

BOARD OF DENTAL EXAMINERS
Professional & Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawaii Revised Statutes ("HRS").

Date: Monday, November 16, 2015

Time: 9:00 a.m.

Place: Queen Liliuokalani Conference Room
King Kalakaua Building
335 Merchant Street, 1st Floor
Honolulu, Hawaii 96813

Present: Paul Guevara, D.M.D., M.D.S., Chair, Dental Member
Candace Wada, D.D.S., Vice Chair, Dental Member
Staphe Fujimoto, D.D.S., Dental Member
Garrett Ota, D.D.S., Dental Member
Earl Hasegawa, D.D.S., Dental Member
Coy Rebmann, D.D.S., Dental Member
Mark Chun, D.M.D., Dental Member
Dennis Nagata, D.D.S., Dental Member
Janet Primiano, R.D.H., M.P.H., Dental Hygiene Member
Marianne Timmerman, R.D.H., Dental Hygiene Member
Rodney Ching, Public Member
Joy B. Y. Shimabuku, Public Member
Daniel Jacob, Esq., Deputy Attorney General
James Kobashigawa, Executive Officer ("EO")
Sandra Matsushima, Executive Officer ("EO")
Lisa Kalani, Secretary

Guests: Noelani R.E.T.G. Greene, Hawaii Dental Hygienists' Association ("HDHA")
Sandy Kirkoski, Hawaii Dental Hygienists' Association ("HDHA")
Diane Brucato Thomas, RDH, EF, BS, FAADH, Hawaii Dental Hygienists' Association ("HDHA")
Loren Leibling, Hawaii Dental Association ("HDA")
Diana Smith, Hawaii Dental Hygienists' Association ("HDHA")
Gayle Chang, Hawaii Dental Hygienists' Association ("HDHA")
Ellie Miyashiro, Hawaii Dental Hygienists' Association ("HDHA")

1. Call to Order: There being a quorum present, Chair Guevara called the meeting to order at 9:00 a.m.

2. Additions/Revisions to Agenda: It was moved by Dr. Wada, seconded by Dr. Ota and unanimously carried to add/correct the following to the agenda:

Corrections are as follows:

7. New Business: should be corrected to 6. New Business:

3. Approval of Board Meeting Minutes and Executive Session Minutes of September 21, 2015 Meeting. Remove Executive Session Minutes as there are none.

Additions are as follows:

8. Executive Officer's Report on Matters Related to the Board of Dental Examiners:

f. FARB

g. DCCA Disciplinary Actions

3. Approval of Board Meeting Minutes Of July 20, 2015: It was moved by Vice Chair Wada, seconded by Dr. Chun, and unanimously carried to approve the July 20, 2015 Board Meeting minutes as circulated.

4. Applications: a. Ratifications

It was moved by Ms. Shimabuku, seconded by Vice Chair Wada, and unanimously carried to ratify the following:

Approved Dentist

NIGHTINGALE, Lisa
PARK, Yunsang

It was moved by Ms. Shimabuku, seconded by Ms. Timmerman, and unanimously carried to ratify the following:

Approved Dental Hygienist

CUNNINGHAM, Kristin
GOLDSTEIN, Dianne
SAKATA, Shannon
PUHI, Kathleen
MOORHEAD, Kimiko
HAYS, Suzanne
BOBIK, Lindsay

It was moved by Vice Chair Wada, seconded by Ms. Timmerman, and unanimously carried to ratify the following:

Approved Certification in the Administration of Intra-Oral Infiltration and Block Anesthesia

FRERK, Vanessa
PUHI, Kathleen
HAYS, Suzanne
SAKATA, Shannon
GUINOTTE, Jennifer

5. Old Business: a. Discussion on Administrative Rules

- Approval of the Rules Committee Minutes of September 21, 2015 Meeting

It was moved by Dr. Chun, seconded by Dr. Ota, and unanimously carried to approve the September 21, 2015 Rules Committee Minutes as circulated.

Ms. Matsushima stated the proposed rules have been reviewed and approved by the Attorney General's office and will be moving to the next step of the rule revision process which is a review by the Small Business Regulatory Review Board.

6. New Business: a. Matter Related to the American Association of Dental Boards ("AADB")

- Report on AADB and AADA Annual Meetings

Ms. Matsushima provided a written report to the Board.

Chair Guevara stated this is the first year that there was very good representation from Hawaii. The biggest topic there was what happened with North Carolina and the FTC. Because of this ruling, changes are coming throughout the states' dental boards.

One of the things they are trying to push is if the FTC sees anything as "restriction of trade" by active participants in that trade, it is an FTC violation.

Chair Guevara stated the other thing discussed at the meeting was the ADA is updating their rules for anesthesia, and capnography is part of it. So we are doing what's right, and are a bit ahead of the game with our rules.

Ms. Primiano stated she attended a breakout dental hygiene meeting. Basically what happened at that meeting was reporting from each of the states. Unfortunately Ms. Primiano did not report because she was unaware of this meeting and therefore was not prepared.

Mr. Jacobs stated although he did not attend the meeting, it appears what we're seeing is maybe the ambiguity exists because all the guidance that's come out says this is going to be a case by case, fact by fact situation. So it's not like they can regurgitate this general rule that can be applicable to each and every scenario. They have to weigh the balance between what is anti-competitive versus what is appropriate regulation.

b. Matters Related to the Commission on Dental Competency Assessments ("CDCA")

- Annual Meeting

Ms. Matsushima reported the meeting will be held January 14-16, 2016 in Orlando, Florida and asked who is interested in attending. Registration deadline is November 27, 2015.

Dr. Chun, Mr. Ching, Dr. Fujimoto, Ms. Primiano, Dr. Rebmann, Vice Chair Wada, Mr. Kobashigawa and Ms. Matsushima will be requesting to attend.

c. Matters Relating to the Central Regional Dental Testing Service ("CRDTS")

Ms. Matsushima passed around the dental hygiene exam results for the Board to review at their perusal.

Ms. Chang reported that April 22 to April 24, 2016 are the scheduled CRDTS dental hygiene exam dates to be held at Pearl Harbor. Vice Chair Wada and Dr. Robert Wada will be a supervising dentist at the exam. Ms. Chang also reported she had 9 candidates take her most recent anesthesia course and it was very successful.

d. Matters Relating to the American Board of Dental Examiners ("ADEX")

- Letter from Dr. Stanwood Kanna and Dr. Guy Champagne Regarding Southern Regional Testing Agency ("SRTA")

Vice Chair Wada stated she was unable to attend the ADEX meeting due to an injury.

Chair Guevara stated the letter received from Dr. Kanna and Dr. Champagne basically reads that in June the Southern Regional Testing Agency ended its' relationship with ADEX.

Ms. Primiano reported that she attended the ADEX meeting held November 13-15, 2015 at the Doubletree Rosemont Hotel in Chicago, IL.. She was able to go to the new committee member orientation meeting. Some of the key points were the history, structure and the goal of ADEX which is to develop one uniform national exam for dental and dental hygiene. It is made up of a House of Representatives with one dentist per state and one dental hygienist per district, currently there are 13 districts. She also attended the dental hygiene examination committee meeting and it had to do with updating the 2016 pilot dental hygiene manual. She also attended the quality assurance committee meeting and the orientation meeting for delegates to the ADEX House of Representatives. Ms. Primiano stated she will provide a full written report to the Board at the next meeting.

Vice Chair Wada stated she received some highlights of the meeting from Dr. Kanna that she wanted to share with the Board today. The highlights are as follows:

1. The ADEX dental hygiene exam will now be administered by CITA starting in 2016;
 2. All the bylaws changes that were recommended by the Board of Directors have passed;
 3. The ADEX exam from now on will be pass/fail result;
 4. There will be a scoring and data portal for the state boards online starting in 2016; and
 5. Dr. Kanna will be president one more year.
- Administration of the ADEX Examination by the Council of Interstate Testing Agencies (“CITA”)

Chair Guevara stated this was one of the highlights mentioned by Vice Chair Wada.

e. Matters Relating to the Western Regional Examining Board (“WREB”)

- WREB Newsletter

The WREB Newsletter was passed around for the Board members to read at their perusal.

- 2016 Meeting Date for WREB Board of Directors, Hygiene Exam Review Board (“HERB”) and Dental Exam Review Board (“DERB”)

Chair Guevara stated the meeting dates and locations are follows:

- ✓ Board of Directors – 1/22/16 in Phoenix, AZ, 4/9/16 in Chicago, IL., 6/25/16 in Austin, TX., and a date TBD in Denver, CO. in conjunction with AADA and AADB meeting;
- ✓ Hygiene Exam Review Board (“HERB”) – 3/11/16 in Phoenix, AZ. and 6/23/16 in Austin, TX.; and
- ✓ Dental Exam Review Board (“DERB”) – 2/12/16 in Phoenix, AZ. and 6/24/16 in Austin, TX.

f. License Renewal Deadline – December 31, 2015

Chair Guevara stated by now everyone should have received their renewal reminder in the mail.

g. Legislation

Ms. Matsushima stated she is not aware of any bills at this time.

h. Discussion on Block Anesthesia Injection – Difference Between Mental Nerve Block and Incisive Nerve Block

Mr. Jacob stated in the statutes for block certification it requires that both mental nerve block and incisive nerve block be administered. It appears there may be an idea that these are the same thing.

Dr. Chun stated its two different parts of the anatomy.

Chair Guevara stated we should make a definition for each of these in the rules to help clarify.

The Board by consensus deferred this discussion to the Rules Committee for clarification.

i. Request for CE Course Approval

It was moved by Dr. Chun, seconded by Vice Chair Wada, and unanimously carried to approve the following:

- Dr. Leslie J. Paris

7. Correspondence: Letter from Noelani Green requesting evaluation of the issue on “Who may become a dental hygienists” as per HRS 447-1

Chair Guevara stated that this issue was discussed previously and the Board received a clarification/interpretation from its DAG Mr. Jacob.

Ms. Green stated her concern is the interpretation because there are many dental hygienist that have infiltration only. However in the statutes it states... “Who has been officially certified in the administration of intra-oral infiltration local anesthesia and intra-oral block anesthesia...” It does not say and/or it says only “and” which means they have to fulfill the requirement.

Ms. Matsushima stated the reason a license may state infiltration only could be because they may only have infiltration.

Ms. Green asked if they can only have infiltration?

Ms. Matsushima stated yes.

Ms. Green asked if that also fulfills the certification of block?

Ms. Matsushima replied no. It means they are a licensed dental hygienist and they can do infiltration only.

Ms. Miyashiro stated her concern is the interpretation of “and” block anesthesia. For years it has always been local infiltration “and” block anesthesia but within the last 2 years it has started being infiltration only if that is all they had. To them it is a matter of public safety because she thought the rules were clear.

Ms. Matsushima stated the Board had their DAG provide an interpretation of that.

Ms. Miyashiro stated yes they are questioning his interpretation. So who can they bring this question to because it is a licensing issue?

Ms. Brucato Thomas stated in relation to this, in the minutes where you’re discussing minimal sedation you talk about changing the language in the rules from an “or” to an “and” to make it clearer. So you know the difference between “or” and “and”, and this is the same problem in restrictions and we’re asking you to please consider that.

Chair Guevara deferred discussion on this topic.

8. Executive Officer’s
Report on Matters
Related to the Board
of Dental Examiners:

a. AGD Transcript Article Relating to Teeth-Whitening Case

Ms. Matsushima reported on July 17, 2015 the 2nd U.S. Circuit Court of Appeals upheld Connecticut State Dental Commission's policy that restricts non dentist from operating teeth whitening services. At the core of the judge's decision was that economic protectionism or favored interest groups is a legitimate use of government power unless specifically forbad by federal law.

b. Professional Licensing Report Article Relating to Traditional Appointed-Board Model for Regulating the Professions

Ms. Matsushima reported three advocacy groups joined forces to alert states that the FTC ruling calls for a rethinking of current policies and procedures. They sent a joint letter to all state attorney generals. The advocacy groups are the Center for Public Interest Law, Consumers Union and the Citizens Advocacy Center.

c. Federal Trade Commission Staff Guidance on Active Supervision of State Regulatory Boards

Ms. Matsushima passed around the guidelines for the Board to review at their perusal.

d. Hawaii Dental Association 2016 Convention

Ms. Matsushima reported the HDA 2016 Convention will be held January 21-22, 2016 at the Hawaii Convention Center.

Mr. Leibling stated the Board is all welcome to come, and if you have not received a registration kit it is available online at www.hawaiidentalassociation.net, you can register there and sign up for booth if you want. This year on Thursday night, January 21, 2015 there will be a casino themed member benefits party. Look forward to seeing everyone there.

e. CODA Communicator

Ms. Matsushima reported on the highlights from the CODA Communicator Summer/Fall newsletter as follows:

- The Commission implemented ad hoc committees to develop a process for accreditation of dental therapy education programs and special care dentistry/advanced general dentistry education programs;
- Six (6) new programs were granted accreditation;
- Eight (8) dental assisting education programs and two (2) hygiene programs received formal warning that accreditation will be withdrawn in February 2016 unless they comply with accreditation standards;
- The Commission discontinued accreditation for seventeen (17) institutions.

f. FARB

Ms. Matsushima reported the 40th Annual FARB Forum will be held January 28-31, 2016 in Clearwater Beach, Florida.

g. DCCA Disciplinary Actions

Ms. Matsushima stated there were no dental actions. She passed around the report for the members to review at their perusal.

9. Public Comment: Ms. Brucato Thomas stated when she saw on the agenda that the September 21, 2015 Rules Committee Minutes were to be approved today she requested a copy but was sent an outline by mistake. So she just received the correct copy right before today's meeting started. Because the minutes do quote her, she would like to request that the Board revisit the minutes so she can add her corrections.

Ms. Matsushima stated it depends on what you would like to amend because it is rare for a member of the public to propose amendments to the minutes.

Mr. Ching asked what she is referring to?

Ms. Brucato Thomas stated on page 4, the first sentence, please add ... “and referenced §447-3(b) HRS, **and §447-1...**”. Also on page 4, 4th paragraph, first sentence, correct to read ...”HDHA believes **fluoride varnish is an effective carries preventive agent**, however, only the **license** hygienist **per statute** should be applying it, as a public safety concern, **because it is an off label use**”.

It was moved by Ms. Primiano, seconded by Ms. Timmerman with 7 members voting in favor and 5 members opposed to reconsider the approval of the September 21, 2015 Rules Committee minutes. The motion carried.

Ms. Shimabuku asked Ms. Brucato Thomas to write down her proposed amendments, she does not want them given verbally.

It was moved by Ms. Timmerman, seconded by Ms. Primiano with 2 members voting in favor, 9 members opposed, and 1 member abstained to amend the September 21, 2015 Rules Committee minutes as proposed by Ms. Brucato Thomas. The motion failed.

Ms. Kirkoski stated she does not want to beat a horse to death, but as dental hygienist we have a responsibility to our patients and to the public. We feel that it is very prudent for you to take this issue of the dental hygiene license very seriously. We believe that the way you are interpreting this statute, you are putting dental hygienist at risk of being in violation of this statute. We are asking that you please revisit this at look at it from a linguistic point of view. Because “and” does not mean “or”. What you may want to do is go back and look at the rationale of why you instituted this statute in the beginning. Because before dental hygienist only had infiltration, and it was the dentist that wanted the hygienist to have block anesthesia, it was not the hygienist that wanted it. The dentist thought that it was prudent that the general public be allowed to have block anesthesia because that is the best possible situation for them, they deserved to be out of pain.

Ms. Matsushima stated that the statute was never changed, it was always interpreted that way and Mr. Jacob just confirmed that interpretation.

Mr. Jacob stated he cannot give legal advice to the community, but you keep citing one particular provision in the statute, but there is another provision in the statute that you should also be referencing that you are not, and that would have equal effect.

Mr. Kobashigawa stated the block anesthesia is an added privilege that the hygienist can apply for.

Ms. Chang stated to give a little history, hygienist were allowed to do infiltration for many years. Then in 1999 legislation was passed that allowed hygienist to do block and the way the statute was written it became an and not an or. Subsequent from that date that the statute went through, any new hygienist coming into the state had to be able to do block anesthesia, there was no options. The legislators put it into the statutes what the exact requirements were for this so it was essentially taken out of the Boards hands. The people who made these decisions were not just the legislators but also the dental community and most of them were dentist. Something happened about 2 years ago where all of a sudden we were noticing that infiltration only was appearing on people's licenses.

Mr. Jacob stated going back to what he mentioned earlier, that other provision in the statute is §447-3.5 HRS, and that needs to be read in conjunction with the other statute that you have been citing.

Mr. Kobashigawa stated it was not dentist who wanted to add block anesthesia, it was the Board of Dental Examiners. At that time there were individual dentist on the Board that testified as individual dentist to not allow block anesthesia for dental hygienist. It was the Board's decision as a Board to support that legislation. Going back to the history, the interpretation at that time from the Attorney General was basically that you needed certification in infiltration and block to get a license. 447-3.5 was added for a dental hygienist to qualify for the block in itself. In order to get a license you need to qualify with certification in the administration of infiltration and block but not necessarily to the extent as required by 447-3.5; in order to perform block, you need to have additional qualification pursuant to 447-3.5

Ms. Brucato Thomas clarified, your saying you have to have infiltration and block to qualify for a license.

Mr. Jacob stated you have to have a familiarization with block just to become a licensee in and of itself, but to perform block, you have to meet 447-3.5.

Ms. Brucato Thomas asked, how does that change 447-1 that says in order to apply, you must have both?

Mr. Jacob stated because you must have both, but if the block program that has been approved by the certified school that you have completed does not meet 447-3.5, you cannot perform block.

Ms. Smith stated she became licensed in 1990. She came from New Jersey and was told that in order to be licensed here she had to be certified in block. She went to Thomas Jefferson University and took their block course. She applied for license in Hawaii and was told that course she took at Thomas Jefferson University did not meet the requirements here. She proceeded to take another course, the Sandra Kramer course, and then was able to take her exam for a Hawaii license. She was not allowed to have a license without first taking that Sandra Kramer course.

Chair Guevara stated the Board has consulted with its attorney and he recommend the dental hygienist do the same. If the dental hygienist legal team comes up with something new and they want to bring it to the Board, we'll revisit it at that time, but until then, there are no changes.

Chair Guevara called for a recess at 10:36 a.m.

Chair Guevara resumed the meeting at 10:45 a.m.

The following agenda item was moved as the next order of business:

Executive
Session:

At 10:45 a.m., it was moved by Vice Chair Wada, seconded by Dr. Ota, and unanimously carried to enter into executive session pursuant to HRS §§ 92-4 and 92-5(a)(4) to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities. Guests were excused from the meeting room

At 11:16 a.m., it was moved by Vice Chair Wada, seconded by Dr. Chung, and unanimously carried to move out of executive session.

The following agenda item was moved as the next order of business:

10. Announcements: None

11. Next Board Meeting: Monday, January 25, 2016
 9:00 a.m.
 Queen Liliuokalani Conference Room
 King Kalakaua Building
 335 Merchant Street, 1st Floor
 Honolulu, Hawaii 96813

12. Adjournment: Chair Guevara adjourned the meeting at 11:20 a.m.

Reviewed and approved by:

Taken and recorded by:

/s/ Sandra Matsushima
Sandra Matsushima
Executive Officer

/s/ Lisa Kalani
Lisa Kalani, Secretary

SM:lk

11/30/15

[X] Minutes approved as is.

[] Minutes approved with changes; see minutes of _____.