

Summary of the Meeting of the Dental Board of California

November 15-16, 2007

Prepared for the California Society of Pediatric Dentistry

The Dental Board of California met November 15-16, 2007, in Los Angeles. The following summarizes actions and issues coming before the Board pertinent to pediatric oral health

Dental Board Sunset

The Governor's veto of SB 534 (Peralta), which would have created a new Dental Hygiene Committee under the jurisdiction of the Dental Board, at the same time eliminating COMDA and placing regulation of dental assistants directly with the Board, also eliminated a provision that would have extended the "sunset" date of the Dental Board of California through 2012. As a result, the Board will become inoperative on July 1, 2008 (ceasing to exist altogether January 1 2009), and the Board's functions transferred July 1, 2008, to a bureau within the Department of Consumer Affairs. In his veto message, the Governor cited increased licensure costs for dental hygienists and assistants without commensurate benefit as his reason for the veto.

In an effort to circumvent this eventuality, efforts were made in November and December at the passage of legislation to extend the sunset date in one of the special legislative sessions called by the Governor to consider health care reform. These efforts failed for several reasons, including the inability of the Governor and Senator Peralta to agree on whether such legislation should address only sunset considerations (several other state boards, for various reasons, were also in need of extensions) or whether the issue of creation of a Dental Hygiene Committee would be part of the package. Because the state constitution in the past has been interpreted to prohibit the use of an "urgency" bill to create or eliminate a state governmental agency, any legislative remedy introduced next year (2008) will not become effective until January 1, 2009. This means the Dental Board will convert a DCA bureau for at least the final six months of 2008.

Comment: This would not be the first time that a regulatory board has become (albeit temporarily) a bureau of the DCA. In this scenario, interim decision-making authority would rest with the Department of Consumer Affairs and the members of the existing Board could be invited to act in an advisory capacity to the DCA. Board staff could stay on as employees of the Department of Consumer Affairs, the Director of the DCA could choose to hire the Board's Executive Officer as an interim director of the bureau, and operations could proceed "as usual" until reconstitution of the Board January 1, 2009. Examination, licensing, and enforcement activities could proceed with existing staff operating as employees of the DCA. At the meeting, a representative of the DCA assured the Board that this is how events would emerge, although I am less than certain. In any event, the Governor would have complete authority as to the appointments to the new Board and the legislature would have ability to alter the Board's composition in re-creating a new Dental Board of California.

Dental Examination and Licensing

The Board continues movement toward implementing SB 683 (2006), which provides for California dental licensure by completion of a one-year General Practice Residency or Advanced Education in General Dentistry program by adoption of necessary regulatory language and forms. As SB 683 also allows for implementation of emergency regulations, the Board anticipates that graduates of these programs will be able to apply for a California license to practice dentistry in early 2008.

In separate action, the Examination Committee moved forward with a proposal to develop a "portfolio" pathway to California dental licensure. Under the concept, graduating dental students of good academic and ethical standing (as attested by their Dean), passing Parts I and II of the written National Board Examination, and successfully completing uniform competency examinations by the faculty at their respective schools (as set forth by the Dental Board of California and commensurate with areas of practice presently tested on the California and WREB licensing examinations) would present to the Board a "portfolio" of specified "clinical experiences" accomplished during dental training. The "portfolio" would encompass, as does the current clinical examination, examples of oral diagnosis and treatment planning (40 cases), periodontics (40 cases), restorative care (80 cases), endodontics (5 cases), prosthodontics (18 individual indirect restorations and 7 arches of full and partial removable appliances), and

oral surgery (25 procedures). Portfolios would be evaluated and assessed by a team of Board-appointed “evaluators” using criteria consistent with that used in the examination process.

At the Committee’s recommendation, the Board voted to support the concept and directed staff to explore draft legislation for possible consideration in 2008.

Comment: The Draft Portfolio Application Package developed by the Examination Committee fails to mandate clinical competency or portfolio evidence of experience in the treatment of children or the primary dentition. Under public comment, CSPD’s Public Policy Advocate made the observation that testing for clinical competency in the treatment of children in a live- patient challenge examination is inappropriate. However, not including competency determination in pediatric dentistry by dental school portfolio submission is a missed opportunity and one that should be addressed in future occupational analyses and portfolio development.

Dental Assistant Training and Licensure

SB 1546 of 2004 placed into law new dental assisting categories effective January 1, 2008. SB 1048 of 2007 moves that effective date to January 1, 2010. In the meantime, the Board must adopt implementing regulations regarding the education and training requirements for Registered Dental Assistants (RDA), Registered Restorative Assistants (RRA), Registered Orthodontic Assistants (ROA), Registered Surgery Assistants (RSA), Registered Dental Assistants in Extended Functions (RDAEF) and Registered Restorative Assistants in Extended Functions (RRAEF). The law also requires that the Board adopt content requirements and approve courses in Infection Control, California Law, and Radiation Safety for non-licensed dental assistants.

SB 1541 of 2006 preserved the work-experience pathway to licensure in the new specialty categories and requires the Board to adopt regulations that will enable it to (1) approve formal specialty education programs in the new specialty areas, (2) approve prerequisite and core courses teaching basic science when these courses are taught at secondary institutions or through regional occupational centers and programs, and (3) establish the parameters governing on-the-job training.

In addition, SB 1541 allows existing RDAs to perform duties in accordance with the new, expanded scope of RDA practice by completing stand-alone Board-approved courses in:

- Orthodontic bracket selection, pre-positioning, curing, and removal
- Monitoring of patients during the pre-operative, intra-operative, and post-operative surgical care
- Adding drugs, medications, and fluids to intravenous lines using a syringe
- Applying pit and fissure sealants.

Regulations for the approval of pit and fissure sealant courses are already in place. The Board now approves courses in infection control and California law through its continuing education regulations and may elect to recognize these courses as meeting the new educational requirements for non-licensed dental assistants. In all other areas, COMDA and the Board are in the progress of developing a comprehensive regulatory package to encompass all areas of SB 1546, SB 1541, and related legislation.

In June the Board and COMDA met in a special day long session to initiate development of draft regulations. This process was continued at the August and November meetings. The Board continues to grapple with these issues with development of regulations that will continue well into 2008.

Comment: In my opinion the most important unresolved issue is that surrounding the re-licensure of existing RDA’s. Under one scenario, existing RDA’s would be allowed to renew their RDA license, but would be prohibited from performing any of the four new duties unless completing Board-approved courses in these functions. Under another scenario, all RDA’s would be required to complete Board-approved courses in orthodontic bracket placement, surgical care monitoring, and pit and fissure sealants before being allowed to renew their licenses.

Continuing Education Requirements

In January 2006 the Board approved amended language to the Business and Professions Code to add mandatory reporter responsibilities of a dentist regarding suspected abuse or neglect to the required content of the California Dental Practice Act course. In November of 2006 the Board considered additional changes recommended by staff to address internal issues of monitoring and enforcement of continuing education and to qualify courses that teach communication of dental procedures in foreign languages to Category II credit. At that meeting CSPD offered public testimony that additional modifications were necessary to clarify the responsibility for deciding if a particular course qualified for either Category I or Category II credit under B&PC regulations and it was unrealistic and unfair to place this burden on the licensee. After considering CSPD's argument, with concurring opinion from the Board's legal council, the Board, voted to revise the continuing education regulations so that course providers would assume this responsibility. At its February 2007 meeting, the Board voted to add drug abuse and dependency issues to Category I credit, as well as certain other changes, and approved a regulatory package (containing all changes dating back to those of January 2006) for public hearing.

A public regulatory hearing was conducted June 13, 2007. Following public testimony, the Board voted a number of other changes to Category I and Category II qualifying regulations. Among the changes adopted at this hearing was one that rather confusingly placed "courses in behavior management in pediatric and special needs populations when oriented specifically to the clinical care of the patient" into Category I and "courses in skills such a communication, behavioral sciences, patient management, and motivation when oriented specifically to the needs of the dental practice and will improve the health of the patient" into Category II. During the 45-day comment period that followed this hearing, CSPD pointed out the confusion inherent in the behavior management sections. At next meeting of the Board in August 2007 CSPD provided additional testimony to the effect that all courses directly related to improving patient care and clinical outcomes were appropriate to Category I and that "behavior guidance" was a more contemporary term than "behavior management." The Board subsequently voted to credit all "courses in behavioral sciences, behavior guidance, and patient management in the delivery of care to all populations including special needs, pediatric, and sedation patients when oriented specifically to the clinical care of the patient" into Category I. The Board directed staff to incorporate these and other changes into a "final" regulatory package for public comment.

At its meeting November 16, the Board considered the "final" regulatory package and directed staff to proceed with the rulemaking process.

Comment: The "final" regulatory package contains the provision that the certificate issued as evidence of completion at the end of the course shall "contain the licensee's name and license number.... in the upper left hand corner of the certificate." Under current regulation is it common practice for providers of continuing education, including professional specialty organizations at annual scientific sessions, to allow the licensee to affix his or her own name to the certificate. I raised the question to the Board's legal counsel concerning whether the Board's interpretation of the proposed regulations will allow continuance of this practice or whether the name and license number of the attendee will have to appear on the certificate placed there by the course provider prior to distribution. I was informed that this, along with several other unresolved issues, will be addressed by the Board in January.

Respectfully Submitted,

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