STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P (916) 263-2300 F (916) 263-2140 www.dbc.ca.gov

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

NOTICE OF LEGISLATIVE AND REGULATORY COMMITTEE MEETING

Thursday, February 24, 2011
Upon Conclusion of Dental Assisting Committee Meeting
Doubletree San Diego Downtown
1646 Front Street
San Diego, CA 92101
619-239-6800/916-263-2300

AGENDA

LEGISLATIVE & REGULATORY COMMITTEE
Chair – Fran Burton, Public Member
Vice Chair – Stephen Casagrande, DDS
Steve Afriat, Public Member
John Bettinger, DDS
Luis Dominicis, DDS
Huong Le, DDS
Suzanne McCormick, DDS
Steve Morrow, DDS

CALL TO ORDER

ROLL CALL AND ESTABLISHMENT OF QUORUM

LEG 1 – Approval of the November 4, 2010 Legislative and Regulatory Committee Meeting Minutes

LEG 2 – 2011 Tentative Legislative Calendar – Information Only

LEG 3 – Discussion and Possible Action on the Following Legislation:
- AB 28 (Huber) – State agencies: repeals
- AB 127 (Logue) - Regulations: effective date
- SB 100 (Price) – Healing Arts
- SB 103 (Liu) - State government: meetings: teleconferencing
- Other legislation impacting the Board that staff becomes aware of between the time the meeting notice is posted and the Board meeting.

LEG 4 – Update on Pending Regulatory Packages
A. Disciplinary Guidelines *(California Code of Regulations, Title 16, Section 1018)*
B. Retroactive Fingerprinting *(California Code of Regulations, Title 16, Sections 1007,1008 and 1017.2)*
C. 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)*
D. Minimum Standards for Infection Control *(California Code of Regulations, Title 16, Section 1005)*
E. Consumer Protection Enforcement Initiative *(California Code of Regulations, Title 16, Sections 1018.05 and 1020)*

LEG 5 – Prospective Legislative Proposals
(A) Discussion and Possible Action to Recommend Statutory Amendments to Business and Professions Code Section 651 Regarding Advertising of Specialty Licensure

(B) Request for proposals - Stakeholders Are Encouraged to Submit Proposals in Writing to the Board Before or During the Meeting for Possible Consideration by the Board at a Future Meeting

PUBLIC COMMENT

ADJOURNMENT

Public comments will be taken on agenda items at the time the specific item is raised. The Committee 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 Committee Chair. For verification of the meeting, call (916) 263-2300 or access the Board's Web Site at **www.dbc.ca.gov**. The meeting facilities are accessible to individuals with physical disabilities. Please make any request for accommodations to Richard DeCuir at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, no later than one week prior to the day of the meeting.

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER, GOVERNOR

DENTAL BOARD OF CALIFORNIA
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LEGISLATIVE AND REGULATORY COMMITTEE MEETING MINUTES
Thursday, November 4, 2010
El Segundo, CA
DRAFT Meeting Minutes

Members Present:
Fran Burton, Public Member, Chair
Steven Afriat, Public Member
Luis Dominicis, DDS
Huong Le, DDS
Suzanne McCormick, DDS
Steven Morrow, DDS

Members Absent:
Stephen Casagrande, DDS, Vice Chair

Staff Present:
Richard DeCuir, Executive Officer
Denise Johnson, Assistant Executive Officer
Donna Kantner, Licensing & Examination Unit Manager
Lori Reis, Complaint & Compliance Manager
Kim A. Trefry, Enforcement Chief
Jocelyn Campos, Enforcement Coordinator
Karen Fischer, Licensing Analyst
Sarah Wallace, Legislation and Regulations Analyst
Linda Byers, Executive Assistant
Kristy Schieldge, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Ms. Burton, chair called the meeting to order at 10:56am. Roll was called and a quorum was established.

LEG 1 – Approval of the May 5, 2010 Legislative and Regulatory Committee Meeting Minutes
M/S/C (Dominicis/Morrow)to approve the May 5, 2010 Legislative and Regulatory meeting minutes. The motion passed unanimously with 1 abstention.

LEG 2 – 2011 Tentative Legislative Calendar – Information Only
The 2011 Tentative Legislative Calendar was not available. Staff will notify the Board once the calendar is available.

LEG 3 – End of 2-Year Legislative Session Summary
Sarah Wallace, Legislative and Regulatory Analyst provided a summary of the Legislation affecting the Board in the past 2 year session. AB 1524 Hayashi (Chapter 442) is currently being sponsored by the Dental Board of California regarding Examination Requirements in Dentistry.

The bills signed by the Governor:

AB 171 Jones (Chapter 418, Statutes of 2009)

DENTAL SERVICES: CREDIT

AB 171, sponsored by the Western Center on Law and Poverty, prohibits a dentist, or an employee of a dentist, from arranging for credit extended from a third party for a patient without providing a written notice and a written treatment plan. This bill prohibits the dentist, or dentist's employees, from arranging for credit while a patient has been administered or is under the influence of general anesthesia, conscious sedation, or nitrous oxide. The bill also prohibits a dentist, or employee, from charging for treatment not yet provided or for costs not yet incurred to a third party creditor without providing the patient with information regarding the treatment and services that are to be rendered and ensure that the patient receives the treatment plan. Dentists are required to refund the creditor any payment for any treatment that has not been rendered within 15 business days of the patient's request. A person who willfully violates the provisions of this bill is subject to specified civil liability. Because a willful violation of these requirements would be a crime, the bill imposes a state-mandated local program. This bill provides that no reimbursement is required by this act for a specified reason.

AB 403 Fuller (Chapter 104, Statutes of 2009)

DENTAL HYGIENISTS: EXAMINATION AND LICENSURE

AB 403, sponsored by the California Dental Hygienists Association, provides that satisfactory performance on the state clinical examination, or satisfactory completion of the dental hygiene examination given by the Western Regional Examining Board or any other clinical dental hygiene examination approved by the Dental Hygiene Committee of California satisfies the clinical examination requirement for licensure as a dental hygienist. The bill also provides that satisfactory completion of the National Dental Hygiene Board examination satisfies the national testing examination requirement for licensure as a dental hygienist.

AB 583 Hayashi (Chapter 436, Statutes of 2010)

HEALTH CARE PRACTITIONERS: DISCLOSURE OF EDUCATION

AB 583, co-sponsored by the California Medical Association and the California Society of Plastic Surgeons, requires health care practitioners to disclose the type of license and the highest level of academic degree he or she holds either in a prominent display in their office or in writing, in a specified format given to a patient on his or her initial office visit. The bill requires a physician and surgeon, and an osteopathic physician and surgeon, who are certified in a medical specialty, to also disclose, in either of those manners the name of the certifying board or association. The bill exempts specified health care practitioners, including persons working in certain licensed laboratories and health care facilities from these requirements.

AB 667 Block (Chapter 119, Statutes of 2009)

TOPICAL FLUORIDE: APPLICATION

AB 667, sponsored by the California Dental Association, specifies that services that are provided to elementary or postsecondary pupils specifically include fluoride varnish in the topical applications that may be used and allow application by any person, including a dental assistant. The bill also permits any person, including a dental assistant, to apply topical fluoride, including fluoride varnish, to the teeth of a person being served in a public health setting or program that is created or administered by a state or local governmental entity, as specified. It requires, with respect to services to which the bill applies, that they be provided in accordance with a prescription and protocol issued and established by a physician or dentist.

AB 1116 Carter (Chapter 509, Statutes of 2009)

COSMETIC SURGERY

AB 1116, sponsored by the author, enacted the Donda West Law, which prohibits the performance of an elective cosmetic surgery procedure on a patient unless, within 30 days prior to the procedure, the patient has received an appropriate physical examination and has received written clearance for

the procedure from, a licensed physician and surgeon, a certified nurse practitioner, or a licensed physician assistant, as specified, or, as applied to an elective facial cosmetic surgery procedure, a licensed dentist or licensed physician and surgeon. The bill requires the physical examination to include the taking of an appropriate medical history, to be confirmed on the day of the procedure. The bill provides that a violation of these provisions would not constitute a crime.

AB 1524 Hayashi (Chapter 446, Statutes of 2010)

DENTISTRY: EXAMINATION REQUIREMENTS

AB 1524, sponsored by the Dental Board of California, abolishes the clinical and written examination administered by the Dental Board of California board and replaces that examination with a portfolio examination of an applicant's competence to enter the practice of dentistry. The portfolio examination is conducted while the applicant is enrolled in a dental school program at a California board-approved dental school. The bill requires this examination to utilize uniform standards of clinical experiences and competencies, as approved by the board. At the end of that dental school program, the bill requires the passage of a final assessment of the applicant's portfolio, subject to certification by his or her dean and payment of a $350 fee. The Board is required to adopt regulations to implement the portfolio examination before it may be conducted. The Board is required to provide specified notice on its Internet Web site and to the Legislature and the Legislative Counsel when the regulations have been adopted. The Board is required to oversee the portfolio examination and final assessment process, and to biennially review each dental school with regard to the standardization of the portfolio examination. The bill specifies examination standards. The Board is required to review the examination to ensure compliance with certain requirements applicable to all board examinations under the department's jurisdiction by December 1, 2016. The bill provides that the examination shall cease to be an option for applicants if the Board determines the examination fails to meet those requirements. The bill requires the board to submit its review and certification or determination to the Legislature and the department, by December 1, 2016.

AB 1659 Huber (Chapter 666, Statutes of 2010)

STATE GOVERNMENT: AGENCY REPEALS

AB 1659, sponsored by the author, creates the Joint Sunset Review Committee to identify and eliminate waste, duplication, and inefficiency in government agencies and to conduct a comprehensive analysis of every "eligible agency," as defined, to determine if the agency is still necessary and cost effective. The bill defines an "eligible agency" as an entity of state government, however denominated, for which a date for repeal has been established by statute on or after January 1, 2011. The bill requires each eligible agency scheduled for repeal to submit a report to the committee containing specified information. The bill requires the committee to take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed, and requires that an eligible agency be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the agency. The bill specifies the composition of the committee, to be appointed by the Senate Committee on Rules and the Speaker of the Assembly, and certain aspects of its operating procedure.

AB 2130 Huber (Chapter 670, Statutes of 2010)

PROFESSIONS AND VOCATIONS: SUNSET REVIEW

AB 2130, sponsored by the author, abolishes the Joint Committee on Boards, Commissions, and Consumer Protection and makes other conforming changes. The bill requires the Joint Sunset Review Committee to review all eligible agencies, as specified. The bill requires the committee to evaluate and make a report on whether an agency should be terminated or its functions revised or consolidated. The bill requires that the report shall be available to the public and the Legislature and imposes a sunset date of January 1, 2013, on the State Race Track Leasing Commission, the Capitol Area Committee, the Continuing Care Advisory Committee, and the California Recreational Trails Committee. The bill provides that its provisions would not become operative unless AB 1659 of the 2009-10 Regular Session is enacted and establishes the Joint Sunset Review Committee.

Kristy Schliedge, Legal Counsel, reiterated that if the Board fails it's Sunset Review, it will be abolished. Unlike years before, when if it failed it became a "Bureau", now, it requires a Bill to be authored in order to reinstate the Board.

AB 2699 Bass (Chapter 270, Statutes of 2010)
HEALING ARTS: LICENSURE EXEMPTION

AB 2699, sponsored by the author, provides an exemption, until January 1, 2014, from the licensure and regulation requirements for a health care practitioner, licensed or certified in good standing in another state or states, who offers or provides health care services for which they are licensed or certified through a sponsored event, as defined, (1) to uninsured or underinsured persons, (2) on a short-term voluntary basis, (3) in association with a sponsoring entity that registers with the applicable healing arts board, and provides specified information to the county health department of the county in which the health care services will be provided, and (4) without charge to the recipient or a 3rd party on behalf of the recipient, as specified. The bill also requires an exempt health care practitioner to obtain prior authorization to provide these services from the applicable licensing board, and to satisfy other specified requirements, including payment of a fee as determined by the applicable licensing board. The bill requires the applicable licensing board to notify the sponsoring entity, of the sponsored event whether the board approves or denies a request for authorization to provide these services within 20 days of receipt of the request. The bill prohibits a contract of liability insurance issued, amended, or renewed on or after January 1, 2011, from excluding coverage of these practitioners or a sponsoring entity for providing care under these provisions.

SB 294 Negrete McLeod (Chapter 695, Statutes of 2010)
PROFESSIONS AND VOCATIONS: REGULATIONS

SB 294, sponsored by the author, specifies that the provisions relating to the California Board of Occupational Therapy become inoperative and be repealed on January 1, 2014, and the provisions concerning the Physician Assistant Committee of the Medical Board of California become inoperative and be repealed on January 1, 2013. The bill specifies that the provisions related to the Medical Board of California, the State Board of Optometry, and the Respiratory Care Board of California are repealed on January 1, 2014. The bill specifies that the provisions related to the Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board and the Board of Psychology are repealed on January 1, 2014. The bill specifies that the provisions related to the Acupuncture Board and the Board of Behavioral Sciences are repealed on January 1, 2013. The bill specifies that the provisions related to the Board of Registered Nursing are repealed on January 1, 2012. The bill specifies that the provisions related to the Naturopathic Medicine Committee within the Osteopathic Medical Board of California are repealed on January 1, 2014. The bill specifies that the provisions relating to the California Board of Accountancy, the California Architects Board, the Landscape Architects Technical Committee, Professional Fiduciaries Bureau, the Board for Professional Engineers and Land Surveyors, and the State Board of Guide Dogs for the Blind are inoperative and repealed on January 1, 2012. The bill authorizes the California Architects Board to implement an intern development program until July 1, 2012. This bill specifies that the provisions related to the Department of Pesticide Regulation a Structural Pest Control Board are inoperative and repealed on January 1, 2015. The bill specifies that the provisions related to the Contractors' State License Board are repealed on January 1, 2012. The bill specifies that the provisions related to the Board of Barbering and Cosmetology are repealed on January 1, 2014. The bill specifies that the provisions related to the Court Reporters Board of California are repealed on January 1, 2013. The bill specifies that the provisions related to the State Athletic Commission are repealed on January 1, 2012. The bill specifies that the California Private Postsecondary Education Act of 2009 is repealed on January 1, 2015.

SB 442 Ducheny (Chapter 502, Statutes of 2010)
CLINIC CORPORATION: LICENSING

SB 442, co-sponsored by the California Family Health Council, the California Primary Care Association, and the Planned Parenthood Affiliates of California, defines a "clinic corporation" as a

nonprofit organization that operates one or more primary care clinics or mobile health care units. This bill allows a clinic corporation, on behalf of an eligible primary care clinic, to submit an affiliate clinic application, to license a primary care clinic or a mobile health care unit as an affiliate clinic if certain conditions are met. The bill designates the clinic corporation as the administrative headquarters for specified purposes for all of the affiliated clinics operated by that clinic corporation and allows the clinic corporation to submit a single report of change and a single payment for all clinic license renewal fees that are due within the same license renewal month for all of the primary care clinics operated by the clinic corporation.

SB 599 Negrete McLeod (Chapter 642, Statutes of 2009)
WORKFORCE DEVELOPMENT

SB 599, sponsored by the author, requires the successor agency to the former Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs to transmit any available data regarding school performance it receives from any schools under its jurisdiction to the California Postsecondary Education Commission. This bill, for purposes of disbursing economic recovery funds recently made available as part of the American Recovery and Reinvestment Act of 2009 to workforce development programs, authorizes local workforce investment boards to work directly with institutions of higher education and other training providers approved by state or federal agencies, including private postsecondary institutions that participate in certain federal student financial aid programs, to quickly design education and training to fit the needs of the job seekers and employers they are serving. The bill requires, for purposes of the California Workforce Investment Act and any laws governing workforce development programs provided for under the federal American Recovery and Reinvestment Act of 2009, that entrance into a registered apprenticeship program is to be considered placement into a job. Existing law creates the California Dental Corps Loan Repayment Program of 2002 in the Dental Board of California, and transferred $3,000,000 from the State Dentistry Fund to the Dentally Underserved Account of that fund for 3 specified fiscal years, through the 2005-06 fiscal year for purposes of the program. The program assists dentists who practice in an underserved area with loan repayment pursuant to an agreement between the board and the dentist, as specified. This bill requires the board, on or after July 1, 2010, to extend the program and distribute the money remaining in the account until July 1, 2012.

SB 630 Steinberg (Chapter 604, Statues of 2009)
HEALTH CARE COVERAGE: CLEFT PALATE RECONSTRUCTIVE SURGERY: DENTAL AND ORTHODONTIC SERVICES

SB 630, sponsored by the California Society of Plastic Surgeons, defines reconstructive surgery, as of July 1, 2010, to include medically necessary dental or orthodontic services that are an integral part of reconstructive surgery for cleft palate procedures. Because a willful violation of this provision by a health care service plan would be a crime, the bill imposed a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill provides that no reimbursement is required by this act for a specified reason.

SB 700 Negrete McLeod (Chapter 505, Statutes of 2010)
HEALING ARTS: PEER REVIEW

SB 700, sponsored by the author, defines the term "peer review" for purposes of those provisions. This bill requires specified persons to file an "805" report with a licensing board within 15 days after a peer review body makes a decision or recommendation regarding the disciplinary action to be taken against a licentiate of that board based on the peer review body's determination, following formal investigation, that the licentiate may have engaged in various acts, including incompetence, substance abuse, excessive prescribing or furnishing of controlled substances, or sexual misconduct, among other things. The bill authorizes the board to inspect and copy certain documents in the record of that investigation. This bill requires the board to maintain the "805" report electronically. The bill specifies that the boards have the authority to also inspect, as permitted by other applicable law, any certified copy of medical records in the record of the disciplinary

proceeding. Under this bill, if a court finds, in a final judgment, that the peer review resulting in the "805" report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board is required to include that finding in the licensee's central file.

SB 1172 Negrete McLeod (Chapter 517, Statutes of 2010)
REGULATORY BOARDS: DIVERSION PROGRAMS

SB 1172, sponsored by the author, specifies individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs are required to keep records and documents related to the treatment and rehabilitation for three years. The bill also specifies that the records and documents are required to be kept confidential and are not subject to discovery or subpoena unless otherwise expressly provided by law. This bill requires a healing arts board to order a licensee to cease practice if the licensee tests positive for any prohibited substance under the terms of the licensee's probation or diversion program. The bill authorizes a healing art board to adopt regulations authorizing it to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation, as specified. The provisions of this bill do not affect the Board of Registered Nursing.

The enrolled Bills:

Bill Number	Author	Final Status	Chapter Number	Statute Year	Page Number
AB 171	Jones	Sign	418	2009	1
AB 403	Fuller	Sign	104	2009	1
AB 583	Hayashi	Sign	436	2010	1
AB 667	Block	Sign	119	2009	2
AB 745	Coto	Veto			----
AB 1116	Carter	Sign	509	2009	2
AB 1235	Hayashi	Veto			----
AB 1524	Hayashi	Sign	446	2010	3
AB 1570	Salas	Veto			----
AB 1659	Huber	Sign	666	2010	3
AB 2130	Huber	Sign	670	2010	4
AB 2699	Bass	Sign	270	2010	4
SB 294	Negrete McLeod	Sign	695	2010	5
SB 442	Ducheny	Sign	502	2010	6
SB 599	Negrete McLeod	Sign	642	2009	6
SB 630	Steinberg	Sign	604	2009	7
SB 674	Negrete McLeod	Veto			----
SB 700	Negrete McLeod	Sign	505	2010	7
SB 1172	Negrete McLeod	Sign	517	2010	8

LEG 4 – Update on Pending Regulatory Packages

Sarah Wallace, Legislative and Regulatory Analyst gave an update of the pending regulatory packages.

A. Disciplinary Guidelines *(California Code of Regulations, Title 16, Section 1018)*

During the September 16, 2010 meeting, the Board adopted the amendments to the Disciplinary Guidelines to incorporate the Board's response to comments as specified in the November 9, 2009 meeting minutes. Staff prepared the re-submittal documents and delivered them to the Department of Consumer Affairs on October 12, 2010 for the Director's review. The package was returned to the Board on October 25, 2010. Staff will deliver the re-submittal documents to OAL on October 28, 2010. OAL will have 30 working day to review the final rulemaking file. If the package is approved, OAL will file it with the Secretary of State and the regulations will become effective 30 days after filing

B. Retroactive Fingerprinting *(California Code of Regulations, Title 16, Section 1007,1008 and 1017.2)*

Board staff prepared the final rulemaking file to be submitted to the Office of Administrative Law (OAL). The rulemaking file was delivered to the Department of Consumer Affairs for the Director's review on July 9, 2010. The file is currently being reviewed by the State and Consumer Services Agency Secretary. Once Agency and DCA complete the review of the final rulemaking, staff will submit the file to OAL. Once submitted, OAL will have 30 working days to either approve or disapprove the Retroactive Fingerprinting rulemaking file. If the package is approved, OAL will file it with the Secretary of State and the regulations will become effective 30 days after filing.

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

At the September 16, 2010 meeting, the Board reviewed the comments received during the 45-day comment period. The Board voted to accept modified text and directed staff to notice the modified text 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. The comments will be addressed by the full board on November 4, 2010.

D. Infection Control *(California Code of regulations, Title 16, Section 1005)*

At the July 26, 2010 Board meeting, the board directed staff to initiate the formal rulemaking process. The proposed regulatory language was noticed on the Board's web site and mailed to interested parties on August 26, 2010. The 45-day public comment period began on August 27, 2010 and ended on October 11, 2010. The regulatory hearing was held on October 11, 2010. Comments were received from the Dental Hygiene Committee of California, the California Dental Association, the California Association of Dental Assisting Teachers, the Dental Assisting Alliance, OSHA Review Incorporated, and Dr. Earl Johnson. The comments will be addressed by the full board on November 4, 2010.

LEG 5 – Request for Prospective Legislative Proposals

There were no requests made.

LEG 6 – Regulatory Priorities for 2011

Sarah Wallace, Legislative and Regulatory Analyst, presented the pending regulatory items to the Board and asked them to prioritize them. The Board discussed them and ultimately came to an agreement.

M/S/C (Burton/Le) to prioritize the pending regulatory items as:

1. Consumer Protection Enforcement Initiative (CPEI) Proposed Changes (SB 1111)
2. New Regulations to Implement the Portfolio Examination
3. Uniform Standards Regarding Substance-Abusing Healing Arts Licensees Proposed Changes (SB 1441)
4. Revise Current Regulations for Use of Conscious Sedation, Use of Oral Conscious Sedation for Pediatrics Patients, and Use of Oral Conscious Sedation for Adult Patients
5. Teaching Methodology Regulations
6. New Regulations for Elective Facial Cosmetic Surgery Permit
7. Licensure Exemption for Out-of-State Healthcare Providers for a Short-Term, Voluntary Basis (AB 2699)
8. Minimum Standards for Infection Control (Required by Statute to review this regulation annually)
9. Mobile Dental Clinics

PUBLIC COMMENT

There was no public comment

ADJOURNMENT

The committee adjourned at 11:25 a.m.

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MEMORANDUM

DATE	February 11, 2011
TO	Legislative and Regulatory Committee Dental Board of California
FROM	Sarah Wallace, Legislative and Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item LEG 2:** 2011 Tentative Legislative Calendar – Information Only

The 2011 Tentative Legislative Calendar is enclosed for informational purposes.

TENTATIVE STATE LEGISLATIVE CALENDAR 2011

First Year of 11-12 Biennial Session

January 1, 2011	Statutes take effect
January 3	Legislature reconvenes
January 10	Budget must be submitted by Governor
January 17	Martin Luther King, Jr. Day
January 21	**Last day to submit bill requests to the Office of Legislative Counsel**
February 18	**Last day for bills to be introduced**
February 21	Presidents' Day observed
March 28	Cesar Chavez Day observed
April 14	Spring Recess begins at end of this day's session
April 25	Legislature reconvenes from Spring Recess
May 6	**Last day for policy committees to hear and report to fiscal committees fiscal bills introduced in their house**
May 13	**Last day for policy committees to hear and report to the floor non-fiscal bills introduced in their house**
May 20	Last day for policy committees to meet prior to June 6
May 27	**Last day for fiscal committees to hear and report to the floor bills introduced in their house. Last day for fiscal committees to meet prior to June6**
May 30	Memorial Day observed
May 31 - June 3	Floor session only. No committee may meet for any purpose
June 3	**Last day to pass bills out of house of origin**
June 6	Committee meetings may resume
June 15	Budget Bill must be passed by midnight
July 4	Independence Day observed
July 8	**Last day for policy committees to meet and report bills.**
July 15	Summer Recess begins at the end of this day's session, provided Budget Bill has been enacted.
August 15	Legislature reconvenes from Summer Recess
August 26	**Last day for fiscal committees to meet and report bills to the Floor**
August 26 - September 9	Floor session only. No committees, other than conference committees and Rules Committee, may meet for any pupose.
September 2	**Last day to amend bills on the Floor**
September 5	**Labor Day Observed**
September 9	**Last day for each house to pass bills. Interim Study Recess begins at end of this day's sssion.**
October 9	**Last day for Governor to sign or veto bills passed by the Legislature on or before September 9 and in the Governor's posession after September 9.**
January 1, 2012	Statutes take effect
January 4, 2012	Legislature reconvenes.

DENTAL BOARD OF CALIFORNIA
2011 PROPOSED LEGISLATION SUMMARY
FEBRUARY 24-25, 2011 BOARD MEETING

ASSEMBLY BILLS								
MEASURE	**AUTHOR**	**TOPIC**	**CURRENT TEXT VERSION**	**INTRODUCED**	**LAST AMENDED**	**STATUS**	**LOCATION**	**BOARD POSITION**
AB 28	Huber	State agencies: repeal	Introduced 12/6/2010	12/6/2010	12/6/2010	12/7/2010 - From printer. May be heard in committee Jan. 6.	12/6/2010 - Assembly Print	
AB 127	Logue	Regulations: effective date	Introduced 1/11/2011	1/11/2011	1/11/2011	1/12/2011 - From printer. May be hear in committee February 12.	1/11/2011 - Assembly Print	
SENATE BILLS								
SB 100	Price	Healing arts	Introduced 1/11/2011	1/11/2011	1/11/2011	1/20/2011 - Referred to Committee on Business, Professions, & Economic Development and	1/20/2011 - Senate Business, Professions, and Economic Development Committee	
SB 103	Liu	State government: meetings: teleconference	Introduced 1/12/2011	1/12/2011	1/12/2011	2/10/2011 - Referred to Committee on Rules	2/10/2011 - Senate Rules Committee	

DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
FEBRUARY 24-25, 2011 BOARD MEETING

BILL NUMBER:	AB 28		
AUTHOR:	Assemblymember Alyson Huber	**SPONSOR:**	
VERSION:	Introduced 12/6/2010	**INTRODUCED:**	12/6/2010
BILL STATUS:	12/7/2010 From printer. May be heard in committee January 6.	**BILL LOCATION:**	Assembly print.
SUBJECT:	State agencies: repeal	**RELATED BILLS:**	

SUMMARY

Last legislative session, a new law was enacted that established the Joint Sunset Review Committee. The Committee was established for the purposes of identifying and eliminating waste, duplication, and inefficiency in state agencies and conducting comprehensive analysis of every "eligible agency' to determine if the agency is still necessary and cost effective. Existing law defines an "eligible agency" as an entity of state government for which a repeal date has been established by statute on or after January 1, 2011. The Committee is required to take public testimony and evaluate the agency prior to the agency's repeal date. The agency is required to be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the agency.

This bill declares the intent of the Legislature to enact legislation that establishes repeal dates for various agencies for the purpose of increasing the number of agencies that meet the definition of an "eligible agency" that would be eligible for review by the Joint Sunset Review Committee.

ANALYSIS

This is currently a spot bill. Staff anticipates that repeal dates for various state agencies will be added to this bill. As introduced, this bill does not directly affect the repeal date of the Dental Board of California (Board). The repeal date for the Board is currently set for January 1, 2012 as established by Assembly Bill 1545 (Chapter 38, Statutes of 2008). The Board is scheduled to be reviewed by the Joint Sunset Review Committee in March 2011.

REGISTERED SUPPORT/OPPOSITION

Support: None on file as of 2/8/2011.
Opposition: None on file as of 2/8/2011.

BOARD POSITION

The Committee may take action to support, oppose, watch, or remain neutral regarding Assembly Bill 28.

ASSEMBLY BILL No. 28

Introduced by Assembly Member Huber

December 6, 2010

An act relating to state agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 28, as introduced, Huber. State agencies: repeal.

Existing law establishes the Joint Sunset Review Committee for the purpose of identifying and eliminating waste, duplication, and inefficiency in government agencies and conducting a comprehensive analysis of every "eligible agency," as defined, to determine if the agency is still necessary and cost effective. Existing law defines an "eligible agency" as an entity of state government, however denominated, for which a date for repeal has been established by statute on or after January 1, 2011. Existing law requires the committee to take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed, and requires that an eligible agency be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the agency.

This bill would declare the intent of the Legislature to enact legislation that would establish repeal dates for various agencies for the purpose of increasing the number of agencies that meet the definition of an "eligible agency" that is eligible for review by the Joint Sunset Review Committee.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to enact legislation that would establish repeal dates for various agencies for the purpose of increasing the number of agencies that are an "eligible agency" subject to review by the Joint Sunset Review Committee as that term is defined in subdivision (a) of Section 9147.7 of the Government Code.

O

DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
FEBRUARY 24-25, 2011 BOARD MEETING

BILL NUMBER:	AB 127		
AUTHOR:	Assemblymember Dan Logue	**SPONSOR:**	
VERSION:	Introduced 1/11/2011	**INTRODUCED:**	1/11/2011
BILL STATUS:	1/12/2011 – From printer. May be heard in committee February 12.	**BILL LOCATION:**	1/11/2011 – Assembly print.
SUBJECT:	Regulations: effective date	**RELATED BILLS:**	

SUMMARY

The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Under existing law, a regulation or an order of repeal of a regulation becomes effective on the 30th day after it is filed with the Secretary of State, except as provided.

This bill would require that a regulation or an order of repeal of a regulation become effective, instead, on January 1 next following a 90-day period after the date it is filed with the Secretary of State, except as provided.

ANALYSIS

The current rulemaking process takes an estimated 12 to 18 months to complete. The Dental Board of California's (Board) highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees and disciplining licensees for violating of the Dental Practice Act (DPA); monitoring licensees whose license has been placed on probation; and managing the Diversion Program for licensees, whose practice may be impaired due to abuse of dangerous drugs or alcohol. The Board is authorized to adopt reasonably necessary rules to implement, interpret, or make specific the statutes that govern the Dental Practice Act. Extending the time before a regulation may become effective could unnecessarily endanger the public.

REGISTERED SUPPORT/OPPOSITION

Support: None on file as of 2/8/2011.
Opposition: None on file as of 2/8/2011.

BOARD POSITION

The Committee may take action to support, oppose, watch, or remain neutral regarding Assembly Bill 127.

ASSEMBLY BILL No. 127

Introduced by Assembly Member Logue

January 11, 2011

An act to amend Section 11343.4 of the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 127, as introduced, Logue. Regulations: effective date.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Under existing law, a regulation or an order of repeal of a regulation becomes effective on the 30th day after it is filed with the Secretary of State, except as provided.

This bill would require that a regulation or an order of repeal of a regulation become effective, instead, on January 1 next following a 90-day period after the date it is filed with the Secretary of State, except as provided.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11343.4 of the Government Code is amended to read:

11343.4. A regulation or an order of repeal required to be filed with the Secretary of State shall become effective on ~~the 30th day~~

January 1 next following a 90-day period after the date of filing unless:

(a) Otherwise specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by the statute.

(b) A later date is prescribed by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(c) The agency makes a written request to the office demonstrating good cause for an earlier effective date, in which case the office may prescribe an earlier date.

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DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
FEBRUARY 24-25, 2011 BOARD MEETING

BILL NUMBER:	SB 100		
AUTHOR:	Senator Curren Price	**SPONSOR:**	
VERSION:	Introduced 1/11/2011	**INTRODUCED:**	1/11/2011
BILL STATUS:	1/20/2011 – Referred to Committee on Business, Professions, and Economic Development and Committee on Health	**BILL LOCATION:**	1/20/2011 – Senate Business, Professions, and Economic Development Committee
SUBJECT:	Healing arts	**RELATED BILLS:**	

SUMMARY

This bill requires licensed chiropractors, dentists, physicians, podiatric doctors, osteopaths, nurses, vocational nurses, psychologists, optometrists, physician assistants, and naturopaths to indicate the appropriate degree or certification after their names in all advertising. This bill requires the Medical Board of California to adopt regulations by January 1, 2013 that specify the level of physician availability needed in clinics that use lasers for elective cosmetic procedures. The bill also requires the Medical Board to post an "easy to understand" fact sheet on cosmetic procedures to educate the public on the risks.

This bill adds language that would allow surgical clinics owned in whole or in part by a physician to be eligible for licensure by the Department of Public Health, which has not been allowed since the 2007 court decision of Capen v. Shrewry. This bill deems any Medical Board accredited outpatient setting as licensed by the Department of Public Health, subjecting the outpatient setting to license fee requirements of the Department of Public Health. The bill requires the Department of Public Health to notify the Medical Board of any action taken against an outpatient setting. If the Department of Public Health's action is a revocation or suspension, that action shall immediately void the accreditation of the outpatient setting with the Medical Board. The Medical Board will be required to provide the Department of Public Health an updated list of accredited outpatient settings every three months. This bill includes facilities that offer in vitro fertilization within the definition of "outpatient setting" and authorizes the Medical Board to adopt regulations it deems necessary for standards of in vitro fertilization clinics. This bill requires the Medical Board to notify the public of all accredited outpatient settings. This bill makes several changes to the outpatient setting accreditation procedure requirements. This bill states that the Legislature intends for the Department of Public

Health to include an inspection of a hospital's peer review process as a part of its normal hospital inspections conducted under existing regulations.

ANALYSIS

As introduced, this bill requires dentists to use the designation of "DDS" or "DMD" immediately following the dentist's name in all advertising. This bill may affect the Dental Board's Oral and Maxillofacial Surgery (OMS) permit holders who own or are employed by ambulatory surgical centers. OMS permit holders are licensed by the Medical Board of California as physicians and surgeons and have a dental license in another state. This bill deems Medical Board accredited ambulatory surgical centers as licensed by the Department of Public Health and are subject to its license fees. This bill only affects the permit for the actual site and not the permit-holder.

REGISTERED SUPPORT/OPPOSITION

Support: None on file as of 2/11/2011.
Opposition: None on file as of 2/11/2011.

BOARD POSITION

The Committee may take action to support, oppose, watch, or remain neutral regarding Senate Bill 100.

SENATE BILL No. 100

Introduced by Senator Price

January 11, 2011

An act to amend Sections 651 and 2023.5 of, and to add Section 2027.5 to, the Business and Professions Code, and to amend Sections 1204, 1248, 1248.15, 1248.2, 1248.25, 1248.35, 1248.5, 1248.55, and 1279 of, and to add Sections 1204.6, 1204.7, and 1204.8 to, the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 100, as introduced, Price. Healing arts.

(1) Existing law provides for the licensure and regulation of various healing arts practitioners and requires certain of those practitioners to use particular designations following their names in specified instances. Existing law provides that it is unlawful for healing arts licensees to disseminate or cause to be disseminated any form of public communication, as defined, containing a false, fraudulent, misleading, or deceptive statement, claim, or image to induce the rendering of services or the furnishing of products relating to a professional practice or business for which they are licensed. Existing law authorizes advertising by these healing arts licensees to include certain general information. A violation of these provisions is a misdemeanor.

This bill would require certain healing arts licensees to include in advertisements, as defined, certain words or designations following their names indicating the particular educational degree they hold or healing art they practice, as specified. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field,

to review issues and problems relating to the use of laser or intense light pulse devices for elective cosmetic procedures by their respective licensees.

This bill would require the board to adopt regulations by January 1, 2013, regarding the appropriate level of physician availability needed within clinics or other settings using certain laser or intense pulse light devices for elective cosmetic procedures.

(3) Existing law requires the Medical Board of California to post on the Internet specified information regarding licensed physicians and surgeons.

This bill would require the board to post on its Internet Web site an easy-to-understand factsheet to educate the public about cosmetic surgery and procedures, as specified.

(4) Under existing law, the State Department of Public Health licenses and regulates clinics, including surgical clinics, as defined.

This bill would expand the definition of surgical clinics to include a surgical clinic owned in whole or in part by a physician and would require, until the department promulgates regulations for the licensing of surgical clinics, the department to use specified federal conditions of coverage.

(5) Existing law requires the Medical Board of California, as successor to the Division of Licensing of the Medical Board of California, to adopt standards for accreditation of outpatient settings, as defined, and, in approving accreditation agencies to perform this accreditation, to ensure that the certification program shall, at a minimum, include standards for specified aspects of the settings' operations. Existing law makes a willful violation of these and other provisions relating to outpatient settings a crime.

This bill would include, among those specified aspects, the submission for approval by an accreditation agency at the time of accreditation, a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery. The bill would also modify the definition of "outpatient setting" to include facilities that offer in vitro fertilization, as defined. By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law also requires the Medical Board of California to obtain and maintain a list of all accredited, certified, and licensed outpatient settings, and to notify the public, upon inquiry, whether a setting is

accredited, certified, or licensed, or whether the setting's accreditation, certification, or license has been revoked.

This bill would require the board, absent inquiry, to notify the public whether a setting is accredited, certified, or licensed, or the setting's accreditation, certification, or license has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency. The bill would also require the board to give the department notice of all accredited, certified, and licensed outpatient settings and to notify the department of accreditation standards, changes in the accreditation of an outpatient setting, or any disciplinary actions and corrective actions.

Existing law requires accreditation of an outpatient setting to be denied if the setting does not meet specified standards. Existing law authorizes an outpatient setting to reapply for accreditation at any time after receiving notification of the denial.

This bill would require the accreditation agency to immediately report to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied. Because a willful violation of this requirement would be a crime, the bill would impose a state-mandated local program. The bill would also apply the denial of accreditation, or the revocation or suspension of accreditation by one accrediting agency to all other accrediting agencies.

Existing law authorizes the Medical Board of California, as successor to the Division of Medical Quality of the Medical Board of California, or an accreditation agency to, upon reasonable prior notice and presentation of proper identification, enter and inspect any accredited outpatient setting to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of the specified law.

This bill would delete the notice and identification requirements. The bill would require that every outpatient setting that is accredited be inspected by the accreditation agency, as specified, and would specify that it may also be inspected by the board and the department, as specified. The bill would require the board to ensure that accreditation agencies inspect outpatient settings.

Existing law authorizes the Medical Board of California to terminate approval of an accreditation agency if the agency is not meeting the criteria set by the board.

This bill would also authorize the board to issue a citation to the agency, including an administrative fine, in accordance with a specified system established by the board.

Existing law authorizes the Medical Board of California to evaluate the performance of an approved accreditation agency no less than every 3 years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

This bill would make that evaluation mandatory.

(5) Existing law provides for the licensure and regulation of health facilities by the State Department of Public Health and requires the department to periodically inspect those facilities, as specified.

This bill would state the intent of the Legislature that the department, as part of its periodic inspections of acute care hospitals, inspect the peer review process utilized by those hospitals.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) It is the intent of the Legislature to clarify Capen v. Shewry (2007) 147 Cal.App.4th 680 and give surgical clinics that are owned in whole or in part by physicians the option to be licensed by the State Department of Public Health. It is further the intent of the Legislature that this clarification shall not be construed to permit the practice of medicine in prohibition of the corporate practice of medicine pursuant to Section 2400 of the Business and Professions Code.

(b) It is the further intent of the Legislature to continue to give physicians and surgeons the option to obtain licensure from the State Department of Public Health if they are operating surgical clinics, or an accreditation through an accrediting agency approved by the Medical Board of California pursuant to Chapter 1.3

(commencing with Section 1248) of Division 2 of the Health and Safety Code.

(c) It is the further intent of the Legislature, in order to ensure patient protection, to provide appropriate oversight by the State Department of Public Health, and to allow corrective action to be taken against an outpatient setting if there is reason to believe that there may be risk to patient safety, health, or welfare, that an outpatient setting shall be deemed licensed by the State Department of Public Health.

SEC. 2. Section 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure

being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same "before" and "after" results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices," or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional

services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a

diplomate of a national specialty board recognized by the American Dental Association.

(ii) A dentist licensed under Chapter 4 (commencing with Section 1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall condition membership or credentialing of its members upon all of the following:

(I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school and is beyond the dental degree at a graduate or postgraduate level.

(II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.

(III) Successful completion of oral and written examinations based on psychometric principles.

(iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.

(iv) A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he

or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or

association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical

Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) (1) Advertising by the following licensees shall include the designations as follows:

(A) Advertising by a chiropractor licensed under Chapter 2 (commencing with Section 1000) shall include the designation "DC" or the word "chiropractor" immediately following the chiropractor's name.

(B) Advertising by a dentist licensed under Chapter 4 (commencing with Section 1600) shall include the designation "DDS" or "DMD" immediately following the dentist's name.

(C) Advertising by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) shall include the designation "MD" immediately following the physician and surgeon's name.

(D) Advertising by an osteopathic physician and surgeon certified under Article 21 (commencing with Section 2450) shall include the designation "DO" immediately following the osteopathic physician and surgeon's name.

(E) Advertising by a podiatrist certified under Article 22 (commencing with Section 2460) of Chapter 5 shall include the designation "DPM" immediately following the podiatrist's name.

(F) Advertising by a registered nurse licensed under Chapter 6 (commencing with Section 2700) shall include the designation "RN" immediately following the registered nurse's name.

(G) Advertising by a licensed vocational nurse under Chapter 6.5 (commencing with Section 2840) shall include the designation "LVN" immediately following the licensed vocational nurse's name.

(H) Advertising by a psychologist licensed under Chapter 6.6 (commencing with Section 2900) shall include the designation "Ph.D." immediately following the psychologist's name.

(I) Advertising by an optometrist licensed under Chapter 7 (commencing with Section 3000) shall include the applicable designation or word described in Section 3098 immediately following the optometrist's name.

(J) Advertising by a physician assistant licensed under Chapter 7.7 (commencing with Section 3500) shall include the designation "PA" immediately following the physician assistant's name.

(K) Advertising by a naturopathic doctor licensed under Chapter 8.2 (commencing with Section 3610) shall include the designation "ND" immediately following the naturopathic doctor's name. However, if the naturopathic doctor uses the term or designation

"Dr." in an advertisement, he or she shall further identify himself by any of the terms listed in Section 3661.

(2) For purposes of this subdivision, "advertisement" includes communication by means of mail, television, radio, motion picture, newspaper, book, directory, Internet, or other electronic communication.

(3) Advertisements do not include any of the following:

(A) A medical directory released by a health care service plan or a health insurer.

(B) A billing statement from a health care practitioner to a patient.

(C) An appointment reminder from a health care practitioner to a patient.

(4) This subdivision shall not apply until January 1, 2013, to any advertisement that is published annually and prior to July 1, 2012.

(5) This subdivision shall not apply to any advertisement or business card disseminated by a health care service plan that is subject to the requirements of Section 1367.26 of the Health and Safety Code.

~~(i)~~

(j) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not,

by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

~~(j)~~

(k) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

~~(k)~~

(l) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars ($10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

SEC. 3. Section 2023.5 of the Business and Professions Code is amended to read:

2023.5. (a) The board, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, shall review issues and problems surrounding the use of laser or intense light pulse devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants. The review shall include, but need not be limited to, all of the following:

(1) The appropriate level of physician supervision needed.

(2) The appropriate level of training to ensure competency.

(3) Guidelines for standardized procedures and protocols that address, at a minimum, all of the following:

(A) Patient selection.

(B) Patient education, instruction, and informed consent.

(C) Use of topical agents.

(D) Procedures to be followed in the event of complications or side effects from the treatment.

(E) Procedures governing emergency and urgent care situations.

(b) On or before January 1, 2009, the board and the Board of Registered Nursing shall promulgate regulations to implement changes determined to be necessary with regard to the use of laser or intense pulse light devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants.

(c) On or before January 1, 2013, the board shall adopt regulations regarding the appropriate level of physician availability needed within clinics or other settings using laser or intense pulse light devices for elective cosmetic procedures. However, these regulations shall not apply to laser or intense pulse light devices approved by the federal Food and Drug Administration for over-the-counter use by a health care practitioner or by an unlicensed person on himself or herself.

(d) Nothing in this section shall be construed to modify the prohibition against the unlicensed practice of medicine.

SEC. 4. Section 2027.5 is added to the Business and Professions Code, to read:

2027.5. The board shall post on its Internet Web site an easy-to-understand factsheet to educate the public about cosmetic surgery and procedures, including their risks. Included with the factsheet shall be a comprehensive list of questions for patients to ask their physician and surgeon regarding cosmetic surgery.

SEC. 5. Section 1204 of the Health and Safety Code is amended to read:

1204. Clinics eligible for licensure pursuant to this chapter are primary care clinics and specialty clinics.

(a) (1) Only the following defined classes of primary care clinics shall be eligible for licensure:

(A) A "community clinic" means a clinic operated by a tax-exempt nonprofit corporation that is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods,

or services. In a community clinic, any charges to the patient shall be based on the patient's ability to pay, utilizing a sliding fee scale. No corporation other than a nonprofit corporation, exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a community clinic; provided, that the licensee of any community clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a community clinic.

(B) A "free clinic" means a clinic operated by a tax-exempt, nonprofit corporation supported in whole or in part by voluntary donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a free clinic there shall be no charges directly to the patient for services rendered or for drugs, medicines, appliances, or apparatuses furnished. No corporation other than a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a free clinic; provided, that the licensee of any free clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a free clinic.

(2) Nothing in this subdivision shall prohibit a community clinic or a free clinic from providing services to patients whose services are reimbursed by third-party payers, or from entering into managed care contracts for services provided to private or public health plan subscribers, as long as the clinic meets the requirements identified in subparagraphs (A) and (B). For purposes of this subdivision, any payments made to a community clinic by a third-party payer, including, but not limited to, a health care service plan, shall not constitute a charge to the patient. This paragraph is a clarification of existing law.

(b) The following types of specialty clinics shall be eligible for licensure as specialty clinics pursuant to this chapter:

(1) A "surgical clinic" means a clinic that is not part of a hospital and that provides ambulatory surgical care for patients who remain

less than 24 hours, *including a surgical clinic that is owned in whole or in part by a physician.* A surgical clinic does not include any place or establishment owned or leased and operated as a clinic or office by one or more physicians or dentists in individual or group practice, regardless of the name used publicly to identify the place or establishment, provided, however, that physicians or dentists may, at their option, apply for licensure.

(2) A "chronic dialysis clinic" means a clinic that provides less than 24-hour care for the treatment of patients with end-stage renal disease, including renal dialysis services.

(3) A "rehabilitation clinic" means a clinic that, in addition to providing medical services directly, also provides physical rehabilitation services for patients who remain less than 24 hours. Rehabilitation clinics shall provide at least two of the following rehabilitation services: physical therapy, occupational therapy, social, speech pathology, and audiology services. A rehabilitation clinic does not include the offices of a private physician in individual or group practice.

(4) An "alternative birth center" means a clinic that is not part of a hospital and that provides comprehensive perinatal services and delivery care to pregnant women who remain less than 24 hours at the facility.

SEC. 6. Section 1204.6 is added to the Health and Safety Code, to read:

1204.6. Until the department promulgates regulations for the licensing of surgical clinics, the department shall use the federal conditions of coverage, as set forth in Subpart C of Part 416 of Title 42 of the Code of Federal Regulations, as those conditions existed on May 18, 2009, as the basis for licensure for facilities licensed pursuant to paragraph (1) of subdivision (b) of Section 1204.

SEC. 7. Section 1204.7 is added to the Health and Safety Code, to read:

1204.7. (a) An outpatient setting, as defined in subdivision (a) of Section 1248, that is accredited by an accrediting agency approved by the Medical Board of California, shall be deemed licensed by the department and shall be required to pay an annual licensing fee as established pursuant to Section 1266.

(b) The department shall have only that authority over outpatient settings specified in Chapter 3.1 (commencing with Section 1248).

(c) The department shall notify the Medical Board of California of any action taken against an outpatient setting and, if licensure of an outpatient setting is revoked or suspended by the department for any reason, then accreditation shall be void by operation of law. Notwithstanding Sections 1241 and 131071, proceedings shall not be required to void the accreditation of an outpatient setting under these circumstances.

SEC. 8. Section 1204.8 is added to the Health and Safety Code, to read:

1204.8. A clinic licensed pursuant to paragraph (1) of subdivision (b) of Section 1204 or an outpatient setting, as defined in Section 1248, shall be subject to the reporting requirements in Section 1279.1 and the penalties for failure to report specified in Section 1280.4.

SEC. 9. Section 1248 of the Health and Safety Code is amended to read:

1248. For purposes of this chapter, the following definitions shall apply:

(a) "Division" means the *Medical Board of California. All references in this chapter to the division, the* Division of Licensing of the Medical Board of ~~California.~~ *California, or the Division of Medical Quality shall be deemed to refer to the Medical Board of California pursuant to Section 2002 of the Business and Professions Code.*

~~(b) "Division of Medical Quality" means the Division of Medical Quality of the Medical Board of California.~~

~~(c)~~

(b) (1) "Outpatient setting" means any facility, clinic, unlicensed clinic, center, office, or other setting that is not part of a general acute care facility, as defined in Section 1250, and where anesthesia, except local anesthesia or peripheral nerve blocks, or both, is used in compliance with the community standard of practice, in doses that, when administered have the probability of placing a patient at risk for loss of the patient's life-preserving protective reflexes.

(2) "Outpatient setting" also means facilities that offer in vitro fertilization, as defined in subdivision (b) of Section 1374.55.

(3) "Outpatient setting" does not include, among other settings, any setting where anxiolytics and analgesics are administered, when done so in compliance with the community standard of

practice, in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes.

~~(d)~~

(c) "Accreditation agency" means a public or private organization that is approved to issue certificates of accreditation to outpatient settings by the ~~division~~ *board* pursuant to Sections 1248.15 and 1248.4.

SEC. 10. Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The ~~division~~ *board* shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:

(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.

(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.

(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.

(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:

(i) Have a written transfer agreement with a local accredited or licensed acute care hospital, approved by the facility's medical staff.

(ii) Permit surgery only by a licensee who has admitting privileges at a local accredited or licensed acute care hospital, with the exception that licensees who may be precluded from having admitting privileges by their professional classification or other administrative limitations, shall have a written transfer agreement with licensees who have admitting privileges at local accredited or licensed acute care hospitals.

~~(iii) Submit~~

(D) The outpatient setting shall submit for approval by an accrediting agency a detailed procedural plan for handling medical

emergencies that shall be reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.

(E) The outpatient setting shall submit for approval by an accreditation agency at the time accreditation of a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm or to govern emergency and urgent care situations.

~~(D)~~

(F) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body, the Health Care Financing Administration, the State Department of ~~Health Services,~~ *Public Health,* and the appropriate licensing authority.

(3) The outpatient setting shall permit surgery by a dentist acting within his or her scope of practice under Chapter 4 (commencing with Section 1600) of *Division 2 of* the Business and Professions Code or physician and surgeon, osteopathic physician and surgeon, or podiatrist acting within his or her scope of practice under Chapter 5 (commencing with Section 2000) of *Division 2 of* the Business and Professions Code or the Osteopathic Initiative Act. The outpatient setting may, in its discretion, permit anesthesia service by a certified registered nurse anesthetist acting within his or her scope of practice under Article 7 (commencing with Section 2825) of Chapter 6 of *Division 2 of* the Business and Professions Code.

(4) Outpatient settings shall have a system for maintaining clinical records.

(5) Outpatient settings shall have a system for patient care and monitoring procedures.

(6) (A) Outpatient settings shall have a system for quality assessment and improvement.

(B) Members of the medical staff and other practitioners who are granted clinical privileges shall be professionally qualified and

appropriately credentialed for the performance of privileges granted. The outpatient setting shall grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting.

(C) Clinical privileges shall be periodically reappraised by the outpatient setting. The scope of procedures performed in the outpatient setting shall be periodically reviewed and amended as appropriate.

(7) Outpatient settings regulated by this chapter that have multiple service locations governed by the same standards may elect to have all service sites surveyed on any accreditation survey. Organizations that do not elect to have all sites surveyed shall have a sample, not to exceed 20 percent of all service sites, surveyed. The actual sample size shall be determined by the ~~division.~~ *board.* The accreditation agency shall determine the location of the sites to be surveyed. Outpatient settings that have five or fewer sites shall have at least one site surveyed. When an organization that elects to have a sample of sites surveyed is approved for accreditation, all of the organizations' sites shall be automatically accredited.

(8) Outpatient settings shall post the certificate of accreditation in a location readily visible to patients and staff.

(9) Outpatient settings shall post the name and telephone number of the accrediting agency with instructions on the submission of complaints in a location readily visible to patients and staff.

(10) Outpatient settings shall have a written discharge criteria.

(b) Outpatient settings shall have a minimum of two staff persons on the premises, one of whom shall either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care. Transfer to an unlicensed setting of a patient who does not meet the discharge criteria adopted pursuant to paragraph (10) of subdivision (a) shall constitute unprofessional conduct.

(c) An accreditation agency may include additional standards in its determination to accredit outpatient settings if these are approved by the ~~division~~ *board* to protect the public health and safety.

(d) No accreditation standard adopted or approved by the ~~division,~~ *board,* and no standard included in any certification

program of any accreditation agency approved by the ~~division,~~ *board,* shall serve to limit the ability of any allied health care practitioner to provide services within his or her full scope of practice. Notwithstanding this or any other provision of law, each outpatient setting may limit the privileges, or determine the privileges, within the appropriate scope of practice, that will be afforded to physicians and allied health care practitioners who practice at the facility, in accordance with credentialing standards established by the outpatient setting in compliance with this chapter. Privileges may not be arbitrarily restricted based on category of licensure.

(e) The board shall adopt standards that it deems necessary for outpatient settings that offer in vitro fertilization.

SEC. 11. Section 1248.2 of the Health and Safety Code is amended to read:

1248.2. (a) Any outpatient setting may apply to an accreditation agency for a certificate of accreditation. Accreditation shall be issued by the accreditation agency solely on the basis of compliance with its standards as approved by the ~~division~~ *board* under this chapter.

(b) The board shall submit to the State Department of Public Health the information required pursuant to paragraph (3) of subdivision (d) within 10 days of the accreditation of an outpatient setting.

~~(b)~~

(c) The ~~division~~ *board* shall obtain and maintain a list of all accredited, certified, and licensed outpatient settings from the information provided by the accreditation, certification, and licensing agencies approved by the ~~division,~~ *board,* and shall notify the ~~public, upon inquiry,~~ *public* whether a setting is accredited, certified, or licensed, or ~~whether~~ the setting's accreditation, certification, or license has been ~~revoked.~~ *revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency. The board shall provide notice to the department within 10 days when an outpatient setting's accreditation has been revoked, suspended, or placed on probation. The department shall notify the board within 10 days if the license of a surgical clinic, as defined in paragraph (1) of subdivision (b) of Section 1204, has been revoked.*

(d) (1) The board shall, on or before February 1, 2012, provide the department with a list of all outpatient settings that are accredited as of January 1, 2012.

(2) Beginning April 1, 2012, the board shall provide the department with an updated list of outpatient settings every three months.

(3) The list of outpatient settings shall include all of the following:

(A) Name, address, and telephone number of the owner.

(B) Name and address of the facility.

(C) The name and telephone number of the accreditation agency.

(D) The effective and expiration dates of the accreditation.

(e) The board shall provide the department with all accreditation standards approved by the board, free of charge. Accreditation standards provided to the department by the board shall not be subject to public disclosure provisions of the California Public Records Act (Chapter 3.5 commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 12. Section 1248.25 of the Health and Safety Code is amended to read:

1248.25. If an outpatient setting does not meet the standards approved by the ~~division,~~ *board,* accreditation shall be denied by the accreditation agency, which shall provide the outpatient setting notification of the reasons for the denial. An outpatient setting may reapply for accreditation at any time after receiving notification of the denial. *The accreditation agency shall immediately report to the board if the outpatient setting's certificate for accreditation has been denied.*

SEC. 13. Section 1248.35 of the Health and Safety Code is amended to read:

1248.35. *(a) Every outpatient setting which is accredited shall be inspected by the accreditation agency and may also be inspected by the Medical Board of California. The Medical Board of California shall ensure that accreditation agencies inspect outpatient settings.*

(b) Unless otherwise specified, the following requirements apply to inspections described in subdivision (a).

(1) The frequency of inspection shall depend upon the type and complexity of the outpatient setting to be inspected.

(2) Inspections shall be conducted no less often than once every three years by the accreditation agency and as often as necessary by the Medical Board of California to ensure the quality of care provided.

~~(a)~~

(3) The ~~Division of~~ Medical ~~Quality~~ *Board of California* or ~~an~~ *the* accreditation agency ~~may, upon reasonable prior notice and presentation of proper identification,~~ *may* enter and inspect any outpatient setting that is accredited by an accreditation agency at any reasonable time to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of this chapter.

~~(b)~~

(c) If an accreditation agency determines, as a result of its inspection, that an outpatient setting is not in compliance with the standards under which it was approved, the accreditation agency may do any of the following:

(1) Issue a reprimand.

(2) Place the outpatient setting on probation, during which time the setting shall successfully institute and complete a plan of correction, approved by the ~~division~~ *board* or the accreditation agency, to correct the deficiencies.

(3) Suspend or revoke the outpatient setting's certification of accreditation.

~~(c)~~

(d) Except as is otherwise provided in this subdivision, before suspending or revoking a certificate of accreditation under this chapter, the accreditation agency shall provide the outpatient setting with notice of any deficiencies and *the outpatient setting shall agree with the accreditation agency on a plan of correction that shall give the outpatient setting* reasonable time to supply information demonstrating compliance with the standards of the accreditation agency in compliance with this chapter, as well as the opportunity for a hearing on the matter upon the request of the outpatient center. *During that allotted time, a list of deficiencies and the plan of correction shall be conspicuously posted in a clinic location accessible to public view. Within 10 days after the adoption of the plan of correction, the accrediting agency shall send a list of deficiencies and the corrective action to be taken to both the board and the department.* The accreditation agency may

immediately suspend the certificate of accreditation before providing notice and an opportunity to be heard, but only when failure to take the action may result in imminent danger to the health of an individual. In such cases, the accreditation agency shall provide subsequent notice and an opportunity to be heard.

~~(d) If the division determines that deficiencies found during an inspection suggests that the accreditation agency does not comply with the standards approved by the division, the division may conduct inspections, as described in this section, of other settings accredited by the accreditation agency to determine if the agency is accrediting settings in accordance with Section 1248.15.~~

(e) The department may enter and inspect an outpatient setting upon receipt of a notice of corrective action or if it has reason to believe that there may be risk to patient safety, health, or welfare.

(f) An outpatient setting that does not comply with a corrective action may be required by the department to pay similar penalties assessed against a surgical clinic licensed pursuant to paragraph (1) of subdivision (b) of Section 1204, and may have its license suspended or revoked pursuant to Article 5 (commencing with Section 1240) of Chapter 1.

(g) If the licensee disputes a determination by the department regarding the alleged deficiency, the alleged failure to correct a deficiency, the reasonableness of the proposed deadline for correction, or the amount of the penalty, the licensee may, within 10 days, request a hearing pursuant to Section 130171. Penalties shall be paid when appeals have been exhausted and the department's position has been upheld.

(h) Moneys collected by the department as a result of administrative penalties imposed under this section shall be deposited into the Internal Departmental Quality Improvement Account established pursuant to Section 1280.15. These moneys shall be tracked and available for expenditure, upon appropriation by the Legislature, to support internal departmental quality improvement activities.

(i) If, after an inspection authorized pursuant to this section, the department finds a violation of a standard of the facility's accrediting agency or any provision of this chapter or the regulations promulgated thereunder, or if the facility fails to pay a licensing fee or an administrative penalty assessed under this chapter, the department may take any action pursuant to Article

5 (commencing with Section 1240) of Chapter 1 and shall report the violation to the board and may recommend that accreditation be revoked, canceled, or not renewed.

(j) Reports on the results of any inspection conducted pursuant to subdivision (a) shall be kept on file with the board or the accreditation agency along with the plan of correction and the outpatient setting comments. The inspection report may include a recommendation for reinspection. All inspection reports, lists of deficiencies, and plans of correction shall be public records open to public inspection.

(k) The accreditation agency shall, within 24 hours, report to the board if the outpatient setting has been issued a reprimand or if the outpatient setting's certification of accreditation has been suspended or revoked or if the outpatient setting has been placed on probation.

(l) If one accrediting agency denies accreditation, or revokes or suspends the accreditation of an outpatient setting, this action shall apply to all other accrediting agencies.

SEC. 14. Section 1248.5 of the Health and Safety Code is amended to read:

1248.5. The ~~division may~~ *board shall* evaluate the performance of an approved accreditation agency no less than every three years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the ~~division.~~ *board.*

SEC. 15. Section 1248.55 of the Health and Safety Code is amended to read:

1248.55. (a) If the accreditation agency is not meeting the criteria set by the ~~division,~~ *board,* the ~~division~~ *board* may terminate approval of the ~~agency.~~ *agency or may issue a citation to the agency in accordance with the system established under subdivision (b).*

(b) The board may establish, by regulation, a system for the issuance of a citation to an accreditation agency that is not meeting the criteria set by the board. This system shall meet the requirements of Section 125.9 of the Business and Professions Code, as applicable, except that both of the following shall apply:

(1) Failure of an agency to pay an administrative fine assessed pursuant to a citation within 30 days of the date of the assessment,

unless the citation is being appealed, may result in the board's termination of approval of the agency. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the renewal fee established under Section 1248.6. Approval of an agency shall not be renewed without payment of the renewal fee and fine.

(2) Administrative fines collected pursuant to the system shall be deposited in the Outpatient Setting Fund of the Medical Board of California established under Section 1248.6.

~~(b)~~

(c) Before terminating approval of an accreditation agency, the ~~division~~ *board* shall provide the accreditation agency with notice of any deficiencies and reasonable time to supply information demonstrating compliance with the requirements of this chapter, as well as the opportunity for a hearing on the matter in compliance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(c)~~

(d) (1) If approval of the accreditation agency is terminated by the ~~division,~~ *board,* outpatient settings accredited by that agency shall be notified by the ~~division~~ *board* and, except as provided in paragraph (2), shall be authorized to continue to operate for a period of 12 months in order to seek accreditation through an approved accreditation agency, unless the time is extended by the ~~division~~ *board* for good cause.

(2) The ~~division~~ *board* may require that an outpatient setting, that has been accredited by an accreditation agency whose approval has been terminated by the ~~division,~~ *board,* cease operations immediately ~~in~~ *if* the ~~event that the division~~ *board* is in possession of information indicating that continued operation poses an imminent risk of harm to the health of an individual. In such cases, the ~~division~~ *board* shall provide the outpatient setting with notice of its action, the reason underlying it, and a subsequent opportunity for a hearing on the matter. An outpatient setting that is ordered to cease operations under this paragraph may reapply for a certificate of accreditation after six months and shall notify the ~~division~~ *board* promptly of its reapplication. *The board shall notify the department of any action taken pursuant to this section for an outpatient setting. Upon cancellation, revocation, nonrenewal, or any other loss of accreditation, an outpatient setting's license shall*

be void by operation of law. Notwithstanding Sections 1241 and 131071, no proceedings shall be required to void the license of an outpatient setting.

SEC. 16. Section 1279 of the Health and Safety Code is amended to read:

1279. (a) Every health facility for which a license or special permit has been issued shall be periodically inspected by the department, or by another governmental entity under contract with the department. The frequency of inspections shall vary, depending upon the type and complexity of the health facility or special service to be inspected, unless otherwise specified by state or federal law or regulation. The inspection shall include participation by the California Medical Association consistent with the manner in which it participated in inspections, as provided in Section 1282 prior to September 15, 1992.

(b) Except as provided in subdivision (c), inspections shall be conducted no less than once every two years and as often as necessary to ensure the quality of care being provided.

(c) For a health facility specified in subdivision (a), (b), or (f) of Section 1250, inspections shall be conducted no less than once every three years, and as often as necessary to ensure the quality of care being provided.

(d) During the inspection, the representative or representatives shall offer such advice and assistance to the health facility as they deem appropriate.

(e) For acute care hospitals of 100 beds or more, the inspection team shall include at least a physician, registered nurse, and persons experienced in hospital administration and sanitary inspections. During the inspection, the team shall offer advice and assistance to the hospital as it deems appropriate.

(f) The department shall ensure that a periodic inspection conducted pursuant to this section is not announced in advance of the date of inspection. An inspection may be conducted jointly with inspections by entities specified in Section 1282. However, if the department conducts an inspection jointly with an entity specified in Section 1282 that provides notice in advance of the periodic inspection, the department shall conduct an additional periodic inspection that is not announced or noticed to the health facility.

(g) Notwithstanding any other ~~provision~~ of law, the department shall inspect for compliance with provisions of state law and regulations during a state periodic inspection or at the same time as a federal periodic inspection, including, but not limited to, an inspection required under this section. If the department inspects for compliance with state law and regulations at the same time as a federal periodic inspection, the inspection shall be done consistent with the guidance of the federal Centers for Medicare and Medicaid Services for the federal portion of the inspection.

(h) The department shall emphasize consistency across the state and *in* its district offices when conducting licensing and certification surveys and complaint investigations, including the selection of state or federal enforcement remedies in accordance with Section 1423. The department may issue federal deficiencies and recommend federal enforcement actions in those circumstances where they provide more rigorous enforcement action.

(i) It is the intent of the Legislature that the department, pursuant to its existing regulations, inspect the peer review process utilized by acute care hospitals as part of its periodic inspection of those hospitals pursuant to this section.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
FEBRUARY 24-25, 2011 BOARD MEETING

BILL NUMBER:	SB 103		
AUTHOR:	Senator Carol Liu	**SPONSOR:**	
VERSION:	Introduced 1/12/2011	**INTRODUCED:**	1/12/2011
BILL STATUS:	2/10/2011- Referred to Committee on Rules	**BILL LOCATION:**	2/10/2011- Senate Rules Committee
SUBJECT:	State government meetings: teleconferencing	**RELATED BILLS:**	

SUMMARY

Existing law authorizes a state body to conduct teleconference meetings. This bill would urge a state body, to the extent legally or financially possible, to conduct teleconference meetings.

ANALYSIS

The Dental Board of California (Board) holds at least 4 meetings each year. The Board is statutorily required to hold one meeting in San Francisco and one meeting Los Angeles each year. The Board currently holds teleconference meetings when legally and financially possible.

REGISTERED SUPPORT/OPPOSITION

Support: None on file as of 2/8/2011.
Opposition: None on file as of 2/8/2011.

BOARD POSITION

The Committee may take action to support, oppose, watch, or remain neutral regarding Senate Bill 103.

SENATE BILL No. 103

Introduced by Senator Liu

January 12, 2011

An act to amend Section 11123 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

SB 103, as introduced, Liu. State government: meetings: teleconferencing.

Existing law authorizes a state body to conduct teleconference meetings.

This bill would urge a state body, to the extent legally or financially possible, to conduct teleconference meetings.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) That teleconferencing is a green technology, allowing organizations to mitigate energy use by dramatically reducing the need to travel.

(b) By communicating over video or telephone, organizations can also substantially reduce their carbon footprint by reducing the need to travel via high-emission methods, such as flying or driving.

(c) Teleconferencing saves money by reducing the number of trips taken annually, and this monetary savings is multiplied by the cost of transportation to and from the airport, the flight, per

diem expenses, salary of time lost in traveling, and other incidental expenses of travel.

(d) The amount saved by teleconferencing greatly exceeds the minimal cost of investing and implementing teleconferencing solutions, such as the cost for new equipment, services, and training.

(e) Therefore it is the intent of the Legislature that state bodies, to the extent possible, conduct teleconference meetings in order to save the environment and save the state money.

SEC. 2. Section 11123 of the Government Code is amended to read:

11123. (a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(c) A state body shall, to the extent legally or financially possible, conduct teleconference meetings, subject to the requirements set out in subdivision (b).

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MEMORANDUM

DATE	February 11, 2011
TO	Legislative and Regulatory Committee Dental Board of California
FROM	Sarah Wallace, Legislative and Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item LEG 4:** Update on Pending Regulatory Packages: Disciplinary Guidelines *(California Code of Regulations, Title 16, Section 1018)*; Retroactive Fingerprinting *(California Code of Regulations, Title 16, Section 1007,1008 and 1017.2)*; 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);* Minimum Standards for Infection Control*(California Code of regulations, Title 16, Section 1005)*; and Consumer Protection Enforcement Initiative*(California Code of Regulations Title 16, Sections 1018.05 and 1020)*

Disciplinary Guidelines *(California Code of Regulations, Title 16, Section 1018)*:
The Office of Administrative Law approved the Dental Board's Disciplinary Guidelines rulemaking and filed it with the Secretary of State on December 14, 2010. The regulation became effective on January 13, 2011. A copy of the "Disciplinary Guidelines with Model Language, August 30, 2010" is available on the Board's web site at: http://www.dbc.ca.gov/formspubs/pub_dgml.pdf.

Retroactive Fingerprinting *(California Code of Regulations, Title 16, Sections 1007,1008 and 1017.2)*:
Since the November meeting, the rulemaking was signed by the State and Consumer Services Agency Secretary and the Director of the Department of Finance. The Director of the Department of Consumer Affairs granted the Board a 90 day extension to file the final rulemaking with the Office of Administrative Law because all signatures had not been obtained by the one-year rulemaking deadline on December 17, 2010. The rulemaking file was turned in to the Office of Administrative Law on January 28, 2011, and they will have 30 working days to either approve or disapprove the file. If the file is approved, it will be filed with the Secretary of State and the regulation will become effective 30 days later. Staff anticipates that the file will be approved and the regulation will become effective sometime in mid-April.

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)*:

Assembly Bill 2637 was passed by the Legislature and signed into law on September 28, 2008. The provisions of this bill relate to the allowable duties and settings for dental assistants, Registered Dental Assistants (RDA), Registered Dental Assistants in Extended Functions (RDAEF) and the two new permit categories for Orthodontic Assistant (OA) and Dental Sedation Assistant (DSA) become effective on January 1, 2010. AB 2637 included an expiration date on the Sections of law pertaining to educational program and course approvals, with the understanding that regulations would be pursued to clarify specific standards and criteria that these programs and course must meet to obtain Board approval to teach newly allowed duties and conform to the statutory changes.

The Board adopted proposed regulatory language at the 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 comment period. The comment period began on June 4, 2010 and ended on July 19, 2010. The regulatory hearing was held on July 19, 2010.

During the September 16, 2010 meeting, the Board reviewed the comments received during the 45-day comment period. The Board voted to accept modified text and directed staff to notice the modified text 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.

During the 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 and directed staff to notice the second modified text 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.

During the 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 and directed staff to notice the third modified text 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. The Board will discuss the comment received as well as the request for withdrawal during the full Board portion of the meeting on February 25, 2011.

Minimum Standards for Infection Control *(California Code of regulations, Title 16, Section 1005)*:

At the July 26, 2010 Board meeting, the board directed staff to initiate the formal rulemaking process. The proposed regulatory language was noticed on the Board's

web site and mailed to interested parties on August 26, 2010. The 45-day public comment period began on August 27, 2010 and ended on October 11, 2010. The regulatory hearing was held on October 11, 2010. Comments were received from the Dental Hygiene Committee of California, the California Dental Association, the California Association of Dental Assisting Teachers, the Dental Assisting Alliance, OSHA Review Incorporated, and Dr. Earl Johnson.

During the November 4, 2010 meeting, the Board reviewed the comments received during the 45-day comment period. The Board voted to accept modified text and directed staff to notice the modified text for 15-day public comment. The comment period began on November 16, 2010 and ended on December 1, 2010. Comments were received from Dr. Earl Johnson and the Dental Assisting Alliance.

During the December 14, 2010 meeting, the Board voted to reject the comments received during the 15-day public comment period and directed staff to complete the rulemaking process and file with the Office of Administrative Law. Staff is in the process of writing the final statement of reasons. Once approved by legal counsel, the final rulemaking file is required to be signed by the Director of the Department of Consumer Affairs, the Secretary of the State and Consumer Services Agency, and the Director of the Department of Finance. Staff anticipates this process to take 30 to 90 days. Once approval signatures are obtained, the rulemaking will be submitted to the Office of Administrative Law to be approved. 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 be effective 30 days later. The one-year deadline to submit the final rulemaking to the Office of Administrative Law is August 26, 2010.

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

During the November 5, 2010 meeting, the Board reviewed proposed regulatory amendments that would 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.

Staff worked with legal counsel to write the initial rulemaking documents including the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and the Economic and Fiscal Impact Statement. The initial rulemaking file was submitted to the Office of Administrative Law on February 7, 2011. The proposed action will be published on February 18, 2011. The 45-day public comment period will begin on February 18, 2011 and will end on April 4, 2011. The regulatory hearing is scheduled for April 4, 2011 at 10 a.m. in Sacramento at the Department of Consumer Affairs Hearing Room located at 2005 Evergreen Street, Sacramento, CA 95815.

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MEMORANDUM

DATE	February 15, 2011
TO	Legislative and Regulatory Committee Dental Board of California
FROM	Sarah Wallace, Legislative and Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item LEG 5(A):** Prospective Legislative Proposals: Discussion and Possible Action to Adopt Statutory Amendments to Business and Professions Code Section 651 Regarding Advertising of Specialty Licensure

The Dental Board of California (Board) has been involved in ongoing litigation concerning the constitutionality of Business and Professions Code Section 651(h)(5)(A) as it pertains to advertising.

In February 2001, Assembly Bill 1026 was introduced by Senator Oropeza and was sponsored by the California Dental Association (CDA). This bill was very similar to the Board's prior regulatory language that had been deemed unconstitutional in a previous lawsuit in 2000. This bill was enacted into law on September 23, 2002 and chaptered as California Business and Professions Code Section 651(h)(5)(A).

As a result of the enactment of AB 1026, a lawsuit was filed challenging the constitutionality of this law. The Board attempted to settle the case and to end the threat of any future litigation by pursuing statutory amendments. However, the Board was unsuccessful in finding an author to sponsor the legislation.

On October 15, 2010, the Honorable John Mendez, United States District Court Judge, ruled that section "651(h)(5)(A) does violate the First Amendment both on its face and in its application and must be invalidated." The Board is constitutionally obligated to appeal that decision, and the issue is currently on appeal in the Ninth Circuit Court of Appeals. In the meantime, the staff is again seeking an author to carry new language to repeal Business and Professions Code Section 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii).

Board Action Requested:
Staff requests that the Committee review the proposed statutory amendments and, if in agreement, recommend the language be forwarded to the full Board for approval and direct the Executive Officer to seek an author to introduce this language as an urgency measure during the 2011-2012 Legislative session to repeal Business and Professions Code Sections 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii).

PROPOSED LEGISLATIVE AMENDMENTS

California Business and Professions Code

§ 651. Dissemination of false or misleading information concerning professional services or products; Permissible advertising

(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents "before" and "after" views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any "before" and "after" views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a statement that the same "before" and "after" results may not occur for all patients.

(4) Relates to fees, other than a standard consultation fee or a range of fees for specific types of services, without fully and specifically disclosing all variables and other material factors.

(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

(c) Any price advertisement shall be exact, without the use of phrases, including, but not limited to, "as low as," "and up," "lowest prices," or words or phrases of similar import. Any advertisement that refers to services, or costs for services, and that uses words of comparison shall be based on verifiable data substantiating the comparison. Any person so advertising shall be prepared to provide information sufficient to establish the accuracy of that comparison. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discount, premiums, gifts, or any statements of a similar nature. In connection with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(d) Any person so licensed shall not compensate or give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity unless the fact of compensation is made known in that publicity.

(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

(h) Advertising by any person so licensed may include the following:

(1) A statement of the name of the practitioner.

(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

(3) A statement of office hours regularly maintained by the practitioner.

(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office.

(5) (A) A statement that the practitioner is certified by a private or public board or agency or a statement that the practitioner limits his or her practice to specific fields.

~~(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a diplomate of a national specialty board recognized by the American Dental Association.~~

~~(ii) A dentist licensed under Chapter 4 (commencing with Section 1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall condition membership or credentialing of its members upon all of the following:~~

~~(I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university-based dental school and is beyond the dental degree at a graduate or postgraduate level.~~

~~(II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.~~

~~(III) Successful completion of oral and written examinations based on psychometric principles.~~

~~(iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.~~

~~(iv)~~*(B)* A statement of certification by a practitioner licensed under Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

~~(B)~~*(C)* A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the Medical Board of California, for certifying medical doctors and other health care professionals that is based on the applicant's education, training, and experience.

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

~~(C)~~*(D)* A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association"

mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph, to be deposited in the State Treasury in the Podiatry Fund, pursuant to Section 2499. The fee shall not exceed the cost of administering this subparagraph.

(6) A statement that the practitioner provides services under a specified private or public insurance plan or health care plan.

(7) A statement of names of schools and postgraduate clinical training programs from which the practitioner has graduated, together with the degrees received.

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

(j) The Attorney General shall commence legal proceedings in the appropriate forum to enjoin advertisements disseminated or about to be disseminated in violation of this section and seek other appropriate relief to enforce this section. Notwithstanding any other provision of law, the costs of enforcing this section to the respective licensing boards or committees may be awarded against any licensee found to be in violation of any provision of this section. This shall not diminish the power of district attorneys, county counsels, or city attorneys pursuant to existing law to seek appropriate relief.

(k) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars ($10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

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MEMORANDUM

DATE	February 11, 2011
TO	Legislative and Regulatory Committee Dental Board of California
FROM	Sarah Wallace, Legislative and Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item LEG 5(B):** Prospective Legislative Proposals

Stakeholders are encouraged to submit proposals in writing to the Board before or during the meeting for possible consideration by the Board at a future meeting.