

Summary of the Meeting of the Dental Board of California

November 9-10, 2009

Prepared for the California Society of Pediatric Dentistry

The Dental Board of California met November 9-10, 2009, in Los Angeles. The following summarizes actions and issues coming before the Board pertinent to pediatric oral health

Adoption of Disciplinary Guidelines

When a licensee is found to be in violation of the Dental Practice Act or related statute or regulation, the Attorney General's Office or the presiding administrative law judge relies upon the Board's *Disciplinary Guidelines* to determine appropriate penalties for enforcement actions. The current *Disciplinary Guidelines* were last revised in 1996 and were considered by the Board's Enforcement Division as in need of revision. Accordingly, a Disciplinary Guidelines subcommittee was formed in 2007 to assist staff with developing proposed revisions. Working with Enforcement staff, Department of Consumer Affairs Legal Counsel, and the Board's Deputy Attorney General liaison, revised Disciplinary Guidelines with recommended penalties was adopted by the committee last year and approved by the Board for public comment. At the required public hearing March 25, 2009, a large number of comments opposing certain of the proposed revisions and recommending others were submitted by the California Dental Association (CDA) and other interested parties. Board staff prepared a detailed response to each comment, which were provided to the Board at its April 2009 meeting. The proposed revisions were then remanded to the subcommittee for reevaluation and further recommendation in April 2009. The subcommittee in July 2009 suggested that the full Board review the comments and responses at its November meeting.

At its November meeting the Board reviewed on a line-by-line basis the 60-page comment and staff response document, voting to adopt and number of modifications and reject others. The amended Disciplinary Guidelines (available online at http://www.dbc.ca.gov/formspubs/1018_disc_guidelines.pdf) were approved by the Board and noticed for the required 15-day public comment period.

Comment: Subsequent to the meeting and required public comment period, the Board met by telephone conference call December 17, 2009, and, absent further public comment, submitted the rulemaking file to the Office of Administrative Law for final approval. Dentists and the public should be grateful for the diligence of CDA in proposing a large number of modifications to the original document, the majority of which were accepted by the Board as constructive and beneficial to the disciplinary system.

Registered Dental Assistant Practical and Written Examination Statistics

The Board was informed that for the period January 1, 2009 – October 21, 2009, the pass rate for the RDA practical examination approached 85%, while the pass rate for the written examination remained at close to 50%. Staff reported that for the first ten months of this year, 1698 applicants (49%) failed the written test. Board members in the past have expressed concern over this low pass rate. Reasons offered by the former Committee on Dental Auxiliaries (COMDA) for the low pass rate have included:

- For many candidates English is a second language, which may pose a particular challenge to these applicants.
- Informal candidate exit surveys indicate particular dissatisfaction and difficulty with the orthodontic questions, an area in which they usually have little clinical experience or familiarity.
- A majority of applicants qualify for licensure examination by the work experience pathway and may not have adequately studied or prepared for the written test.

Comment: With the dissolution of COMDA and the assumption of responsibility for examination and licensing of Registered Dental Assistants by the Dental Board and its Dental Assistant Committee, a new written examination is being developed which may better evaluate the knowledge base of RDA candidates.

Licensure Examination Eligibility by Specialty Training

California statute requires that an applicant for a dental license who has been issued a diploma from a foreign dental school not approved by the Board under Section 1636.4 of the Dental Practice Act shall not be eligible for licensure examination until he or she has successfully completed a minimum of two academic years at a California dental school and been issued by that school a dental degree or its equivalent. At the November meeting, Dr. Earl Johnson, representing the California Association of Orthodontists, requested that the Examination Committee consider recommending that Board seek statutory change that would allow a candidate with a dental diploma from a foreign dental school who has successfully completed a CODA-approved post-doctoral specialty training program in the United States to be eligible for the California licensure examination.

The Examination Committee appointed a two-person subcommittee to explore the concept and report back in February.

Comment: Consideration of licensure eligibility by specialty training opens the door to consideration of specialty dental licensing in California, something long-opposed by CSPD. The report of the two-person subcommittee will be carefully analyzed and response by CSPD will be conveyed to the Examination Committee as appropriate.

Cancelled License Description

When a dentist retires or otherwise ceases practice, she or he may request an “inactive license” which is maintained by payment of a biannual fee. An inactive license can be reactivated by payment of a renewal fee and satisfactory evidence of completion of all continuing dental education requirements accrued during the inactive period. Alternatively, the dentist may notify the Board that he or she no longer requires a dental license, in which case the license is cancelled and no fees are required. This is sometimes referred to as “surrendering” a license. If the dentist takes neither action and simply fails to renew a license on the biannual renewal date, the license is placed by the Board in a “delinquent” status for up to five years, after which it is automatically “cancelled.”

This process is the same for all dental permits and for RDA and RDAEF licenses.

Board member Dr. Luis Dominicus in September expressed concern that the public may confuse a “cancelled license” with the results of a disciplinary proceeding and requested staff to research wording for the licensure verification section of the Board’s website that might eliminate this interpretation. At the suggestion of staff, the Licensing, Certifications and Permits committee voted to adopt, and the Board subsequently approved, the following language:

- Definition used for a dental license
 - Any license that has been delinquent for five (5) years is automatically cancelled by the Board. The license is cancelled and no longer valid for practice in California. A licensee may choose to cancel a license that is no longer required or needed. You may contact the Board to see why the license was cancelled.
- Definition used for all dental permits:
 - A permit is cancelled if it is delinquent for five (5) years or the Board has cause. This permit is cancelled and is no longer valid. A licensee may choose to cancel a permit; cancellation of a permit by the licensee means that the permit is no longer required or needed. A Board issued permit may be cancelled or delinquent while the dental license is current and valid for practice. You may contact the Board to see why the permit was cancelled.

Comment: The change in definition of a cancelled permit is especially important in this age of consumer-based web “research” to avoid misinterpretation of a cancelled permit of a valid license holder.

California Dental Corps Loan Repayment Program

In 2002 the legislature created the *California Dental Corps Loan Repayment Program* which became operative January 1, 2003. Designed to increase access to dental care in underserved areas, the program, administered by the Dental Board of California, provides grants of up to \$105,000, distributed over a three year period, to offset or repay educational debt. In return, the dentist enters into a contract to provide care in a “dentally underserved area” as

designated by the California Healthcare Workforce Policy Commission for each year the grant is renewed. The program is financed by the transfer of \$3 million from the unspent reserve account of the State Dentistry Fund to a *Dentally Underserved Account* within the State Dentistry Fund.

The clear statutory authority for the Board to distribute these funds ended in 2006. Approximately \$1.5 million in undistributed and uncommitted funds remained in the account. Language inserted into SB 599, passed by the legislature in the 2008 session and signed by the Governor, extends the program as of July 1, 2010 with authority to distribute the remaining funds until July 1, 2012.

Comment: During the first three fiscal years of program existence, only 17 qualified applicants were identified and funded. The unencumbered funds remaining would support another 15 or so applicants. The wording of the original legislation left some ambiguity as to whether the program would continue until the funds were exhausted or whether the awarding of \$1 million in grant promises in each of three fiscal years set an automatic limit on program existence. SB 599 resolves this ambiguity. Pediatric dentists may reduce general dental education loans and/or pediatric dental training loans under this program.

Mandatory CE Course on Substance Abuse

The Continuing Education Committee in previous meetings considered mandating continuing education on substance abuse by dental licensees as a condition of license renewal. Deliberated by the committee was the necessity for this offering and the form it should take if adopted. At its November meeting, the Committee voted to recommend that the Board proceed by amending the California Code of Regulations to specify that the already mandated course in the California Dental Practice Act contain this instruction. The Board subsequently concurred and directed staff to develop the regulatory language for adoption at a future meeting.

Comment: Historically, CSPD has opposed expansion of mandated-subject continuing education. The Board's authority to mandate subject matter of continuing education is limited to "coursework within the general areas of patient care, health and safety, and law and ethics" and may not exceed fifteen hours per renewal period for dentists and seven and one-half hours per renewal period for dental auxiliaries. If the Committee recommends, and the Board approves, integration of this subject matter into the California Law requirement, it is likely continuing education providers will petition for increasing the number of hours required for this course offering.

Infection Control Regulations

The California Code of Regulations requires the Dental Board to annually review and, if necessary, amend regulations to ensure that minimum standards for infection control adequately address patient safety in dental service delivery. The current regulations were last amended in 2005. As part of the annual review process, a two-person subcommittee of the Board's Infection Control Committee was appointed in April to review the current regulations and make recommendations, if any, for necessary changes. In July the subcommittee made a number of recommendations to conform regulations, as they saw it, to the Centers for Disease Control and Prevention (CDC) 2008 Infection Control Guidelines. These modifications were opposed to a large extent by the Dental Assisting Alliance, which requested that additional input be solicited before the amendments were considered for adoption. The Committee acceded to the request and postponed consideration until the November meeting, at which time they voted to again refer the proposed modifications back to the subcommittee for further review of consistency with CAL-EPA and CDC guidelines and to report back at the February meeting.

Comment: A major point of contention revolves around sterilization and disinfection procedures, specifically the elimination of the requirement that instruments must be "bagged" before sterilization and remain "bagged" until use. The California Association of Orthodontists (CAO) has long held this as unnecessary and impractical for orthodontic instrumentation (such as pliers and wire cutters) treated by dry heat sterilization. The CAO contends that cleaning of critical and semi-critical instruments and subsequent sterilization by dry heat, steam under pressure (autoclaving) or chemical vapor is sufficient to ensure prevention of cross-contamination (i.e. to break the chain of microbial transmission). They further argue there is insufficient evidence to suggest that bagging after sterilization to prevent contamination by air-borne pathogens is less effective than pre-bagging in disease prevention.

Implementation of AB 2637

AB 2637, which becomes operational January 1, 2010, redefines the dental assisting career path. Among the provisions of this legislation is that unlicensed dental assistants must complete an eight-hour Board approved course in infection control within a year of employment. At the November meeting, the California Dental Association raised two concerns regarding this provision:

- The number of unlicensed dental assistants engaged in active practice is estimated to be in excess of 50,000. CDA believes that creating the capacity necessary for completion of an eight-hour Board-approved course, including a four-hour clinical component, is logistically unfeasible and therefore impossible to accomplish within the 12-month timeframe.
- There is some ambiguity in the legislation regarding whether the eight-hour course, consisting of four hours of didactic instruction and four hours of pre-clinical and clinical instruction, may be in two separate components. CDA believes the intent of the legislation was to allow two separate and distinct four-hour instruction components that cumulatively result in eight hours of instruction. Specifically, AB 2637 provides that the didactic instruction can be provided “via electronic media, home study materials, or live lecture methodology.” Furthermore, the statute specifies that the clinical instruction must be in a clinic setting with “at least one instructor for every six students.”

CDA contends that the solution to meeting this requirement of AB 2637 could be addressed by the Board providing one or both of the following actions:

- Supporting emergency legislation in the 2009 legislative session that would exempt currently employed and active dental assistants from the eighty-hour course requirement, either entirely or by substitution of the 2-hour biannual infection control continuing education course (i.e. a “grandfather” clause).
- Allowing dental assistants to comply with the eight-hour course requirement by taking two separate four-hour modalities. In this manner the didactic requirement could be met by an online course developed by CDA or other provider and the clinical requirement could be met in the employing dentist’s office following an established and approved teaching methodology.

After consideration, the Board took no action on the first suggestion (there being no current bill or language to consider) and rejected the second as outside the Board mandate required by statute.

Comment: As AB 2637 was passing through the legislature, it became clear that it would be impossible to promulgate the regulations governing dental assisting educational courses and programs to implement the new law in a timely manner. Therefore, they were included as statutes with inoperative dates of 1/1/11 so that the Board could develop replacement regulations and modification of statute by the inoperative date. If such regulations are not developed and operative by the inoperative date, there will be no laws to govern RDA, RDAEF, IC, OA and DSA programs and courses. CDA will likely insert, or move to insert, relief for the unlicensed dental assistant infection control course dilemma in a comprehensive legislative package.

Respectfully Submitted,

Paul Reggiardo, DDS
Public Policy Advocate, California Society of Pediatric Dentistry.