote: The motion to watch Assembly Bill 224 passed 3:1.

Name	Aye	Nay	Abstain
Susan Good		X	
Michelle Hurlbutt	X		
Nicolette Moultrie	X		
Garry Shay	X		

The Subcommittee discussed **AB 387, Thurmond. Minimum Wage: Healthcare Interns.** This bill would expand the definition of employer resulting in a requirement that any person engaging in work experience to satisfy requirements for licensure must be paid at least minimum wage for his or her labor.

The Subcommittee considered the fairness aspect of paying people at least minimum wage for their work. They also considered the likelihood that if interns had to be paid, dental hygiene students may not be able to find opportunities to gain their required hours of chairside experience. Additionally, it was pointed out that the supervised training experience itself has traditionally been considered a valuable form of payment for the work interns perform.

Motion: Nicolette Moultrie moved to accept staff's recommendation to oppose Assembly Bill 387.

Second: Michelle Hurlbutt

Chair Good asked if any member of the public or the Subcommittee would like to comment.

Public Comment: Julie Coan stated that the CDHA agrees with a position of oppose for AB 387 because the CDHA recognizes the value of supervised experience as a part of training and feels that this bill would threaten the continuation of this practice.

There were no further comments from the public or the Subcommittee.

Vote: The motion to oppose Assembly Bill 387 passed 3:1.

Name	Aye	Nay	Abstain
Susan Good	X		
Michelle Hurlbutt	X		
Nicolette Moultrie	X		
Garry Shay		X	

The Subcommittee discussed **Senate Bill SB 379, Atkins. Pupil Health: Oral Health Assessment.** This bill would mandate reporting from school districts to a system designated by the state dental director. The reports would contain data on the prevalence of caries in children. The data would be derived from assessments parents/guardians acquired from their child’s dentists and from data gathered at free oral health assessments in the schools. Parents/Guardians desiring that their child not be assessed during the free school assessment would retain the right to opt-out.

The Subcommittee considered whether it would be more appropriate to require parents/guardians to opt-in rather than merely allowing them to opt-out. On one hand, there appear to be other health-related assessments, such as height and weight, which are sometimes given to children in public schools on an opt-out basis; but there has also been a history of contention in California when it comes to giving dental evaluations to children on an opt-out basis.

Motion: Nicolette Moultrie moved to support Senate Bill 379, if amended so that parent’s must provide informed consent prior to their child being assessed in school.

Second: Michelle Hurlbutt

Chair Good asked if any member of the public or the Subcommittee would like to comment.

There were no further comments from the public or the Subcommittee.

Vote: The motion to support Senate Bill 379, if amended so that parent’s must provide informed consent prior to their child being assessed in school failed 2:2.

Name	Aye	Nay	Abstain
Susan Good	X		
Michelle Hurlbutt		X	
Nicolette Moultrie	X		
Garry Shay		X	

Motion: Garry Shay moved to support Senate Bill 379.

Second: Michelle Hurlbutt

Chair Good asked if any member of the public or the Subcommittee would like to comment.

There were no further comments from the public or the Subcommittee.

Vote: The motion to support Senate Bill 379, passed 3:0.

Name	Aye	Nay	Abstain
Susan Good	X		
Michelle Hurlbutt	X		
Nicolette Moultrie		X	
Garry Shay	X		

Recess

The Legislative and Regulatory Subcommittee meeting recessed at 11:50 a.m. then reconvened at 2:00 p.m.

Discussion and Possible Action: Seek Amendment to Business and Professions (B&P) Codes § 1950.5 to Add Language to Mandated Reporting Requirements Specific to the Profession

Ms. Champlain introduced suggested language that would add failure to comply with existing mandatory reporting laws (under the California Penal Code and the California Health and Welfare Code) to unprofessional conduct in the Business and Professions Code. This would give the DHCC authority to take administrative action on a dental hygienist's license if that hygienist failed to make a report of known or suspected abuse to a patient.

Public Comment: JoAnn Galliano explained that there was a recent incident in which a dental hygienist failed to make a report as required under the mandatory reporting laws. This dental hygienist was also licensed under another professional category and the other license was sanctioned. As a result, this individual was restricted from dealing with patients in one situation yet still allowed to deal with patients as a dental hygienist.

Public Comment: Dr. Witcher asked if the DHCC would be able to accomplish the same outcome using existing regulations that require a dental hygienist to report criminal

convictions. He also asked if the administrative process was truly more expedient than the criminal justice process.

Motion: Michelle Hurlbutt motioned that the Subcommittee recommend to the Full Committee to place language under Business and Professions Code § 1950.5 regarding unprofessional conduct for failure to comply with mandatory reporting requirements.

Second: Nicolette Moultrie

Chair Good asked if any member of the public or the Subcommittee would like to comment. There were no further comments.

Vote: The motion that that the Subcommittee recommend to the Full Committee to place language under Business and Professions Code § 1950.5 regarding unprofessional conduct for failure to comply with mandatory reporting requirements passed 4:0.

Name	Aye	Nay	Abstain
Susan Good	X		
Michelle Hurlbutt	X		
Nicolette Moultrie	X		
Garry Shay	X		

Discussion and Possible Action on California Code of Regulations, Title 16, Division 11, § 1153 Name Badge at Sponsored Events

Ms. Champlain reported that the Department of Consumer Affairs' Legislative and Regulatory Review Department returned the DHCC's rulemaking file for CCR, Title 16, Division 11, § 1153 Sponsored Events on the grounds that the name badge section lacks clarity. She then presented proposed amendments to the rulemaking file that would increase clarity. Since the rulemaking file had not yet progressed to the Office of Administrative Law, if any changes were made at the present meeting, it would not be necessary to notice those changes for a 15-day comment period separate from the already required 45-day comment period that will be noticed for the entire rulemaking file.

Motion: Michelle Hurlbutt motioned that the Subcommittee recommend to the Full Committee to approve the proposed modified text to the name badge language in the rulemaking file for CCR, Title 16, Division 11, § 1153 Sponsored Events, direct staff to take all necessary steps to resume the formal rulemaking process, set the proposed regulations

for a 45-day public comment period, and delegate to the Interim Executive Officer the authority to make any technical or nonsubstantive changes that may be required in completing the rulemaking file.

Second: Nicolette Moultrie

Chair Good asked if any member of the public or the Subcommittee would like to comment. There were no comments.

Vote: The motion that the Subcommittee recommend to the Full Committee to approve the proposed modified text to the name badge language in the rulemaking file for CCR, Title 16, Division 11, § 1153 Sponsored Events, direct staff to take all necessary steps to resume the formal rulemaking process, set the proposed regulations for a 45-day public comment period, and delegate to the Interim Executive Officer the authority to make any technical or nonsubstantive changes that may be required in completing the rulemaking file passed 4:0.

Name	Aye	Nay	Abstain
Susan Good	X		
Michelle Hurlbutt	X		
Nicolette Moultrie	X		
Garry Shay	X		

Discussion and Possible Action on California Code of Regulations, Title 16, Division 11, § 1104(b)(6) Review of Educational Programs

Anthony Lum, Interim Executive Officer of the DHCC, reported that the DHCC has the authority to review dental hygiene educational programs in California to determine whether the program is operating in compliance with the law and he presented proposed language to amend Title 16, Division 11, § 1104(b)(6) to require that dental hygiene educational programs must comply with DHCCs announced and unannounced site visits and that they must cooperate by providing required written or other material after receiving notice from the DHCC or its designee. The proposed language also contained the penalty that an educational program's failure to comply would be grounds for the DHCC to deny or withdraw approval of the educational program.

Motion: Michelle Hurlbutt motioned that the Subcommittee recommend to the Full Committee to approve the proposed amendments to CCR, Title 16, Division 11, §

1104(b)(6), direct staff to take all necessary steps to initiate the formal rulemaking process, set the proposed regulations for a 45-day public hearing, and authorize the Interim Executive Officer to make any technical or nonsubstantive changes that may be required in completing the rulemaking file.

Second: Garry Shay

Chair Good asked if any member of the public or the Subcommittee would like to comment.

The Subcommittee discussed whether it was appropriate to conduct unannounced site visits. Mr. Lum emphasized that the DHCC would only conduct site visits for the purpose of consumer protection and compliance with the law.

There were no further comments.

Vote: The motion that the Subcommittee recommend to the Full Committee to approve the proposed amendments to CCR, Title 16, Division 11, § 1104(b)(6), direct staff to take all necessary steps to initiate the formal rulemaking process, set the proposed regulations for a 45-day public hearing, and authorize the Interim Executive Officer to make any technical or nonsubstantive changes that may be required in completing the rulemaking file passed 4:0.

Name	Aye	Nay	Abstain
Susan Good	X		
Michelle Hurlbutt	X		
Nicolette Moultrie	X		
Garry Shay	X		

Discussion and Possible Action to Amend California Code of Regulations, Title 16, Division 11, § 1107(b)(9)(A-B) RDH Course in Local Anesthesia, Notrous Oxide-Oxygen Analasia, an Periodontal Soft Tissue Curettage

Mr. Lum proposed that the DHCC present charts within the regulation to make the requirements of the regulation more easily understood. Because the contents of the text would not be changed whatsoever, this change could be pursued as a Section 100 Change Without Regulatory Effect.

Motion: Michelle Hurlbutt motioned to direct staff to pursue an amendment to add a chart to CCR Title 16, Division 11, § 1107(b)(9)(A-B) as a change without regulatory effect (Section 100).

Second: Garry Shay

Chair Good asked if any member of the public or the Subcommittee would like to comment.

Public Comment: JoAnn Galliano suggested further clarification in the chart by adding an asterisk to “Required Clinical Injections” then reiterating below the chart that those injections must be administered to four separate patients. This would not change the requirement, it would only make more explicit what is stated in the second sentence of § 1107(b)(9).

The Subcommittee also discussed that under “Didactic Instruction” and under “Clinical Instruction” the words “at least 15 hours” should appear. This would make more explicit the requirement found in the first sentence of § 1107(b)(9).

There were no further comments.

Vote: The motioned to direct staff to pursue an amendment to add a chart to CCR Title 16, Division 11, § 1107(b)(9)(A-B) as a change without regulatory effect (Section 100) passed 3:1.

Name	Aye	Nay	Abstain
Susan Good	X		
Michelle Hurlbutt	X		
Nicolette Moultrie		X	
Garry Shay	X		

Future Agenda Items

Chair Good asked if any member of the public or the Subcommittee would like to suggest future agenda items.

Public Comment: JoAnn Galliano suggested the DHCC discuss AB 714, Wood, which would require that committees and boards hold a third annual meeting and that it be in a rural area of California; SB 392, Bates, which pertains to pediatric dental patients’ access to care; and SB 501, Glazer, dealing with general anesthesia and sedation.

Ms. Hurlbutt requested that staff recall from the rulemaking process the Local Anesthetic, Soft Tissue Curettage, and Nitrous Oxide-Oxygen rulemaking file so the DHCC can review it for further changes.

Ms. Moultrie requested that the DHCC watch AB 1732, which pertains to the Registered Dental Assistant (RDA) practical examination suspension.

There were no further comments.

Chair Good adjourned the meeting at 3:40 p.m.