



Monday, December 3, 2012

Dental Hygiene Committee of California

Enforcement Subcommittee Meeting

Agenda



Dental Hygiene Committee of California

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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 3, 2012

Upon Conclusion of Closed Session

Department of Consumer Affairs Headquarters

EL Dorado Room

1625 North Market Street, 2nd Floor North, Room 220

Sacramento, CA 95834

Agenda

- ENF 1** – Roll Call
- ENF 2** – Public Comment for Items Not on the Agenda
- ENF 3** – Chairperson's Report
- ENF 4** – Approval of April 16, 2012 Minutes
- ENF 5** – Consideration and Possible Action of Statutory Language Regarding Issuance of Initial Probationary License for Applicants
- ENF 6** – Enforcement Statistics
- ENF 7** – Department of Consumer Affairs Performance Measures
- ENF 8** – Future Agenda Items
- ENF 9** – Adjournment

Enforcement Subcommittee

Chair – Rita Chen Fujisawa, Public Member
Alex Calero, Public Member
Nicolette Moultrie, RDH
Noel Kelsch, RDHAP

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 3, 2012

Dental Hygiene Committee of California

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Agenda Item 3

Chairperson's Report



MEMORANDUM

DATE	December 3, 2012
TO	DHCC Committee Members
FROM	Rita Chen Fujisawa, Chair, Enforcement Subcommittee
SUBJECT	Agenda Item 3: Chairperson's Report

A verbal report will be provided.



Monday, December 3, 2012

Dental Hygiene Committee of California

Enforcement Subcommittee Meeting

Agenda Item 4

Approval of April 16, 2012 Minutes



DRAFT - ENFORCEMENT SUBCOMMITTEE MEETING MINUTES

**Embassy Suites – San Diego Downtown
Topeka Room
601 Pacific Highway
San Diego, CA 94101
Monday, April 16, 2012**

ENF - 1 Roll Call

The Enforcement Subcommittee Chair (Alex Calero substituting for Rita Chen Fujisawa, who was not in attendance) called the meeting to order with roll call at 9:11 a.m. With two out of three subcommittee members present, a quorum was established.

Subcommittee members present: Alex Calero, Public Member, and Michelle Hurlbutt, RDH Educator.

Subcommittee member absent: Rita Chen Fujisawa, Public Member.

Staff present: Lori Hubble, Executive Officer, Anthony Lum, Administration Analyst, and Traci Napper, Legislation and Regulatory Analyst.

Department of Consumer Affairs' (DCA) legal representative present: Claire Yazigi.

ENF - 2 Public Comment for Items Not on the Agenda

Ms. Yazigi clarified that any public comment under this agenda item would need to be on issues intended to be placed on a future Enforcement Subcommittee agenda. She stated that even if the comments pertained to this agenda item, the comments could not be a discussion of substance, only a request to place it on a future agenda for the subcommittee to address.

John Carpenter had a suggestion for the Committee. Mr. Carpenter indicated that he submitted two letters about his quality of dental care he received and never received a response. Mr. Calero asked as to whether the letters he submitted were directed to the dental office where he received dental services or to the Dental Hygiene Committee of California (Committee). Mr. Carpenter stated that the letters were sent to the dental office where he received dental services.

Mr. Carpenter suggested that any investigation conducted by the Committee, the Dental Board, or insurance fraud authority that involves dentists or dental hygienists, should have the names of the dentist and dental hygienists forwarded to the Committee so that they are aware of the individual licensee's conduct. He stated that if the Committee had a list of the names of individual licensees that work in particular offices that are under investigation, it would identify the licensees that may have professional conduct issues, as their name would be on multiple office lists.

Mr. Calero asked for any further public comment for items not on the Enforcement Subcommittee's agenda.

Andrea Gardner, the wife of a retired dentist, inquired as to whether the Committee acted in conjunction with the Dental Board on investigations of dental hygienists. Ms. Hubble stated that the Committee would consider it a companion case and would work in conjunction with the Dental Board on these types of investigations. Ms. Gardner indicated that she was satisfied with the response that the Committee would work with the Dental Board on an investigation against a dental hygienist.

There was no further public comment.

ENF - 3 Chairperson's Report

Mr. Calero stated that the Enforcement Subcommittee had previously worked on draft disciplinary guidelines and uniform standards regarding substance abuse for use by the Committee and provided an update on their status. He indicated that the regulatory process for the disciplinary guidelines and uniform standards did not progress since the December 2011 meeting. He explained that he would brief the Committee at the full committee meeting on the next day.

Mr. Calero reported on a recent DCA legal opinion indicating that the uniform standards created by SACC (Substance Abuse Coordination Committee) are mandatory for all boards and committees. Also, Ms. Yazigi identified some of the areas within the Committee's proposed uniform standards had a few minor deviations from the original language proposed by SACC. He indicated that at tomorrow's full committee meeting, the Committee will be presented with a proposal to revise the existing draft disciplinary guidelines and uniform standards to incorporate the language that was identified by Ms. Yazigi in order to eliminate any existing deviations in the language.

ENF - 4 Approval of December 12, 2011 Minutes

Mr. Calero asked for a motion to approve the December 12, 2011 subcommittee meeting minutes.

- **Michelle Hurlbutt moved to approve the December 12, 2011 Enforcement Subcommittee meeting minutes.**

Alex Calero seconded the motion.

Mr. Calero asked if there was any public comment on the approval of the minutes. There was no public comment.

Mr. Calero called for the vote to approve the December 12, 2011 meeting minutes.

Vote: The motion passed unanimously (2 – 0).

ENF - 5 Enforcement Statistics

Ms. Hubble reported that currently, the Committee has 24 open investigations and that of the four field investigations, one is related to drugs and alcohol, two pertain to working outside of the scope of practice, and one is of negligence. She continued that the Committee enforcement staff have made 20 records requests all of which are related to drugs and alcohol. She stated that the Committee currently has eight probationers of which four are active (three involve drugs and alcohol and one pertains to grand theft) and the remaining four are tolling probationers.

Mr. Calero inquired whether there were any questions from the subcommittee members in regard to the enforcement statistics. Ms. Hurlbutt asked whether any of the open

investigations are a cooperative type of investigation with the dental board. Ms. Hubble stated that she did not have the specific information on this issue and would confer with the Committee's Enforcement Coordinator to obtain it.

Mr. Calero asked if there was any public comment regarding the enforcement statistics. Katie Dawson inquired as to the definition of a tolling probationer. Ms. Hubble explained that tolling probation applies to licensees that live out of state and cannot complete their current probationary terms and thus, the licensee's probation is tolled (or paused, as clarified by Ms. Yazigi) while they are out of state until the licensee returns to California to practice. Ms. Yazigi provided an example where a licensee received five years of probation, served two of them while practicing in California, but then left the state where they are no longer practicing in California, so the remaining three years of probation is tolled until the licensee returns to California to practice.

Mr. Calero asked for any further comment from the public or Enforcement Subcommittee members. There were no further comments.

ENF - 6 Department of Consumer Affairs Performance Measures

Mr. Calero stated that the next agenda item for the Enforcement Subcommittee is the DCA Performance Measures and deferred to Ms. Hubble for the update.

Ms. Hubble stated that the DCA Performance Measures were added to the Enforcement Subcommittee meeting packet as an addendum since the information was received a few days prior to the meeting. She indicated that the performance measures are based upon enforcement information forwarded to DCA from the Committee on a quarterly basis and in turn, the DCA presents the Committee with the Performance Measures Report. She explained that the purpose of forwarding the information to DCA is to ensure that the Committee is processing its enforcement cases in a timely manner. She stated that the report shows that the Committee is well within the recommended range of time to complete investigations.

Ms. Hubble reported that the first performance measure indicated the total the number of complaints and convictions received for the quarter. She stated that the Committee received a total of 46 complaints and/or convictions between January and March 2012 that consisted of three complaints and 43 convictions which is an excellent average of 15 per month.

Ms. Hubble reported that for complaint intake, which is the average time to receive and assign a complaint to an investigator, the recommended target time is 30 days and the Committee's average is well below this number at one day.

Ms. Hubble reported that there are no formal discipline or probationary cases to report.

Mr. Calero asked if there were any comments from the subcommittee members or the public. Ms. Gardner inquired as to what the Committee's disciplinary actions consist of when there is a conviction. Ms. Hubble stated that there could be many different disciplinary outcomes from a conviction. She indicated that some possible outcomes are license revocation, probation, and possible imprisonment. Ms. Gardner asked whether a licensee who is put on probation can continue to practice dental hygiene. Ms. Hubble indicated that a licensee could continue to practice while on probation but that the probation would probably have some form of restrictions while the licensee was allowed to continue to practice.

Mr. Calero asked for any further comment from the public.

Mr. Carpenter asked for clarification as to whether the Committee only deals in misdemeanors only. Ms. Yazigi indicated that the Committee only deals with violations of the Dental Practice Act which are misdemeanors. She stated that in addition to a violation of the practice act, other more serious criminal violations can be present such as a violation of the Penal Code. Ms. Yazigi indicated that the subcommittee is not a law enforcement forum and the issue could be presented to his local district attorney's office if the violation is a crime.

Mr. Calero asked for any further public or subcommittee member comments. There were no further comments.

ENF - 7 Public Comment for Items Not on the Agenda

Mr. Calero asked for any comments from the members and the public for items not on the Enforcement Subcommittee agenda. There were none.

ENF - 8 Adjournment

Time: 9:47 a.m.



Monday, December 3, 2012

Dental Hygiene Committee of California

Enforcement Subcommittee Meeting

Agenda Item 5

Consideration and Possible Action of Statutory Language
Regarding Issuance of Initial Probationary License for
Applicants



MEMORANDUM

DATE	November 20, 2012
TO	DHCC Committee Members
FROM	Lori Hubble, Executive Officer
SUBJECT	ENF 5 – Consideration and Possible Action of Statutory Language Regarding Issuance of Initial Probationary License for Applicants

This proposed addition to the code was drafted by legal counsel and would allow the Dental Hygiene Committee of California (DHCC) to issue an initial probationary license in the instance that an applicant has broken the law. Currently, the DHCC only has the ability to issue a clear and unrestricted license or not issue any license. Following is the proposed new text:

- (a) Notwithstanding any other provision of law, the committee may, in its sole discretion, issue a probationary license to an applicant subject to terms and conditions deemed appropriate by the committee, including, but not limited to, the following:
- (1) Medical or psychiatric evaluation.
 - (2) Continuing medical, psychiatric, or psychological treatment.
 - (3) Restriction of the type or circumstances of practice.
 - (4) Random fluid testing for alcohol or drugs.
 - (5) Ongoing participation in a specified rehabilitation program. Abstention from the use of alcohol or drugs.
 - (6) Compliance with all provisions of this chapter.
- (b)(1) Notwithstanding any other provision of law, and for purposes of this section, when deciding whether to issue a probationary license, the committee shall request that an applicant with a dismissed conviction provide proof of that dismissal and shall give special consideration to applicants whose convictions have been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.
- (2) The committee shall also take into account and consider any other reasonable documents or individual character references provided by the applicant that may serve as evidence of rehabilitation as deemed appropriate by the committee.
- (c) The committee may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the applicant or licensee after two years.
- (d) For purposes of issuing a probationary license to qualified new applicants, the committee shall develop standard terms of probation that shall include, but not be limited to, the following:
- (1) A three to five-year limit on the individual issued a probationary license.
 - (2) Supervision requirements.
 - (3) Compliance and quarterly reporting requirements.
- (e) The applicant shall have the right to appeal the denial, or the issuance with terms and conditions, of any license in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

Committee Action Requested

Staff requests the Committee adopt this language and direct staff to pursue legislation to enact this statutory change.



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Agenda Item 6

Enforcement Statistics

INVESTIGATION STATISTICS*

Open Investigations

- **Complaints**

Working Outside Scope	4
Fraud	2

- **Convictions/Arrests**

Drugs/Alcohol	16
Petty Theft	1
Corporal Injury/Assault	3

Cases Referred to Attorney General's Office

- Preliminary Accusations/SOI 7
- Filed Accusations 2

Probationers

<u>Active</u>		<u>Tolling</u>	
Drugs/Alcohol	3	Drugs/Alcohol	3
Unlicensed Practice	1	Negligence	1
Subversion of Exam	1	Unlicensed Practice	1



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Agenda Item 7

Department of Consumer Affairs Performance Measures

Performance Measures

Q1 Report (July - September 2012)

To ensure stakeholders can review the Committee's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

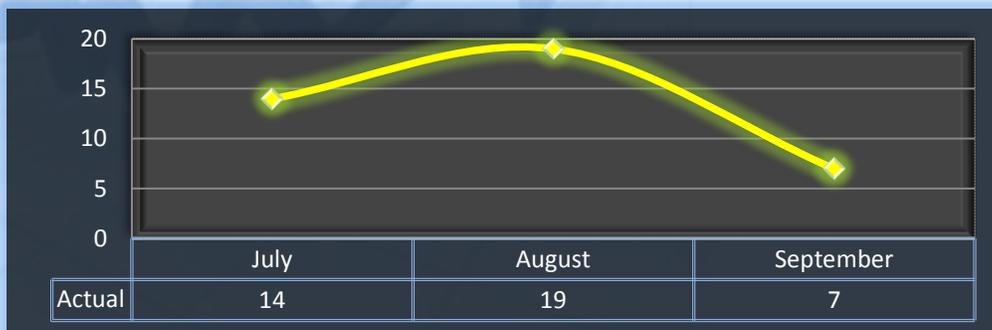
Volume

Number of complaints and convictions received.

Q1 Total: 40

Complaints: 6 Convictions: 34

Q1 Monthly Average: 13



Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 30 Days

Q1 Average: 2 Days



Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 120 Days

Q1 Average: 45 Days



Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Committee, and prosecution by the AG)

Target: 540 Days

Q1 Average: 846 Days



Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q1 Average: N/A

The Committee did not contact any new probationers this quarter.

Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q1 Average: N/A

The Committee did not handle any probation violations this quarter.



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Agenda Item 8

Future Agenda Items