



Monday, December 12, 2011

Dental Hygiene Committee of California

Enforcement Subcommittee Agenda

Agenda



Notice is hereby given that a public meeting of the Enforcement Subcommittee of the Dental Hygiene Committee of California will be held as follows:

ENFORCEMENT SUBCOMMITTEE MEETING

Monday, December 12, 2011

9:30 AM

**Evergreen Hearing Room
2005 Evergreen Street, 1st Floor
Sacramento, CA 95815**

Agenda

- ENF 1** – Roll Call
- ENF 2** – Public Comment for items not on the agenda
- ENF 3** – Chairperson's Report
- ENF 4** – Approval of December 5, 2010 Minutes
- ENF 5** – Complaint Form Update
- ENF 6** – Enforcement Statistics
- ENF 7** – Department of Consumer Affairs Performance Measures
- ENF 8** – Adjournment

Enforcement Subcommittee

Chair – Alex Calero, Public Member
Miriam DeLaRoi, RDHAP
Cathy DiFrancesco, RDH

A quorum of the Committee may be present at the subcommittee meeting. However, Committee members who are not on the subcommittee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The subcommittee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers, for convenience, and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-1978 or access the Committee's Web Site at **www.dhcc.ca.gov**.

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Anthony Lum at (916) 576-5004 or e-mail anthony.lum@dca.ca.gov or send a written request to DHCC at 2005 Evergreen Street, Ste. 1050, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.



Monday, December 12, 2011

Dental Hygiene Committee of California

Enforcement Agenda Item 3

Chairperson's Report



MEMORANDUM

| | |
|----------------|--|
| DATE | December 12, 2011 |
| TO | DHCC Committee Members |
| FROM | Alex Calero, Chair Enforcement Subcommittee, Dental Hygiene Committee of California |
| SUBJECT | Agenda Item 3: Chairperson's Report |

A verbal report will be provided.



Monday, December 12, 2011

Dental Hygiene Committee of California

Enforcement Agenda Item 4

Approval of December 5, 2011 Minutes

Dental Hygiene Committee of California

2005 Evergreen Street, Suite 1050, Sacramento, California 95815
Phone 916.263.1978 Fax 916.263.2688 | www.dhcc.ca.gov



***Dental Hygiene Committee of California
Enforcement Subcommittee Meeting***

*Department of Consumer Affairs
Evergreen Hearing Room
2005 Evergreen Street
Sacramento, CA 95815*

Sunday, December 05, 2010

DRAFT MINUTES

1. Roll Call/Establishment of Quorum

Members Present

Alex Calero, Public Member & Chair
Miriam DeLaRoi, RDHAP
Cathy DiFrancesco, RDH

Staff Present

Lori Hubble, Executive Officer
Shirley Moody, Enforcement Coordinator
Dennis Patzer, Enforcement Analyst

Legal Counsel

Norine Marks

The meeting began at 10:57 a.m. Roll was called and a quorum established.

2. Public Comment

There was no public comment.

3. Approval of September 27, 2010 Minutes

It was m/s/c (DeLaRoi/DiFrancesco) to approve the September 27, 2010 Enforcement Subcommittee minutes as submitted. Motion passed unanimously.

4. Chairperson's Report

There was no Chairperson's report.

5. Enforcement Statistics

Shirley Moody, DHCC Enforcement Chief, presented the enforcement report for the month of December 2010. She reported the following:

- 12 Field and 16 Records investigations were open

- 12 licensees were on probation of which seven were active and five were tolling

6. Discussion and Consideration of Peer Review

Dennis Patzer, DHCC Enforcement Officer, reported what peer review was under existing law as well as the definition of what constituted a peer review body. Mr. Patzer reported that all peer review and peer review bodies existed outside the board or committee structure and that some of the outcomes of actions by the peer review were required to be reported by law. During his research Mr. Patzer found that for the practice of dental hygiene, peer review did not exist on the West Coast. He felt the first place to start with peer review would be at the association level.

Ms. Moody stated that if the Dental Hygiene Committee wanted to participate in the 805 reporting process it would have to be accomplished through legislation. Staff recommended that if the association wanted peer review, it should be done by the association through legislation.

Mr. Calero asked if there were any questions from the subcommittee.

Ms. DiFrancesco asked if the Dental Hygiene Committee was listed in Senate Bill 700. Mr. Patzer stated that it was not. Ms. Moody stated that currently a facility or dentist may not report adverse decisions to the Dental Hygiene Committee because they are not required to submit an 805 form. If they filed a complaint with the committee it would be investigated through the normal process.

Ms. DiFrancesco asked if peer review was done just for persons working independently. Ms. Moody stated that generally peer review was done by facilities or the associations when patient safety may have been jeopardized. Ms. Moody stated that the Dental Hygiene Committees enforcement process is somewhat like peer review. Mr. Patzer stated that in regards to expert determinations, two opinions are sought and if the opinions concur, the opinion is accepted. If the opinions do not concur, a third opinion is sought and that opinion would be used along with the other concurring opinion for investigative determination. Mr. Patzer stated that in regards to using expert opinions the process is much like peer review.

Ms. DiFrancesco asked if peer reviews were accepted in the enforcement process. Ms. Moody stated that they would still have to be completely investigated in the enforcement process and expert reviewers would still have to be used.

Ms. Moody stated that because most dental hygienists work under the supervision of a dentist she did not see why peer review would be beneficial.

For clarification purposes Mr. Calero commented that peer review is done by some kind of internal body of a hospital or association and that law mandates reporting to the appropriate board when adverse action occurs and this gives a

regulatory board a heads up. Mr. Calero discussed the 805 participants described in the agenda package.

Kimberly Kirchmeyer, Deputy Director for Board and Bureau Relations stated that because the 805 reporting process is controversial in the medical boards she felt that if a registered dental hygienist was disciplined by a peer review, the committee probably would not send one to the Dental Hygiene Committee. Ms. Kirchmeyer stated that if there are instances where peer review for dental hygienists is occurring, the committee should look into legislation for reporting outcomes.

Ellen Standley, California Dental Hygienists' Association President (CDHA), stated that the association would like to monitor the peer review action by the Dental Hygiene Committee of California and would be willing to provide input at a later date.

JoAnn Galliano, Educator, stated the California Dental Hygienists' Association would have to set up the peer review structure in accordance with existing requirements and submit it for legislation. Ms. Galliano stated the one question that would be asked is, is the Dental Hygiene Committee in support of it.

Mr. Calero asked legal counsel if it was appropriate for the subcommittee to provide a consensus on peer review instead of taking a formal vote.

Ms. Marks stated that the subcommittee could provide consensus if it wanted to.

Mr. Calero stated that if it helps to protect consumers of dental hygiene services, the subcommittee would definitely like to look into it further and would be interested in hearing back from any interested organization.

7. *Review of DHCC's Consumer Complaint Form*

Mr. Calero commended committee staff for their work on the Consumer Complaint form, especially the brief summary of the complaint process. Mr. Calero said he had a few non- substantive changes that he would share with staff later.

Ms. Kirchmeyer stated that under the BreEZe Project the Department of Consumer Affairs had developed a standardized complaint form and encouraged the committee to use it now. She stated that when BreEZe is operational, the department will push all the boards to use it.

Ms. Standley commended the committee for its work in the development of a complaint form to meet the needs of the consuming public as well as dental practitioners.

8. *Proposed regulations to implement DCA recommendation to strengthen DHCC's enforcement program pursuant to Consumer Protection Initiative (CEPI)*

Mr. Calero stated that he was under the impression that not only was the Enforcement Subcommittee going to look at this agenda item but the Legislation and Regulation Subcommittee would also be addressing the issue. Mr. Calero stated that any substantive and non-substantive changes coming from the Enforcement Subcommittee should be given to the Legislation and Regulation Subcommittee.

Ms. DiFrancesco questioned language in section 1138.2(a)(2) regarding the word "revoked" and "Promptly." It was determined that the word "revoked" be changed to "revoke." Ms. DiFrancesco questioned whether the word "Promptly" in the section was definitive enough. Ms. Marks stated the word "Promptly" would provided by prior counsel was probably from model language.

Ms. Kirchmeyer stated that the word "Promptly" was used because of the Administrative Procedure Act requirements regarding time line issues.

Mr. Calero directed the subcommittee to section 1138 Delegation of Functions. He stated that this section gave authority to the Executive Officer to perform all functions necessary to do the business of the committee in connection with investigative and administrative proceedings as well as being able the approve settlement agreement for the revocation, surrender, or interim suspension of a license. Mr. Calero stated that there had been concerns that there may be a conflict of interest as the Executive Officer makes the initial decision to proceed with disciplinary action. He stated that prior legal counsel stated that there would not be a conflict of interest. Ms. Marks agreed that there would not be a conflict of interest.

Ms. Kirchmeyer encouraged the committee to take out the verbiage "including but not limited to" because it was too broad. She stated that language had been an issue with another board in their proposed regulation. Mr. Calero stated that there was not a motion to change the verbiage on the floor.

Mr. Calero stated that he had noticed while reviewing the statutory cleanup language under tab 8 of the Legislation and Regulatory Subcommittee agenda items, that in section 1958.1(the sex offender language) is the same as the sex offender language of the proposed regulation. He said he wanted clarification of what was the purpose of having the same language in the statute as the regulation.

Ms. Napper stated that the committee may not need the language referred to in the statute in its proposed regulation. She stated that the language cleanup was acceptable at the time it was submitted.

Ms. Marks stated the statute always trumps the regulation.

Ms. Galliano stated that the language in the legislation had inadvertently left out what the California Dental Hygienist Association had submitted, including the sex offender language, and that is why it is now in the cleanup language.

Ms. Kirchmeyer stated that if the committee has the authority to strike language from the legislation cleanup and put it in proposed legislation, then it should consider doing it. She said that leaving the language in both legislation cleanup and proposed regulation could be problematic.

Erica Eisenlauer, Legislative Analyst, Department of Consumer Affairs, stated that having the language in both the statutory cleanup and regulation proposals could raise issues. She said it would probably be easier to do it through regulation.

Mr. Calero stated that the subcommittee was asked to determine whether it was a good idea to have the legislative language placed in legislation or regulation. He thought the subcommittee should make a recommendation to the full committee as to where the language should be placed.

Mr. Calero stated that he wanted to explore whether the subcommittee wanted to make all four categories addressed in section 1138.3(e)(2), unprofessional conduct. The subcommittee agreed that all four categories were unprofessional conduct.

It was m/s/c (DiFrancesco/DeLaRoi) that the Enforcement Subcommittee recommend to the Full Committee that the Full Committee begin the regulatory process with respect to 1138, 1138.2, and 1138.3 including all substantive (deleting the language "including but not limited to") and non-substantive changes. The motion passed unanimously.

Agenda Item 9 – Future Agenda Items

There were no suggestions for future agenda items.

Agenda Item 10 – Adjournment

The subcommittee meeting adjourned at 12.22 p.m.



Monday, December 12, 2011

Dental Hygiene Committee of California

Enforcement Agenda Item 5

Complaint Form Update



MEMORANDUM

| | |
|----------------|---|
| DATE | December 12, 2011 |
| TO | DHCC Committee Members |
| FROM | Shirley Moody, Enforcement Coordinator |
| SUBJECT | Agenda Item 5: Complaint Form Update |

Staff has incorporated changes in the complaint form as directed by the Committee. The new complaint form has been placed online.

Attached is a copy of the DHCC's complaint form as it appears online.



CONSUMER COMPLAINT FORM

PLEASE PRINT OR TYPE

COMPLAINT REGISTERED AGAINST

| | | | |
|----------|--------|-----------|------------------------|
| Name: | | | Name of Dental Office: |
| Address: | | | |
| City: | State: | Zip Code: | Office Phone Number: |

PERSON REGISTERING COMPLAINT

| | | |
|--|--------|--------------------------|
| Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms. <input type="checkbox"/> | Name: | Relationship to Patient: |
| Address: | | Home Phone Number: |
| City: | State: | Zip Code: |
| Patient Name: | | Patient's Date of Birth: |
| <input type="checkbox"/> Male <input type="checkbox"/> Female | | |
| Legal authority to act on patient's behalf? If yes, must attach legal documentation. | | |
| Has patient been examined or treated by another hygienist for this same complaint? YES <input type="checkbox"/> NO <input type="checkbox"/> If yes, please provide full names and addresses on the back of this form. | | |

DETAILS OF COMPLAINT

Dates of Visits:

State your complaint in detail:

NOTICE: As much information as possible should be provided, in addition to any supporting documents pertaining to your specific complaint. Failure to provide sufficient information or documentation may prevent or delay the review of your complaint. The information will be used to determine whether a violation of law has occurred. If a violation is substantiated, the information may be transmitted to other governmental agencies, including the Attorney General's Office. The Dental Hygiene Committee of California does not have jurisdiction over fee disputes or office business procedures.

DO NOT WRITE IN
THIS SPACE

Signature _____ Date _____



SUPPLEMENTAL COMPLAINT INFORMATION

PLEASE PROVIDE THE NAME, ADDRESS, TELEPHONE NUMBER AND DATE OF VISIT TO ANY OTHER HYGIENIST OR HYGIENIST IN ALTERNATIVE PRACTICE YOU HAVE SEEN SINCE BEING TREATED BY THE SUBJECT OF YOUR COMPLAINT.

| | | |
|----|---------|---------|
| 1. | | |
| | | SUITE # |
| | PHONE # | DATE(S) |
| 2. | | |
| | | SUITE # |
| | PHONE # | DATE(S) |
| 3. | | |
| | | SUITE # |
| | PHONE # | DATE(S) |
| 4. | | |
| | | SUITE # |
| | PHONE # | DATE(S) |



Authorization for Release of Dental/Medical Patient Records

Patient Name: _____ Date of Birth: _____

AUTHORIZATION TO RELEASE INFORMATION: I, the undersigned, authorize any physician, dentist, medical practitioner, hospital, clinic or other dental or dental related facility having records (original and/or electronic) available as to diagnosis, treatment and prognosis with respect to any dental or medical condition and/or treatment of me (or the patient) to release to the Dental Hygiene Committee of California or any Committee representative, related local, state and federal governmental agencies, including but not limited to, investigators and legal staff.

I understand that this information will be maintained in confidence and will be used solely in conjunction with any investigation and possible legal proceeding regarding any violations of California laws and regulations. I further agree to allow the Committee, Committee representatives and related governmental agencies, to process and possibly file other charges based on my complaint.

I also understand that the subject of my complaint may receive a copy of my complaint and records pursuant to the Administrative Procedures Act and the Information Practices Act.

I agree that a photocopy of this Authorization shall be as valid as the original. This Authorization shall remain valid until the Dental Hygiene Committee of California or other authorized government agency completes its review and the proceedings arising out of the investigation.

I understand that I have a right to receive a copy of this authorization if requested by me.

Patient/Guardian

Signature: _____ Date: _____

Attach written proof of authorization to act on patient's behalf.

NOTE TO THE PROVIDER: This release is compliant with the requirements of HIPPA and Civil Code Section 56.11.

THE COMPLAINT AND DISCIPLINARY PROCESS:

The Dental Hygiene Committee of California has authority over licensed registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions in California and has the authority to enforce the provisions of the laws and regulations related to the practice of dental hygiene (within the California Business and Professions Code and the California Code of Regulations). The Committee also handles complaints for the unlicensed practice of dental hygiene.

Complaints involving allegations that are not within the jurisdiction of the Committee will be returned to the complainant with information about other agencies or organizations that may be better able to assist the complainant. Allegations that are not within the authority of the Committee include fee/billing disputes, general business practices, personality conflicts, and providers who are licensed by other boards/bureaus such as dentists, and registered dental assistants.

You may file a complaint with the Dental Hygiene Committee of California by using the attached Consumer Complaint Form or by submitting it electronically from the Committee's website:

www.dhcc.ca.gov

Anonymous complaints will be reviewed by the Committee. It may not be possible to pursue an anonymous complaint unless it contains documented evidence of the allegations made.

Allegations of unlicensed practice will be investigated by the Committee and if sufficient evidence is found, will be forwarded to the local District Attorney's Office for criminal prosecution. Please submit proof of the unlicensed practice with your complaint (i.e. appointment card, invoices, website information, advertisements, business letterhead etc.).

Upon receipt, your complaint will be assigned to Committee Enforcement Unit personnel for review. Within 10 days of receipt of the complaint by the Committee, you will be notified of receipt. A staff person from the Enforcement Unit will gather the information necessary to review and evaluate your complaint. The information necessary may include patient records or written reports, a written response from the subject of the complaint, an opinion from a Committee consultant, or possibly, a legal opinion. If the complaint file is sent for consultant review, the complainant will be notified.

If the review determines that the actions of the registered dental hygienist were not below the standard of care for dental hygienists, the Committee has no authority to proceed, and the complaint will be closed. If the Committee finds that the care fell below the standard of care, but does not represent gross negligence, generally the complaint will be closed and will be maintained on file for the Committee's further reference. Often complaints are dealt with through a variety of non-disciplinary methods which may include but are not limited to mediation between the parties involved, educational letters, cease and desist letters, warning letters or face-to-face educational interventions between the licensee and a Committee consultant.

If a complaint warrants formal investigation, the complainant can expect to be interviewed by investigator assigned to the case. Details of the complaint and investigation remain confidential and are not public record; details may be disclosed to the subject of the complaint at some point. The complainant is notified when a complaint is referred for investigation.

If a complaint is referred to investigation and a violation is confirmed, the case may be submitted to the Office of the California Attorney General for disciplinary action against the dental hygienist's license. Once a case has been accepted by the Office of the Attorney General, an Accusation is then drafted. The accusation is the first public document in the disciplinary process. Once the Accusation is filed, the licensee may request a hearing to contest the charges. At the hearing, the Committee must demonstrate by "clear and convincing evidence to a reasonable certainty" that the allegations are true. For that reason, it is generally necessary for the person who made the original complaint to testify in person at the administrative hearing.

In many cases, the defense counsel and the Deputy Attorney General representing the Committee may engage in discussions of proposals for stipulated agreements prior to hearing. Stipulated agreements generally include admission to one or more of the allegations and a proposal for appropriate discipline. The Committee encourages negotiated settlements because they eliminate the need for costly administrative hearing and protect consumers by imposing disciplinary action sooner. To this end the Committee has adopted Disciplinary Guidelines that are designed to set forth the Committee's penalty standards. You may obtain a copy of the guidelines by contacting the Committee's office, or by downloading it from the Committee's website. When a case does go to hearing, the hearing is presided over by an Administrative Law Judge (ALJ). After the hearing is completed the (ALJ) will issue a "Proposed Decision" stating the ALJ's findings (facts proven in the hearing) and offering a recommendation for resolution of the case (i.e. revocation, suspension, probation, dismissal). The ALJ utilizes the Committee's Disciplinary Guidelines in formulating his or her recommendations. The Proposed Decision is distributed to the Committee members for vote. If the Committee votes in favor of the Proposed Decision, it becomes the Final Decision. If the Committee votes to non-adopt the Proposed Decision, the hearing transcript is reviewed by the Committee members, written arguments are solicited from the defense counsel and the Attorney General, and the Committee subsequently issues its own Final Decision. Final Decisions are matters of public record. Disciplinary documents (i.e. Accusations and Final Decisions) will be automatically provided to the complainant in the case and available to the public through the Committee's website. The Committee's goal is that its disciplinary process should take no longer than 520 days.



Monday, December 12, 2011

Dental Hygiene Committee of California

Enforcement Agenda Item 6

Enforcement Statistics

Open Investigations 11

Field Investigations (2)

| | |
|-----------------|---|
| Drugs & Alcohol | 2 |
|-----------------|---|

Records Requests (9)

| | |
|-----------------|---|
| Drugs & Alcohol | 9 |
|-----------------|---|

Probationers 9

Active (4)

| | |
|-----------------|---|
| Drugs & Alcohol | 3 |
| Grand Theft | 1 |

Tolling (5)

| | |
|---------------------|---|
| Drugs & Alcohol | 2 |
| Negligence | 1 |
| Unlicensed Practice | 1 |



Monday, December 12, 2011

Dental Hygiene Committee of California

Enforcement Agenda Item 7

Department of Consumer Affairs Performance Measures



| | |
|----------------|--|
| DATE | December 12, 2011 |
| TO | Dental Hygiene Committee of California Enforcement Subcommittee |
| FROM | Shirley Moody Enforcement Coordinator |
| SUBJECT | ENF 7 – Department of Consumer Affairs Performance Measures |

Enforcement Improvement Plan

This memorandum is in response to the request for an Enforcement Improvement Plan. The Dental Hygiene Committee of California (DHCC) was established on July 1, 2009.

The following is the Enforcement Plan:

1. Hire staff: The DHCC needs to hire an Investigative Analyst, since Dennis Patzer's retirement on July 31, 2011, to review all fingerprints, investigate complaints, track all disciplinary cases, and monitor probationers.
2. Review and update Statutes.
3. Review and update Regulations.
4. DHCC is in the process of completing the Cite and Fine regulations that are currently in the regulatory process.
5. The DHCC Disciplinary Guidelines are in the regulatory process.