



DENTAL BOARD OF CALIFORNIA

2005 Evergreen St., Suite 1550, Sacramento, CA 95815

P (916) 263-2300 | F (916) 263-2140 | www.dbc.ca.gov



DENTAL BOARD OF CALIFORNIA

NOTICE OF MEETING

October 12, 2023

Board Members

- Alan Felsenfeld, MA, DDS, President
Joanne Pacheco, RDH, MAOB, Vice President
Lilia Larin, DDS, Secretary
Steven Chan, DDS
Joni Forge, DDS
Meredith McKenzie, Esq., Public Member
Angelita Medina, MHS, Public Member
Sonia Molina, DMD, MPH
Rosalinda Olague, RDA, BA
Yogita Thakur, DDS, MS
James Yu, DDS, MS

Action may be taken on any item listed on the agenda.

The Dental Board of California (Board) will meet at 8:30 a.m., on Thursday, October 12, 2023, at the following location:

Department of Consumer Affairs
1625 N. Market Blvd., Hearing Room #102
Sacramento, CA 95834

AGENDA

8:30 a.m., Thursday, October 12, 2023

- 1. Call to Order/Roll Call/Establishment of a Quorum
2. Public Comment on Items Not on the Agenda [3]
Note: The Board may not discuss or take action on any matter raised during this Public Comment section, except to decide whether to place the matter on the agenda of a future meeting. (Government Code sections 11125 and 11125.7(a).)
3. Discussion and Possible Action to Consider: [4-15]
a. Comments Received During the 45-Day Comment Period and Proposed Responses Thereto for the Board's Rulemaking to Adopt California Code of Regulations (CCR), Title 16, Section 1006 (AB 107: Temporary Licenses for Military Spouses or Partners)
b. Adoption of CCR, Title 16, Section 1006 (AB 107: Temporary Licenses for Military Spouses or Partners)

4. Legislative Proposals **[16-22]**
  - a. Discussion and Possible Action on Legislative Proposal to Amend Business and Professions Code Section 1647.3 Regarding Moderate Sedation Permit Requirements
5. Discussion and Possible Action on the Board's 2024 Sunset Review Report **[23-24]**
6. Adjournment

Information regarding the meeting is available by contacting the Board at (916) 263-2300 or (877) 729-7789, email: [DentalBoard@dca.ca.gov](mailto:DentalBoard@dca.ca.gov), or by sending a written request to the Dental Board of California, 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815. This agenda can be found on the Dental Board of California website at [dbc.ca.gov](http://dbc.ca.gov). The time and order of agenda items are subject to change at the discretion of the Board President and may be taken out of order. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public.

The meeting will be webcast, provided there are no unforeseen technical difficulties or limitations. To view the webcast, please visit [thedcapage.wordpress.com/webcasts/](http://thedcapage.wordpress.com/webcasts/). The meeting will not be cancelled if webcast is not available. Meeting adjournment may not be webcast if it is the only item that occurs after a closed session. Members of the public may, but are not obligated to, provide their names or personal information as a condition of observing or participating in the meeting. (Government Code section 11124.)

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at their discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).

This meeting location is accessible to the physically disabled. A person who needs disability-related accommodations or modifications to participate in the meeting may make a request by contacting Tracy Montez, Executive Officer, at Dental Board of California, 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, or by phone at (916) 263-2300. Providing your request at least five (5) business days prior to the meeting will help ensure availability of the requested accommodations. TDD Line: (877) 729-7789



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# MEMORANDUM

<b>DATE</b>	October 2, 2023
<b>TO</b>	Members of the Dental Board of California
<b>FROM</b>	Mirela Taran, Administrative Analyst Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 2.:</b> Public Comment on Items Not on the Agenda

Notes



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MEMORANDUM

Table with 2 columns: Field (DATE, TO, FROM, SUBJECT) and Content (September 19, 2023, Members of the Dental Board of California, David Bruggeman, Legislative and Regulatory Specialist Dental Board of California, Agenda Item 3.: Discussion and Possible Action to Consider: a. Comments Received During the 45-Day Comment Period and Proposed Responses Thereto for the Board’s Rulemaking to Adopt California Code of Regulations (CCR), Title 16, Section 1006 (AB 107: Temporary Licenses for Military Spouses or Partners) b. Adoption of CCR, Title 16, Section 1006 (AB 107: Temporary Licenses for Military Spouses or Partners))

Background

AB 107 (Chapter 693, Statutes of 2021) was chaptered on October 8, 2021 and became operative on July 1, 2023. It amends provisions of the Business and Professions Code for all boards in the Department of Consumer Affairs relating to temporary licenses for qualified spouses or domestic partners of active-duty military personnel assigned to a duty station in California under official active-duty military orders. Effective July 1, 2023, such provisions now apply to the Dental Board, meaning the Board is required to grant temporary licenses or registrations to dentists or dental auxiliaries who qualify.

To be eligible, spouses or domestic partners of military servicemembers who are assigned to a California duty station are required to have a ‘current, active and unrestricted’ license from another state, district, or territory of the United States with the same scope of practice for which the applicant seeks a temporary license from the Board. They also need to take a California law and ethics examination if otherwise required by the Board for licensure. The temporary license would last for 12 months or until the Board grants or denies a regular license. The temporary license

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would be nonrenewable and could be revoked if the Board finds, following notice and a hearing, that the license holder engaged in unprofessional conduct or any other action that is a cause for discipline by the Board. The temporary license could also be immediately terminated by operation of law if the Board finds that the applicant provided substantively inaccurate information that would affect the persons eligibility for temporary licensure.

At its August 25-26, 2022 Board meeting, the Board voted to initiate a rulemaking to adopt proposed regulatory text at California Code of Regulations, title 16, section 1006. As staff was preparing the rulemaking package for review by the Department of Consumer Affairs it was determined that revisions to the adopted proposed regulatory text were necessary to include additional categories of licensure offered by the Dental Board and to revise the application process for temporary licensure to better match the application process for regular licensure.

The revised language was brought to the Board and approved at the November 18-19, 2022 Board meeting. After review by the Department of Consumer Affairs and the Business, Consumer Services and Housing Agency, the rulemaking was filed with the Office of Administrative Law and published in the California Regulatory Notice Register on July 28, 2023. That started a 45-day public comment period, which ended on September 12, 2023.

During the public comment period Board staff received one comment, which has been redacted to remove the personal email address of the commenter. The comment, along with a proposed staff response, is attached to this memo.

### **Recommendation for Item No. 3.a.:**

Board staff is requesting that the Board review the submitted comment and proposed Board response to that comment. Given the discussion above, Board staff recommend that the Board approve the proposed response to the comment and reject the comment received on this rulemaking package.

### **Actions Requested**

The Board is asked to discuss the information presented in this memo and consider Board staff recommendations. If the Board agrees, suggested motions are listed below.

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### Suggested Motions for Item No. 3.a.: Responses to Comments

**Option A** (support the staff recommended response to reject the comments): Direct staff to proceed as recommended to reject the comments as specified and provide the responses to the comments as indicated in the staff recommended response in Attachment 1 to this memo.

**Option B** (If there are changes to the proposed responses by the Board members): Direct staff to accept the public comment and make the following edits to the text: [identify what part of the comment to accept and text to change here and explain why].

### Suggested Motions for Agenda Item 3.b: Adoption of Proposed Regulations

If the Board rejects the previously discussed comment and makes no further changes to the proposed text, staff recommends the Board consider the following motion to complete the rulemaking process and adopt the proposed text:

**Motion A** (If there are no changes to the proposed text by members): Direct staff to take all steps necessary to complete the rulemaking process including the filing of the final rulemaking package with the Office of Administrative Law, authorize the Executive Officer to make any non-substantive changes to the proposed regulation and the rulemaking documents, and adopt the proposed regulations as described in the notice for 16 CCR section 1006.

If the Board decides it wishes to make changes to the originally proposed and noticed text, the Board may use the following motion:

**Motion B** (If there are changes to the proposed text by members at this meeting): To approve the proposed modified regulatory text for section 1006 that includes the following changes [describe amendments here] and direct staff to take all steps necessary to complete the rulemaking process, including sending out the modified text with these changes for an additional 15-day comment period. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulation, and adopt the proposed regulations as described in the modified text notice for Title 16 CCR section 1006.

Documents included with this memo for reference:

1. Summary of Comments Received and Staff Recommendation for Response to Comment

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2. Written Comment Received During the 45-day Public Comment Period on Originally Proposed Regulatory Language
3. Originally Proposed Regulatory Language (Noticed to the Public)

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## **Summary of Comment Received and Staff Recommendations for Response to Comment on Proposed Rulemaking to Adopt Section 1006 of the California Code of Regulations**

**Comment 1:** Email dated July 28, 2023 from Dr. Charles Huang

### **Comment Summary:**

Commenter does not want the Board to adopt the regulations. Commenter notes that LGBTQIA individuals have faced and continue to face discrimination in the military and in other states and believes that allowing dental licensees from states that permit such discrimination to obtain temporary licensure in California would be unfair. Commenter believes that the regulations would not apply to all unions and should not be supported on that basis. Commenter also argues that these “shortcuts proposed” by the Board of temporary licensure is not necessary given the “5 year reciprocity clause” that the Board already has permitted to states who agree to that term. The commenter also cites the Board’s estimate of about 6 applicants per year to apply for temporary licensure (as provided in the Board’s Notice on Fiscal Impact estimates to the Board) and asks where this number comes from. The commenter also remarks on aspects of dental insurance coverage unrelated to the proposed regulations (why certain insurance plans still have a “missing tooth clause.”)

### **Staff Recommended Response:**

Reject Comment: The Dental Board is required to issue temporary licenses to qualified spouses or domestic partners of military service members stationed in California pursuant to Business and Professions Code (Code) section 115.6. That obligation exists whether the Board issues the proposed regulations or not. Further, refusing to adopt regulations would only serve to create confusion and compliance issues for those individuals who may be qualified to apply for temporary licensure. Regulations are the only legally prescribed method under the laws of this state (California Administrative Procedure Act – Gov. Code, §§ 11340 et seq.) for setting the minimum application requirements referenced in this proposal for all dental and dental auxiliary licensees that choose to seek temporary licensure. Additionally, section 115.6 of the Code applies to all qualified individuals who are married, in a domestic partnership, or in any other legal union, with a military servicemember assigned to a duty station in California.

It is unclear what the commenter means by “5 year reciprocity clause” unless referring to the Board’s licensure by credential authority in Section 1635.5 of the Code, which has much more extensive application requirements than in Section 115.6 of the Code. Further, the licensure by credential process does not allow the

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Board to issue a temporary license to an out-of-state licensee applicant in good standing who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States where an applicant is able to receive expedited temporary authority to practice while meeting state specific requirements for a period of at least one year, or where the applicant is able to receive an expedited license by endorsement with no additional requirements (see exemption from this law enacted by AB 107 at Section 115.6(j)(1) of the Code). As a result, the Board must adopt regulations to implement this new law at Section 115.6 of the Code.

On the source for the estimated 6 applicants per year inquiry, as the Board's notice indicates, it is based upon on "historical licensing data" for applicants who qualified under prior provisions of law requiring expedite under these same criteria. The last comment is rejected as unrelated to this proposal.

**TITLE 16. DENTAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS**

**AB 107: Temporary Licenses for Military Spouses or Partners**

**PROPOSED LANGUAGE**

**Adopt Section 1006 of Article 1 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations to read as follows:**

Section 1006. Temporary Licenses for Military Spouses or Partners.

(a) Definitions. For the purposes of this section, the following definitions shall apply:

(1) "License" shall include any license or permit issued by the Board to practice dentistry, practice under an affiliated permit, or provide dental supportive procedures as a dental auxiliary.

(2) "Disciplined" means that the applicant's license has been placed on probation, revoked, suspended, reprovved, censured, reprimanded, restricted, limited, or conditioned.

(3) "Jurisdiction" shall mean a state, district, or territory of the United States or another country.

(4) "Disciplinary proceeding" shall mean any proceeding or investigation under the authority of the licensing jurisdiction pursuant to which licensee discipline may be imposed on the applicant.

(5) "Provide dental supportive procedures as a dental auxiliary" shall mean providing the services within the scope of practice of a registered dental assistant, registered dental assistant in extended functions, orthodontic assistant, or dental sedation assistant as defined in Sections 1752.4, 1753.5, 1753.55, 1753.6, 1750.3, and 1750.5 of the Code, as applicable, and sections 1086 and 1087 of this Division, as applicable.

(6) "Good standing" shall mean that the applicant has not been disciplined, is not the subject of an unresolved complaint or review procedure, and is not the subject of any unresolved disciplinary proceeding.

(7) "Original licensing jurisdiction" shall mean the jurisdiction agency or board that issued a license to the applicant authorizing the applicant to practice within the

same scope of practice for which the applicant seeks a temporary license from the Board.

(8) "Affiliated permit" shall mean any permit or endorsement associated with either a dentist license or physician and surgeon license, as applicable, and issued by the Board to practice as an elective facial cosmetic surgeon, oral and maxillofacial surgeon, or to administer general anesthesia or moderate sedation to an adult and/or pediatric patient, oral conscious sedation for adult patients, or pediatric minimal sedation as specified in Sections 1638, 1638.1, 1646, 1646.1, 1646.2, 1646.9, 1647.1, 1647.2, 1647.3, 1647.18, 1647.19, 1647.30 and 1647.31 of the Code.

(9) "Successfully complete" shall mean that an applicant has achieved a criterion-referenced passing score as defined in Section 1031.

(b) Application and Eligibility Requirements. An applicant seeking a temporary license to practice dentistry, practice under an affiliated permit, or provide dental supportive procedures as a dental auxiliary pursuant to section 115.6 of the Code shall submit a completed application to the Board and meet all of the requirements of this section and section 115.6 of the Code to be eligible for a temporary license. A completed application shall include the following information:

(1) The applicant's identifying and contact information, including:

(A) Applicant's full legal name ((Last Name) (First Name) (Middle Name) and/or (Suffix)),

(B) Other name(s) applicant has used or has been known by,

(C) Applicant's physical address,

(D) Applicant's mailing address, if different than the applicant's physical address. The mailing address may be a post office box number or other alternate address,

(E) Applicant's email address, if any,

(F) Applicant's telephone number,

(G) Applicant's Social Security Number or Individual Taxpayer Identification Number, and,

(H) Applicant's birthdate (month, day, and year).

(2) The applicant shall disclose whether the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official

active duty military orders. If the applicant answers in the affirmative, the applicant shall provide the following documentation with the application:

(A) copy of certificate of marriage or certified declaration/registration of domestic partnership filed with the California Secretary of State or other documentary evidence of legal union with an active-duty member of the Armed Forces, and;

(B) copy of the military orders establishing their spouse or partner's duty station in California.

(3) The applicant shall disclose whether the applicant holds a current, active and unrestricted license, or comparable authority ("license"), to practice dentistry, practice within the scope of practice of an affiliated permit or provide dental supportive procedures as a dental auxiliary in another state, district, or territory of the United States, and whether such license is the same type of license that the applicant is applying for with the Board. If the applicant answers in the affirmative, the applicant shall provide written verification from the applicant's original licensing jurisdiction that the applicant's license or other comparable authority ("license") is in good standing in that jurisdiction.

The verification shall include all of the following:

(A) the full legal name of the applicant and any other name(s) the applicant has used or has been known by,

(B) the license type and number issued to the applicant by the original licensing jurisdiction, and the relevant law(s) and regulation(s) under which the license was issued; and

(C) the name and location of the licensing agency or entity,

(D) the issuance and expiration date of the license, and,

(E) information showing that the applicant's license is currently in good standing.

(4) The applicant shall disclose whether the applicant has committed an act in any jurisdiction that would have constituted grounds for denial, suspension, or revocation of the license pursuant to Sections 141, 480, or 490 of the Code, or Articles 4 (commencing with Section 1670 of the Code) or 5 (commencing with Section 1700 of the Code) of the Act.

(5) The applicant shall disclose whether the applicant has been disciplined by a licensing entity in another jurisdiction or is the subject of an unresolved complaint, review procedure, or disciplinary proceeding conducted by a licensing entity in another jurisdiction.

(6) The applicant shall furnish fingerprints to the Board in compliance with subsection (d) to permit the Board to conduct a criminal history record check through the California Department of Justice.

(7) For applicants seeking a temporary license to practice as a dentist, the applicant shall furnish proof of successful completion of the California law and ethics examination specified in subsection (c). "Proof of successful completion" shall mean a copy of the applicant's report or notice issued by the examination administrator PSI Services LLC (PSI) that lists the applicant's name and indicates that the applicant passed the examination.

(8) A statement attesting to the fact that the applicant meets all the requirements for the temporary license, and that the information submitted in the application is accurate, to the best of the applicant's knowledge.

(c) Law and Ethics Examination Requirements. Each applicant for a temporary license as a dentist shall successfully complete the California law and ethics examination administered by PSI specified in Section 1031.

(1) To take the examination, each applicant shall submit to the Board a completed application for approval to test that contains all of the following:

(A) full legal name (first, last and middle),

(B) social security number or individual taxpayer identification number,

(C) birth date,

(D) mailing address,

(E) telephone number,

(F) email address,

(G) a disclosure regarding whether the applicant is requesting a reasonable accommodation pursuant to subdivision (b) of Government Code Section 12944. The applicant shall provide medical documentation consisting of a written document with the name, license number, telephone number, date and signature of a physician confirming the existence of the applicant's disability or medical condition (as defined in Government Code section 12926) and the need for the reasonable accommodation.

(H) the information required by paragraphs (2) and (3) of subsection (b); and,

(I) a certification, under penalty of perjury, by the applicant that the information on the application is true and correct.

(2) After receipt of a completed application for approval to test, and upon the Board's determination that the applicant has met the requirements of paragraphs (1) and (2) of subdivision (c) of Section 115.6 of the Code, the Board shall mail a written and dated notice of approval to test to the applicant and PSI. The notice shall also contain the web site address, email address, telephone number and mailing address for the applicant to contact PSI to schedule the examination.

(3) Upon receipt of written notice of approval to test from the Board, an applicant is responsible for contacting PSI to schedule a test date and examination site location, and paying PSI's nonrefundable fees to take the examination.

(d) Fingerprinting Requirements. All applicants shall have met the fingerprinting requirements of this subsection prior to issuance of a temporary license.

(1) Subject to paragraph (3), all applicants must submit fingerprints through the California Department of Justice's electronic fingerprint submission Live Scan Service ("Live Scan") by completing the California Department of Justice Form "Request for Live Scan Service," and submitting fingerprinting, through Live Scan as described in this subsection.

(2) Each applicant shall take the completed Request for Live Scan Service form to a Live Scan location to have their fingerprints taken by the operator. The applicant will be required to pay all fingerprint processing fees payable to the Live Scan operator, including the Live Scan operator's "rolling fee," if any, and fees charged by the California Department of Justice and the Federal Bureau of Investigation. For current information about fingerprint background checks, and Live Scan locations, please visit the Attorney General's website at: <https://oag.ca.gov/fingerprints>.

(3) Applicants residing outside of California who cannot be fingerprinted electronically through Live Scan in California must have their fingerprints taken at a law enforcement agency in their state of residence, using fingerprint cards. Applicants shall complete and mail two fingerprint cards, together with the California Department of Justice and the Federal Bureau of Investigation fingerprinting fees (either personal check drawn on a U.S. bank, money order or certified check), payable to the "Dental Board of California," to:

Dental Board of California  
Attention: Licensing and Examination Unit  
2005 Evergreen St., Suite 1550  
Sacramento, CA 95815

(e) Upon meeting the requirements in subsection (b) and if no grounds for denial exist pursuant to Sections 115.6 or 480 of the Code, the Board shall issue to the applicant the applicable temporary license, subject to the conditions set forth in subdivision (h) of Section 115.6 of the Code.

(f) If the applicant is seeking a temporary license from the Board to practice under an affiliated permit, the applicant also shall either:

(1) Prior to or at the same time as the applicant submits an application for the temporary license to practice under an affiliated permit, apply for a temporary dentist license using the application specified in subsection (b) for permits issued pursuant to Sections 1638.1, 1646.1, 1647.2, 1647.19, or 1647.31 of the Code; or

(2) Have a current, active, and unrestricted license as a physician and surgeon from the Medical Board of California for permits issued pursuant to Sections 1638 and 1646.9 of the Code.

(g) No temporary license for an affiliated permit shall issue until the applicant has been issued a temporary dentist license or has obtained a license as a physician and surgeon from the Medical Board of California, as applicable.

(h) This section shall become operative on [OAL: insert July 1, 2023 or the next quarterly effective date if adopted after July 1, 2023].

Note: Authority cited: Sections 115.6 and 1614, Business and Professions Code.  
Reference: Sections 480, 115.6, 1611, 1632, 1638, 1638.1, 1646, 1646.1, 1646.2, 1646.9, 1647.1, 1647.2, 1647.3, 1647.18, 1647.19, 1647.30, 1647.31, 1749.1, 1750.2, 1750.4, 1752.1 and 1753, Business and Professions Code.



## MEMORANDUM

<b>DATE</b>	September 25, 2023
<b>TO</b>	Members of the Dental Board of California
<b>FROM</b>	Jessica Olney, Anesthesia Unit Manager Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 4.a.:</b> Discussion and Possible Action on Legislative Proposal to Amend Business and Professions Code Section 1647.3 Regarding Moderate Sedation Permit Requirements

### Identification of Issue

Through communications with stakeholders, Dental Board of California (Board) staff have become aware that private organizations are offering moderate sedation (MS) training programs at private dental offices in California. These programs are designed to provide the MS training, including at least 20 cases of administration of MS to patients, required to obtain a Board-issued MS permit. Board staff are concerned about the safety of the patients who are being administered MS during MS training programs in private dental offices in California.

### Background and Discussion

At the Board's February 9–10, 2023 meeting, the Board voted to include, among other things, in the Board's Sunset review report a recommendation to amend Business and Professions Code (BPC) section 1647.3 to provide patient record confidentiality for MS case reports submitted to the Board in connection with the application for a pediatric endorsement for an MS permit.

At the Board's May 18–19, 2023 meeting, the Board voted to make additional amendments to BPC section 1647.3 that would: (1) include a new requirement that the dentist possess a dentist license or an oral and maxillofacial surgery permit issued by the Board that is in good standing, as defined, to receive an MS permit; (2) make pediatric case records submitted to the Board confidential; and (3) make clarifying minor/technical revisions.

Board staff have identified additional issues that may need to be resolved through further proposed amendments to BPC section 1647.3.



To administer or order the administration of MS to a dental patient on an outpatient basis, a dentist must possess either a general anesthesia or MS permit. (BPC section 1647.2, subd. (a)(1), (2).) To administer MS to patients under 13 years of age, the dentist holding an MS permit also must obtain a pediatric endorsement. (BPC section 1647.2, subd. (b).) BPC section 1647.3, subdivisions (a) through (c), establish the requirements, including 60 hours of instruction and satisfactory completion of at least 20 cases of administration of MS, to obtain an MS permit. Subdivision (d) of that section establishes requirements, including successful completion of 20 cases of MS to pediatric patients, as specified, for a pediatric endorsement to an MS permit.

A small number of companies offer MS training programs designed to fulfill MS or conscious sedation permitting requirements in multiple states. Programs are held in various locations throughout the U.S. and attract dentist trainees from multiple states. One such training program advertises that their instructors will train a dentist in the dentist's own dental office. The programs typically cost between \$5,000 and \$25,000, and sometimes more. This type of program is not new, but more programs are now being held in private dental offices in California.

These MS training programs appear to meet an unmet need because relatively few accredited dental schools offer stand-alone MS training programs for dentists who have been practicing for several years and wish to expand their practice to the administration of MS. Significantly, these MS training programs are not continuing education (CE) courses but offered to MS permit applicants to satisfy the training and case requirements.

Under BPC section 1647.3, subdivision (c), training in the administration of MS must consist of at least 60 hours of instruction and the "satisfactory completion of at least 20 cases of administration of [MS]." The training program must also comply with the *Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students* (*Guidelines*) of the American Dental Association (BPC section 1647.3, subd. (c)(3)). The *Guidelines* specify that "adequate facilities must be available for proper patient care, including drugs and equipment for the management of emergencies." (*Guidelines*, p. 19.) The *Guidelines* also require a "participant-faculty ratio of not more than four-to-one when moderate sedation is being taught [to allow] for adequate supervision during the clinical phase of instruction," i.e., during the "administration of sedation for at least 20 individually managed patients." (*Guidelines*, p. 17.) For a pediatric endorsement to administer MS to pediatric patients, the applicant must confirm successful completion of at least 20 cases of MS to patients under 13 years of age or successful completion of 20 cases of MS for children under seven years of age, as specified. (BPC section 1647.3, subd. (d)(2), (3).) The statute does not specify under what training or supervision conditions the pediatric cases must be completed.

Despite the existing requirement to comply with the *Guidelines*, Board staff believe that the administration of MS to patients during MS training programs held in private dental offices in California raises patient safety concerns and compliance issues. Further, the statute is unclear regarding where or under what training conditions pediatric cases must be completed, which also raises patient safety concerns and compliance issues, discussed further below.

First, these MS training programs operate nationwide, and dentists licensed in other states may be coming into California as clinical instructors. BPC section 1647.3 does not specify that a clinical instructor who orders or supervises the administration of MS must hold a California general anesthesia (GA) or MS permit or even a California dentist license. BPC section 1647.2, subdivision (a), requires a dentist administering or ordering the administration of MS to a patient in California to hold a current dentist license in good standing and a valid GA or MS permit. BPC section 1626, subdivision (c), exempts dentists from California licensure requirements if they are operating as “bona fide clinicians or instructors in dental colleges approved by the Dental Board.” BPC section 1626, subdivision (c), does not exempt instructors in MS training programs held in private dental offices in California. Therefore, the administration of MS during MS training programs in private dental offices in California may involve the unlicensed practice of dentistry in the State of California if the clinical instructor is not licensed as a California dentist and does not hold a GA or MS permit, with a pediatric endorsement as applicable, issued by the Board.

Second, even if an instructor holds a California dentist license and GA or MS permit, they may be engaging in unprofessional conduct. Under BPC section 1682, subdivision (a), a patient being administered MS “on an outpatient basis” must be continuously monitored on a **one-to-one ratio** while sedated by either the dentist or another licensed health professional authorized by law to administer [MS].” Under the *Guidelines*, however, dentist trainees administering MS to multiple patients (20 cases) during an MS training program must be supervised only on a **four-to-one ratio** (i.e., one supervising dentist for every four trainee dentists). If a clinical instructor in an MS training program in a private dental office in California is complying with the *Guidelines* but not with BPC section 1682, subdivision (a), they would be engaging in unprofessional conduct if the one-to-one patient ratio under BPC section 1682, subdivision (a), is not met.

Third, the private dental offices in which these MS training programs are held may not satisfy California dental office facility and equipment standards applicable to the administration of MS (see California Code of Regulations, title 16, section 1043.3), particularly if the office is not the dental practice of a holder of a California general anesthesia (GA) or MS permit.

In addition, Board staff noted that the patient case records confidentiality provision in the legislative proposal reviewed and approved by the Board during the May 18–19,

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2023 meeting that applies to pediatric MS cases submitted to the Board for pediatric endorsements also should apply to the 20 cases of MS administration submitted to the Board required for an MS permit.

### **Staff Recommendation**

To ensure patient safety and compliance with laws regarding the administration of MS, Board staff recommend that the Board's legislative proposal that includes amendments to BPC section 1647.3 be revised and require MS procedures performed in a dental office in California to satisfy the MS permit and/or pediatric endorsement case requirements to comply with all office facility, equipment, and staff requirements for MS permit holders. Staff further recommend statutory clarification that those procedures be performed under the direct supervision of a California-licensed dentist who holds a GA or MS permit, and a pediatric endorsement if applicable, issued by the Board and in compliance with the one-to-one patient ratio limitation established under BPC section 1682, subdivision (a).

Board staff note that these changes would only apply to MS training programs conducted in private dental offices in California. MS training programs conducted in other states would have to comply with the laws and regulations of those states.

Board staff further recommend that the patient case records required to be submitted to the Board to obtain an MS permit be clearly designated as confidential and protected from public disclosure.

### **Action Requested**

The Board is asked to discuss the legislative proposal recommended by Board staff. If the Board agrees with the recommendation, the Board is asked to move to revise and include in the Board's Sunset Review Report the legislative proposal to amend Business and Professions Code section 1647.3 regarding MS permit requirements.

### **Possible Motion**

Move to revise and include in the Board's Sunset Review Report the legislative proposal to amend Business and Professions Code section 1647.3 regarding MS permit requirements.

**Attachment:** Legislative Proposal to Amend Business and Professions Code Section 1647.3 Regarding Moderate Sedation Permit Requirements

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**DENTAL BOARD OF CALIFORNIA**  
**LEGISLATIVE PROPOSAL TO AMEND BUSINESS AND PROFESSIONS CODE**  
**SECTION 1647.3 REGARDING MODERATE SEDATION PERMIT REQUIREMENTS**

May 2023 additions are indicated in underline text.

May 2023 deletions are indicated in ~~striketrough text~~.

October 2023 additions are indicated in double underline text.

October 2023 deletions are indicated in ~~double striketrough text~~.

An act to amend Business and Professions Code section 1647.3 as follows:

**1647.3.** (a) A dentist who desires to administer or to order the administration of moderate sedation shall possess a dentist license or a permit under Section 1638 or 1640 issued by the board that is in good standing and apply to the board on an application form prescribed by the board. The dentist shall submit an application fee and produce evidence showing that ~~he or she~~the dentist has successfully completed training in moderate sedation that meets the requirements of subdivision (c).

(b) The application for a permit shall include documentation that equipment and drugs required by the board are on the premises.

(c) Training in the administration of moderate sedation shall be acceptable if it meets all of the following as approved by the board:

(1) Consists of at least 60 hours of instruction.

(2) Requires satisfactory completion of at least 20 cases of administration of moderate sedation for a variety of dental procedures.

(3) Complies with the requirements of the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students of the American Dental Association, including, but not limited to, certification of competence in rescuing patients from a deeper level of sedation than intended, and managing the airway, intravascular or intraosseous access, and reversal medications.

(d) A dentist may apply for a pediatric endorsement for a moderate sedation permit by confirming all of the following:

(1) Successful completion of residency in pediatric dentistry accredited by the Commission on Dental Accreditation (CODA) or the equivalent training in pediatric moderate sedation, as determined by the board.

(2) Successful completion of at least 20 cases of moderate sedation to patients under 13 years of age to establish competency in pediatric moderate sedation, both at the time of the initial application and at renewal. The applicant or permitholder shall

maintain and shall provide proof of these cases upon request by the board for up to three permit renewal periods.

(3) In order to provide moderate sedation to children under seven years of age, a dentist shall establish and maintain current competency for this pediatric population by completing 20 cases of moderate sedation for children under seven years of age in the 24-month period immediately preceding application for the pediatric endorsement and for each permit renewal period.

(4) Current certification in Pediatric Advanced Life Support (PALS) and airway management or other board-approved training in pediatric life support and airway management, adopted pursuant to Section 1601.8.

(e) A moderate sedation permit holder with a pediatric endorsement shall maintain current and continuous certification in Pediatric Advanced Life Support (PALS) and airway management or other board-approved training in pediatric life support and airway management, adopted pursuant to Section 1601.8, for the duration of the permit.

(f) Applicants for a pediatric endorsement who otherwise qualify for the pediatric endorsement but lack sufficient cases of moderate sedation to patients under 13 years of age may administer moderate sedation to patients under 13 years of age under the direct supervision of a general anesthesia or moderate sedation permit holder ~~with~~who possesses a pediatric endorsement. The applicant may count these cases toward the 20 required in order to qualify for the applicant's pediatric endorsement.

(g) Moderate sedation ~~permit holders~~permit holders with a pediatric endorsement seeking to provide moderate sedation to children under seven years of age, but who lack sufficient cases of moderate sedation to patients under seven years of age pursuant to paragraph (3) of subdivision (d), may administer moderate sedation to patients under seven years of age under the direct supervision of a general anesthesia or moderate sedation permit holder ~~who meets those qualifications~~possesses a pediatric endorsement to administer general anesthesia or moderate sedation to patients under seven years of age.

(h) Patient records submitted to the board pursuant to paragraph (2) of subdivision (c) and paragraphs (2) ~~and~~ (3) of subdivision (d) shall be confidential and shall not be disclosed pursuant to any state law, including, but not limited to, the California Public Records Act (Division 10 (commencing with Section 7920.000 of the Government Code), except for disclosure pursuant to a lawfully issued subpoena or a written request from a government agency responsible for either enforcement of civil or criminal laws or the professional licensing of individuals that is conducting an investigation about the applicant.

(i) If the procedures under paragraph (2) of subdivision (c) or paragraph (3) of subdivision (d) are performed in a dental office located in this state, the following shall apply:

(1) All office facility, equipment, and staff requirements for moderate sedation permit holders shall be met.

(2) The procedures shall be performed under the direct supervision of a California-licensed dentist who holds a board-issued general anesthesia or moderate sedation permit.

(3) For procedures performed under paragraph (3) of subdivision (d), the procedures shall be performed under the direct supervision of a California-licensed dentist who holds a board-issued general anesthesia or moderate sedation permit with a pediatric endorsement issued by the board.

(4) The procedures shall be supervised in compliance with subdivision (a) of Section 1682.

(i) For purposes of this section, "good standing" means the license or permit is active and unrestricted by disciplinary action taken pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, is not the subject of an unresolved complaint or review procedure, and is not the subject of any unresolved disciplinary proceeding.



## MEMORANDUM

<b>DATE</b>	October 2 2023
<b>TO</b>	Members of the Dental Board of California
<b>FROM</b>	Tracy Montez, Ph.D., Executive Officer Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 5.:</b> Discussion and Possible Action on the Board's 2024 Sunset Review Report

### Background

By statute (Business and Professions Code section 1601.1), the Dental Board of California (Board) has the authority to operate until January 1, 2025. This sunset date provision is applied to all Department of Consumer Affairs (DCA) boards and bureaus on a staggered basis so that the California Legislature can review each entity and its operations and adjust that entity's laws as it sees fit. This is called the sunset review process, and the Board last went through this review in the 2018-2019 timeframe.

The process starts with the Board preparing a Sunset Review Report to submit to the Legislature. Following a format provided by the Legislature, the report summarizes the Board's activities (including licensing, enforcement, finances, legislation, and regulations) during the period since the last report was submitted. The report addresses any issues identified by the Legislature in the previous review, presents new issues to the Legislature for its consideration, and covers any other matters as requested.

Board staff have prepared a draft report for the Board's consideration at this meeting, and the final report will be submitted to the Legislature by the end of calendar year 2023. The report covers Board activities from the 2018-2019 fiscal year through the 2022-2023 fiscal year. This report covers five years because the Legislature amended the Board's sunset review date in 2022 to account for a backlog in the sunset review process for all DCA Boards and Bureaus brought on by the COVID-19 pandemic.

After the Board has submitted the report, the policy committees overseeing the Board (Assembly Business and Professions Committee and Senate Business, Professions and Economic Development Committee) will schedule a sunset review hearing for the early spring of 2024. Committee staff will prepare a background paper, based in part on the Board's Sunset Review Report, and release it prior to the hearing. At this joint hearing, the legislators will hear testimony from the Board President and Executive Director, ask

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questions, and take public comment. Additionally, stakeholders and the public will have the opportunity to submit written comment prior to the hearing.

This hearing will inform what is called a 'sunset bill' – legislation that would reauthorize the Board for a specified period (typically four years, though this can vary, or be adjusted by subsequent legislation). Besides reauthorizing the Board, the sunset bill usually makes changes to sections of the Dental Practice Act to address concerns raised during the sunset review process. For instance, the legislative proposals approved by the Board could inform provisions of the sunset bill.

### **Action Requested**

Board staff have prepared a draft Sunset Review Report for the Board's consideration, feedback, and approval. If the Board wishes to make substantive changes to the text of the report, Board staff request that the Board move to approve those changes separately from any motion to approve the report. Suggested motion language for approving the report follows:

**Motion A:** (The Board has no suggested changes for the proposed regulatory text.)  
Approve the proposed draft Sunset Review Report for the Dental Board of California and authorize the Executive Officer to take all steps necessary to finalize the report, make any non-substantive changes to the text, and take all steps necessary to submit the report to the California Legislature.

**Motion B:** (The Board has suggested changes for the proposed regulatory text.)  
Approve the proposed draft Sunset Review Report for the Dental Board of California, with the changes previously approved by the Board. In addition, authorize the Executive Officer to take all steps necessary to finalize the report, make any non-substantive changes to the text, and take all steps necessary to submit the report to the California Legislature.

### **Attachment**

Dental Board of California 2024 Sunset Review Report DRAFT  
2024 Sunset Report Form, Section 12 - Attachments DRAFT