TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

FINAL STATEMENT OF REASONS

HEARING DATE: January 6, 2014

SUBJECT MATTER OF PROPOSED REGULATIONS: Portfolio Examination Requirements

UPDATED INFORMATION:
The Initial Statement of Reasons is included in the file. The information contained therein is accurate and is further updated as follows:

At its August 2013 meeting, the Dental Board of California (Board) approved proposed regulatory language relative to the Portfolio Examination Requirements and directed staff to initiate the rulemaking. Board staff filed the initial rulemaking documents with the Office of Administrative Law (OAL) on Tuesday, October 29th and the proposal was published in the California Regulatory Notice Register on Friday, November 8, 2013. The 45-day public comment period began on Friday, November 8, 2013 and ended on Monday, December 23, 2013. The Board held a regulatory hearing in Sacramento on Monday, January 6, 2014.

The Board received written comments from: (1) Bruce Sims; (2) the California Dental Association (CDA); (3) Steven W. Friedrichsen, DDS, Professor and Dean, College of Dental Medicine, Western University of Health Sciences; and (4) Avishai Sadan, DMD, Dean, Ostrow School of Dentistry, University of Southern California. Additionally, the Board received verbal testimony from Sharon Golightly, representing the California Dental Hygiene Association (CDHA), at the regulatory hearing.

At its February 27, 2014 meeting, the Board considered comments received during the 45-day public comment period and voted to modify the text in response to some of the comments. The Board directed staff to notice the modified text for 15-day public comment, which included the amendments discussed at the meeting. If after the 15-day public comment period no adverse comments were received, the Executive Officer was further authorized to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopted the proposed amendments as noticed in the modified text.

The Notice of Modified Text and Documents Added to the Rulemaking File, Modified Text, and documents added to the file were noticed on the Board's web site and mailed to interested parties on March 3, 2014. The 15-day public comment period began on March 4, 2014 and ended on March 18, 2014. The following documents were noticed as being added to the rulemaking file and were made available to the public:

1. "Application for Licensure to Practice Dentistry (WREB)" Form 33A-22W (Revised 11/06)

2. "Certification of Successful Completion of Remedial Education Requirements for Re-Examination Eligibility" (Form Rev. 1).

These documents are existing forms that have not been changed as a result of this proposal. Rather, these documents were cited in the text for clarification purposes and are included as documents relied upon.

The Board did not receive comments in response to the modified text. Since there were no comments received in response to the modified text, the Board adopted the final text as noticed in the modified text at its February 27, 2014 meeting.

LOCAL MANDATE:
A mandate is not imposed on local agencies or school districts.

BUSINESS IMPACT:
The Board has made the initial determination that the proposed regulation would not have a significant, statewide adverse economic impact directly affecting business, including the inability of California businesses to compete with businesses in other States.

The Board has determined that the following types of businesses may be affected by the proposal:

- Board-approved pre-doctoral dental schools located in California that offer the Board's portfolio examination; and,

- The Western Regional Examination Board (WREB)

Although the six (6) Board-approved pre-doctoral dental schools located in California that will offer the Board's portfolio examination may be impacted, the Board estimates that the economic impact would be minor and absorbable. The Board does not maintain data relating to the expenses incurred by the Board-approved dental schools to administer and oversee their respective dental programs. However, the Board anticipates that the economic impact on the Board-approved dental schools will be minor and absorbable because the portfolio examination has been designed and will be implemented to work in concert with the already established curriculum and competency testing currently being conducted within all of the schools. As a result, schools will incur minimal implementation costs to comply with this proposal's requirements.

The Board acknowledges that WREB may experience a slight decrease in the number of California candidates taking its examination. However, the Board does not anticipate this decrease to significantly impact revenue that WREB receives from its examination. Because the WREB examination is a recognized pathway to dental licensure in 35

states, the Board believes that a significant portion of its portfolio examination applicants will go on to take the WREB examination so that they may qualify for licensure in other states.

There were no modifications to the proposal that would warrant further update from the information provided in the Initial Statement of Reasons.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

OBJECTIONS/RECOMMENDATIONS/RESPONSES:

Comments Received During the 45-Day Public Comment Period:

The 45-day public comment period began on Friday, November 8, 2013 and ended on Monday, December 23, 2013. The Board held a regulatory hearing in Sacramento on Monday, January 6, 2014.

The Board received written comments from: (1) Bruce Sims; (2) the California Dental Association (CDA); (3) Steven W. Friedrichsen, DDS, Professor and Dean, College of Dental Medicine, Western University of Health Sciences; and (4) Avishai Sadan, DMD, Dean, Ostrow School of Dentistry, University of Southern California. Additionally, the Board received verbal testimony from Sharon Golightly, representing the California Dental Hygiene Association (CDHA), at the regulatory hearing.

Comments Received from Bruce Sims:

Summary of Comments:

Mr. Bruce Sims submitted an email commenting that the phrase "established standards of care" was used in the proposal, and yet consumers cannot find out what such standards are. Mr. Sims commented that he had an experience where a dentist's business manager falsely claimed that a procedure was required by such 'standards of care', and that if there is a document specifying such 'standards of care' for the common dental practices associated with cleaning, repair, and restoration, that document should be available for consumers to reference.

Mr. Sims also commented on the Board's regulatory action titled "Consumer Protection Enforcement Initiative" from 2011. Mr. Sims commented that he saw nothing in the rules and regulations that hold a dentist accountable for the behavior of employees though such accountability exists in law. He commented that dentists must be made aware of their responsibilities in regards to their employee's behavior and that the Board would seem to have that responsibility.

The Board voted unanimously to reject Mr. Sims comments. Legally, the established standards of care in dentistry are indefinable and cannot be found in textbooks. The *Journal of the American Dental Association* featured an article from Joseph P. Graskemper, DDS, JD, in October 2004 that touched on the standard of care in dentistry and how it has evolved. Dr. Graskemper explained that "the standard of care actually is found in the definition of negligence, which is said to have four elements, all of which must be met to allow negligence to be found in a malpractice lawsuit. Those four elements are as follows: that a duty of care was owed by the dentist to the patient; that the dentist violated the applicable standard of care; that the plaintiff suffered a compensable injury; and, that such injury was caused in fact and proximately caused by substandard conduct." Dr. Graskemper cites that a definition of the standard of care was best stated in *Blair v. Eblen* (461 S.W. 2d370, 370 (Ky 1970): "[A dentist is] under a duty to use that degree of care and skill which is expected of a reasonably competent [dentist] acting in the same or similar circumstances." Because the standard of care evolves due to court rulings, advances in dental research, continuing education, and the progression of the practice of dentistry, there is no possible way for the Board to define it as it relates to this proposal.

Mr. Sims second comment regarding the regulatory action titled "Consumer Protection Enforcement Initiative" is not relevant to this regulatory proposal, as this was a previous Board rulemaking that became effective in March 2012.

Comments Received from the California Dental Association:

The California Dental Association (CDA) submitted a letter to the Board in response to the Board's rulemaking proposal. The CDA commented that it appreciates the opportunity to provide comment on the proposed regulatory package to implement portfolio licensure in California and has been proud to work with the Board these last few years on what is being looked to across the nation as a milestone in the history of dental licensure examination.

The CDA commented that it has participated in many stakeholder meetings and discussions regarding the details of the portfolio process, and has appreciated the openness of the Dental Board and the six California dental schools to their thoughts and perspectives as these regulations and the accompanying manuals have been developed. The letter stated that the level of consensus that has been reached between all parties is remarkable given the complexity and unprecedented nature of the task. Because of that effort, the CDA had few broad policy concerns; however, the CDA addresses a few areas where the CDA feels additional clarification may be appropriate.

CDA Comment #1 - Section 1028(b)(6):

The CDA questioned if Section 1028 (b)(6) should say something like "proof that the applicant has passed the California Law and Ethics written examination," rather than simply "information as to whether the applicant has taken" the exam.

The Board voted unanimously to reject this comment. It is not necessary for the Board to obtain proof that an applicant has passed the California Law and Ethics written

examination as the Board receives the examination results directly from the vendor. Rather, it is important for staff to have information as to whether an applicant has taken the examination so that staff may determine if there is an existing applicant file or not because applicants may take the Law and Ethics exam well in advance of submitting a portfolio examination application. If there is not an existing file, staff would know to issue eligibility to an applicant and establish a file.

CDA Comment #2 - Section 1028(e):
The CDA commented that subsections (e)(1), (2), and (3) all use the word "examinee" to refer to the final submittal of the portfolio to the Board. It would seem to be more accurate to consistently use the word "applicant" here, since once they are submitting their completed portfolios to the Board they are no longer being "examined;" the Board's role is simply to verify completion of the portfolio requirements.

The Board voted unanimously to reject the use of the term "applicant"; however, the Board voted unanimously to modify the text to replace "examinee" with "candidate". The term "candidate" is synonymous with the terms "applicant" and "examinee" as a student participating in the portfolio examination pathway to licensure is always considered a "candidate" for licensure throughout the examination and application processes. Additionally, the Board voted unanimously to add a definition to clarify the meaning of "candidate".

The Board does not agree that the Board's role would be to simply verify completion of the portfolio requirements. Rather, the Board is charged with the responsibility of administering the portfolio examination, via cooperation with California dental schools, and is responsible for making the ultimate decision as to whether a candidate was assessed properly via the examination and has fulfilled the requirements for licensure.

CDA Comment #3 - Section 1028(e):
The CDA commented that the regulations are somewhat unclear about the respective timing and review process for the portfolio itself and the application for licensure. In discussions with board staff, CDA believed the intent is that the portfolio would be submitted and reviewed first, and once the portfolio was determined to be complete, the applicant would be notified and could then submit the licensure application. To make that process clearer in the regulations, CDA suggested the following amendments, commencing after the first paragraph of subsection (e):

> (e) Prior to submitting the "Application for Determination of Licensure Eligibility (Portfolio)", the Board shall have completed its review of the applicant's submitted portfolio and notified the applicant that he/she has met the requirements for Licensure by Portfolio Examination and is eligible to submit the application.
>
> (1) The earliest date upon which an ~~examinee~~ applicant may submit their portfolio for review by the board shall be within 90 days of anticipated graduation. The latest date upon which an ~~examinee~~ applicant may

submit their portfolio for review by the board shall be no more than 90 days after graduation.

(2) The ~~examinee~~ applicant shall arrange with the dean of his or her dental school for the school to submit the completed portfolio materials to the Board.

~~(3) The Board shall review the submitted portfolio materials to determine if it is complete and the examinee has met the requirements for Licensure by Portfolio Examination.~~

The Board voted unanimously to reject this comment. The Board would be notified of a candidate's readiness to have their portfolio examination reviewed once the Board receives the "Application for Determination of Licensure Eligibility (Portfolio)" Form 33A-22P (New 08/2013). The dental school is still responsible for submitting the candidate's completed portfolio materials to the Board. Once the Board reviews the "Application for Determination of Licensure Eligibility (Portfolio)" Form 33A-22P (New 08/2013) and determines that the candidate is eligible for licensure, the Board will subsequently send the candidate the "Application for Issuance of License Number and Registration of Place of Practice," (Rev. 11-07). The candidate would submit this form with the applicable initial licensure fee to the Board to be issued a license number. The Board does not believe it's necessary to add the term "anticipated" as it relates to graduation as it does not provide an added benefit or add substance to the proposed language.

CDA Comment #4 - Section 1032:

The CDA commented that the last sentence of this section states: "The student shall have the approval of his or her clinical faculty prior to beginning the portfolio examination process." The word "approval" implies that a dental school would have the authority to deny a student's request to participate in the portfolio process, thereby forcing him or her to take the WREB exam instead, which does not seem appropriate as a matter of policy. All methods of licensure examination in California are expected to be equivalent and equally available to applicants who meet the necessary requirements. The CDA suggested the following amendment:

> "The student shall notify ~~have the approval of~~ his or her clinical faculty prior to beginning the portfolio examination process."

The Board voted unanimously to reject this comment. The requirement for a student to seek approval prior to beginning the portfolio examination process was intended to ensure that a candidate was ready to begin clinical experiences on patients, thus ensuring patient safety. The Board understands that clinical experiences in dental schools typically begin at the end of the second year; however, seeking prior clinical faculty approval will allow for adequate patient protection in the event there is future reshuffling of curriculum sequencing and clinical experiences happen earlier. However, the Board did vote unanimously to modify the text to delete this provision from section 1032 and specify this requirement for each individual competency examination for the sake of clarity.

CDA Comment #5 - Section 1032.1
In reviewing the draft regulations in their entirety, the CDA found a number of instances in which the distinction between clinical experiences and competency examinations is not clear and could be confused. Throughout the draft there are references to "completion" or "successful completion" of clinical experiences, which implies that the procedures are completed entirely by the student. Clarifying the definitions here, including providing a definition of "competency examination," may help prevent confusion later on. Based on prior discussions, it seems to CDA that the clearest distinction is that clinical experiences can include faculty intervention, while competency examinations cannot. CDA suggested adding the following definition of "competency examination," along with amendments to the definition of "clinical experiences:"

> (b) "Clinical experiences" means ~~the~~ procedures, performed with or without faculty intervention, that the ~~examinee~~ applicant must complete to the satisfaction of his or her clinical faculty prior to submission of his or her portfolio examination application.
>
> (c) "Competency examination" means an examinee's final assessment in a portfolio examination competency, performed without faculty intervention and graded by competency examiners registered with the board.

The CDA also suggested that subsection (e) be deleted, since the term "independent performance" does not appear in the proposed regulations, and thus a definition is not needed.

The Board voted unanimously to accept this comment with the exception of replacing "applicant" with "candidate" for reasons previously specified.

CDA Comment #6 - Section 1032.2:
The CDA suggested several structural/grammatical amendments which they believe will clarify the level of information that needs to be provided to the Board in each applicant's portfolio:

> (a) Each ~~examinee~~ applicant shall complete at least the minimum number of clinical experiences in each of the competencies prior to submission of their portfolio to the Board. ~~Clinical experiences have been determined as a minimum number in order to provide an examinee with sufficient understanding, knowledge and skill level to reliably demonstrate competency.~~ All clinical experiences shall be performed on patients under the supervision of school faculty ~~and shall be included in the portfolio submitted to the Board~~. Clinical experiences shall be performed at the dental school clinic, or at an extramural dental facility or ~~a~~ mobile dental clinic approved by the Board. The portfolio shall contain ~~documentation~~ certification that the examinee has ~~satisfactorily~~ completed the minimum number of clinical experiences as follows:

(1) ~~The documentation of~~ oral diagnosis and treatment planning (ODTP) clinical experiences shall include a minimum of twenty (20) patient cases. Clinical experiences for ODTP include: comprehensive oral evaluations; limited (problem-focused) oral evaluations, and periodic oral evaluation.

(2) ~~The documentation of~~ direct restorative clinical experiences shall include a minimum of sixty (60) restorations. The restorations completed in the clinical experiences may include any restoration on a permanent or primary tooth using standard restorative materials including: amalgams, composites, crown build-ups, direct pulp caps, and temporizations.

(3) ~~The documentation of~~ indirect restorative clinical experiences shall include a minimum of fourteen (14) restorations. The restorations completed in the clinical experiences may be a combination of the following procedures: inlays, onlays, crowns, abutments, pontics, veneers, cast posts, overdenture copings, or dental implant restorations.

(4) ~~The documentation of~~ removable prosthodontic clinical experiences shall include a minimum of five (5) prostheses. One of the five prostheses may be used as a portfolio competency provided that it is completed in an independent manner with no faculty intervention. A prosthesis ~~is defined to~~ may include any of the following: full denture, partial denture (cast framework), partial denture (acrylic base with distal extension replacing a minimum number of three posterior teeth), immediate treatment denture, or overdenture retained by a natural or dental implant~~s~~.

(5) ~~The documentation of~~ endodontic clinical experiences on patients shall include five (5) canals or any combination of canals in three separate teeth.

(6) ~~The documentation of~~ periodontal clinical experiences shall include a minimum of twenty-five (25) cases. A periodontal experience shall include the following: An adult prophylaxis, treatment of periodontal disease such as scaling and root planing, any periodontal surgical procedure, and assisting on a periodontal surgical procedure when performed by a faculty or an advanced education candidate in periodontics. The combined clinical periodontal experience shall include a minimum of five (5) quadrants of scaling and root plan~~n~~ing procedures.

(b) ~~Evidence of~~ ~~sSuccessful~~ ~~c~~Completion of all required clinical experiences shall be certified by the director of the school's clinical education program on the "Portfolio Examination Certification of Clinical Experience Completion: Form 33A-23P (New 08/13), which is hereby incorporated by reference, and shall be ~~maintained~~ included in the examinee's portfolio submitted to the Board.

The Board voted unanimously to accept these comments with the following exceptions:

- Replace the term "applicant" with "candidate";
- Include the following in the definition for "clinical experiences" in Section 1032.1: "Clinical experiences have been determined as a minimum number in order to provide a candidate with sufficient understanding, knowledge, and skill level to reliably demonstrate competency." The Board believes that this information will add clarity to the definition.
- Reject the modification to delete the requirement for clinical experiences to be included in the portfolio submitted to the Board. The schools are responsible for maintaining the complete portfolio which includes the documentation of clinical experiences. The portfolio must include the documentation of clinical experiences in order for the Board to issue approval.
- Reject the modification that the portfolio would contain "certification" rather than "documentation" of the completed minimum number of clinical experiences for reasons previously specified.
- Reject the modification to the removable prosthodontic clinical experiences which define a prosthesis in a permissive manner with "may" rather than a definitive manner with "shall".

CDA Comment #7 - Section 1032.3:
As a general comment that applies to the subsequent sections as well, since the specifics of the clinical experience requirements for all competencies are contained in the preceding section 1032.2, for the sake of clarity the CDA suggested deleting redundant references to clinical experiences in Section 1032.3 and making the section entirely about the competency examination. Thus, the CDA suggested changing the title to "~~Portfolio~~Competency Examination: Oral Diagnosis and Treatment Planning (ODTP)," and modifying (a) as follows:

> ~~(a)~~ The portfolio shall contain ~~the following documentation of the minimum ODTP clinical experiences and documentation of ODTP portfolio competency examination:~~
>
> > ~~(1) Evidence of successful completion of the ODTP clinical experiences shall be certified by the director of the school's clinical education program on the "Portfolio Examination Certification of Clinical Experience Completion" Form 33A-23P (New 08/13), which is hereby incorporated by reference, and shall be maintained in the examinees portfolio.~~
> > ~~(2)~~ ~~D~~documentation ~~providing proof~~ of satisfactory completion of a final assessment in the ODTP competency examination. ~~For purpose of this section, satisfactory proof means the ODTP competency examination has been approved by the designated dental school faculty~~

For the sake of further clarity, the CDA suggested switching the current subsections (b) and (c), so that "Acceptable Patient Criteria" comes before "Competency Examination Requirements." This seems to make logical sense, since the patient must be chosen before the exam can be taken. The CDA offered a similar suggestion for the remaining

competency examination sections.

The Board voted unanimously to reject these comments. Section 1032.3 was not intended to address only the competency examination requirements; rather, it was intended to explain all of the requirements of the candidate's portfolio in relation to the specified competency. A complete portfolio submitted to the Board must contain documentation of the relevant clinical experiences and the competency examinations for each required competency. Including the numerical requirements for clinical experiences in Section 1032.2 was intended to eliminate the potential duplication that the proposed language would have had if the clinical experience requirements had been distributed amongst each applicable competency section. Additionally, the Board does not believe it is necessary or would provide further clarity by moving "Acceptable Patient Criteria" before "Competency Examination Requirements" as there does not seem to be any added benefit. The Board did vote to modify the text in subdivision (a) to clarify that it is applicable to the portfolio examination in its entirety.

CDA Comment #8 - Section 1032.3:
The CDA commented that in reviewing the entirety of the current subdivision (b), it is not clear to the CDA how many different patients can be included in the ODTP competency examination. Subsection (b)(2) states that there shall be "one" multidisciplinary portfolio competency exam, but (b)(2) states that "the treatment plan shall involve at least three...disciplines...", and subsequent subsections make reference to "treatment provided to clinical patients." The CDA questioned if this section should more clearly spell out the number of patient treatment plans that can make up this competency examination.

The Board voted unanimously to reject these comments. The Board believes that the language is clear that the oral diagnosis and treatment planning competency examination would be initiated and completed on one patient and requires a treatment plan involving at least three of the six competency disciplines. The Board does not believe modifications to the text are necessary as this was the agreed upon terminology developed by the focus groups from the dental schools involved in the development of the portfolio examination criteria.

However, the Board did vote to modify the text to make some grammatical and technical amendments to clean up the language and correct the inadvertent pluralizing of "patient".

CDA Comment #9 - Section 1032.4:
The CDA suggested that changes to the title and to subsection (a) be made here that are equivalent to those suggestions for Section 1032.3, and for the same reason.

The Board voted unanimously to reject this comment. Section 1032.4 was not intended to address only the competency examination requirements; rather, it was intended to explain all of the requirements of the candidate's portfolio in relation to the specified competency. A complete portfolio submitted to the Board must contain documentation

of the relevant clinical experiences and the competency examinations for each required competency. Including the numerical requirements for clinical experiences in Section 1032.2 was intended to eliminate the potential duplication that the proposed language would have had if the clinical experience requirements had been distributed amongst each applicable competency section. Additionally, the Board does not believe it is necessary or would provide further clarity by moving "Acceptable Patient Criteria" before "Competency Examination Requirements" as there does not seem to be any added benefit.

CDA Comment #10 - Section 1032.4:
The CDA found some ambiguity here as to how many patients are to be included in the competency exam, and exactly which restorative procedures are required to be performed, and would defer to the developers of these criteria as to the intent. Specifically, subsection (b) states that the examinee shall document competency "to perform a Class II, Class III, and Class IV direct restoration..." (underline added for emphasis). However, the wording of (b)(2) appears to give the examinee the option to perform two Class II amalgam restorations, with a Class III/IV composite as an option for one of the restorations but not a requirement. This discrepancy may need to be clarified.

The Board voted unanimously to accept this comment. The examination should only include two restorations consisting of: (1) one Class II amalgam or composite, maximum one slot preparation; and, (2) one Class III or IV composite. The Board voted to modify the text accordingly.

CDA Comment #11 - Section 1032.5:
The CDA makes the same comment and suggestions regarding the title and subsection (a) made for previous sections.

The Board voted unanimously to reject this comment. Section 1032.5 was not intended to address only the competency examination requirements; rather, it was intended to explain all of the requirements of the candidate's portfolio in relation to the specified competency. A complete portfolio submitted to the Board must contain documentation of the relevant clinical experiences and the competency examinations for each required competency. Including the numerical requirements for clinical experiences in Section 1032.2 was intended to eliminate the potential duplication that the proposed language would have had if the clinical experience requirements had been distributed amongst each applicable competency section. Additionally, the Board does not believe it is necessary or would provide further clarity by moving "Acceptable Patient Criteria" before "Competency Examination Requirements" as there does not seem to be any added benefit.

CDA Comment #12 - Section 1032.6:
The CDA makes the same comment and suggestions regarding the title and subsection (a) made for previous sections.

The Board voted unanimously to reject this comment. Section 1032.6 was not intended to address only the competency examination requirements; rather, it was intended to explain all of the requirements of the candidate's portfolio in relation to the specified competency. A complete portfolio submitted to the Board must contain documentation of the relevant clinical experiences and the competency examinations for each required competency. Including the numerical requirements for clinical experiences in Section 1032.2 was intended to eliminate the potential duplication that the proposed language would have had if the clinical experience requirements had been distributed amongst each applicable competency section. Additionally, the Board does not believe it is necessary or would provide further clarity by moving "Acceptable Patient Criteria" before "Competency Examination Requirements" as there does not seem to be any added benefit.

CDA Comment #13 - Section 1032.6:
The CDA commented that for each prosthetic option, the examination standards include a reference to follow-up care [i.e. "(5)(H) Evidence the examinee provided the patient post insertion care including adjustment, relines and patient counseling"]. The CDA commented that such open-ended references to follow-up/post insertion care leave it unclear how it will be determined when this competency examination has been completed and a final score can be issued. The CDA questioned if it needs to be clarified in the regulations.

The Board voted unanimously to accept the comment with the addition of "within the established standard of care" to the text. The Board voted to modify the text accordingly.

CDA Comment #14 - Section 1032.7:
The CDA makes the same comment and suggestions regarding the title and subsection (a) made for previous sections.

The Board voted unanimously to reject this comment. Section 1032.7 was not intended to address only the competency examination requirements; rather, it was intended to explain all of the requirements of the candidate's portfolio in relation to the specified competency. A complete portfolio submitted to the Board must contain documentation of the relevant clinical experiences and the competency examinations for each required competency. Including the numerical requirements for clinical experiences in Section 1032.2 was intended to eliminate the potential duplication that the proposed language would have had if the clinical experience requirements had been distributed amongst each applicable competency section. Additionally, the Board does not believe it is necessary or would provide further clarity by moving "Acceptable Patient Criteria" before "Competency Examination Requirements" as there does not seem to be any added benefit.

CDA Comment #15 - Section 1032.7:
The CDA commented that subsection (b)(2) states that the endodontic competency

exam will consist of "one (1) clinical case." However, the subsequent subsection (b)(3) uses the word "cases" twice. For the sake of clarity, the Board may wish to change those to "case."

The Board voted unanimously to accept this comment and to modify the text accordingly.

CDA Comment #16 - Section 1032.8:
The CDA makes the same comment and suggestions regarding the title and subsection (a) made for previous sections.

The Board voted unanimously to reject this comment. Section 1032.8 was not intended to address only the competency examination requirements; rather, it was intended to explain all of the requirements of the candidate's portfolio in relation to the specified competency. A complete portfolio submitted to the Board must contain documentation of the relevant clinical experiences and the competency examinations for each required competency. Including the numerical requirements for clinical experiences in Section 1032.2 was intended to eliminate the potential duplication that the proposed language would have had if the clinical experience requirements had been distributed amongst each applicable competency section. Additionally, the Board does not believe it is necessary or would provide further clarity by moving "Acceptable Patient Criteria" before "Competency Examination Requirements" as there does not seem to be any added benefit.

CDA Comment # 17 - Section 1032.9:
The CDA commented that since this section is itself establishing the criteria for competency examiner qualifications, the suggested the following amendment to (a):

> (a) Portfolio competency examiners shall meet the following criteria ~~established by the board~~:

The Board voted to accept this comment and modify the text accordingly.

CDA Comment # 18 - Section 1032.9:
The CDA commented that subsection (b) requires schools to submit to the Board the names and qualifications of the faculty members "to be approved or disapproved by the Board as portfolio competency examiners," and to certify that they meet the standards of the school and of these regulations. The CDA commented that the regulations provide no criteria by which the Board would "approve or disapprove" any individual examiner put forth by a school. The CDA questioned on what basis the Board could disapprove examiners if the dental school dean has certified the qualifications. The CDA also questioned if the Board's review of competency examiners should be left to the periodic auditing process.

The Board voted unanimously to reject this comment. The portfolio examination is administered by the Board; and as such the Board maintains its authority to approve or

disapprove portfolio competency examiners. Such approval by the Board would be based on the required documentation of qualifications provided to the Board as specified in subdivisions (a), (b), and (c). It is important for the Board to maintain its authority to approve or disapprove competency examiners at any time; if the Board only reviewed competency examiners during the periodic auditing process, the Board would risk losing its ability to disapprove competency examiners that are not grading appropriately, which could lead to the Board issuing licenses to candidates who may pose a risk to patient protection.

CDA Comment # 19 - Section 1032.9:
The CDA commented that subsection (c) appears redundant and could be deleted; and, subsection (b) already requires the deans to certify that each examiner has met the requirements of (a)(3), which is the calibration requirement described again in (c).

The Board voted unanimously to reject this comment. The Board does not believe the language exhibits redundancy. Subdivision (a) provides the qualifications for the competency examiners; subdivision (b) specifies that the schools must submit the names, credentials, and qualifications, and a certifying letter from the dean that the examiner satisfies the criteria and standards to conduct the competency examination for the faculty to be considered by the Boards; and, subdivision (c) provides that the dean mush submit documentation that the appointed examiners have satisfied the Board's competency examiner training requirements.

CDA Comment #20 - Section 1032.10:
The CDA commented that they have a concern that subsection (d), as drafted, lacks clarity about the respective roles of the dental school and the Board in determining whether an examiner should be disqualified due to problems in calibration. Because the Board is not envisioned to be involved in the day-to-day operations of this process, the CDA believes their responsibility for making these determinations should lie in the periodic auditing process, and that the schools should maintain the ongoing responsibility to dismiss examiners. The CDA suggested the following clarifying amendments:

> (c) Calibration of Examiners. The calibration of portfolio competency examiners shall be conducted to maintain common standards as an ongoing process. Portfolio competency examiners shall be provided feedback about their performance and how their scoring varies from their fellow examiners. Portfolio competency examiners whose error rate exceeds psychometrically accepted standards for reliability shall be re-calibrated. If at any time a school determines that a portfolio competency examiner is unable to ~~be~~ meet the board's ~~re-~~calibrat~~ed~~ion standards, the school shall ~~disapprove~~ remove the portfolio competency examiner from further participation in the portfolio examination process. In addition, the Board may through its auditing process require a school to remove an examiner based on findings that the examiner does not meet the Board's calibration standards.

The Board voted to reject this comment. The portfolio examination is administered by the Board; and as such the Board maintains its authority to approve or disapprove portfolio competency examiners. It is important for the Board to maintain its authority to approve or disapprove competency examiners at any time; if the Board only reviewed competency examiners during the periodic auditing process, the Board would risk losing its ability to disapprove competency examiners that are not grading appropriately, which could lead to the Board issuing licenses to candidates who may pose a risk to patient protection.

However, the Board voted unanimously to add language to subdivision (c) to specify that the school is required to notify the Board if at any time a school determines that a competency examiner is unable to meet the Board's calibration standards. The Board voted to modify the text accordingly.

CDA Comment #21 - Section 1034:
The CDA commented that subsection (c) states: "An examinee shall be deemed to have passed the portfolio examination if his or her overall score is at least 75 in each of the portfolio competency examinations." Taken out of context, this could imply that this is the sole condition for being awarded a license via portfolio. The CDA suggested the following clarifying amendments:

> Along with the requirements of Section 1028,an examinee shall be ~~deemed to have passed the portfolio examination~~ eligible for licensure via portfolio only if his or her overall scaled score is at least 75 in each of the portfolio competency examinations.

The Board voted unanimously to reject this comment. The contents of this section are specific to the grading of the competency examinations, not the portfolio examination in its entirety. Therefore, the Board voted to modify the title of the section to "Portfolio Competency Examination Grading".

CDA Comment #22 - Section 1034:
The CDA commented that subsection (d) as drafted states: "The executive officer shall notify examinees who have passed or failed the portfolio examination." Given that the entire process for the Board's review of portfolios and licensure applications is contained in Section 1028, this subsection is not needed and could cause confusion, especially since this section is about competency examinations. Under the portfolio process, the Board really is not determining whether someone has "passed or failed" the examination; rather, its role is to determine whether the portfolio is complete as submitted by the school, and to issue a license once that determination has been made and all other requirements have been met.

The Board voted unanimously to reject this comment. The Board still has to verify scoring accuracy and the Board maintains the final approval, as this is a Board administered examination.

However, the Board voted to modify the text to replace "executive officer" with "Board" so that it is clearly understood as a Board-administered examination. The Board delegates authority to staff to review examination results and applications to determine eligibility for initial licensure via the portfolio examination.

CDA Comment #23 - Section 1034:
The CDA commented that subsection (f) in its entirety appears to be redundant and unnecessary, since the scoring factors already are included in the sections for each competency examination.

The Board voted unanimously to accept this comment and modify the language to only reference the relevant subsections of each competency so that the competency examination grading criteria may be clearly understood.

CDA Comment #24 - Section 1035:
The CDA commented that this section as a whole appears to be a throwback to the days when the Board was administering its own clinical examination, and thus it does not seem to fit comfortably within either the WREB or the portfolio process. In each of those cases, the CDA's assumption would be that appeals at least initially should be directed to the examining entity (WREB or the dental school) and not to the Board. We do, nevertheless, believe that there should be built-in the ability for an applicant to make a secondary appeal to the Board if he or she is dissatisfied with the due process received by the examining entity. Therefore, the CDA suggested the following amendments:

(a) An examinee who has failed an examination shall be provided with notice, upon written request to the examining body, of those areas in which he/she is deficient ~~in the clinical and restorative laboratory phases of such examination~~.
(b) An unsuccessful examinee who has been informed of the areas of deficiency in his/her performance ~~on the clinical and restorative laboratory phases of the examination~~ and who has determined that one or more of the following errors was made during the course of his/her examination and grading may appeal to the ~~board~~ examining body within sixty (60) days following receipt of his/her examination results:
    (1) Significant procedural error in the examination process;
    (2) Evidence of adverse discrimination;
    (3) Evidence of substantial disadvantage to the examinee

After completion of the examining body's appeal process, the examinee may submit an appeal to the Board within 30 days of the examining body's decision. Such appeal shall be made by means of a written letter specifying the grounds upon which the appeal is based. The board shall respond to the appeal in writing and may request a personal appearance by the examinee. The board shall thereafter take such action as it deems appropriate.

~~(c) This section shall not apply to the portfolio examination of an examinee's~~

~~competence to enter the practice of dentistry.~~

The Board voted unanimously to reject this comment. This section is not applicable to the Board's portfolio examination as exempted in subdivision (c). Additionally, the CDA proposed modifications would adversely impact the Board's California Law and Ethics examination.

CDA Comment #25 - Section 1036:
The CDA commented that similar to the preceding section, by grafting language on to old regulatory language that pertained more to the Board's own clinical examination, and which now applies to the WREB exam, these amendments are somewhat confusing. For example, subsection (a) would appear to allow a portfolio licensure applicant to obtain remedial education at a dental school other than the one he/she is currently attending, which doesn't make much sense. In addition, the proposed amendments to subsection (b)(1) create similar ambiguity by adopting a portfolio-specific form (seemingly leaving no equivalent form for WREB examinees), but then implying that the form should be submitted to the Board (not to the school) prior to retaking a competency examination, which makes little sense given that the Board would otherwise not be involved with an individual portfolio examinee at that stage of the process. The CDA commented that the Board may want to consider creating a separate remedial education section specific to the portfolio process.

The Board voted unanimously to accept this comment and voted to modify the text to differentiate between the remedial education process for the Board's portfolio examination and the WREB examination.

Comments Received from Steven W. Friedrichsen, DDS, Professor and Dean, College of Dental Medicine, Western University of Health Sciences
The Board received a letter from Steven W. Friedrichsen, DDS, Professor and Dean at Western University of Health Sciences College of Dental Medicine (CDM). Dr. Friedrichsen commented that the faculty and student leadership of the CDM reviewed the proposal and the feedback from both leadership groups was used to develop their comments. The letter stated that the concerns and potential solutions were offered in the spirit of full support of the Portfolio Examination, while at the same time encouraging the Board to consider modification of the Portfolio Examination to address concerns prior to implementation. A copy of the letter is included in the meeting materials.

The CDM stated that it is highly supportive of the Portfolio Examination as one of the pathways to licensure in California and believes it is a long overdue bold step forward in the initial licensing process. The CDM hopes that the collective feedback from the six California dental schools and other interested parties will lead to modifications that produce a smooth initial implementation and successful administration of the Portfolio Examination.

Concern #1 - Impact to Schools:

The CDM commented that the original intent was that the Portfolio Examination process would fit within the curriculum and patient care processes of the dental schools; the estimated impact to the schools was envisioned to be "minor and absorbable". While the school understands the original intent, they wanted it to be recognized that as the portfolio examination has grown in complexity through the design process, it no longer meets that intent.

The letter commented that portfolio was anticipated to logistically include a set of uniform, collaboratively developed competency examinations that would be seamlessly integrated into each of the schools assessment systems. In order to achieve the collaborative buy-in of the six dental schools, it appears the rubrics are overly generalized and there is a lack of uniformity in the grading between the various competencies. The faculty who would serve as portfolio competency examiners determined the portfolio competencies would not function as a wholesale replacement for similar competencies that are integrated into the CDM's clinical assessment systems. The letter stated that it appears that the CDM would either have to provide additional definition to the portfolio rubrics and devise a conversion matrix for their grading system, or use the portfolio competencies in parallel with the CDM's. Dr. Friedrichsen noted that either of those options would require a significant added investment of time and personnel to support two systems – the portfolio competencies and the CDM's current assessment practices.

The letter stated that each component of the portfolio has an associated cost. The recordkeeping for audits, inter-institutional calibration processes, separate tracking for numerical requirements and logistics of scheduling multiple faculty for competency examinations, collectively represents a significant cost; and as designed, that cost would be borne by the schools. The letter provided that those costs would most likely accrue to the students of schools that choose to participate. These imbedded costs would be amortized among all students in a school – even those taking other licensure exams.

The letter illustrated that an example of how costs can quickly accumulate is readily seen by reviewing the *Impact on the Board* that is outlined on page 7 of the *Notice*. The projected impact to the Board's budget exceeds $100,000 per year and includes both administrative and adjudication costs. The CDM noted that it should be recognized that for each and every expense incurred by the Board, there is a parallel costs to the dental schools. The CDM expects that the projected costs for the administration of the portfolio exam are not minor and will be difficult to absorb without passing the expense along to the students. The CDM's students and faculty alike are concerned that significant implementation costs would affect the tuition or fees.

The Board voted unanimously to reject this comment. The Board worked collaboratively with the six California dental schools to design the portfolio examination. The examination was developed to fit seamlessly into the existing school curriculum by using the existing resources. Each competency component of the exam was developed by focus groups composed of representatives from each of the six California dental

schools. These regulations are implementing the findings and collaborative work of those focus groups. Participation of the California dental schools in the Board's portfolio examination is entirely voluntary; and no other school has expressed similar concerns. Additionally, the projected impact to the Board of $100,000 was in regards to revenue from applications and not an expense.

Concern #2 - Portability:
The CDM commented that they are concerned that the anticipated lack of portability to other states will detract from student participation. An examination that does not qualify for licensure in other states could deter student participation. In the current dental practice environment, dental graduates frequently find that employment opportunities often cross state borders. The CDM notes that it will be critical to investigate and communicate how the portfolio examination will be viewed by other states in their licensure decisions, both in initial licensure and when applying for licensure by credentials. The CDM anticipates that students would most likely choose a regional examination that offers the opportunity for licensure in a number of states rather than risk the geographic restriction to California.

As a private institution, the CDM acknowledges that a significant percentage of their students will seek licensure in other states and the investment of supporting two examination processes (both WREB and the portfolio examination) will have to be carefully weighed by the CDM once the final processes and procedures are in place. If the lack of portability drives the interest rate in students below a critical threshold, the CDM would likely need to reluctantly not participate in the portfolio examination.

The Board voted unanimously to reject this comment. The portability of the Board's portfolio examination is not relevant to this rulemaking. The portfolio examination was not designed to be portable across states; however, the Board understands that other states are considering adding a portfolio type examination to their pathways to licensure. The Board hopes that portability will be available some time in the future. Additionally, taking the Board's portfolio examination would not preclude a candidate from taking the WREB examination.

Concern #3 - Liability Coverage for Faculty and Patients:
The CDM commented that they have two significant liability concerns related to the integrated format with portfolio competency exams.

First, if portfolio competencies are used solely for licensure, on those dates and times when the dental school faculty is serving as the portfolio competency examiners, they are in essence acting on behalf of the Board rather than the CDM. Under those circumstances, the faculty will be conducting the portfolio competencies for the purposes of licensure in California, which is not and cannot be a graduation requirement of the CDM. It is nearly inevitable that at some point a student will not pass the portfolio competencies. When that occurs, it is also inevitable that the student will consider seeking legal recourse. Because the portfolio competencies are not a component of the CDM curriculum required for graduation, Western University's liability coverage for their

faculty will not extend to the administration of the exam on behalf of the Board. If the portfolio examination is administered at Western University of Health Sciences as proposed, the Board would need to provide appropriate coverage for the actions of the faculty.

Second, a similar situation can be forecast on behalf of the patients who are involved in the competency examinations. On those dates and times, the patients are in essence being treated for the purposes of an examination process. If the patient encounters a substantive issue requiring correction or remediation, our University's liability carrier is likely to consider the event uncovered – again California licensure is not a graduation requirement for their students, and therefore, not a component of the curriculum. If the portfolio examination is administered at Western University of Health Sciences as designed, the Board (or students) would need to provide appropriate coverage for the relevant patient care process.

Additionally, if the portfolio examination process extends beyond commencement, the CDM would need to construct a specific mechanism to allow students to participate in the requisite competency exams, completion of requirements, or remediation.

The Board voted unanimously to reject this comment. This comment is based on speculation and is not relevant to the proposed regulations concerning examination requirements. The Board worked collaboratively with the six California dental schools to design the portfolio examination. The examination was developed to fit seamlessly into the existing school curriculum by using the existing resources. Each competency component of the exam was developed by focus groups composed of representatives from each of the six California dental schools. These regulations are implementing the findings and collaborative work of those focus groups. Participation of the California dental schools in the Board's portfolio examination is entirely voluntary; and no other school has expressed similar concerns. The schools would administer the Board's exam, but would not be working for the Board. Since the student's would be performing the procedures as part of their curriculum, and it is key that the patient is a patient of record within the school receiving treatment through a normal sequence, it was assumed that the liability would be assumed by the school. The Board believes Western University's concern is only an individual concern that is unique to their particular education model.

Concern #4 - Numerical Requirements:
The CDM commented that they are concerned that the use of numerically based requirements is not in alignment with competency based outcome measures.

The Commission on Dental Accreditation (CODA), as well as most contemporary assessment systems, has moved the educational processes to competency-based outcomes. The numerical requirements of the portfolio process run counter to the design of the CDM dental education program and CODA standards for accreditation. As a result of changing disease patterns, treatment procedures and demographics, it is likely that the CDM would be challenged to provide all students with sufficient numbers

of procedures in some areas (i.e. removable prosthodontics) on a consistent basis to meet the numerical requirements outlined as well as the competencies.

Reaching specific targeted numbers of requirements could put the students and the CDM in untenable positions. The CDM would need to either preferentially direct patient care experiences selectively to the portfolio examination participants to meet the numerical requirements or deny students the opportunity to participate in the portfolio licensure pathway. The use of specific numbers of procedures has served as an ethical pitfall for decades – students "make" patient care fit the requirements in order to achieve a goal. The CDM encourages the Board to revisit this component of the portfolio examination.

The Board voted unanimously to reject this comment. The Board worked collaboratively with the six California dental schools to design the portfolio examination. The examination was developed to fit seamlessly into the existing school curriculum by using the existing resources. Each competency component of the exam was developed by focus groups composed of representatives from each of the six California dental schools. These focus groups established the number of clinical experiences required as part of the examination. These regulations are implementing the findings and collaborative work of those focus groups. If it becomes necessary in the future, the Board may need to reevaluate the number of required clinical experiences if there are changes in the population of individuals seeking dental treatment at dental schools; however, this is not necessary at this point in the examination's development. Participation of the California dental schools in the Board's portfolio examination is entirely voluntary; and no other school has expressed similar concerns.

Potential Solutions – Allow the Use of Existing Systems:
The CDM would like the Board to consider an option that would allow the schools to request the Board review existing competency examinations and processes as equivalent alternatives to the portfolio competencies and requirements.

The Board may want to consider providing schools with the option of using the existing competency-based assessments conducted by the individual schools. This would potentially solve several key concerns. The schools that want to exercise this option could submit a copy of their competency assessment rubrics, grading scale and faculty calibration plan for the identified portfolio competencies. The Board would then review the submission to assure that it was equivalent to the portfolio competencies. All students who completed the Board approved plan of competencies and other requirements would be considered for licensure.

Developing this option would allow schools to use their existing assessment systems and outcomes reporting processes which already support the CODA Standards for accreditation, college outcome and assessment plans and institutional learning objectives. Using existing systems and processes in lieu of the proposed competencies and requirements would help the portfolio examination meet the intent of "minor and

absorbable" impact. The liability concerns would also evaporate through the utilization of existing graduation requirements.

The same option process should be considered for the requirements. Schools with existing requirements processes could modify them to equate to the portfolio requirements. Those schools that have a competency-based curriculum could submit their overarching competency assessment process for review by the Board for approval in lieu of submitting numerical requirements.

The Board voted unanimously to reject this comment. The Board worked collaboratively with the six California dental schools to design the portfolio examination. The examination was developed to fit seamlessly into the existing school curriculum by using the existing resources. Each competency component of the exam was developed by focus groups composed of representatives from each of the six California dental schools. These regulations are implementing the findings and collaborative work of those focus groups. Participation of the California dental schools in the Board's portfolio examination is entirely voluntary; and no other school has expressed similar concerns.

Comments Received from Avishai Sadan, DMD, Dean, Ostrow School of Dentistry of the University of Southern California:

Summary of Comments:

Dr. Sadan submitted a letter in response to the proposed rulemaking thanking the Board for the documentation concerning the portfolio examination requirements. The letter stated that the faculty at the Ostrow School of Dentistry of USC has welcomed the opportunity to participate in the integration process of merging the portfolio evaluation of candidate competency within their clinical education program. The school feels their students will be able to comply with the minimum required experiences as outlined in the initial rulemaking documents; although, the school may need additional time to provide a more detailed response in regards to a timeline for implementation and clinical faculty calibration with the portfolio criteria and standards.

There was no need for the Board to respond to this comment as there are no comments in response to the language that was proposed. Board staff will be working with the dental schools closely through the implementation and calibration processes, once the regulations become effective.

Comments Received from Sharon Golightly, California Dental Hygiene Association, at the Regulatory Hearing Held on January 6, 2014 in Sacramento, CA:

Summary of Comments:

Sharon Golightly, representing the California Dental Hygiene Association, stated that there was concern that the examination did not include testing of a dentist's skills and competency relating to the administration of local anesthesia and nitrous oxide. Ms. Golightly commented that this concern stemmed from the fact that the use of local anesthesia and nitrous oxide has led to citations and deaths occurring during dental treatment. Ms. Golightly noted that the administration of local anesthesia and

nitrous oxide was included as components of the proposed competency examinations, but felt that they should be tested as a separate stand-alone competency examination. She stated that this is a competency that sees a lot of lawsuits, especially in the field of pedodontics, as children may easily be overdosed. She commented that it should be examined in an educational institution.

Ms. Golightly explained that the Western Regional Examination Board (WREB) Examination for hygiene candidates has a separate examination to test a candidate's competence in the application of local anesthesia and that she felt there should be the same standard in the practice of dentistry to provide public protection as it is an area where she felt the skills and competency are inadequate.

The Board voted unanimously to reject this comment. The competencies assessed as part of the Board's proposed Portfolio Examination requirements include more than adequate training and competency evaluation in pain management. While pain management using local anesthesia and nitrous oxide is not a separate competency that is assessed as part of the Portfolio Examination, these pain management options are embedded within the competencies for direct restoration, indirect restoration, periodontics, endodontics, and removable prosthodontics. Additionally, it is not in the best interest of a patient to administer anesthetic agents for the simple purpose of assessing the administration of a drug without patient treatment.

Additionally, the Board voted unanimously to modify the text to correct technical and grammatical errors upon the recommendation of Board staff.

Comments Received During the 15-Day Modified Text Public Comment Period:
The Board did not receive comments in response to the noticed modified text.

INCORPORATION BY REFERENCE:
The incorporation by reference method was used because it would be impractical and cumbersome to publish the required forms in the California Code of Regulations (CCR).

Form 33A-22P (New08/13) is necessary to create a process for the Board for the review of applicants via the portfolio examination pathway to licensure. This form assists with providing detailed information to applicants regarding the requirements for seeking licensure via the portfolio examination pathway to licensure. The certification and disclosure requirements assist in ensuring accurate, timely and complete information is being provided to the Board prior to making a decision to grant or deny licensure.

Form 33A-23P (New 08/13) is necessary to create a process for the Board to verify completion of the required clinical experiences necessary to obtain licensure via the portfolio examination pathway.

The *Certification of Successful Completion of Remedial Education for Portfolio Competency Re-Examination Eligibility (New 08/13)* is necessary so that the Board may receive certification of compliance with the remedial education requirements.

If the forms were incorporated into the CCR, it would increase the size of Division 10 and may cause confusion to the user. The forms were made available to the public and were posted on the Board's web site.