



*NOTICE OF PUBLIC MEETING – Notice is hereby given that a public meeting of the Dental Board of California will be held as follows:*

**Monday, November 7, 2011**  
Sportsmen's Lodge, 12825 Ventura Blvd.  
Studio City, CA 91604  
818-769-4700 or 916-263-2300

*Public comments will be taken on agenda items at the time the specific item is raised. The Board 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 and to maintain a quorum. The meeting may be cancelled without notice. Time limitations for discussion and comment will be determined by the President. For verification of the meeting, call (916) 263-2300 or access the Board's Web Site at [www.dbc.ca.gov](http://www.dbc.ca.gov). This Board meeting is open to the public and is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Richard DeCuir, Executive Officer at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, or by phone at (916) 263-2300. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation*

*While the Board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources.*

**8:30 a.m. DENTAL BOARD OF CALIFORNIA – FULL BOARD - OPEN SESSION**

ROLL CALL .....Establishment of a Quorum

**\* CLOSED SESSION - FULL BOARD**

Deliberate and Take Action on Disciplinary Matters

\*The Board will meet in closed session as authorized by Government Code Section 11126(c)(3).

**\*CLOSED SESSION – LICENSING, CERTIFICATION, AND PERMITS COMMITTEE**

(a) Issuance of New License(s) to Replace Cancelled License(s)

\*The Committee will meet in closed session as authorized by Government Code Section 11126(c)(2) to deliberate on applications for issuance of new license(s) to replace cancelled license(s).

(b) Grant, Deny or Request Further Evaluation for Conscious Sedation Permit Onsite Inspection and Evaluation Failure, pursuant to Title 16 CCR Section 1043.6

\*The Committee will meet in closed session as authorized by Government Code Section 11126(c)(2) to deliberate whether or not to grant, deny or request further evaluation for a Conscious Sedation Permit as it Relates to an Onsite Inspection and Evaluation Failure.

**OPEN SESSION RESUMES AT APPROXIMATELY 10:00 a.m.**

**COMMITTEE MEETINGS – SEE ATTACHED AGENDAS**

➤ EXAMINATION COMMITTEE

See attached Examination Committee agenda

- LICENSING, CERTIFICATION, AND PERMITS COMMITTEE  
See attached Licensing, Certification, and Permits Committee agenda
- DENTAL ASSISTING COMMITTEE  
See attached Dental Assisting Committee agenda
- LEGISLATIVE AND REGULATORY COMMITTEE  
See attached Legislative and Regulatory Committee agenda
- ENFORCEMENT COMMITTEE  
See attached Enforcement Committee agenda

## FULL BOARD MEETING RESUMES

AGENDA ITEM 1 .....Discussion and Possible Action Regarding:

(A) Comments Received During the 45-day Public Comment Period for the Board’s Proposed Rulemaking to Amend Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines and

(B) Adoption of Proposed Amendments to Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines

AGENDA ITEM 2 .....Presentation by Senator Richard G. Polanco (Ret.), Chairman of the California Latino Legislative Caucus Institute for Public Policy, Regarding his Support of Universidad De La Salle’s Renewal Application

AGENDA ITEM 3 .....Discussion and Possible Action Regarding:

(A) Subcommittee Update of Universidad De La Salle’s Renewal and Site Review

(B) Extending the Expiration Date of Universidad De La Salle’s Current Approval to Allow Review of the Renewal Application

AGENDA ITEM 4 .....Discussion and Possible Action to Consider Initiation of a Rulemaking to Add *Title 16, CCR, Section 1065* Regarding Requirements for Posting Notice to Consumers of Licensure by the Dental Board

AGENDA ITEM 5 .....Update on Pending Regulatory Packages:

A. Dental Assisting Educational Programs and Courses (*California Code of Regulations, Title 16, Sections 1070, 1070.1, 1070.2, 1070.6, 1070.7, 1070.8 and 1071*)

B. Consumer Protection Enforcement Initiative (*California Code of Regulations, Title 16, Sections 1018.05 and 1020*)

C. Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines (*California Code of Regulations, Title 16, Sections 1018 and 1020.5*)

D. Sponsored Free Health Care Events (*California Code of Regulations, Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18*)

AGENDA ITEM 6 .....Update on the Office of Statewide Health Planning and Development (OSHPD) Health Workforce Pilot Project (HWPP#172)

AGENDA ITEM 7 .....(A) Presentation by Howard Katz, DDS, Regarding Cosmetic and Scope of Practice Issues in Dentistry;

(B) Discussion and Possible Action Regarding Board Policy and Interpretations of *Business and Professions Code Section 1625*  
Related to:

(i) Cosmetic and Esthetic Procedures

(ii) Scope of Practice of *Business and Professions Code Section 1625*  
Related to “Associated Structures”

AGENDA ITEM 8 .....Update on Dental Board of California Pathways to Licensure for Dentists  
– Information Only

**PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA**

*Note: The Board may not discuss or take action on any matter raised during the Public Comment section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting. (Government Code Sections 11125 and 11125.7(a).)*

RECESS



## MEMORANDUM

<b>DATE</b>	October 19, 2011
<b>TO</b>	Dental Board Members
<b>FROM</b>	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 1(A):</b> Discussion and Possible Action Regarding Comments Received During the 45-day Public Comment Period for the Board's Proposed Rulemaking to Amend Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines

**Background:**

At its February 25, 2011 meeting, the Board discussed and approved proposed regulatory language relative to the uniform standards relating to substance abusing licensees and Disciplinary Guidelines. The Board directed staff to initiate a rulemaking.

The initial rulemaking file was submitted to the Office of Administrative Law on March 11, 2011. The proposed action was published on March 25, 2011 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on March 25, 2011 and ended on May 9, 2011. The regulatory hearing was held on May 10, 2011. The Board received oral testimony from the California Dental Association and written comments from the Center for Public Interest Law.

The Substance Abuse Coordination Committee (SACC) met on April 11, 2011 and revised requirements contained in the *Uniform Standards Relating to Substance-Abusing Healing Arts Licensees*. The amendments were related to drug testing requirements and facilitated group support meetings. A copy of the April 11, 2011 document is included in the meeting packet.

At its August 11, 2011 meeting, the Board discussed comments received during the 45-day public comment period relative to the Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines. There was discussion at the meeting regarding the issue of the Board's discretionary authority in using the uniform standards as conditions of probation for substance abusing licensees. The Board tabled taking action on responding to comments until it received more information regarding the Board's discretion, including a legal opinion from the Legislative Counsel's Office. To date, staff has not received any additional legal opinions.

Staff has prepared the following information for the Board's review at this meeting:

1. Recommended responses to the comments received during the 45-day public comment period and at the public regulatory hearing;
2. Recommended modifications to the originally proposed text based on a number of issues that arose after the original text was noticed; and
3. Recommended modifications to the originally proposed text to use the amendments made by the SACC on April 11, 2011.

### **COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD:**

#### ***Comments Received from the California Dental Association:***

Bill Lewis, California Dental Association (CDA), delivered verbal testimony at the regulatory hearing on May 10, 2011 in response to the proposed regulatory action. Mr. Lewis indicated CDA's overall support of the proposed regulations as drafted. Mr. Lewis thanked the Dental Board of California and staff for finding a balance between implementing the Uniform Standards, as created by the Substance Abuse Coordination Committee, and recognizing the distinction between the appropriate roll of the Board's Diversion Program and disciplinary action. Mr. Lewis stated that it is important that the Board maintain flexibility and discretion while treating individuals self-referred into the Diversion Program and not in a one-size fits all approach.

#### **Staff Recommendation:**

Since this was not an adverse comment, there is no Board action required in response to the California Dental Association's comment.

#### ***Comments Received from the Center for Public Interest Law:***

Julianne D'Angelo Fellmeth, Administrative Director, for the Center for Public Interest Law submitted a letter (copy enclosed) in response to the proposed regulations.

First, Ms. Fellmeth stated that the proposed regulation does not incorporate the correct version of the Uniform Standards developed by the Department of Consumer Affairs' Substance Abuse Coordination Committee (SACC). The letter further explained that the SACC finalized its Uniform Standards in April 2011, and that the new version should be incorporated into the DBC's Disciplinary Guidelines.

Secondly, Ms. Fellmeth commented that the Dental Board of California does not have discretion to order individual conditions. Ms. Fellmeth commented that the Board is required to apply any applicable standard developed by the SACC as finalized in April 2011. She stated that Business and Professions Code Section 315 states: "...the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program..." and that there is nothing discretionary in this language. Ms. Fellmeth further stated that the language was intended to ensure consistency across all the healing arts boards when dealing with substance-abusing licensees and that no healing arts board is allowed to pick and choose among the SB 1441 standards and decide which to follow and which to ignore.

Staff Recommendation:

Staff recommends rejection of these comments. The Dental Board (“Board”) incorporated the original terms of the probationary standards recommended by the Substance Abuse Coordination Committee (SACC) into its originally noticed text, which was filed before the SACC amended its standards in April 2011. The Board intends to modify its proposed text to reflect these new amendments as of April 2011.

However, the Board staff disagrees with the commenter that the Board has no discretion. Rulemaking is a discretionary act that has been specifically delegated to the Board by law, not to the SACC. The SACC has been given no power to enact rules or regulations by Section 315 of the Business and Professions Code and the SACC’s proposed standards are not exempt from the APA. As a result, any standards the SACC proposes do not have the force of law (statute or regulation) and do not set standards for the Board’s licensees unless adopted by the Board through the rulemaking process. In addition, Section 315 of the Business and Professions Code does not restrict the Board’s discretion to determine how and when to use the standards, or divest it of its rulemaking authority. The statute merely states that the boards “shall use” the standards formulated by the SACC in dealing with substance-abusing licensees. The Board has done this by proposing to add the standards as written by the SACC to its guidelines. However, the Board has made it clear that it still has authority to determine how and whether to apply the standards. The analysis in support of these conclusions follows.

The Board has been expressly delegated the authority to make rules by the Legislature.

Section 108 of the Business and Professions Code states, in pertinent part, that:

**“Each of the boards** comprising the department **exists as a separate unit**, and has the functions of **setting standards**, ... passing upon applicants, conducting investigations of violations of laws under its jurisdiction, ... holding hearings for the revocation of licenses, and the imposing of penalties following those hearings, insofar as these powers are given by statute to each respective board.” (Emphasis added.)

In particular, Section 1611 of the Business and Professions Code charges the Board with carrying out the purposes of and enforcing the provisions of the Dental Practice Act. This includes adopting rules necessary to issue and renew a license and administer and enforce the Dental Practice Act (Bus.&Prof.Code, § 1614.). Section 1628.7 of the Business and Professions Code states that the Board has “sole discretion” to determine whether an applicant should be issued a probationary license and the Board “may” determine what term or condition of a probationary license may be imposed. Further, Section 1628.7 requires any rules regarding the terms and conditions of probation, including those for abstention of alcohol, to “be adopted, amended, or repealed in accordance with the provisions of the Administrative Procedure Act.” Further, Section 1695.5 of the Business and Professions Code states that the “Board shall establish criteria for the acceptance, denial or termination of licentiates in a diversion program.” As a result, the Board has been specifically delegated the authority to decide what standards to adopt and when those standards will be applied.

Section 315 neither divests the Board of its rulemaking authority nor restricts its rulemaking authority. Later enacted statutes support this conclusion.

The first step “is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning.” ( *People v. Valladoli* (1996) 13 Cal.4th 590, 597, 54 Cal.Rptr.2d 695, 918 P.2d 999.) “If the statutory language is clear and unambiguous, there is no need for construction.” ( *Viking Pools, Inc. v. Maloney* (1989) 48 Cal.3d 602, 606, 257 Cal.Rptr. 320, 770 P.2d 732.) “[T]he Legislature is presumed to have meant what it said, and the plain meaning of the statute governs.” ( *People v. Johnson* (2002) 28 Cal.4th 240, 244, 121 Cal.Rptr.2d 197, 47 P.3d 1064.) It is assumed that when enacting a statute, the legislature is deemed to be aware of statutes already in existence and to have enacted new laws in light of the existing law with an intent to maintain a consistent body of statutes ( *People v. Harrison* (1989) 48 Cal.3d 321, 329 citing *People v. Overstreet* (1986) 42 Cal.3d. 891,897; *Burlington Northern and Sante Fe Ry. Co. v. Public Utilities Com'n* (2003) 112 Cal.App.4th 881, 889.)

Looking at the plain language of section 315, the statute merely states that each board “shall use” the standards proposed by the SACC. It says nothing about the SACC's power to either adopt rules that must be adopted by the boards or that the boards have no discretion but to apply these terms in every case, regardless of the facts of the case. On the contrary, the failure of the Board to exercise its discretion in every case could subject the Board to legal challenges for any decision it issues when it has expressly been delegated the authority to exercise its discretion. (See, e.g., *Ventimiglia v. Board of Behavioral Sciences* (2008)168 Cal.App.4th 296, 300-301.)

Further, the Legislature presumptively knew that the Board had been delegated “sole discretion” to determine probationary conditions, but instead only chose to require the Board to “use” the standards proposed by the SACC. Later statutory enactments at Sections 315.2 and 315.4 of the Business and Professions Code further support this conclusion. Section 315.4 of the Business and Professions Code, which was enacted after Section 315, reinforces that the Board has discretion when it states that “a board, as described in Section 315, **may** adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice...when the board orders a licensee to undergo a clinical diagnostic evaluation...” (Emphasis added.) The use of the word “may” is ordinarily permissive ( *Hogya v. Superior Court* (1977) 75 Cal.App.3d 122, 133.)

However, when the Legislature intended to restrict the board’s discretion, it did so clearly when it enacted Section 315.2 of the Business and Professions Code, which states that all boards: “shall order a licensee of the board to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee’s probation or diversion program.” As a result, a plain reading of the statute would indicate that the board must order a licensee to cease practice if the licensee tests positive for a banned substance. The Board’s current proposal is consistent with this legislative mandate, and has been included in the Board’s changes on page 33 of the proposed amendments.

In conclusion, the Dental Board has authority to set standards as authorized by the Dental Practice Act and other applicable statutes. The enactment of Section 315 of the

Business and Professions Code did not remove the Board's authority to exercise its discretion in adopting rules applicable to the professions it regulates. The statute merely states that the boards shall "use" the standards. The statute does not state that the boards are not permitted to exercise their discretion in determining how and when to use the standards proposed by the SACC. Later enacted statutory provisions support this interpretation. As a result, the Board does indeed have discretion to determine whether a particular condition should be applied to a licensee in a given case.

### **ADDITIONAL STAFF RECOMMENDATIONS**

In addition to responding to the comments received during the 45-day public comment period and reviewing the changes made to the proposed language to use the Substance Abuse Coordination Committee's (SACC) April 2011 amendments, the Board may wish to discuss and take action to further modify the text, based on the following issues:

#### **Issue #1:**

The Board's proposed language does not provide a definition for "substance-abusing licensee". The Board may wish to discuss the need for clarifying the proposed language to advise the Administrative Law Judge (ALJ) as to when the Uniform Standards for Substance Abusing Licensees and related conditions of probations would apply.

#### **Issue #2:**

Staff recommends interchanging the numbering for proposed conditions "(35) Facilitated Group Support Meetings" and "(36) Clinical Diagnostic Evaluation" to be "(35) Clinical Diagnostic Evaluation" and "(36) Facilitated Group Support Meetings". The condition for a clinical diagnostic evaluation should come before other conditions relating to the Uniform Standards. A clinical diagnostic evaluation must be performed to determine if a licensee has a substance abuse problem that would necessitate the order of other probationary conditions relating to substance abuse.

#### **Issue #3:**

When a clinical diagnostic evaluation is ordered as a condition of probation, the Board is responsible for determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment. When making that determination, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

The originally proposed language did not include a condition of probation relative to a treatment and rehabilitation program for substance abuse other than the Diversion Program. Since the Diversion Program probationary condition is separate from the Clinical Diagnostic Evaluation probationary condition, and the two conditions should not be included on the same probationary order, an order containing a Clinical Diagnostic Evaluation condition should also include a Treatment/Rehabilitation Program

probationary condition in the case the evaluator and the Board determine the licensee should participate in an inpatient, outpatient, or any other type of treatment. Staff recommends adding the following probationary condition to ensure compliance with the Uniform Standards as developed by the SACC:

**(37) TREATMENT/REHABILITATION PROGRAM FOR SUBSTANCE ABUSE**

After a receipt of a clinical diagnostic evaluation, the Board or its designee may order that Respondent enter an inpatient or outpatient alcohol or other drug abuse recovery program or equivalent program as approved by the Board or its designee. If so ordered, then within seven (7) days from the date of the order, Respondent shall enter an inpatient or outpatient alcohol or other drug abuse recovery program or an equivalent program as approved by the Board or its designee. Components of the treatment program shall be relevant to the violation and to the Respondent's current status in recovery or rehabilitation. Respondent shall provide the Board or its designee with proof that the approved program was successfully completed. Terminating the program without permission or being expelled for cause shall constitute a violation of probation by Respondent. All costs associated with the program shall be paid by Respondent.

However, if Respondent has already attended such an inpatient or outpatient alcohol or other drug abuse recovery program, as described above, commencing with the current period of sobriety, respondent shall provide the Board or its designee with proof that the program was successfully completed and this shall suffice to comply with this term of probation.

In determining whether inpatient or outpatient treatment is necessary, the Board or its designee shall consider the following factors: the recommendation of the clinical diagnostic evaluation, license type, licensee's history, documented length of sobriety or time that has elapsed since substance abuse, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse, and whether the licensee is a threat to himself or herself or the public.

Note: This term should be used in conjunction with the (35) Clinical Diagnostic Evaluation term. This term should also be used when Respondent's license is placed on probation for substance or alcohol abuse violations and Additional Probationary Term No. (26) (Diversion Program) is not a term and condition of the probationary order.

**The following is the full text of the proposed amendments identified in Issue #2 and Issue #3:**

**(3635) CLINICAL DIAGNOSTIC EVALUATION** – Upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation,

Respondent shall cease practice for a minimum of 1 month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least 2 times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation was completed, unless an extension, not to exceed 30 days, is granted to the evaluator by the Board. The cost of such evaluation shall be paid by the Respondent.

Respondent shall cease practice until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least 1 month of negative drug test results. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

Note: This condition should be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations and Additional Probationary Term No, (26) (Diversion Program) is not a term and condition of the probationary order.

**RATIONALE:** This condition gives the Board the ability to order a Respondent, at any time during the probation period, to undergo an evaluation to determine if he or she is currently safe to practice.

**(3536) FACILITATED GROUP SUPPORT MEETINGS –**

Within fifteen (15) days from the effective date of the decision, Respondent shall submit to the Board or its designee for prior approval the name of one or more meeting facilitators. Respondent shall participate in facilitated group support meetings within fifteen (15) days after notification of the Board's approval of the meeting facilitator. When determining the type and frequency of required facilitated group support meeting attendance, the Board shall give consideration to the following:

- The licensee's history;
- The documented length of sobriety/time that has elapsed since substance abuse;
- The recommendation of the clinical evaluator;
- The scope and pattern of use;
- The licensee's treatment history; and ,
- The nature, duration, and severity of substance abuse.

Verified documentation of attendance shall be submitted by Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

If a facilitated group support meeting is ordered, the group facilitator shall meet the following qualifications and requirements:

1. The group meeting facilitator shall have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The group meeting facilitator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last ~~five (5)~~ years.
3. The group facilitator shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The group meeting facilitator shall report any unexcused absence to the Board within twenty-four (24) hours.

Note: This condition should be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations.

**RATIONALE:** Alcohol and/or drug abuse treatment should be required in addition to other terms of probation in cases where the use of alcohol or other drugs by the Respondent has impaired the Respondent's ability to safely practice.

**(37) TREATMENT/REHABILITATION PROGRAM FOR SUBSTANCE ABUSE** After a receipt of a clinical diagnostic evaluation, the Board or its designee may order that Respondent enter an inpatient or outpatient alcohol or other drug abuse recovery program or equivalent program as approved by the Board or its designee. If so ordered, then within seven (7) days from the date of the order, Respondent shall enter an inpatient or outpatient alcohol or other drug abuse recovery program or an equivalent program as approved by the Board or its designee. Components of the treatment program shall be relevant to the violation and to the Respondent's current status in recovery or rehabilitation. Respondent shall provide the Board or its designee with proof that the approved program was successfully completed. Terminating the program without permission or being expelled for cause shall constitute a violation of probation by Respondent. All costs associated with the program shall be paid by Respondent.

However, if Respondent has already attended such an inpatient or outpatient alcohol or other drug abuse recovery program, as described above, commencing with the current period of sobriety, respondent shall provide the Board or its designee with proof that the program was successfully completed and this shall suffice to comply with this term of probation.

In determining whether inpatient or outpatient treatment is necessary, the Board or its designee shall consider the following factors: the recommendation of the clinical diagnostic evaluation, license type, licensee's history, documented length of sobriety or time that has elapsed since substance abuse, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse, and whether the licensee is a threat to himself or herself or the public.

Note: This term should be used in conjunction with the (35) Clinical Diagnostic Evaluation term. This term should also be used when Respondent's license is placed on probation for substance or alcohol abuse violations and Additional Probationary Term No. (26) (Diversion Program) is not a term and condition of the probationary order.

May 9, 2011

Sarah Wallace  
Legislative and Regulatory Analyst  
Dental Board of California  
2005 Evergreen Street, Suite 1550  
Sacramento, CA 95815

re: DBC's Disciplinary Guidelines Regulations

Dear Ms. Wallace:

The Center for Public Interest Law (CPIL) has two comments on DBC's proposal to amend sections 1018 and 1020.5, Title 16 of the CCR, and its Disciplinary Guidelines.

First, the proposal does not incorporate the correct version of the Uniform Standards developed by the Department of Consumer Affairs' Substance Abuse Coordination Committee (SACC). The Committee finalized its standards in April 2011, and that version should be incorporated into DBC's guidelines.

Secondly, page 3 of the disciplinary guidelines (under the heading "Uniform Standards Related to Substance Abuse") states: "The following standards should be followed in all cases in which a license is placed on probation due to a substance abuse problem. *Whether individual conditions are ordered, however, is within the discretion of the Board.*"

We assume you are referring to the "uniform and consistent standards" developed by the SACC as directed by SB 1441 (Ridley-Thomas) (2008). Under that law (specifically Business and Professions Code section 315), the Dental Board has no discretion. It is required to apply any applicable standard developed by the SACC and finalized in April 2011. Section 315 specifically states: "...the committee shall formulate uniform and specific standards in each of the following areas that **each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program...**" (emphasis added). There is nothing discretionary about that language; it was intended to ensure consistency across all the healing arts boards in their dealings with substance-abusing licensees. No healing arts board is allowed to pick and choose among the SB 1441 standards and decide which to follow and which to ignore.

Center for Public Interest Law ■ Children's Advocacy Institute ■ Energy Policy Initiatives Center

5998 Alcalá Park, San Diego, CA 92110-2492 ■ Phone: (619) 260-4806 ■ Fax: (619) 260-4753

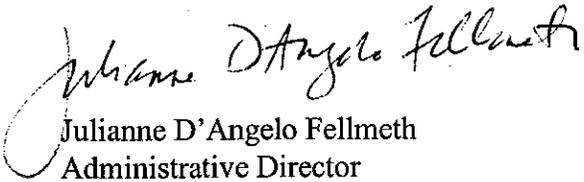
717 K Street, Suite 509, Sacramento, CA 95814-3408 ■ Phone: (916) 444-3875 ■ Fax: (916) 444-6611

www.cpil.org ■ www.caichildlaw.org ■ www.sandiego.edu/epic

Reply to:  San Diego  Sacramento

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, reading "Julianne D'Angelo Fellmeth". The signature is written in a cursive style with a large initial 'J'.

Julianne D'Angelo Fellmeth  
Administrative Director  
Center for Public Interest Law



## **REGULATORY HEARING**

Dental Board of California  
2005 Evergreen Street, Hearing Room  
Sacramento, CA 95815

May 11, 2011

Minutes of Public Hearing for California Code of Regulations  
Sections 1018 and 1020.5 for Uniform Standards Relating to  
Substance Abusing Licensees and Disciplinary Guidelines

### Staff Present:

Denise Johnson, Assistant Executive Officer  
Sarah Wallace, Legislative & Regulatory Analyst  
Kristy Shellans, Senior Legal Counsel  
Karen Fischer, Special Assistant to the Executive Officer

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### **Title 16, California Code of Regulations, Amend Sections 1018 and 1020.5 for Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines**

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Sarah Wallace, Legislative and Regulatory Analyst, read the opening statement explaining the hearing process and opened the hearing for testimony at approximately 10:00 a.m.

Mr. Bill Lewis, California Dental Association (CDA), delivered verbal testimony in response to the proposed regulatory action. Mr. Lewis indicated CDA's overall support of the proposed regulations as drafted. Mr. Lewis thanked the Dental Board of California and staff for finding a balance between implementing the Uniform Standards, as created by the Substance Abuse Coordination Committee, and recognizing the distinction between the appropriate roll of the Board's Diversion Program and disciplinary action. Mr. Lewis stated that it is important that the Board maintain flexibility and discretion while treating individuals self-referred into the Diversion Program and not in a one-size fits all approach.

There were no other comments, and the hearing was adjourned at 10:15 a.m.

Changes made to the Standards from April 2010 – April 2011 are underlined  
for additions and strikeout for deletions

# Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by  
Department of Consumer Affairs,  
Substance Abuse Coordination Committee



Brian J. Stiger, Director  
~~April 2010~~ April 2011



**Substance Abuse Coordination Committee**

Brian Stiger, Chair  
**Director, Department of Consumer Affairs**

Elinore F. McCance-Katz, M.D., Ph. D.  
**CA Department of Alcohol & Drug Programs**

Janelle Wedge  
**Acupuncture Board**

Kim Madsen  
**California Board of Behavioral Sciences**

Robert Puleo  
**Board of Chiropractic Examiners**

Lori Hubble  
**Dental Hygiene Committee of California**

Richard De Cuir  
**Dental Board of California**

Joanne Allen  
**Hearing Aid Dispensers**

Linda Whitney  
**Medical Board of California**

Heather Martin  
**California Board of Occupational Therapy**

Mona Maggio  
**California State Board of Optometry**

Teresa Bello-Jones  
**Board of Vocational Nursing and  
 Psychiatric Technicians**

Donald Krpan, D.O.  
**Osteopathic Medical Board of California**

Francine Davies  
**Naturopathic Medicine Committee**

Virginia Herold  
**California State Board of Pharmacy**

Steve Hartzell  
**Physical Therapy Board of California**

Elberta Portman  
**Physician Assistant Committee**

Jim Rathlesberger  
**Board of Podiatric Medicine**

Robert Kahane  
**Board of Psychology**

Louise Bailey  
**Board of Registered Nursing**

Stephanie Nunez  
**Respiratory Care Board of California**

Annemarie Del Mugnaio  
**Speech-Language Pathology & Audiology &  
Hearing Aid Dispenser Board**

Susan Geranen  
**Veterinary Medical Board**

**Staff Working Group**

~~Susan Lancara, DCA, Legislative & Policy Review  
 LaVonne Powell, DCA Legal Counsel  
 Laura Edison-Freedman, DCA Legal Counsel  
 Katherine Demos, DCA, Legislative & Policy Review  
 Kristine Brothers, Acupuncture Board  
 Kim Madsen, Board of Behavioral Sciences  
 April Alameda, Board of Chiropractic Examiners  
 Richard DeCuir, Dental Board of California  
 Kimberly Kirchmeyer, Medical Board of CA  
 Jeff Hanson, Board of Occupational Therapy~~

~~Margie McGavin, Board of Optometry  
 Felisa Scott, Osteopathic Medical Board  
 Anne Sodergren, Board of Pharmacy  
 Glenn Mitchell, Physician Assistant Committee  
 Debi Mitchell, Physical Therapy Board of CA  
 Carol Stanford, Board of Registered Nursing  
 Liane Freels, Respiratory Care Board  
 Amy Edelen, Veterinary Medical Board  
 Marilyn Kimble, Board of Vocational Nursing &  
 Psychiatric Technicians~~

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**#1 SENATE BILL 1441 REQUIREMENT**

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

**#1 Uniform Standard**

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
  - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
  - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
  - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
  - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
  - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
  - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

**#2 SENATE BILL 1441 REQUIREMENT**

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

**#2 Uniform Standard**

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

**#3 SENATE BILL 1441 REQUIREMENT**

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

**#3 Uniform Standard**

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

**#4 SENATE BILL 1441 REQUIREMENT**

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

**#4 Uniform Standard**

The following drug testing standards shall apply to each licensee subject to drug testing govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

~~Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the board. After the first year, licensees, who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.~~

**TESTING FREQUENCY SCHEDULE**

A board may order a licensee to drug test at anytime. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

<u>Level</u>	<u>Segments of Probation/Diversion</u>	<u>Minimum Range of Number of Random Tests</u>
<u>I</u>	<u>Year 1</u>	<u>52-104 per year</u>
<u>II*</u>	<u>Year 2+</u>	<u>36-104 per year</u>

\*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

**EXCEPTIONS TO TESTING FREQUENCY SCHEDULE****I. PREVIOUS TESTING/SOBRIETY**

In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.

**II. VIOLATION(S) OUTSIDE OF EMPLOYMENT**

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

**III. NOT EMPLOYED IN HEALTH CARE FIELD**

A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the a licensee shall notify and secure the approval of the licensee's board. Prior to returning to any healthcare employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

**IV. TOLLING**

A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

**V. SUBSTANCE USE DISORDER NOT DIAGNOSED**

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

**OTHER DRUG STANDARDS**

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

**PETITIONS FOR REINSTATEMENT**

Nothing herein shall limit a board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that

contains different provisions for reinstatement or reduction of penalty.

## **OUTCOMES AND AMENDMENTS**

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

### **Historical Data - Two Years Prior to Implementation of Standard**

Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

### **Post Implementation Data- Three Years**

Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

### **Data Collection**

The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant ee Unique Identifier

License Type

Probation/Diversion Effective Date

General Range of Testing Frequency by/for Each Probationer/Diversion Participant ee

Dates Testing Requested

Dates Tested

Identify the Entity that Performed Each Test

Dates Tested Positive

Dates Contractor (if applicable) was informed of Positive Test

Dates Board was informed of Positive Test

Dates of Questionable Tests (e.g. dilute, high levels)

Date Contractor Notified Board of Questionable Test

Identify Substances Detected or Questionably Detected

Dates Failed to Appear

Date Contractor Notified Board of Failed to Appear

Dates Failed to Call In for Testing

Date Contractor Notified Board of Failed to Call In for Testing

Dates Failed to Pay for Testing

Date(s) Removed/Suspended from Practice (identify which)

Final Outcome and Effective Date (if applicable)

**#5 SENATE BILL 1441 REQUIREMENT**

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

**#5 Uniform Standard**

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

**Group Meeting Facilitator Qualifications and Requirements:**

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last five (5) years(insert number) year(s).
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

**#6 SENATE BILL 1441 REQUIREMENT**

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

**#6 Uniform Standard**

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

**#7 SENATE BILL 1441 REQUIREMENT**

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

**#7 Uniform Standard**

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, ~~or~~ be another health care professional if no monitor with like practice is available or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. ~~If~~ the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
  - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
  - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
  - c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
  - the licensee's name;
  - license number;
  - worksite monitor's name and signature;
  - worksite monitor's license number;
  - worksite location(s);
  - dates licensee had face-to-face contact with monitor;
  - staff interviewed, if applicable;
  - attendance report;
  - any change in behavior and/or personal habits;
  - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

**#8 SENATE BILL 1441 REQUIREMENT**

Procedures to be followed when a licensee tests positive for a banned substance.

**#8 Uniform Standard**

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

**#9 SENATE BILL 1441 REQUIREMENT**

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

**#9 Uniform Standard**

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

**#10 SENATE BILL 1441 REQUIREMENT**

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

**#10 Uniform Standard**

**Major Violations** include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

**Consequences** for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
  - a) the licensee must undergo a new clinical diagnostic evaluation, and
  - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

**Minor Violations** include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

**Consequences** for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

**#11 SENATE BILL 1441 REQUIREMENT**

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

**#11 Uniform Standard**

**“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.**

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee’s substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

**#12 SENATE BILL 1441 REQUIREMENT**

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

**#12 Uniform Standard**

**“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.**

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) year.

**#13 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

**#13 Uniform Standard**

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

**(a) Specimen Collectors:**

- a) (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- b) (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- c) (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- d) (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- e) (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- f) (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

- g) (7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- h) (8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- i) (9) Must undergo training as specified in Uniform Standard #4 (6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- a) (1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- b) (2) must be licensed or certified by the state or other nationally certified organization;
- c) (3) must not have a financial relationship, personal relationship, or business relationship with the licensee in the last ~~five (5)~~ years;
- d) (4) shall report any unexcused absence within 24 hours to the board, and,
- e) (5) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

(c) Work Site Monitors:

1. The worksite monitor must meet the following qualifications:

- a) (1) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
- b) (2) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional, if no monitor with like practice is available, or, as approved by the board, be a

person in a position of authority who is capable of monitoring the licensee at work.

- e) ~~(3)~~ (3) If ~~the~~ worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
- e) (4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
- Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
  - Interview other staff in the office regarding the licensee's behavior, if applicable.
  - Review the licensee's work attendance.
3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
- the licensee's name;
  - license number;
  - worksite monitor's name and signature;
  - worksite monitor's license number;
  - worksite location(s);
  - dates licensee had face-to-face contact with monitor;
  - staff interviewed, if applicable;
  - attendance report;

- any change in behavior and/or personal habits;
- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

4. Treatment facility staff and services must have:

- a) (1) Licensure and/or accreditation by appropriate regulatory agencies;
- b) (2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- e) (3) Professional staff who are competent and experienced members of the clinical staff;
- d) (4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- e) (5) Means to provide treatment/progress documentation to the provider.

(e) General Vendor Requirements

2. The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

- a) (1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
- b) (2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
- e) (3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

**#14 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

**#14 Uniform Standard**

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

**#15 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

**#15 Uniform Standard**

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.

**#16 SENATE BILL 1441 Requirement**

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

**#16 Uniform Standard**

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.
- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.



## MEMORANDUM

<b>DATE</b>	October 19, 2011
<b>TO</b>	Dental Board Members
<b>FROM</b>	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 1(B):</b> Discussion and Possible Action Regarding Adoption of Proposed Amendments to Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines

### **Background:**

Following the Board's consideration of comments received during the required 45-day public comment period, the Board may hold discussion and take action to adopt proposed amendments to California Code of Regulations, Title 16, Sections 1018 and 1020.5 for the Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines.

### **Action Requested:**

Depending on the Board's response to the comments received, staff requests the Board take one of the following actions:

- A. If the Board rejects the comments received during the 45-day comment period, the SACC's amendments, and staff's recommended modifications to the text, then the Board would:

Adopt the final text as noticed and 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 and authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to Title 16, CCR, Sections 1018 and 1020.5.

- B. If the Board accepts any comments received or modifies the text to include the SACC's amendments, or staff's recommended modifications then the Board would:

Modify the text in response to the comments and recommendations received and direct staff to take all steps necessary to complete the rulemaking process,

including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the board at this meeting. 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 regulations before completing the rulemaking process, and adopt the proposed amendments to Title 16, CCR, Sections 1018 and 1020.5 as noticed in the modified text.

TITLE 16. DENTAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS

**PROPOSED MODIFIED TEXT**

The modified text shows changes made to the originally proposed language using double underline for new text and double strikeout for deleted text.

Amend Article 4.5 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations to read:

ARTICLE 4.5  
UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE  
AND DISCIPLINARY GUIDELINES

§ 1018. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines. In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Dental Board of California shall consider the ~~disciplinary guidelines entitled "Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines With Model Language", revised 08/30/2010~~ February 25, 2011 November 7, 2011 which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Dental Board of California, in its sole discretion, determines that the facts of the particular case warrant such deviation - for example: the presence of mitigating and aggravating factors; the age of the case; evidentiary problems.

Note: Authority cited: Sections 315, 315.2, 315.4, and 1614, Business and Professions Code; and Sections 11400.20 and 11400.24, Government Code. Reference: Section 11400.20 and 11425.50(e), Government Code; and Sections 315, 315.2, and 315.4 of the Business and Professions Code.

Amend Section 1020.5 of Article 5.5 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations to read:

ARTICLE 5.5.  
IMPAIRED LICENTIATES PROGRAM

§ 1020.5. Diversion Evaluation Committee Duties and Responsibilities.  
A diversion evaluation committee shall have the following duties and responsibilities in addition to those set forth in Section 1695.6 of the Code:  
(a) To consider recommendations of the program manager and any consultant to the committee;

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(b) To set forth in writing for each licensee in a program a treatment and rehabilitation program established for that licensee with the requirements for supervision and surveillance.

(c) To consider the uniform standards contained within the "Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines With Model Language", revised ~~February 25, 2014~~ November 7, 2011 in creating a treatment rehabilitation plan for each licensee entering the impaired licentiates program.

Note: Authority cited: Sections 315, 315.2, 315.4, 1614 and 1695.6, Business and Professions Code. Reference: Sections 315, 315.2, 315.4 and 1695.6, Business and Professions Code.

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# DENTAL BOARD OF CALIFORNIA

## UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES WITH MODEL LANGUAGE

Revised:

~~August 30, 2010~~

~~February 25, 2011~~

November 7, 2011

Issued by:

Dental Board of California  
2005 Evergreen Street, Suite 1550  
Sacramento, California 95815  
Telephone (916) 263-2300  
Fax (916) 263-2140

## INTRODUCTION

In keeping with its obligation to protect the consumers of dental services from the unsafe, incompetent, negligent or impaired dentists and dental auxiliaries, the Dental Board of California ("Board") has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Dental Practice Act as well as Uniform Standards Related to Substance Abuse.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount and to the extent not inconsistent with public protection, disciplinary actions shall be calculated to aid in the rehabilitation of the licensee. Consequently, the Board requests that the Administrative Law Judge ("ALJ") clearly state the factual basis for his or her decision. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons for the deviation and to evaluate the appropriateness of the decision.

These guidelines are for use by administrative law judges, attorneys and any licensee involved in settlement of disciplinary actions or statement of issues proceedings. It is emphasized that these are guidelines and the Board acknowledges that there may be departures in individual cases depending upon mitigating or aggravating circumstances. Probation conditions are divided into two categories: (1) Standard conditions, to be used in all cases of probation; and (2) Optional conditions, to be imposed dependent upon the circumstances and nature of an individual case. Optional conditions will be used to define the extent of the disciplinary action if a given case warrants a penalty above the minimum established but below the established maximum. In a Statement of Issues, optional conditions should also be used if a probationary license is issued depending upon the nature and circumstances of the matter.

If, at the time of hearing, the ALJ finds that the Respondent<sub>1</sub> for any reason<sub>1</sub> is not capable of safe practice, the Board favors outright revocation of the license. If, however, the Respondent has demonstrated a capacity to practice dentistry safely, a stayed revocation order with probation is recommended.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the dentist or dental auxiliary is suspended in order to correct deficiencies in skills, education or rehabilitation.

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## LEGAL AUTHORITY

The legal authority for the "Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines with Model Language", revised February 25, 2011, is contained in Section 1018 of Title 16 of the California Code of Regulations.

California Code of Regulations  
Title. 16 Professional and Vocational Regulations  
Division 10. Dental Board of California  
Chapter 1. General Provisions Applicable To All Licensees  
Article 4.5 Uniform Standards Related To Substance Abuse and Disciplinary Guidelines

§ 1018. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines. In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Dental Board of California shall consider the "Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines With Model Language", revised ~~February 25, 2011~~ November 7, 2011 which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Dental Board of California, in its sole discretion, determines that the facts of the particular case warrant such deviation - for example: the presence of mitigating and aggravating factors; the age of the case; evidentiary problems.

Note: Authority cited: Sections 315, 315.2, 315.4, and 1614, Business and Professions Code; and Sections 11400.20 and 11400.21, Government Code. Reference: Section 11400.20 and 11425.50(e), Government Code; and Sections 315, 315.2, and 315.4 of the Business and Professions Code.

## UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE

The following standards should be followed in all cases in which a license is placed on probation due to a substance abuse problem. Whether individual conditions are ordered, however, is within the discretion of the Board.

### **Clinical Diagnostic Evaluations:**

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license which authorizes the practitioner to conduct clinical diagnostic evaluations, and has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders. The evaluator shall be approved by the Board. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

### **Clinical Diagnostic Evaluation Report:**

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have had a financial, personal, business or other relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

The Board shall review the clinical diagnostic evaluation to help determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee based on the application of the following criteria:

License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

**Facilitated Group Support Meetings:**

If the board requires a licensee to participate in facilitated group support meetings, either because it is the decision of the Board or it is within the discretion of the Board staff when determining the nature of group support meetings, the following shall apply:

1. When determining the frequency of required facilitated group meeting attendance, the board shall give consideration to the following:

- The licensee's history;
- The documented length of sobriety/time that has elapsed since substance use;
- The recommendation of the clinical evaluator;
- The scope and pattern of use;
- The licensee's treatment history; and,
- The nature, duration, and severity of substance abuse.

2. Group Meeting Facilitator Qualifications and Requirements:

a. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

b. The meeting facilitator must not have had a financial relationship, personal relationship, or business relationship with the licensee within the last five (5) years.

c. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

d. The facilitator shall report any unexcused absence within 24 hours.

**Supervised Practice (Work Site Monitor Requirements):**

If the Board determines that supervised practice is necessary for a particular licensee, the supervisor must meet the following requirements to be considered for approval by the Board:

The supervisor shall not have a current or former financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the

Board. If it is impractical for anyone but the licensee's employer to serve as the supervisor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's supervisor be an employee or supervisee of the licensee.

The supervisor's license scope of practice shall include the scope of practice of the licensee who is being monitored, ~~or be another health care professional if no monitor with like scope of practice is available, or, as approved by the Board, be a person in a position of authority who is capable of monitoring the licensee at work.~~

The supervisor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The supervisor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.

The supervisor must adhere to the following required methods of monitoring the licensee:

- a) Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board, but at least once per week.
- b) Interview other staff in the office regarding the licensee's behavior, if applicable.
- c) Review the licensee's work attendance and behavior.

Reporting by the supervisor to the Board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The supervisor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; supervisor's name and signature; supervisor's license number; worksite location(s); dates licensee had face-to-face contact with supervisor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the supervisor and the Board to allow the Board to communicate with the supervisor.

**Major and Minor Violations:**

Major Violations include, but are not limited to, the following:

- Failure to complete a Board-ordered program;
- Failure to undergo a required clinical diagnostic evaluation;
- Multiple minor violations;
- Treating patients while under the influence of drugs or alcohol;
- Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
- Failure to obtain biological testing for substance abuse;
- Testing positive for a banned substance; and
- Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee commits a major violation, the Board shall:

1. Order the licensee to cease practice;
2. Inform the licensee that he or she has been so ordered and that he or she may not practice unless notified by the Board;
3. Require the licensee to undergo a new clinical diagnostic evaluation;
4. Terminate contract/agreement; and
5. Refer the matter for disciplinary action or other action as determined by the Board.

Minor Violations include, but are not limited to:

- Failure to submit required documentation as required;
- Unexcused absence at required meetings;
- Failure to contact a monitor as required; and
- Any other violations that do not present an immediate threat to the licensee or to the public.

If a licensee commits a minor violation, the Board shall determine what action is appropriate.

**Drug Testing Standards:**

If a licensee tests positive for a banned substance, the Board shall order that the licensee cease any practice, and contact the licensee to inform him or her that he or she has been ordered to cease practice and that he or she may not practice until the Board determines that he or she is able to safely practice. The Board shall also notify the licensee's employer that the licensee has been ordered to cease practice, and that he or she may not practice until the Board determines that he or she is able to safely practice. The Board shall determine whether the positive alcohol or drug test is, in fact, evidence of prohibited use, a major violation. If not, the Board shall immediately lift the cease practice order. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, the licensee shall be automatically suspended

from practice pending the final decision on the petition to revoke probation or accusation.

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly alcohol or drug tested at least 104 times per year for the first year and at any time as directed by the Board. After the first year, licensees who are practicing, shall be randomly alcohol or drug tested at least 50 times per year, and at any time as directed by the Board.

Licensees shall be tested randomly in accordance with the schedule below:

<u>Level</u>	<u>Segments of Probation/Diversion</u>	<u>Minimum Range of Number of Random Tests</u>
<u>I</u>	<u>Year 1</u>	<u>52-104 per year</u>
<u>II*</u>	<u>Year 2 +</u>	<u>36-104 per year</u>

\*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter, up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes the Board from increasing the number of random tests for any reason. If the Board finds or has suspicion that a licensee has committed a violation of the testing program or who has committed a Major Violation, the Board may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

2. Alcohol or drug testing may be required on any day, including weekends and holidays.
3. Except when directed, the scheduling of alcohol or drug tests shall be done on a random basis, preferably by a computer program.
4. Licensees shall be required to make daily contact as directed to determine if alcohol or drug testing is required.
5. Licensees shall be alcohol or drug tested on the date of notification as directed by the Board.
6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
9. Collection of specimens shall be observed.
10. Prior to vacation or absence, alternative alcohol or drug testing location(s) must be approved by the board.
11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.
12. A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

## **EXCEPTIONS TO TESTING FREQUENCY SCHEDULE**

### **I. PREVIOUS TESTING/SOBRIETY**

In cases where the Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard. This means that credit may be given for testing that has already occurred in setting the frequency schedule of drug testing.

### **II. VIOLATION(S) OUTSIDE OF EMPLOYMENT**

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

### **III. NOT EMPLOYED IN HEALTH CARE FIELD**

The Board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the Board. Prior to returning to any healthcare employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not

previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

#### IV. TOLLING

The Board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the Board upon the licensee's return to California and shall be subject to testing as provided in this term. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

#### V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year. completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

## DISCIPLINARY GUIDELINES

### FACTORS TO BE CONSIDERED

In determining whether revocation, suspension or probation should be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration-;
2. Actual or potential harm to the public-;
3. Actual or potential harm to any patient-;
4. Prior disciplinary record-;
5. Number and variety of violations-;
6. Mitigation evidence-;
7. Aggravating evidence-;
8. Rehabilitation evidence-;
9. In case of a criminal conviction, compliance with conditions of sentence and court-ordered probation-;
10. Criminal record-;
11. Time passed since the act(s) or offense(s) occurred-; and
12. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

#### Evidence of Rehabilitation:

The following documents are examples of evidence the Respondent may submit to demonstrate his or her rehabilitative efforts and dental competency:

- Successful completion of drug or alcohol treatment program
- Individual or group counseling

- Random, documented biological fluid screening
- Participation in dental support groups
- Education courses taken related to addictive disease
- Adherence to a 12-step recovery program philosophy, or equivalent
- Written documentation of participation in 12-step recovery groups, or equivalent
- Recent, dated letters from counselors regarding Respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the Respondent has attended, the counselor's diagnosis of Respondent's condition and current state of rehabilitation improvement, the counselor's basis for determining improvement, and the credentials of the counselor and records from a treatment facility.
- For licensees, statement from employers documenting that the employer is aware of the previous drug or alcohol abuse problems. Statement must also substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed dental functions in a safe and competent manner. Each statement should include the period of time and capacity in which the person worked with the Respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.
- Recent, dated laboratory analyses or drug screen reports, where appropriate.
- Recent, dated performance evaluations from Respondent's employer.
- Recent, dated physical examination reports by a licensed physician and surgeon, nurse practitioner, or physician assistant.
- Certificates or transcripts of courses related to dentistry that Respondent completed since the date of the violation. A dentist or dental auxiliary whose license has been revoked can use his or her former license number to obtain continuing education credit or hours or for any other purpose.

Mitigation Evidence:

- Length of time in practice
- No prior disciplinary action
- Illness or death of a family member or other personal circumstances affecting licensee's performance at the time of the incident
- Early admissions

**~~OTHER~~ SITUATIONS IN WHICH REVOCATION IS THE RECOMMENDED PENALTY**

- Failure to file a notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation.
- Violation of a condition(s) of the Board's Probation Program.
- Substantiated evidence or convictions of physical abuse or sexual offenses.

## PROBATIONARY TERMS AND CONDITIONS

The Board's primary responsibility is consumer protection. The Board believes that in disciplinary matters where probation has been imposed, conditions should be established to provide for consumer protection and to allow the probationer to demonstrate rehabilitation.

The following conditions of probation provide for consumer protection and establish a mechanism to monitor the rehabilitation progress of a probationer.

### **Probationary Term:**

Generally, the Board recommends a minimum of three years of probation unless a longer or shorter term is warranted.

### **Probationary Conditions:**

Conditions of probation are divided into two categories:

1. ***Standard*** conditions that are included in all probation orders; and
2. ***Additional*** conditions which are applicable to the nature of the violation(s).

For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Dental Board of California or its designee.

## LIST OF STANDARD PROBATIONARY TERMS AND CONDITIONS

### **Standard Probation Conditions:**

Introductory Language and Standard Probation Conditions 1-14 are required as follows:

1. Obey all laws
2. Quarterly Reports
3. Comply with the Board's Probation Program
4. Address Change, Name Change, License Status
5. Meetings and Interviews
6. Status of Residency, Practice or Licensure Outside of State
7. Submit Documentation
8. Cost Recovery
9. Probation Monitoring Costs
10. License Surrender
11. Function as a Licensee
12. Continuance of Probationary Term/Completion of Probation
13. Sale or Closure of an Office or Practice

14. Notification to Employer**~~LIST OF ADDITIONAL PROBATIONARY TERMS AND CONDITIONS~~****Additional Probation Conditions:**

15. Suspension of License
16. Remedial Education
17. Examination
18. Supervised Practice
19. Restricted Practice
20. Third Party Chaperone Monitor
21. Restitution
22. Community Service
23. Psychological Evaluation
24. Psychotherapy
25. Physical Evaluation
26. Diversion Program
27. Biological Testing
28. Abstain from Use of Alcohol, Controlled Substances, and Dangerous Drugs
29. Surrender/Partial Surrender of Drug Enforcement Agency Permit
30. Ethics Course
31. Billing Monitor
32. Solo Practice
33. Controlled Substance-Maintenance of Records and Inventory
34. Clinical Training Program
35. Facilitated Group Support Meetings
36. Clinical Diagnostic Evaluation

**MODEL INTRODUCTORY LANGUAGE  
TO BE USED FOR ALL PROBATIONARY ORDERS**

The following introductory language is to be included in decisions that place the respondent's license on probation.

**IT IS HEREBY ORDERED** that (INSERT APPROPRIATE LICENSE CATEGORY) Number (INSERT LICENSE NUMBER) issued to Respondent is revoked. However, the revocation is stayed and Respondent's (INSERT LICENSE CATEGORY) is placed on probation for (INSERT NUMBER OF YEARS) years on the following conditions.

In order to provide clarity and consistency in its decisions, the following language should be used in proposed decisions or stipulated agreements for exam applicants, credential applicants [those who hold a license in another state(s)], and for petitioners for reinstatement who are issued a license that is placed on probation.

**Exam applicants who are placed on probation:**

The application of respondent \_\_\_\_\_ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements including payment of all fees, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent's license placed on probation for a period of-- \_\_\_\_\_ years on the following conditions:

**Credential applicants who are placed on probation:**

The application of respondent \_\_\_\_\_ licensure is hereby granted and a license shall be issued to respondent upon successful completion of all licensing requirements including payment of all fees. Said license shall immediately be revoked, the order of revocation stayed and respondent's license placed on probation for a period of \_\_\_\_\_ years on the following conditions:

**Reinstatement of licensure with conditions of probation:**

The application of respondent \_\_\_\_\_ for reinstatement of licensure is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent's license placed on probation for a period of \_\_\_\_\_ years on the following conditions:

**NOTE:** If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by a petitioner, a probation condition requiring payment of the original cost recovery on a payment plan must be included in the reinstatement and decision.

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**Language for Additional Permits**

It is further ordered that (INSERT TYPE OF ADDITIONAL LICENSE OR PERMIT) Number (INSERT LICENSE OR PERMIT NUMBER) issued to Respondent is revoked. However, the revocation is stayed and Respondent's (INSERT TYPE OF ADDITIONAL LICENSE OR PERMIT) name the certificates) is placed on probation for (INSERT NUMBER OF YEARS) years on the following conditions.

## STANDARD PROBATION CONDITIONS FOR ALL DECISIONS AND ORDERS

**SEVERABILITY CLAUSE** – Each condition of probation is a separate and distinct condition. If any condition of this Decision and Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all other applications thereof, shall not be affected. Each condition of this Decision and Order shall separately be valid and enforceable to the fullest extent permitted by law.

**RATIONALE:** The severability clause is required for all decisions and orders and stipulated agreements where there are conditions of probation, to avoid the possibility of all probation conditions being invalidated upon a successful appeal.

**(1) OBEY ALL LAWS** - Respondent shall obey all federal, state and local laws and all rules and regulations governing the practice of dentistry in California, and remain in full compliance with any court ordered criminal probation, payments and other requirements. A full and detailed account of all misdemeanor and felony arrests and convictions shall be reported by Respondent to the Board in writing within seven (7) days of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit a completed California Department of Justice state and federal Livescan fingerprint form, unless previously submitted as part of the licensure application process. Fingerprints shall be submitted within 15 calendar days of the effective date of the Decision and Order.

**CRIMINAL COURT ORDERS:** If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

**OTHER BOARD OR REGULATORY AGENCY ORDERS:** If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

**RATIONALE:** All licensees are responsible for abiding by federal, state, and local laws. Licensees are also responsible for complying with criminal court orders. If a licensee is subject to other health-care related board or regulatory agency orders, violations of

those orders may impact the status of his or her discipline by the Board. This condition emphasizes the Respondent's responsibility and specifies the Board's authority to take more immediate and severe action if other violations occur. If a licensee whose license is on probation violates other probationary conditions or order they may be unsafe to practice in this state.

**(2) QUARTERLY REPORTS** - Respondent shall submit quarterly reports signed under penalty of perjury stating whether there has been compliance with all the conditions of probation. Respondent shall submit a quarterly report no later than seven (7) calendar days from the beginning of the assigned quarter.

**RATIONALE:** This provides the Board with a mechanism for maintaining communication with the Respondents between meetings; gathering pertinent information from Respondent's; obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis. This also allows coordination with other state agencies that discipline dentists and dental auxiliaries.

**(3) COMPLY WITH THE BOARD'S PROBATION PROGRAM** - Respondent shall fully comply with the conditions of probation established by the Board and all requirements necessary to implement the conditions of probation. Respondent shall cooperate with the Board in its monitoring and investigation of the Respondent's compliance with the conditions of probation. Respondent shall respond to all requests and inquiries from the Board within the time period specified by the Board.

Upon successful compliance with the conditions of probation, and completion of the probation term, Respondent's license shall be fully restored.

**RATIONALE:** Full compliance with conditions of probation demonstrate a Respondent's commitment to rehabilitation and to correcting the problems which led to the disciplinary action.

**(4) ADDRESS CHANGE, NAME CHANGE, LICENSE STATUS** - Respondent shall inform the Board in writing within 15 calendar days of any change in his or her address of record, physical employment address, physical residence address, and any legal name change. Respondent shall maintain an active, current license with the Board, including while suspended from practice of dentistry unless otherwise specified by the disciplinary orders.

Any misrepresentation by Respondent of his or her restricted license status to the public shall be a violation of the probation conditions.

**RATIONALE:** Informing the Board of address and name changes is necessary to ensure ongoing Board monitoring and contact with the Respondent.

**(5) MEETINGS AND INTERVIEWS** - Respondent shall appear in person for meetings and shall be available by telephone for interviews as directed by the Board.

**RATIONALE:** This provides a means for the Board representatives to make periodic assessments of the Respondent, to determine compliance with probation conditions and to give guidance and directions to licensees on probation.

**(6) STATUS OF RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - In the event Respondent should leave California to reside or practice outside the state, Respondent must provide written notification to the Board of the dates of departure and anticipated return to the state. Respondent's probation is tolled, if and when he or she ceases practicing in California. Period of practice outside of California will not apply to the reduction of the probationary period.

Respondent shall provide a list of all states, United States territories, and elsewhere in the world where he or she has ever been licensed as a dentist or dental auxiliary or held any health-care related professional license or certificate. Respondent shall further provide information regarding the status of each license and certificate and any changes in the license or certificate status during the term of probation. Respondent shall inform the Board if he or she applies for or obtains a dental or dental auxiliary license or certificate outside of California during the term of probation.

For purposes of this condition, non-practice due to Board ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

**RATIONALE:** Ensures that Respondents may not complete probation without being fully monitored for their period of probation in California. This further ensures that the Board is aware of all licensure outside of California as a dentist or dental auxiliary or in any health care related capacity.

**(7) SUBMIT DOCUMENTATION** - Upon request, Respondent shall submit documentation to the Board including, but not limited to the following: Livescan forms, quarterly reports, authorization for release of confidential information.

Such documentation shall be submitted under penalty of perjury, as required by the Board. On a case-by-case basis, documents shall be required to contain statements relative to Respondent's compliance with all the conditions of probation, and compliance with Board instructions.

**RATIONALE:** This provides the Board with a mechanism for maintaining communication with the Respondent between meetings; gathering pertinent information from the Respondent; and obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis.

**(8) COST RECOVERY** – Respondent is hereby ordered to reimburse the Board the amount of \$\_\_\_\_\_ within ninety (90) calendar days from the effective date of this decision for its investigative and prosecution costs up to the date of the hearing. Failure to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the probationary order, unless the Board or its designee agrees in writing to payment by an installment plan because of financial hardship. Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board. However, full payment of any and all costs required by this condition must be received by the Board no later than one (1) year prior to the scheduled termination of probation. Periods of non-practice by Respondent shall not relieve Respondent of his or her obligation to reimburse the Board for its costs.

**RATIONALE:** The Board has statutory authority to collect probation monitoring costs and all orders should contain this provision.

**(9) PROBATION MONITORING COSTS:** All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Board and must be received by the dates specified.

If Respondent is unable to submit costs for any month, he or she shall be required, instead to submit an explanation of why he or she is unable to submit the costs, and the dates he or she will be able to submit the costs including payment amounts. Supporting documentation and evidence of why the Respondent is unable to make such payments must accompany this submission.

In addition to any other disciplinary action taken by the Board, the probationary period will be extended.

**RATIONALE:** The Board has statutory authority to collect probation monitoring costs and all orders should contain this provision.

**(10) LICENSE SURRENDER** - If Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his or her license to the Board. The Board shall evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Such surrender shall be accomplished through a written stipulated agreement, without the filing of an accusation or petition to revoke probation, and without further hearing. Upon formal acceptance of the surrender, Respondent shall deliver his or her wallet and wall certificate to the Board or its designee and Respondent shall no longer practice dentistry or be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. If Respondent re-applies for a dental license, the application shall be treated as a petition for reinstatement of a revoked license.

**(11) FUNCTION AS A LICENSEE** – Respondent, during the period of probation, shall engage in the practice of [INSERT APPROPRIATE LICENSING CATEGORY, e.g. dentistry, dental hygiene, dental hygiene in extended functions, etc.] in California for a minimum of sixteen (16) hours per week or sixty-four (64) hours per calendar month. For the purpose of compliance with this section, “engaged in the practice of [INSERT APPROPRIATE LICENSING CATEGORY] may include, when approved by the Board, volunteer work in [INSERT APPROPRIATE LICENSING CATEGORY], or work in any non-direct patient position that requires licensure.

In the event Respondent should leave California to practice outside the state, Respondent must provide written notification to the Board of the dates of departure and anticipated return to the state. Respondent's probation is tolled, if and when he or she ceases practicing in California. Periods of practice outside of California will not apply to the reduction of the probationary period. In the event Respondent ceases to practice a minimum of sixteen (16) hours per calendar week or sixty-four hours per calendar month in California, Respondent must provide written notification of that fact to the Board. The period when the Respondent is not practicing, the minimum number of hours, will not apply to the reduction of the probationary period. Absence from practice

shall not relieve the Respondent from maintaining a current license or from fulfilling all of the terms and conditions of probation. For purposes of this condition, non-practice due to Board ordered suspension shall not be considered a period of non-practice. If Respondent stops practicing in California for a total of five (5) years, Respondent's license shall be automatically cancelled.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if Respondent is in compliance with all other probation conditions, the Board, in its sole discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply unless they have been modified by the Board via a petition for modification of probation.

**RATIONALE:** This provides the Board with an opportunity to monitor Respondents and determine if they can perform the functions and duties of his or her licensing category in a competent manner. It also prevents Respondents from merely "sitting out" the probation and avoiding the necessity of demonstrating competence and compliance with probation conditions.

**(12) CONTINUANCE OF PROBATIONARY TERM/COMPLETION OF PROBATION -**

If Respondent violates the terms of this probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may set aside the stay order and impose the revocation or suspension of the Respondent's license. If, during the period of probation, an accusation and/or a petition to revoke probation or both has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation and/or a petition to revoke probation or both against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation and/or the petition to revoke probation has been acted upon by the Board. Upon successful completion of probation, Respondent's license will be fully restored.

**RATIONALE:** The provision ensures that the Board will be able to continue monitoring the practice of licensees who are either out of compliance with his or her probation conditions or have allegedly committed further acts that constitute a violation of the Dental Practice Act. This is necessary to protect the public from licensees who have already demonstrated a lack of compliance.

**(13) SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE -** If Respondent sells or closes his or her office after the imposition of administrative discipline, Respondent shall ensure the continuity of patient care and the transfer of patient records.

Respondent shall also ensure that patients are refunded money for dental work not completed, and shall not misrepresent to anyone the reason for the sale or closure of the office and/or practice. The provisions of this condition in no way authorize the practice of dentistry by the Respondent during any period of license suspension.

**RATIONALE:** This provision is intended to protect patients whose dentist of record has been disciplined and he or she needs to or chooses to sell or close his or her practice.

**(14) NOTIFICATION TO EMPLOYER** - Prior to engaging in the practice of dentistry, the Respondent shall provide a true copy of the Decision and Accusation to his or her employer, supervisor, or contractor, or prospective employer or contractor, and at any other facility where Respondent engages in the practice of dentistry before accepting or continuing employment. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in place of employment.

The Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors, or contractors, and shall inform the Board in writing of the facility or facilities at which the person engages in the practice of dentistry.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board to allow the Board to communicate with the employer and supervisor, or contractor regarding the licensee's work status, performance, and monitoring.

**RATIONALE:** The condition provides the Board with a mechanism for ensuring that the employer providing dental services is informed of the license status of the respondent so that, if necessary, the work environment can be structured to ensure consumer safety.

## ADDITIONAL CONDITIONS OF PROBATION MODEL LANGUAGE

These are additional probationary conditions that may be imposed depending on the nature of the violation(s). Some of the additional probationary conditions should be applied to substance abusing licensees.

**(15) SUSPENSION** - Commencing from the effective date of this decision, Respondent shall be suspended from the practice of dentistry for a minimum period of (minimum of 14 days). Respondent shall not mislead patients regarding the reasons for suspension from practicing dentistry.

During the suspension Respondent shall not practice dentistry directly or indirectly, including the supervision of dental auxiliaries, nor shall Respondent receive or have set aside for future receipt, any new monies derived from the practice of dentistry as defined by the provisions of Business and Professions Code Section 1625, which includes managing or conducting as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed.

If Respondent operates his or her own office as a solo practitioner or as a one person professional corporation, said office is to be closed except for administrative purposes (making future appointments when suspension is over, opening mail, referring patients, accepting payments on account, and general office administration); and Respondent shall not lease the dental office nor make any monetary gain from the practice earned during the period of time that the office is closed.

During the suspension period, all probation conditions are in full force and effect except those relating to the actual practice of [INSERT APPROPRIATE LICENSE CATEGORY.]

**RATIONALE:** This provision is necessary for the protection of the public because in some cases the licensee needs to stop practicing and participate in either rehabilitation or remedial education before resuming practice. And, it is appropriate in cases where the serious nature of the misconduct warrants a period of suspension from practice.

**(16) REMEDIAL EDUCATION** – Within (90 days) of the effective date of this decision, Respondent shall submit to the Board for its prior approval, an appropriate program of remedial education related to (*the cause of disciplinary action*) in an educational facility or program which must also to be approved by the Board. (*If appropriate, Respondent shall be evaluated by a dental educational institution prior to submitting remedial education courses for approval.*) The exact number of hours and specific content of the

program shall be determined by the Board or its designee. Respondent shall successfully complete the remedial education program and may be required to pass an examination administered by the Board or its designee related to the program's content. *(If appropriate, Respondent shall be restricted from the practice of {areas where a deficiency has been identified} until the remedial education program has been successfully completed.)* Respondent shall pay all costs of the remedial education program.

**RATIONALE:** In those instances where a licensee has demonstrated negligence or incompetence, or has been found to have performed work or attempting treatment beyond the scope of training or experience, the Board will impose a program of remedial education. This program shall specify the areas and hours of education remediation required, and may also dictate the institution(s) where the education will be received. A remedial education program is usually required prior to allowing the licensee to return to the identified deficient area of practice, and requires prior approval by the Board. Continuing education courses used for renewal of licensure will not fulfill the remedial education requirement. This program is for dentists and auxiliaries who have demonstrated deficiencies in skill but do not constitute a present danger to patients in other areas of practice.

**(17) EXAMINATION** – Respondent shall not practice dentistry until he or she has passed the California clinical examination or the Western Regional Examination Board examination. Respondent shall pay all fees related to the examination. If Respondent fails the examination three times, a period of one year must pass prior to retaking the required examination. Under the condition of failure for three times, the Respondent must also show evidence of remediation in the deficient area(s) prior to retaking the examination. Respondent must be successful in each section of the examination in order to fulfill this requirement and may not practice until totally successful. The probation period is tolled until Respondent passes either examination.

**RATIONALE:** This condition concerns itself with those individuals who are significantly deficient in the practice of dentistry or who have had a prior revocation and are petitioning the Board for reinstatement of their license. This condition will also apply to licensees who have had prior restrictions on practicing in a particular area or specialty field. This condition is particularly recommended in cases where Respondent has been found to have committed gross negligence, incompetence or repeated negligence.

**(18) SUPERVISED PRACTICE** - Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more proposed supervisors and a plan for each such supervisor by which

Respondent's practice would be supervised. The Board will advise Respondent within two weeks whether or not the proposed supervisor and plan of supervision are approved. Respondent shall not practice until receiving notification of Board approval of Respondent's choice of a supervisor and plan of supervision. Respondent shall complete any required consent forms and sign an agreement with the supervisor and the Board regarding the Respondent and the supervisor's requirements and reporting responsibilities.

The plan of supervision shall be *(direct and require the physical presence of the supervising dentist in the dental office during the time dental procedures are performed.) (general and not require the physical presence of the supervising dentist during the time dental procedures are performed but does require an occasional random check of the work performed on the patient as well as quarterly monitoring visits at the office or place of practice).* Additionally, the supervisor shall have full and random access to all patient records of Respondent. The supervisor may evaluate all aspects of Respondent's practice regardless of Respondent's areas of deficiencies.

Each proposed supervisor shall be a California licensed dentist who shall submit written reports to the Board on a quarterly basis verifying that supervision has taken place as required and include an evaluation of Respondent's performance. It shall be Respondent's responsibility to assure that the required reports are filed in a timely manner. Each supervisor shall have been licensed in California for at least five (5) years and not have ever been subject to any disciplinary action by the Board. An administrative citation and fine does not constitute discipline and therefore, in and of itself is not a reason to deny an individual as a supervisor.

The supervisor shall be independent, with no prior business or professional relationship with Respondent and the supervisor shall not be in a familial relationship with or be an employee, partner or associate of Respondent. If the supervisor terminates or is otherwise no longer available, Respondent shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by the Respondent.

If Respondent is placed on probation due to substance or alcohol abuse, then the supervisor shall meet the following additional requirements:

The supervisor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to supervise the licensee as set forth by the Board.

The supervisor shall have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the Board, but at least once per week. The supervisor shall interview other staff in the office regarding the licensee's behavior, if applicable. The supervisor shall review the licensee's work attendance and behavior.

The supervisor shall orally report any suspected substance abuse to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. The supervisor shall submit a written report to the Board within 48 hours of occurrence.

The supervisor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; supervisor's name and signature; supervisor's license number; worksite location(s); dates licensee had face-to-face contact with supervisor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

**RATIONALE:** This condition allows the Board to monitor the competency of Respondent by use of a fellow practitioner. ~~It is most appropriate~~ should be used in those cases involving incompetence, negligence, ~~and sexual misconduct, and~~ substance abuse. The type of supervision needs to be clearly defined relative to the necessity for the presence of the supervisor. Direct supervision would require the physical presence of the supervisor during the time dental procedures are performed. General supervision does not require the physical presence of the supervising dentist. The type of required supervision depends on the severity of the violation(s).

**(19) RESTRICTED PRACTICE** - Respondent shall not practice which includes consulting, examining and treating in *(area of noted deficiency) (shall not treat {male}{female}{minors} patients {without the presence of another party})*. Within 30 days from the effective date of this decision, Respondent shall submit to the Board, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board of compliance with this term of probation.

Respondent shall notify all current and prospective patients of the inability to perform the dental procedure of \_\_\_\_ by posting a written notification visible to all patients before they receive any dental treatment. Respondent shall submit documentation which provides satisfactory evidence of compliance with this term of probation.

**RATIONALE:** The condition prevents the Respondent from engaging in the practice of dentistry in situations where there is no close supervision and/or where the respondent could have undue authority over others and access to controlled substances.

**(20) THIRD PARTY CHAPERONE MONITOR** - During probation, Respondent shall have a third party Board-approved monitor present at all times while consulting, examining or treating (INSERT PATIENT CATEGORY, e.g., male, female, or minors) patients. Respondent shall, within (30) calendar days of the effective date of the Decision, submit to the Board for prior approval names of persons who will act as the third party monitor. Each third party monitor shall initial and date each patient dental record at the time the monitor's services are provided. Each third party monitor shall read the Decision(s) and the Accusation(s) and fully understand the role of the third party monitor.

Respondent shall maintain a log of all patients seen for whom a third party monitor is required. The log shall contain the; 1) monitor's name, patient name, age, gender, address, and telephone number; and date of service. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board, and shall retain the log for the entire term of probation. Failure to maintain a log of all patients requiring a third party monitor, or to make the log available for immediate inspection and copying on the premises, is a violation of probation.

Respondent shall provide written notification prior to treatment to Respondent's affected patients that a third party monitor shall be present during all consultations, examination, or treatment with (e.g., male, female, or minor) patients. Respondent shall maintain in the patient's file a copy of the written notification, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board, and shall retain the notification for the entire term of probation.

Respondent shall submit documentation to the Board that provides satisfactory evidence of compliance with this term of probation.

**RATIONALE:** This condition should only be imposed in those rare instances where the Respondent has shown evidence of rehabilitation and is no longer considered a danger to patients. In those instances where Respondent is still considered a danger to patients, revocation should be imposed.

**NOTE:** In those cases where practice is restricted by either scope of practice or by the age or gender of patients, the Respondent must notify all current and prospective

patients of the restriction. Respondents found to have violation(s) or conviction(s) of sexual misconduct shall also be placed in a supervised environment.

**(21) RESTITUTION** - Within (30 to 90) days of the effective date of this decision, Respondent shall make arrangements for restitution to (*patient or entity*) in the amount of (*dollar amount*). (Insert who payment is to be made and when it is due. If a payment plan is imposed, insert specifics regarding payment plan.)

**RATIONALE:** Where there has been patient harm resulting from negligent or incompetent treatment or a determination has been made concerning fraudulent billing, restitution may be warranted. Careful scrutiny should be made to ensure that proper restitution is made to either the patient or any other applicable entity. Restitution may be made within a specific time frame or on a payment schedule. Restitution should cover those amounts that are a direct result of the actions of Respondent.

**(22) COMMUNITY SERVICE** - Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program for the (*first year of probation or a specified period of probation*) in which Respondent shall provide volunteer services on a regular basis to a non-profit community or charitable facility or agency for at least (*number of hours per month/year for the first year or specified period of probation*). Such community service shall be (*dental or non-dental*) related.

Community service required by this condition shall be performed in the State of California. Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition.

Prior to engaging in any community service Respondent shall provide a true copy of the Decision to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where Respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also comply to any change(s) in community service.

All community services must be completed no later than one hundred and twenty (120) calendar days prior to the scheduled termination of probation.

**RATIONALE:** The Dental Practice Act authorizes the Board to impose as a condition of probation the fulfillment of community service. This is appropriate in those cases where

the Respondent has violated the public's trust. If the violation relates to quality of care, the community service shall not be dentally related.

**(23) PSYCHOLOGICAL EVALUATION** - Within 60 days of the effective date of this decision, and on a periodic basis thereafter as required by the Board or its designee, Respondent shall undergo a psychological evaluation by a licensed psychiatrist or psychologist approved by the Board. The psychiatrist or psychologist shall have been licensed for a minimum of five years and shall not have been subject to discipline by a regulatory agency. The evaluator shall furnish a detailed written report to the Board regarding Respondent's judgment and ability to practice dentistry independently and safely and other information as the Board may require. The cost of the evaluation shall be paid by Respondent. Respondent shall execute a Release of Information form authorizing the evaluator to release all information to the Board. Respondent shall comply with all of the recommendations of the evaluator unless excused by the Board in its sole discretion. This evaluation shall be confidential by the Board and is not subject to discovery. Psychological evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement.

**OPTION:** Respondent shall not engage in the practice of dentistry until notified by the Board in writing of its determination that Respondent is safe to practice dentistry independently and safely. The period of time that Respondent is not practicing shall not be counted toward completion of the term of probation.

Respondent's failure to undergo and complete the psychological evaluation, recommended therapy or comply with any other recommendations by the evaluator is a violation of probation.

**RATIONALE:** This condition shall be applied, but not limited to, any licensee who may be affected by a psychological problem, who has committed an act of sexual misconduct or who has suffered a substantially related conviction. This evaluation may be ordered and the results evaluated prior to allowing practice by the Respondent.

**(24) PSYCHOTHERAPY** - Within 45 days of the effective date of this decision, or within 45 days of a determination that psychotherapy is required, Respondent shall submit a proposed therapist and plan of therapy to be approved by the Board. The cost of therapy shall be borne by Respondent. The plan of therapy shall include the nature of the treatment and its proposed duration. The psychotherapist shall agree to submit quarterly reports to the Board regarding the progress and participation of Respondent. The treatment program shall not be terminated except upon Board approval after submission of the results of the program by the psychotherapist.

If there is a need for ongoing psychiatric psychological treatment, Respondent shall, within 30 days of the requirement notice, submit to the Board for its prior approval the name and qualifications of a psychotherapist psychiatrist licensed mental health professional of Respondent's choice. If the psychological evaluation recommends that Respondent seek treatment from a specific type of mental health professional (e.g. psychiatrist, psychologist, licensed clinical social worker or marriage and family therapist), Respondent shall only submit for consideration those who meet that recommendation. Respondent shall undergo and continue psychotherapy until further notice from the Board or its designee. Respondent shall have the treating psychotherapist mental health care professional submit quarterly status reports to the Board or its designee indicating whether the Respondent is capable of practicing dentistry safely.

**RATIONALE:** This condition should be imposed whenever there is evidence that the Respondent may have a psychological problem that may impact his or her being able to practice safely. If the Respondent is already in therapy this condition should be imposed to ensure that he or she continues to receive help.

**(25) PHYSICAL EVALUATION** - Within 45 days of the effective date of this decision, Respondent, at his or her expense, shall have a licensed physician and surgeon, who is approved by the Board before the assessment is performed, submit an assessment of the Respondent's physical condition and capability to perform the duties of a dentist. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician providing written reports to the Board.

If Respondent is determined to be unable to practice dentistry safely with or without restrictions, the licensed physician and surgeon making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board in writing. During this period of cessation of practice, Respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified Respondent that a medical determination permits Respondent to resume practice. This period of cessation of practice shall not apply to the reduction of this probationary time period.

If the Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent's license is immediately suspended and he or she shall immediately cease practice and shall not resume practice until notified by the

Board in writing. This period of suspension of practice shall not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

Physical evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement.

OPTION: Respondent shall not engage in the practice of dentistry until notified by the Board in writing of its determination that Respondent is safe to practice dentistry independently and safely. The period of time that Respondent is not practicing shall not be counted toward completion of the term of probation.

**RATIONALE:** This condition shall be applied, but not limited to, any licensee whose ability to practice safely may be affected by a physical condition. This evaluation may be ordered and the results evaluated prior to allowing practice by the Respondent.

**(26) DIVERSION PROGRAM** - Within 7 days of the effective date of this Decision, Respondent shall contact the Program Manager of the Board's Diversion Program or his or her designee to schedule an intake and assessment and drug testing for evaluation by the Diversion Evaluation Committee (DEC). If Respondent fails to participate in the time required by the Diversion Program in the initial intake and assessments before his or her meeting with the DEC, this shall constitute a violation of probation and shall be reported to the enforcement program. If the Board notifies Respondent in writing of such failure to participate in the time required for the initial intake and assessment, he or she shall immediately cease practicing. If the DEC determines that Respondent is not appropriate for the program for reasons other than Respondent's failure to cooperate or make a good faith effort to participate, this condition of probation will have been met. If accepted into the program, Respondent shall fully comply with the terms and conditions of treatment and any other requirements imposed by the DEC. Any costs incurred shall be paid by Respondent. Failure to successfully complete the DEC treatment Diversion Program shall constitute a violation of probation.

If Respondent is not accepted into the Diversion Program for any reason, then the following probation condition shall apply.

Upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of 1 month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least 2 times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation was completed, unless an extension, not to exceed 30 days, is granted to the evaluator by the Board. The cost of such evaluation shall be paid by the Respondent.

Respondent shall cease practice until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least 1 month of negative drug test results. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

Note: This condition should be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations.

**RATIONALE:** Where it has been determined that in order to protect the public, a licensee or applicant should be evaluated to determine if he or she should participate in the Board's Diversion Program due to drug or alcohol impairment, this condition of probation should be imposed.

**(27) BIOLOGICAL TESTING** - Respondent shall submit to and pay for any random and directed biological fluid or hair sample, breath alcohol or any other mode of testing required by the Board. The Respondent shall be subject to a minimum of ~~one hundred and four (104)~~ ~~fifty-two (52)~~ random tests per year within the first year of probation, and a minimum of ~~fifty (50)~~ ~~thirty-six (36)~~ random tests per year thereafter, ~~for the duration of the probationary term~~ up to five (5) years. Thereafter, if additional years of probation are ordered, Respondent shall be subject to random tests one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall have the test performed by a Board-approved laboratory certified and accredited by the U.S. Department of Health and Human Services ~~within twelve (12) hours upon request by the Board, or sooner if so requested by the Board~~ and on the same day that he or she is notified that a test is required. ~~†~~This shall ensure that the test results are sent immediately to the Board. Failure to comply within the time specified shall be considered an admission of a

positive drug screen and constitutes a violation of probation. If a test results in a determination that the urine admission was too diluted for testing, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation. If an "out of range result" is obtained, the Board may require Respondent to immediately undergo a physical examination and to complete laboratory or diagnostic test to determine if any underlying physical condition has contributed to the diluted result and to cease practice. Any such examination or laboratory and testing costs shall be paid by respondent. An "out of range result" is one in which, based on scientific principles, indicates the Respondent attempted to alter the test results in order to either render the test invalid or obtain a negative result when a positive result should have been the outcome. If it is determined that Respondent altered the test results, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation and Respondent must cease practicing. Respondent shall not resume practice until notified by the board. If Respondent tests positive for a banned substance, Respondent shall be ordered by the Board to cease any practice, and may not practice unless and until notified by the Board. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

Nothing precludes the Board from increasing the number of random tests for any reason. If the Board finds or has suspicion that a licensee has committed a violation of the testing program or who has committed a Major Violation, the Board may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

### **RESPONDENT'S TESTING FREQUENCY SCHEDULE IS SUBJECT TO THE FOLLOWING EXCEPTIONS:**

#### **I. PREVIOUS TESTING/SOBRIETY**

In cases where the Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the Board, the Board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard. This means that credit may be given for testing that has already occurred in setting the frequency schedule of drug testing.

#### **II. VIOLATION(S) OUTSIDE OF EMPLOYMENT**

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

### III. NOT EMPLOYED IN HEALTH CARE FIELD

The Board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the Board. Prior to returning to any healthcare employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

### IV. TOLLING

The Board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the Board upon the licensee's return to California and shall be subject to testing as provided in this term. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

### V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the Board, but not to be less than 24 times per year.

***RATIONALE:*** This probation condition will allow the Board to monitor the Respondent in order to ascertain if he/she is substance and/or chemical free. It is to be required when the Respondent has violated any alcohol and/or substance abuse prohibitions. This condition shall be used in conjunction with additional probationary condition (28) Abstain from Use of Alcohol, Controlled Substance and Dangerous Drugs.

**(28) ABSTAIN FROM USE OF ALCOHOL, CONTROLLED SUBSTANCES AND DANGEROUS DRUGS** - Respondent shall abstain completely from the possession, injection, or consumption of any route, including inhalation, of all psychotropic (mood altering) drugs, including alcohol, and including controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drug as defined by Business and Professions Code Section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed by a physician and surgeon, dentist, or nurse practitioner for a bona fide illness or condition. Within fifteen (15) calendar days of receiving any lawful prescription medications, Respondent shall notify the Board in writing of the following: prescriber's name, address, and telephone

number; medication name and strength, issuing pharmacy name, address, and telephone number, and specific medical purpose for medication. Respondent shall also provide a current list of prescribed medication with the prescriber's name, address, and telephone number on each quarterly report submitted. Respondent shall provide the Board with a signed and dated medical release covering the entire probation period.

Respondent shall identify for the Board's approval a single coordinating physician and surgeon who shall be aware of Respondent's history of substance abuse and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances, psychotropic or mood altering drugs. Once a Board-approved physician and surgeon has been identified Respondent shall provide a copy of the accusation and decision to the physician and surgeon. The coordinating physician and surgeon shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of such substances.

The Board may require that only a physician and surgeon who is a specialist in addictive medicine be approved as the coordinating physician and surgeon.

If Respondent has a positive drug screen for any substance not legally authorized, Respondent shall be ordered by the Board to cease any practice and may not practice unless and until notified by the Board. and If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, Respondent shall be automatically suspended from practice pending the final decision on the petition to revoke probation or accusation. This period of suspension will not apply to the reduction of this probationary period.

Note: This condition is to be required when Respondent has violated any alcohol and/or substance abuse prohibitions. The provisions of Section 315.2 of the Business and Professions Code require the Board to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program.

**RATIONALE:** Abstinence from mood altering substances (alcohol/drugs) is necessary for compliance with the Board's Probation Program and to ensure successful rehabilitation. Abstinence from any psychotropic drug is required to prevent the substitution of one addicting substance with another.

## **(29) SURRENDER/PARTIAL SURRENDER OF DRUG ENFORCEMENT AGENCY PERMIT -**

Option 1:

Controlled Substances - Within 60 days of the effective date of this decision, Respondent shall submit to the Board proof of surrender of Respondent's Drug Enforcement Agency Permit. Respondent shall not apply for a new permit without prior written approval from the Board.

OR

Option 2:

Respondent shall not prescribe, administer, dispense, order, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, (*except for those drugs listed in Schedule(s)\_\_\_\_\_*) of the Act and/or prescribed to Respondent for a bona fide illness or condition by another practitioner. Respondent shall ensure that the DEA Permit is modified to reflect this restriction and proof submitted to the Board of this modification within 60 days.

**RATIONALE:** In cases of substance abuse/or violation of statutes regulating the procurement, dispensing or administration of controlled substances and dangerous drugs, this condition must be imposed.

**(30) ETHICS COURSE** - Within 30 days of the effective date of this decision, Respondent shall submit for prior Board approval a course in ethics that will be completed within the first year of probation. Units obtained for an approved course in ethics shall not be used for continuing education units required for renewal of licensure. No correspondence or Internet courses shall be allowed. An ethics course taken after the acts that gave rise to the charges in the accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board, be accepted towards the fulfillment of this condition.

**RATIONALE:** In those cases involving fraud, false advertising, excessive billing, or negligence this condition of probation will be imposed and may also be imposed in other cases if applicable.

**(31) BILLING MONITOR** – Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more persons to act as a billing monitor. The proposed billing monitor(s) shall have been licensed dentist for at least five (5) years be approved and not have ever been subject to any disciplinary action by the Board. Once the Board has approved a

billing monitor, Respondent shall submit a plan by which the billing monitor will provide monitoring of Respondent billing practices.

All proposed billing monitors shall be independent, with no professional or personal relationship with Respondent, including a familial relationship with or be an employee, partner, or associate of Respondent. If at any time during the period of probation, the billing monitor quits or is otherwise unavailable to perform his or her monitoring duties, within fifteen (15) calendar days of the same, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more persons to be the monitor.

The billing monitor shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place as required. It shall be Respondent's responsibility to ensure that the required reports are filed in a timely manner.

Respondent shall give the monitor access to all of Respondent's dental practice business records including financial and patient records. Monitoring shall consist of at least four (4) hours, per quarter, of review of Respondent's records. This review shall take place in Respondent's office and or place of employment. If the monitor prepares a quarterly report to the Board which finds substantial errors or omissions in, and/ or questionable billing practices, monitoring may be increased at the discretion of the Board and Respondent shall immediately comply therewith. All costs of monitoring shall be borne by the Respondent.

Each supervising monitor shall have read this Decision and the related Accusation.

***RATIONALE:*** Recommended in cases involving capping, steering, fees for patient referrals or any other type of billing irregularities or fraud.

**(32) SOLO PRACTICE** - Respondent is prohibited from engaging in the solo practice of dentistry.

***RATIONALE:*** Like similar conditions, this condition prevents the respondent from engaging as a sole practitioner in the practice of dentistry in situations where there is no close supervision and/or where the respondent could have undue authority over others and/or access to controlled substances.

**(33) CONTROLLED SUBSTANCE-MAINTENANCE OF RECORDS AND INVENTORIES** - Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3)

the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

Failure to maintain all records, to provide immediate access to the inventory, or to make all records available for immediate inspection and copying on the premises, is a violation of probation.

**RATIONALE:** In cases of substance abuse/or violation of statutes regulating the procurement, dispensing or administration of controlled substances and dangerous drugs, this condition must be imposed.

**(34) CLINICAL TRAINING PROGRAM** - Within 60 days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program offered by an approved California Dental School. The program shall consist of a comprehensive assessment comprised of a two-day assessment of respondent's basic clinical and communication skills common to all clinicians; and dental knowledge, skill and judgment pertaining to respondent's specialty or sub-specialty (if he or she has one), and at a minimum, a 40 hour program of clinical education in the area of practice for which respondent was alleged to be deficient and that takes into account data obtained from the assessment, administrative decisions and accusations, and any other information that the Board deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the program will advise the Board of its recommendations for the scope and length of any additional education or clinical training or anything else affecting respondent's practice of dentistry.

At the completion of any additional education or training, respondent shall submit to and pass an examination. The program's determination whether or not respondent passed the examination or successfully completed the program shall be binding.

Respondent shall complete the program no later than six months after respondent's initial enrollment unless the Board agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program as outlined above is a violation of probation.

### **Option #1: Condition Precedent**

Respondent shall not practice dentistry until he or she has successfully completed the program and has been so notified by the Board in writing, except that respondent may practice in a clinical training program approved by the Board. Respondent's practice of dentistry shall be restricted to that which is required by the program.

### **Option #2 Condition Subsequent**

If respondent fails to complete the clinical training program within the designated time period, respondent shall cease the practice of dentistry within 72 hours after being notified by the Board that respondent failed to successfully complete the program.

### **(35) FACILITATED GROUP SUPPORT MEETINGS –**

Within fifteen (15) days from the effective date of the decision, Respondent shall submit to the Board or its designee for prior approval the name of one or more meeting facilitators. Respondent shall participate in facilitated group support meetings within fifteen (15) days after notification of the Board's approval of the meeting facilitator. When determining the type and frequency of required facilitated group support meeting attendance, the Board shall give consideration to the following:

- The licensee's history;
- The documented length of sobriety/time that has elapsed since substance abuse;
- The recommendation of the clinical evaluator;
- The scope and pattern of use;
- The licensee's treatment history; and ,
- The nature, duration, and severity of substance abuse.

Verified documentation of attendance shall be submitted by Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

If a facilitated group support meeting is ordered, the group facilitator shall meet the following qualifications and requirements:

1. The group meeting facilitator shall have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

2. The group meeting facilitator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five (5) years.
3. The group facilitator shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The group meeting facilitator shall report any unexcused absence to the Board within twenty-four (24) hours.

Note: This condition should be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations.

**RATIONALE:** Alcohol and/or drug abuse treatment should be required in addition to other terms of probation in cases where the use of alcohol or other drugs by the Respondent has impaired the Respondent's ability to safely practice.

**(36) CLINICAL DIAGNOSTIC EVALUATION** –Upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of 1 month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least 2 times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation was completed, unless an extension, not to exceed 30 days, is granted to the evaluator by the Board. The cost of such evaluation shall be paid by the Respondent.

Respondent shall cease practice until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least 1 month of negative drug test results. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

Note: This condition should be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations and Additional Probationary Term No. (26) (Diversion Program) is not a term and condition of the probationary order.

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**RATIONALE:** This condition gives the Board the ability to order a Respondent, at any time during the probation period, to undergo an evaluation to determine if he or she is currently safe to practice.

**RECOMMENDED PENALTIES**

B&P Refers to Business and Professions Code

**Section 123 B&P                      Subversion of Examinations**

Maximum Penalty: Revocation of license or Statement of Issues denying admission into examination.

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard conditions (1-14)
- 2. Community Service, 40 hours per year (22)
- 3. Ethics Course (30)

\*\*\*\*\*

**Section 125.6 B&P                      Refusal to Treat Patient**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation.

- 1. Standard Conditions (1-14)
- 2. Ethics Course (30)

Additional Condition if Warranted Based Upon Nature and Extent of Violation(s):

- 1. Suspension, 30 days (15)

\*\*\*\*\*

**Section 125.9B&P                      Failure to Comply with Citation**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard conditions (1-14)
- 2. Suspension, 30 days (15), as an additional condition if warranted
- 3. Compliance with citation, if applicable

\*\*\*\*\*

**Section 498 B&P License Secured by Fraud or Misrepresentation**

Maximum Penalty: Revocation, Revocation in all cases in which the licensee is not qualified for the license.

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard conditions (1-14)
- 2. Suspension, 30 days (15)
- 3. Community Service, 40 hours per year (22)
- 4. Ethics Course (30)

\*\*\*\*\*

**Section 650 B&P Accepting or Receiving Rebates  
Section 1680(g) B&P**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard conditions (1-14)
- 2. Suspension, 30 days (15)
- 3. Community Service , 40 hours per year (22)
- 4. Ethics Course (30)

For more serious cases, the following additional condition should be imposed:

- 1. Suspension, 30 days (15)

\*\*\*\*\*

**Section 650.2(i) B&P Patient Referral Service-Failure to Disclose**

Maximum Penalty: Revocation of registration of dental service.

Minimum Penalty: Revocation stayed, two (2) years probation

- 1. Standard conditions (1-14)
- 2. Community Service , 40 hours per year(22)
- 3. Ethics Course (30)

Also see Section 1680(g)

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**Section 651 B&P                    False, Misleading or Deceptive Public Communications**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation and correct advertising

- 1. Standard Conditions (1-14)
- 2. Community Service , 40 hours per year (22)
- 3. Ethics Course (30)

See Section 1680(h)-(l)

\*\*\*\*\*

**Section 654.1 B&P                    Prohibits Referral of Patients to Laboratories without Disclosure of Beneficial Interest**

Maximum Penalty: Revocation of registration of dental referral service.

Minimum Penalty: Revocation stayed, two (2) years probation

- 1. Standard Conditions (1-14)
- 2. Ethics Course (30)

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**Section 654.2 B&P                    Prohibits charges, billings, solicitations or referrals without disclosure of beneficial interest.**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation

- 1. Standard Conditions (1-14)
- 2. Community Service, 40 hours per year (22)
- 3. Ethics Course (30)

\*\*\*\*\*

**Section 725 B&P                      Excessive Prescribing or Treatment or Administration of Drugs**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, Five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Remedial Education, Prescribing Practice Course (16)
- 3. Community Service, 40 hours per year (22)
- 4. Surrender/Partial Surrender of DEA Permit (19)
- 5. Ethics Course (30)
- 6. Controlled Substance-Maintenance of Records and Inventories (33)

In more serious cases the following additional conditions should be imposed:

- 1. Suspension, 60 days (15)
- 2. Examination (17)
- 3. Supervised Practice (18)

See Section 1680(p)

\*\*\*\*\*

**Section 726 B&P                      Commission of Act of Sexual Abuse or Misconduct With Patient.**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five years probation for consensual sex with one patient

- 1. Standard Conditions (1-14)
- 2. Ethics Course (30)
- 3. Professional Boundaries program
- 4. Psychiatric Evaluation
- 5. Third Party Chaperone
- 6. Suspension, 60 days, additional condition if warranted
- 7. Psychotherapy, additional condition if warranted
- 8. Restricted Practice, additional condition if warranted

\*\*\*\*\*

**Section 732 B&P                      Failure to Refund Overpayments to Patients**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Restitution (21)
- 3. Ethics Course (30)

\*\*\*\*\*

**Section 810 B&P                      Insurance Fraud**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, Five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15)
- 3. Remedial Education, in book keeping (16)
- 4. Restitution (21)
- 5. Community Service , 50 hours (22)
- 6. Ethics Course (30)
- 7. Billing Monitor (31)

See Section 1680(a)

\*\*\*\*\*

**Section 822 B&P                      Psychological or Physical Illness**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation, depending on severity.

Psychological Illness:

- 1. Standard conditions (1-14)
- 2. Psychological Evaluation (23)
- 3. Psychotherapy (24)

Additional conditions if the licensee is suffering from a serious psychological illness:

- 1. Suspension from practice until determined safe to practice after completing psychological evaluation (23).
- 2. Supervised practice (18)
- 3. Solo practice (32)

Physical Illness:

- 1. Standard conditions (1-14)
- 2. Physical evaluation (25)
- 3. Solo practice (32)

Additional conditions if the licensee is suffering from a serious physical illness:

- 1. Suspension from practice until determined safe to practice after completing physical evaluation (25)
- 2. Supervised practice (18)
- 3. Solo practice (32)

\*\*\*\*\*

**Section 1611.5 B&P      Inspection of Books, Records, and Premises**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Ethics Course (30)

\*\*\*\*\*

**Section 1645 B&P      Continuing Education Violations**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation, 30 days actual suspension, and compliance within one (1) year

- 1. Standard Conditions (1-14)
- 2. Community service, 40 hours per year (22)
- 3. Ethics Course (30)

For More Serious Cases, the Following Additional Condition Should be Imposed:

- 1. Suspension, 30 days (15)

Section 1680(n)

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**Section 1646.1 B&P      Administration of General Anesthesia (GA) Without a Permit/Failure to Renew a Permit**

Maximum Penalty: Revocation of Licensure and/or Denial of Permit

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 30 days (15) if practicing without ever having been issued a permit.
- 3. Ethics Course (30)

\*\*\*\*\*

**Section 1647.2 B&P      Administration of Conscious Sedation Without a Permit/Failure to Renew a Permit**

Maximum Penalty: Revocation of Licensure and/or Denial of Permit

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 30 days (15) if practicing without ever having been issued a permit.
- 3. Ethics Course (30)

\*\*\*\*\*

**Section 1647.11 B&P      Administration of Oral Conscious Sedation Without a permit - Minors**

Maximum Penalty: Revocation of Licensure and/or Denial of Permit

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 30 days (15) if practicing without ever having been issued a permit.
- 3. Ethics Course (30)

\*\*\*\*\*

**Section 1647.19 B&P Administration of Oral Conscious Sedation Without a permit -Adults**

Maximum Penalty: Revocation of Licensure and/or Denial of Permit

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 30 days (15) if practicing without ever having been issued a permit.
- 3. Ethics Course (30)

\*\*\*\*\*

**Section 1670 B&P Gross Negligence, Incompetence, Repeated Acts of Negligence**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation depending on nature and extent of the violation

- 1. Standard Conditions (1-14)
- 2. Remedial Education (16)
- 3. Supervised Practice (18)
- 4. Community Service, 40 hours per year (22), as an additional condition if warranted

Additional conditions if warranted based on nature and extent of violation(s):

- 1. Suspension (15)
- 2. Examination (17)
- 3. Restricted practice (19)
- 4. Solo practice (32)
- 5. Clinical training program (34)

\*\*\*\*\*

**Section 1670.1 B&P Conviction of a Crime**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) to five (5) years probation depending upon the nature of the criminal offense

- 1. Standard Conditions (1-14)
- 2. Suspension, 30 days (15) depending on the nature of the criminal offense
- 3. Community Service , 40 hours per year (22)
- 4. Ethics Course (30)

\*\*\*\*\*

**Section 1671 B&P Violation of Probation**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed and extension of probationary period probation depending upon the nature of the violation

The maximum penalty should be given for repeated similar offenses.

\*\*\*\*\*

**Section 1680(a) B&P or Obtaining Any Fee by Fraud or Misrepresentation  
Section 810 B&P Insurance Fraud**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15)
- 3. Remedial Education (16)
- 4. Restitution (21)
- 5. Community Service , 50 hours (22)
- 6. Ethics Course (30)
- 7. Billing Monitor (31)

\*\*\*\*\*

**Section 1680(b) B&P      Employment of Any Student or Suspended or Unlicensed Dentist**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15), as an additional condition, if warranted
- 3. Community Service , 40 hours (22)
- 4. Ethics Course (30)

\*\*\*\*\*

**Section 1680(c) B&P      Aiding or Abetting Unlicensed Practice**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15), as an additional condition, if warranted
- 3. Community Service , 50 hours per year (22)
- 4. Ethics Course (30)

\*\*\*\*\*

**Section 1680(d) B&P      Aiding or Abetting Licensed Person to Practice Dentistry Unlawfully**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15), as an additional condition, if warranted
- 3. Remedial Education (16)
- 4. Restitution (21)
- 5. Community Service , 40 hours per year (22)
- 6. Ethics Course (30)

\*\*\*\*\*

**Section 1680(e) B&P      Sexual Abuse, Misconduct, or Relations with a Patient**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, Five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15)
- 3. Remedial Education (16)
- 4. Supervised Practice (18)
- 5. Third Party Chaperone Monitor (20)
- 6. Community Service, 50 hours per year (22)
- 7. Psychological Evaluation (23)
- 8. Psychotherapy (24)
- 9. Ethics Course (30)
- 10. Solo Practice (32)

\*\*\*\*\*

**Section 1680(f) B&P      Use of False or Fictitious Name**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 30 day (15) suspension where the use of the name involved substantial deception of the public related to the practice of dentistry.
- 3. Ethics Course (30)

\*\*\*\*\*

**Section 1680(h) B&P      Use of Deceptive or Misleading Advertising Statements**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation and correct advertising

- 1. Standard Conditions (1-14)
- 2. Community Service , 40 hours per year(22)

3. Ethics Course (30)

\*\*\*\*\*

**Section 1680(i) B&P      Advertising of Professional Superiority**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation and correct advertising

- 1. Standard Conditions (1-14)
- 2. Community Service , 40 hours per year (22)
- 3. Ethics Course (30)

\*\*\*\*\*

**Section 1680(j) B&P      Employing or Making use of Solicitors**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Community Service , 40 hours per year (22)
- 3. Ethics Course (30)

\*\*\*\*\*

**Section 1680(k) B&P      Any Advertising that Violates Section 651 of the Business and Professions Code**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation and correct advertising

Please see Section 651 B&P for proposed penalty.

\*\*\*\*\*

**Section 1680(l) B&P      Advertising to Guarantee Any Dental Service or to Perform Dental Operations Painlessly**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation and correct advertising as appropriate

1. Standard Conditions (1-14)
2. Community Service , 50 hours per year (22)
3. Ethics Course (30)

\*\*\*\*\*

**Section 1680(m) B&P      Violation of any Law Regulating the Dispensing or Administration of Dangerous Drugs or Controlled Substances**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Conditions (1-14)
2. Suspension , 60 days (15), as additional condition if warranted
3. Remedial Education (16)
4. Supervised environment (18)
5. Ethics Course (30)
6. Controlled Substances-Maintenance of Records and Inventories (33)

Additional conditions:

1. Community Service, 40 hours per year (22)
2. Diversion (26) or Clinical Diagnostic Evaluation (36)
3. Biological Testing (27)
4. Abstain from use of alcohol, controlled substances and dangerous drugs (28)
5. Surrender/partial surrender of DEA permit (29)
6. Facilitated Group Support Meetings (35)

\*\*\*\*\*

**Section 1680(o) B&P      Permitting any Person to Operate Radiographic equipment in Violation of the Law**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, Five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15)
- 3. Community Service , 40 hours per year (22)
- 4. Ethics Course (30)

\*\*\*\*\*

**Section 1680(p) B&P      Clearly Excessive Prescribing or Treatment**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-12)
- 2. Remedial Education (14)
- 3. Community Service, 40 hours per year (22)
- 4. Surrender/Partial Surrender of DEA Permit (29)
- 5. Ethics Course (30)
- 6. Controlled substance-Maintenance of Records and Inventories (33)

For more serious cases, the following additional conditions should be imposed:

- 1. Suspension, 60 days (13)
- 2. Supervised practice (18)
- 3. Restitution (21)
- 4. Clinical Training Program (34)

\*\*\*\*\*

**Section 1680(q) B&P      Use of Threats or Harassment to Dissuade Testimony**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15)
- 3. Community Service, 40 hours per year (22)
- 4. Ethics Course (30)

\*\*\*\*\*

**Section 1680(r) B&P      Suspension or Revocation by Another State**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Impose similar conditions as indicated by other state.
- 3. Ethics Course (30)

\*\*\*\*\*

**Section 1680(s) B&P      Alteration of Patient Records**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation, correction of condition

- 1. Standard Conditions (1-14)
- 2. Remedial Education (16)
- 3. Supervised Environment (18)
- 4. Community Service, 40 hours per year (22)
- 5. Ethics Course (30)

For more serious violations, the following additional condition should be imposed:  
Suspension, 60 days (15)

\*\*\*\*\*

**Section 1680(t)    Unsanitary Conditions**

Maximum Penalty:    Revocation

Minimum Penalty:    Revocation, stayed three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Remedial Education (16)

If violation does not warrant a 3 year probation, consideration should be given to a lesser probationary period with a requirement to take a course in infection control approved by the Board.

In more serious cases:  
Suspension, 30 days (15)

\*\*\*\*\*

**Section 1680(u) B&P    Abandonment of Patient**

Maximum Penalty:    Revocation

Minimum Penalty:    Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Community Service, 40 hours per year (22)
- 3. Ethics Course (30)

For those more serious violations, the following condition should be imposed:  
Suspension, 30 days (15)

\*\*\*\*\*

**Section 1680(v) B&P    Misrepresenting the Facts Regarding Disciplinary Action**

Maximum Penalty:    Revocation

Minimum Penalty:    Revocation stayed, three (3) years probation.

- 1. Standard Conditions (1-14)
- 2. Ethics Course (30)

\*\*\*\*\*

**Section 1680(w) B&P      Fraud in the Procurement of Any License**

Maximum Penalty: Revocation. Revocation in all cases in which the licensee is not qualified for the license.

Minimum Penalty: Revocation, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 30 days (15)
- 3. Community Service, 40 hours per year (22)
- 4. Ethics Course (30)

\*\*\*\*\*

**Section 1680(x) B&P      Actions that would Warrant Denial of a License**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14); and

Any other conditions as appropriate and consistent with these guidelines based on the particular action.

\*\*\*\*\*

**Section 1680(y) B&P      Aiding or Abetting Negligent or Incompetent Practice**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard conditions (1-14)
- 2. Suspension, 30 days (15)
- 3. Remedial Education (16)
- 4. Examination (17) if appropriate
- 5. Supervised Environment (18)
- 6. Restricted practice (19)
- 7. Ethics Course (30)

\*\*\*\*\*

**Section 1680(z) B&P      Failure to Report Patient Death**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, 5 years probation

- 1. Standard conditions (1-14)
- 2. Ethics Course (30)

For more serious cases, the following additional condition should be imposed:

- 1. Suspension, 30 days (15)

\*\*\*\*\*

**Section 1680(aa) B&P      Participating In or Operating Any Group Advertising or Referral Services that is not Registered by the Board**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, six (6) months suspension from advertising through referral services
- 3. Community Service, 40 hours per year (22)
- 4. Ethics Course (30)

(Section 650.2 B&P)

\*\*\*\*\*

**Section 1680(ab)B&P      Failure to use a Fail-Safe Machine**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Terms (1-14)
- 2. Proof of Correction Through Obtaining and Using Correct Machine
- 3. Remedial Education (16)

\*\*\*\*\*

**Section 1680(ac) Engaging in Practice of Dentistry with an Expired License**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 30 days (15), as an additional condition, if warranted
- 3. Ethics (30)

\*\*\*\*\*

**Section 1680(ad) Unsafe and Sanitary Conditions**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 30 days (15)
- 3. Remedial Education in infection control (16)
- 4. Proof of correction of the condition

If violation is not severe enough to warrant a 3 year probation, consideration should be given to a lesser probationary period with a requirement to take a course in infection control approved by the Board

\*\*\*\*\*

**Section 1680(ae) The Use of Auxiliaries Beyond the Scope of the License**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15), as an additional condition if warranted
- 3. Remedial Education in scope of practice for dental auxiliaries (16)
- 4. Proof of correction of the condition

If violation is not severe enough to warrant a 3 year probation, consideration should be given to a lesser probationary period with a requirement to take a course in the scope of practice of a dental auxiliary approved by the Board.

\*\*\*\*\*

**Section 1681(a) B&P      Substance Abuse, Possession or Control, Alcohol Abuse, or Conviction related to Controlled Substances**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years

- 1. Standard Conditions (1-14)
- 2. Supervised Practice (18)
- 3. Abstain from use of alcohol, Controlled substances and dangerous drugs (28)
- 4. Surrender/Partial surrender of DEA permit (29)
- 5. Ethics Course (30)
- 6. Controlled Substance-Maintenance of Records and Inventories (33)

Optional Conditions Where Appropriate:

- 1. Psychological Evaluation (23)
- 2. Psychotherapy (24)
- 3. Diversion (26) or Clinical Diagnostic Evaluation (36)
- 4. Biological Fluid Testing (27)
- 5. Facilitated Group Support Meetings (35)

\*\*\*\*\*

**Section 1681 (b) B&P      Use of drugs/alcohol causing danger to patient**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, seven (7) years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15)
- 3. Supervised Practice (18)
- 4. Psychological Evaluation (23)
- 5. Psychotherapy(24)
- 6. Diversion(26) or Clinical Diagnostic Evaluation (36)
- 7. Biological Fluid Testing (27)

- 8. Abstain from use of Alcohol, Controlled Substances and Dangerous Drugs (28)
- 9. Surrender/Partial Surrender of DEA permit (29)
- 10. Ethics Course (30)
- 11. Controlled Substance-Maintenance of Records and Inventories (33)
- 12. Facilitated Group Support Meetings (35)

\*\*\*\*\*

**Section 1681 (c) B&P Conviction of violating state drug statutes**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, 5 years probation

- 1. Standard Conditions (1-14)
- 2. Suspension, 60 days (15)
- 3. Supervised Practice (18)
- 4. Psychological Evaluation (23)
- 5. Psychotherapy (24)
- 6. Diversion (26) or Clinical Diagnostic Evaluation (36)
- 7. Biological Testing (27)
- 8. Abstain from use of Alcohol, Controlled Substances and Dangerous Drugs (28)
- 9. Surrender/Partial Surrender of DEA permit (29)
- 10. Ethics Course (30)
- 11. Controlled Substance-Maintenance of Records and Inventories (33)
- 12. Facilitated Group Support Meetings (35)

\*\*\*\*\*

**Section 1682 B&P Violation of Requirements re Patients Undergoing Conscious Sedation or General Anesthesia**

Maximum Penalty: Revocation of licensure and/or Permit

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Remedial Education (16)
- 3. Examination (17)
- 4. Supervised Practice (18)
- 5. Restricted Practice (19)
- 6. Ethics Course (30)

Section 1647 B&P

\*\*\*\*\*

**Section 1683 B&P Treatment Entries in Patient Records**

Maximum Penalty: Revocation of licensure and/or Permit

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Remedial Education(16)

If violation is not severe enough to warrant a 3 year probation, consideration should be given to a lesser probationary period or public reprimand with a requirement to take a course approved by the Board in how to maintain patient records.

\*\*\*\*\*

**Section 1684 B&P Service Beyond the Scope of License**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

- 1. Standard Conditions (1-14)
- 2. Community Service, 40 hours per year (22)
- 3. Ethics Course (30)

Options and additions where appropriate

- 1. Suspension (15)
- 2. Remedial Education (16)
- 3. Examination (17)
- 4. Supervised Practice (18)
- 5. Restricted Practice (19)
- 6. Restitution (31)
- 7. Clinical Training Program (34)

\*\*\*\*\*

**Section 1685 B&P Permitting Dental Care that Discourages Necessary or Encourages Excessive or Improper Treatment**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

- 1. Standard Conditions (1-14)
- 2. Ethics Course (30)

Options and additions where appropriate

- 1. Suspension, 30 days (15)
- 2. Remedial Education (16)
- 3. Examination (17)
- 4. Restitution (21)
- 5. Clinical Training Program (34)

\*\*\*\*\*



## MEMORANDUM

<b>DATE</b>	October 20, 2011
<b>TO</b>	Dental Board of California
<b>FROM</b>	Linda Byers, Administrative Assistant Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 2:</b> Presentation by Senator Richard G. Polanco (Ret.), Chairman of the California Latino Legislative Caucus Institute for Public Policy, Regarding his Support of Universidad De La Salle's Renewal Application

Senator Richard G. Polanco (Retired), Chairman of the California Latino Legislative Caucus Institute for Public Policy, requested that he be allowed to speak in order to voice his support for the re-approval process of the Universidad De La Salle by the Dental Board of California.



October 12, 2011

Mr. Richard De Cuir  
Executive Director  
Dental Board of California  
2005 Evergreen Street, S# 1550  
Sacramento, CA 95815  
VIA EMAIL [richard.decuir@dca.gov](mailto:richard.decuir@dca.gov)

Dear Mr. De Cuir:

I am writing this letter of **SUPPORT for the re-approval process of the Universidad de la Salle Bajio, Leon, Guanajuato, Mexico** by the Dental Board of California.

As the original author of the legislation that created the relationship between California with the Universidad de la Salle in Mexico, I would like to request that I be allowed to speak on this agenda item at the next full board meeting in Los Angeles on Nov. 7th and 8th.

Currently the Universidad de la Salle Bajio is the only approved foreign dental school by the Dental Board of California. With the continued shortage of cultural and linguistic proficient dental healthcare professionals in California, the Universidad de la Salle is providing excellence workforce resources and has a demonstrated an academic performance record of highest quality and standards.

I thank you in advance for your consideration of my request. Please contact me if you need any other information on cell (916) 826-1872.

Sincerely,

**SENATOR RICHARD G. POLANCO (RET.)**  
Chairman CLCI

CC: Secretary Anna Caballero, CA State and Consumer Affairs Agency  
915 Capitol Mall, Suite 200. Sacramento, CA 95814-2719  
Mr. Brian Stiger, Director, Department of Consumer of Affairs  
1625 North Market Blvd., Suite #308, Sacramento, CA 95834  
Mr. John Bettinger, DDS, President, Dental Board of California  
Mr. Bruce Whitcher, DDS, Vice President, Dental Board of California  
2005 Evergreen Street, S\$1550, Sacramento, CA 95815

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## MEMORANDUM

<b>DATE</b>	October 13, 2011
<b>TO</b>	Dental Board of California
<b>FROM</b>	Donna Kantner, Manager, Licensing & Exam Unit Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 3(A):</b> Discussion and Possible Action Regarding Subcommittee Update of Universidad De La Salle's Renewal and Site Review

### Background:

At its August 26, 2011 meeting, the Subcommittee gave its report that the renewal application of Universidad De La Salle's dental program was initially not entirely in English and had to be translated, and once translated was determined to be incomplete. The Subcommittee reported that the school was notified on August 2<sup>nd</sup> of the areas that must be addressed to complete the application.

The Board had requested a legal opinion regarding whether the Board has authority to approve a specified curriculum within a foreign dental school or only the authority to approve the foreign dental school as an institution. Legal Counsel Kristy Shellans reported that she reviewed the Board's statutes and regulations and it is her legal opinion that the Board has the authority to grant dental school approvals and does not have authority to grant an approval for a dental school to offer only a specified curriculum within the dental school. She stated statutes and regulations are clear that the Board's approval authority of the foreign dental school is institutional.

The Board had also requested a legal opinion regarding its authority to extend the school's approval if the review and assessment cannot be completed before the school's current approval expires on November 4, 2011. In Ms. Shellans' opinion, the Board may extend the current approval for 225 days from the date of receipt of the completed application according to regulation, so that the Board would have enough time to conduct the site visit and make the decision to approve or disapprove the renewal application. Dr. Bettinger requested clarification if the application would have to be completed prior to the November expiration date of the school's current approval; Ms. Shellans clarified that if the completed application is not submitted prior to the expiration date, then the school's current approval would expire.

Update:

The school was notified on August 15, 2011 that all of its dental programs must conform to California's statutory and regulatory requirements and that the Board must receive a complete renewal application no later than November 4<sup>th</sup>, 2011 or the school's approval will expire.

The Subcommittee will make its report at the meeting.



## MEMORANDUM

<b>DATE</b>	October 20, 2011
<b>TO</b>	Dental Board of California
<b>FROM</b>	Donna Kantner, Manager, Licensing & Exam Unit Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 3(B):</b> Discussion and Possible Action Regarding Extending the Expiration Date of Universidad De La Salle's Current Approval to Allow Review of the Renewal Application

### Background:

The Board requested a legal opinion regarding its authority to extend the school's approval if the review and assessment cannot be completed before the school's current approval expires on November 4, 2011. In Legal Counsel's opinion, the Board may extend the current approval for 225 days from the date of receipt of the completed application according to California Code of Regulations Section 1024.4(b), so that the Board would have enough time to conduct the site visit and make the decision to approve or disapprove the renewal application. Ms. Shellans clarified that if the completed application is not submitted prior to the expiration date of November 4<sup>th</sup>, the school's current approval would expire.

### Update:

The school was notified on August 15, 2011 that all of its dental programs must conform to California's statutory and regulatory requirements and that the Board must receive a complete renewal application no later than November 4<sup>th</sup>, 2011 or the school's approval will expire.

### Requested action

In anticipation that a completed application will be received no later than November 4, 2011, staff requests that the Board vote to extend the approval of Universidad De La Salle's dental program for 225 days contingent upon receipt of a complete application by the November 4<sup>th</sup> deadline.

**Ricardo Lara**CHAIRMAN, ASSEMBLY JOINT LEGISLATIVE AUDIT COMMITTEE  
ASSEMBLYMEMBER, FIFTIETH DISTRICTCOMMITTEES:  
APPROPRIATIONS  
BANKING AND FINANCE  
HIGHER EDUCATION  
WATER, PARKS AND WILDLIFE  
SELECT COMMITTEES:  
FINANCIAL EMPOWERMENT, CHAIR

California Legislature

October 12, 2011

Mr. Richard DeCuir  
Executive Director  
Dental Board of California  
2005 Evergreen Street, Suite 1550  
Sacramento, CA 95815**RE: Support for the re-approval process of the Universidad De La Salle, Bajio**

Dear Mr. DeCuir:

I write this letter to convey my support for the re-approval process of the Universidad De La Salle, Bajio by the Dental Board of California.

It has come to my attention that the re-approval process of the Universidad De La Salle dental school program is to be taken up at the next full board meeting in Los Angeles on November 7<sup>th</sup> and 8<sup>th</sup> and that Senator Polanco (Ret.) has requested to speak on the agenda item.

Currently, the Universidad De La Salle, Bajio is the only approved foreign dental school by the Dental Board of California. With the continued shortage of cultural and linguistic proficient dental healthcare professionals in California, the Universidad De La Salle dental school program provides a necessary workforce resource.

In February, I personally visited the dental school program at the Universidad De La Salle and was impressed by the programs high quality and caliber of work. It is my sincere hope that California's longstanding relationship with the Universidad De La Salle, Bajio continues.

Thank you for your consideration of this request. Should you have any questions, please contact me or my staff at (916) 319-2050.

Sincerely,

RICARDO LARA  
Assembly Member, 50th District



# MEMORANDUM

<b>DATE</b>	October 14, 2011
<b>TO</b>	Dental Board Members
<b>FROM</b>	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 4:</b> Discussion and Possible Action to Consider Initiation of a Rulemaking to Add Title 16, CCR, Section 1065 Regarding Requirements for Posting Notice to Consumers of Licensure by the Dental Board

Background

On September 30, 2011, Governor Brown signed into law Senate Bill 540 (Chapter 385, Statutes of 2011). Senate Bill 540 extended the effective date of the Dental Board of California (Board) until January 1, 2012 and made several changes to the provisions contained in the Dental Practice Act (DPA). The bill added Business and Professions Code Section 1611.3 to require the Board to comply with the requirements of Business and Professions Code Section 138 by January 1, 2013. Section 1611.3 also requires the Board’s regulations regarding the notice to consumers include provisions that: (1) specify that the Board is the entity that regulates dentists, (2) provide the telephone number and Internet address of the Board, and (3) require the notice to be posted in a conspicuous location accessible to public view.

As Senate Bill 540 moved through the legislative process, the bill analyses provided by the Senate Business and Professions Committee indicated that the purpose of adding Business and Professions Code Section 1611.3 to the DPA was to have the Board adopt regulations in the same manner as the Medical Board of California (MBC). The MBC promulgated regulations relative to consumer notification of licensure in 2010; a copy of their currently effective regulations is enclosed for information purposes only (Example: MBC Notice to Consumers Regulations).

Business and Professions Code Section 138 specifies that every board within the Department of Consumer Affairs (Department) shall initiate the process of adopting regulations to require its licentiates to provide notice to their clients or customers that the practitioner is licensed by this state.

The primary purpose of these proposed regulations is to implement, interpret and make specific the provisions of Section 138 and 1611.3 of the Business and Professions Code relative to providing conspicuous notification to consumers that dentists are licensed

and regulated by the Board, require that the notice include a statement to that effect, and contain the Board's toll-free telephone number and its Web Site address.

Staff proposes the Board consider the following changes:

Adopt Section 1065 of Division 10 of Title 16 of the California Code of Regulations (Notice to Consumers by Dentists):

This proposal adopts Section 1065 to require a licensed dentist engaged in the practice of dentistry to provide notice to each patient of the fact that he or she is licensed and regulated by the Board. This proposal would require the notice include a statement that dentists are licensed and regulated by the Board and contain the Board's toll-free telephone number and Web site address.

This proposal would specify that the notice is required to be provided by one of the following methods:

- (1) Prominently posted in an area visible to patients on the premises where services are provided in at least 48-point type in Arial font;
- (2) Included in a written statement, signed and dated by the patient or patient's representative and retained in the patient's dental records, stating the patient understands the dentist is licensed and regulated by the Board; or
- (3) Including the notice in a statement on letterhead, discharge instructions, or other document given to a patient or the patient's representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type.

Board Action Requested

Consider and possibly accept the proposed regulatory language relevant to the requirements for posting notice to consumers of licensure by the Dental Board of California and direct staff to take all steps necessary to initiate the formal rulemaking process, including noticing the proposed language for 45-day public comment, setting the proposed language for a public hearing, and authorize the Executive Officer to make any non-substantive changes to the rulemaking package. If after the close of the 45-day public comment period and public regulatory hearing, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed additions to California Code of Regulations, Title 16, Section 1065 as noticed in the proposed text.

## EXAMPLE: MBC NOTICE TO CONSUMERS REGULATIONS

Title 16. Professional and Vocational Regulations  
Division 13. Medical Board of California  
Chapter 2. Division of Medical Quality  
Article 1. General Provisions

### § 1355.4. Notice to Consumers.

(a) A licensee engaged in the practice of medicine shall provide notice to each patient of the fact that the licensee is licensed and regulated by the board. The notice shall include the following statement and information:

#### NOTICE

Medical doctors are licensed and regulated  
by the Medical Board of California  
(800) 633-2322  
[www.mbc.ca.gov](http://www.mbc.ca.gov)

(b) The notice required by this section shall be provided by one of the following methods:

- (1) Prominently posting the notice in an area visible to patients on the premises where the licensee provides the licensed services, in which case the notice shall be in at least 48-point type in Arial font.
- (2) Including the notice in a written statement, signed and dated by the patient or the patient's representative and retained in that patient's medical records, stating the patient understands the physician is licensed and regulated by the board.
- (3) Including the notice in a statement on letterhead, discharge instructions, or other document given to a patient or the patient's representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type.

Note: Authority cited: Section 2018, Business and Professions Code. Reference: Section 138, Business and Professions Code.

#### HISTORY

1. New section filed 3-29-2010; operative 6-27-2010 (Register 2010, No. 14). For prior history, see Register 83, No. 33.
2. Change without regulatory effect amending section heading and subsection (a) filed 6-30-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 27).

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

**PROPOSED LANGUAGE**

Adopt Section 1065 of Division 10 of Title 16 of the California Code of Regulations, to read as follows:

**1065. Notice to Consumers.**

(a) A licensed dentist engaged in the practice of dentistry shall provide notice to each patient of the fact that the dentist is licensed and regulated by the Board. The notice shall include the following statement and information:

NOTICE TO CONSUMERS

Dentists are licensed and regulated  
by the Dental Board of California  
(877) 729-7789  
www.dbc.ca.gov

(b) The notice required by this section shall be provided by one of the following methods:

(1) Prominently posting the notice in an area visible to patients on the premises where the dentist provides the licensed services, in which case the notice shall be in at least 48-point type in Arial font; or

(2) Including the notice in a written statement, signed and dated by the patient or the patient's representative and retained in that patient's dental records, stating the patient understands the dentist is licensed and regulated by the Board; or

(3) Including the notice in a statement on letterhead, discharge instructions, or other document given to a patient or the patient's representative, where the notice is placed immediately above the signature line for the patient in at least 14-point type.

NOTE: Authority cited: Section 1614, Business and Professions Code; Reference: Sections 138 and 1611.3, Business and Professions Code.



## MEMORANDUM

<b>DATE</b>	October 14, 2011
<b>TO</b>	Dental Board Members
<b>FROM</b>	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 5:</b> Update on Pending Regulatory Packages:

**A. Dental Assisting Educational Programs and Courses (California Code of Regulations, Title 16, Sections 1070, 1070.1, 1070.2, 1070.6, 1070.7, 1070.8 and 1071):**

The Board approved proposed regulatory language at its November 2009 meeting. The proposed regulatory language regarding Dental Assisting Educational Programs and Courses was noticed on the Board's website and mailed on June 4, 2010 for the 45-day public comment period. The comment period began on June 4, 2010 and ended on July 19, 2010. A regulatory hearing was held on July 19, 2010.

At its September 16, 2010 meeting, the Board reviewed the comments received during the 45-day comment period and at the regulatory hearing. The Board voted to accept modified text to be noticed for 15-day public comment. The comment period began on September 28, 2010 and ended on October 12, 2010. Comments were received from the Butte Sierra District Dental Society, the California Association of Dental Assisting Teachers, the California Dental Association, and the Dental Assisting Alliance.

At its November 4, 2010 meeting, the Board reviewed the comments received during the first 15-day comment period. The Board voted to accept a second modified text to be noticed for 15-day public comment. The comment period began on November 18, 2010 and ended on December 3, 2010. Comments were received from the Dental Assisting Alliance, the California Association of Dental Assisting Teachers, Michael W. Champeau, M.D., and Bill Barnaby Sr. & Jr. on behalf of the California Society of Anesthesiologists.

At its December 14, 2010 meeting, the Board reviewed comments received during the second 15-day comment period. The Board voted to accept a third modified text to be noticed for 15-day public comment. The comment period began on December 27, 2010 and ended on January 11, 2011. A comment was received from the Dental Assisting Alliance. The Dental Assisting Alliance requested to withdraw their comment after the close of the comment period.

At its February 25, 2011 meeting, the Board rejected the Dental Assisting Alliance's comment based on their request for withdrawal and adopted the final regulatory language as noticed in the third modified text and directed staff to complete the rulemaking process and file with the Office of Administrative Law.

Staff submitted the final rulemaking file to the Director of the Department of Consumer Affairs (Department) on May 26, 2011. A 90-day extension was granted as authorized by Business and Professions Code Section 313.1. The final rulemaking file was approved by the Director of the Department, the Secretary of the State and Consumer Services Agency (Agency), and the Director of the Department of Finance (Finance).

The final rulemaking file was submitted to the Office of Administrative Law on August 30, 2011. The Office of Administrative Law approved the rulemaking file on October 12, 2011 and filed with the Secretary of State. The regulation will become effective on November 11, 2011.

**B. Consumer Protection Enforcement Initiative (*California Code of Regulations Title 16, Sections 1018.05 and 1020*):**

At its November 5, 2010 meeting, the Board reviewed proposed regulatory amendments to improve the Board's enforcement process in an effort to address public concern. The Board directed staff to initiate a rulemaking to further define unprofessional conduct and to permit the Board to require the examination of an applicant who may be impaired by a physical or mental illness affecting competency.

The initial rulemaking file was submitted to the Office of Administrative Law on February 7, 2011. The proposed action was published on February 18, 2011 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on February 18, 2011 and ended on April 4, 2011. A regulatory hearing was held on April 4, 2011. The Board received a comment from the California Dental Association.

Recommendations and comments received during the 45-day public comment period and at the April 4, 2011 regulatory hearing were considered by the Board at its May 19, 2011 meeting. A number of modifications were made to the Consumer Protection Enforcement Initiative regulations based upon comments received. The modified text was noticed on the Board's web site and mailed on May 25, 2011. The 15-day public comment period began on May 26, 2011 and ended on June 10, 2011. The Board did not receive comments in response to the modified text. Since there were no adverse comments received in response to the modified text, the Board adopted the final text as noticed in the modified text at its May 19, 2011 meeting.

Staff submitted the final rulemaking file to the Director of the Department on June 13, 2011. The final rulemaking file is required be approved by the Director of the Department, the Secretary of Agency, and the Director of Finance. The rulemaking file has been approved by the Director of the Department and the Secretary of Agency and is currently pending approval of the Director of Finance. Once the approval signature is obtained, the rulemaking will be submitted to the Office of Administrative Law. The Office of Administrative Law will have 30 working days to review the file. Once

approved, the rulemaking will be filed with the Secretary of State and will become effective 30 days later. The deadline to submit the final rulemaking to the Office of Administrative Law is February 17, 2012.

**C. Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines (California Code of Regulations, Title 16, Sections 1018 and 1020.5):**

At its February 25, 2011 meeting, the Board discussed and approved proposed regulatory language relative to the uniform standards relating to substance abusing licensees and Disciplinary Guidelines. The Board directed staff to initiate a rulemaking.

The initial rulemaking file was submitted to the Office of Administrative Law on March 11, 2011. The proposed action was published on March 25, 2011 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on March 25, 2011 and ended on May 9, 2011. The regulatory hearing was held on May 10, 2011. The Board received oral testimony from the California Dental Association and written comments from the Center for Public Interest Law. The Substance Abuse Coordination Committee (SACC) met on April 11, 2011 and revised requirements contained in the *Uniform Standards Relating to Substance-Abusing Healing Arts Licensees*.

At its August 11, 2011 meeting, the Board tabled response to comments until further legal clarification was received regarding the Board's discretion regarding ordering conditions of probation relative to the uniform standards.

The Board will discuss these proposed regulations during the Full Board meeting on November 7, 2011.

**D. Sponsored Free Health Care Events (California Code of Regulations, Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18)**

At its February 25, 2011 meeting, the Board discussed and approved proposed regulatory language relative to sponsored free health care events. The Board directed staff to initiate a rulemaking. The proposed regulatory language regarding Sponsored Free Health Care Events was noticed on the Board's website and mailed on October 7, 2011 for the 45-day public comment period. The comment period began on October 7, 2011 and will end on November 21, 2011. A regulatory hearing is scheduled for November 22, 2011 in Sacramento.

**Action Requested:**

No action necessary.



## MEMORANDUM

<b>DATE</b>	October 17, 2011
<b>TO</b>	Dental Board Members
<b>FROM</b>	Karen Fischer, Administrative Analyst Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 6:</b> Update on the Office of Statewide Health Planning and Development (OSHPD) Health Workforce Pilot Project (HWPP #172)

### **Background:**

In June 2010, the Office of Statewide Health Planning and Development (OSHPD) invited the Dental Board of California (Board) to participate in the review and comment process of the Health Workforce Pilot Project application (HWPP #172) submitted by the Pacific Center for Special Care at the University of Pacific, Arthur A. Dugoni School of Dentistry. The pilot project is intended to train and demonstrate the ability of current allied dental personnel to perform new duties in community settings to improve the oral health of underserved populations.

Most of the duties performed by dental providers in this community-based system are already allowed under existing law. However, two new duties that will be performed require an expanded scope of practice for community-based Registered Dental Assistants (RDAs), Registered Dental Hygienists (RDHs) working in public health programs, and Registered Dental Hygienists in Alternative Practice (RDHAPs).

The two new duties to be evaluated under this HWPP are:

- Determine, based on protocols, which radiographs to take, if any, to facilitate an initial oral evaluation by a dentist.
- Place "Interim Therapeutic Restorations" (ITR) when directed to do so by a collaborating dentist.

Prior to OSHPD's approval to move ahead with the pilot project, the Board submitted a letter to Dr. David Carlisle, Director of OSHPD, outlining concerns with the proposed project. The Board continues to monitor the progress of the pilot project.

**Update:**

Board President Dr. John Bettinger asked Dr. Steven Morrow to participate in a teleconference meeting of the HWPP #172 Evaluation Team. The meeting was held September 16, the purpose of which was to discuss the roles and responsibilities of the site visit team, to review the site visit tools, and to discuss the manner in which the site visits will be conducted. There will be a total of nine (9) sites involved in the project. Dr. Morrow will be participating in the first site visit which will take place in Sacramento on November 2, 2011. He will supplement this background information with a verbal report of the teleconference meeting and site visit.



## MEMORANDUM

<b>DATE</b>	October 17, 2011
<b>TO</b>	Dental Board Members
<b>FROM</b>	John Bettinger, DDS Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 7(A):</b> Presentation by Howard Katz, DDS, Regarding Cosmetic and Scope of Practice Issues in Dentistry

Dr. Katz will give a presentation.



## MEMORANDUM

<b>DATE</b>	October 24, 2011
<b>TO</b>	Dental Board Members
<b>FROM</b>	John S. Bettinger, DDS Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 7(B)(i):</b> Discussion and Possible Action on Board Policy Regarding Cosmetic /Esthetic Procedures Related to Business & Professions Code Section 1625

There remains confusion regarding the Board's interpretation of the Dental Practice Act related to cosmetic/esthetic procedures. We have had a legal opinion, however further discussion is necessary in order to clarify the confusion.

Dr. Bettinger will introduce this issue and ask for all the Board Members to join in on this discussion before a vote is taken on any motion.

The options are:

1. Vote that cosmetic/ esthetic dental procedures are impermissible in California unless permitted under the EFCS Statute
2. Vote cosmetic or esthetic dental procedures are permissible under Business & Professions Code Section 1625.
3. Table the discussion.
4. Vote to seek rule making or statutory change.
5. Take no action.



## MEMORANDUM

<b>DATE</b>	October 20, 2011
<b>TO</b>	Dental Board Members
<b>FROM</b>	John S. Bettinger, DDS Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 7(B)(ii):</b> Discussion and Possible Action Regarding Scope of Practice Issues Related to "Associated Structures" in Business & Professions Code Section 1625

There has been recent discussion regarding the interpretation of the words "Associated Structures" along with other parts of Business & Professions (B &P) Code Section 1625. The major areas that need clarification in the Practice Act are highlighted below. It is being asked that the Board clarify policy on the interpretation of scope as related to B&P Code Section 1625.

### **The Business & Professions Code, Section 1625.**

**1625.** Dentistry is the diagnosis or treatment, by surgery or other method, of diseases and lesions and the correction of malpositions of the human teeth, alveolar process, gums, jaws, or associated structures; and such diagnosis or treatment may include all necessary related procedures as well as the use of drugs, anesthetic agents, and physical evaluation. Without limiting the foregoing, a person practices dentistry within the meaning of this chapter who does any one or more of the following:

(a) By card, circular, pamphlet, newspaper or in any other way advertises himself or represents himself to be a dentist.

(b) Performs, or offers to perform, an operation or diagnosis of any kind, or treats diseases or lesions of the human teeth, alveolar process, gums, jaws, or associated structures, or corrects malposed positions thereof.

(c) In any way indicates that he will perform by himself or his agents or servants any operation upon the human teeth, alveolar process, gums, jaws, or associated structures, or in any way indicates that he will construct, alter, repair, or sell any bridge, crown, denture or other prosthetic appliance or orthodontic appliance.

(d) Makes, or offers to make, an examination of, with the intent to perform or cause to be performed any operation on the human teeth, alveolar process, gums, jaws, or associated structures.

(e) Manages or conducts as manager, proprietor, conductor, lessor,

or otherwise, a place where dental operations are performed.

The interpretation of the Dental Practice Act regarding "associated structures" as well as regions of the head and neck that are within the scope of practice of dentistry are open to wide interpretation. The sponsors / proponents of SB 438 (2005 – 2006), the Elective Facial Cosmetic Surgery Permit Bill, recognized that "associated structures" in B&P Code Section 1625 was interpreted broadly in the dental and medical communities. Portions of the analyses from the Assembly and Senate Committee hearings and floor sessions are noted below.

The Analysis noted the following statements as "Existing Law."

(2) **B & P 1625.** Dentistry is the diagnosis or treatment, by surgery or other method, of diseases and lesions and the correction of malpositions of the human teeth, alveolar process, gums, jaws, or associated structures; and such diagnosis or treatment may include all necessary related procedures as well as the use of drugs, anesthetic agents, and physical evaluation

(8) Defines "facial" to mean those regions of the body identified within the definition of dentistry (see #2 in Existing Law section above".

The Analysis also states:

1. Purpose. SB 438 is jointly sponsored by the California Dental Association (CDA) and the California Association of Oral and Maxillofacial Surgeons (CALAOMS). According to the Author and sponsors, the bill is necessary to cure an anomaly in the law, as interpreted by the Board, that prevents highly trained Oral and Maxillofacial Surgeons from performing facial surgical procedures that are well within their training and competence.

OMSs may perform surgery not only in the oral cavity, but also on the jaws and other "associated structures." While somewhat general in its terminology, according to the proponents, the phrase "associated structures" has acquired a relatively well-understood meaning in the dental/medical world, and hospitals via their medical staffs grant surgical privileges to OMSs to perform a broad range of facial surgical procedures, including major facial trauma surgery, cleft palate and lip procedures, lower and upper jaw reconstruction, and the range of necessary related procedures that accompany this surgery.

According to the sponsors, the anomaly they believe exists is that the same or similar surgical procedures on the same parts of the face that are "legal" in the ER/trauma center, or in the context of "reconstructive" surgery and other circumstances, have been deemed "illegal" by the Dental Board when performed on healthy patients as an elective cosmetic surgical procedure.

The Board is being asked to clarify the Dental Practice Act in regard to interpretation of the term “Associated Structures.”

Actions:

1. Vote to interpret the words “associated structures” in B&P Code Section 1625 broadly.
2. Vote to interpret the words, “associated structures” in B&P Code Section 1625 narrowly.
3. Table the issue



## MEMORANDUM

<b>DATE</b>	October 17, 2011
<b>TO</b>	Dental Board of California
<b>FROM</b>	Donna Kantner, Manager, Licensing & Exam Unit Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 8:</b> Update on Dental Board of California Pathways to Licensure for Dentists – Information Only

In response to a request from Member Afriat, information on how applicants may qualify for a California dental license is summarized below.

**WREB Clinical Examination** - Applicants must have graduated from an approved dental program or have previously passed the Board's restorative technique exam and must pass the Western Regional Examination Board's clinical exam and pass the California Law and Ethics examination. (Business and Professions Code Section 1632)

**Licensure by Residency (LBR)** - Applicants must have graduated from an American Dental Association Commission on Dental Accreditation (CODA) accredited dental program and completed at least one year of postgraduate education in an approved Advanced Education in General Dentistry or General Practice Residency and pass the California Law and Ethics examination. (Business and Professions Code Section 1634.1)

**Licensure by Credential** - Applicants must have been licensed in another state for at least 5 years and provide documentation of at least 5,000 hours of clinical practice in the preceding 5 of 7 years, or agree to at least a two year contract with an approved dental program in California as an instructor, or practice in a public health clinic in an underserved area as designated by Office of Statewide Health Planning and Development (OSHPD). (Business and Professions Code Section 1635.5)

A fourth pathway, Portfolio examination, is in development for the future. The Portfolio examination will assess a California dental student's experiences within the clinic settings of his or her dental program as the measure of competence for issuance of a California dental license. (Business and Professions Code Section 1632)

In addition, all applicants must undergo a criminal background check and have a Social Security number before a license may be issued.