February 10, 2016

Honorable Susan A. Bonilla
Room 4140, State Capitol

REGISTERED DENTAL ASSISTANT: PRACTICAL EXAMINATION - #1602127

Dear Ms. Bonilla:

The Dental Practice Act provides that an applicant for licensure as a registered dental assistant must complete certain eligibility requirements, including satisfactory performance on a practical examination administered by the Dental Board of California. In addition, that act allows the board, if certain requirements are met, to vote to suspend the practical examination until July 1, 2017. You asked us whether, if the board suspends the practical examination for registered dental assistants, the board may, during that suspension, license an applicant who has not taken the practical examination.

The Dental Practice Act (Bus. & Prof. Code, § 1600 et seq.; hereafter the act) governs the licensing and regulation of dental auxiliaries by the Dental Board of California (board). (§ 1740 et seq.) The act creates categories of dental auxiliaries, including a registered dental assistant. (§ 1752.1 et seq.; Cal. Code Regs., tit. 16, § 1067, subd. (c).) The board may license an applicant as a registered dental assistant if he or she submits an application and demonstrates that he or she has completed certain eligibility requirements, including satisfactory performance on a practical examination administered by the board. (§ 1752.1, subd. (a).) The act requires the board to administer the practical examination, which must consist of certain procedures set out in section 1752.3, subdivision (b). (See also Cal. Code Regs., tit. 16, §§ 1080, 1081.1, 1083, subd. (b).)

All further section references are to the Business and Professions Code, unless otherwise indicated.

In addition, the Dental Assisting Council of the Dental Board of California provides recommendations to the board on topics relating to dental auxiliaries. (§§ 1742, 1752.3, subd. (b), 1753.4.)
Your question relates to the authority of the board to suspend the practical examination under section 1752.1, subdivisions (i) and (j) (hereafter subdivisions (i) and (j), respectively). Those subdivisions read as follows:

"(i) The board shall, in consultation with the Office of Professional Examination Services, conduct a review to determine whether a practical examination is necessary to demonstrate competency of registered dental assistants, and if so, how this examination should be developed and administered. The board shall submit its review and determination to the appropriate policy committees of the Legislature on or before July 1, 2017.

"(j) Notwithstanding any other law, if the review conducted by the Office of Professional Examination Services pursuant to subdivision (i) concludes that the practical examination is unnecessary or does not accurately measure the competency of registered dental assistants, the board may vote to suspend the practical examination. The suspension of the practical examination shall commence on the date the board votes to suspend the practical examination and shall remain suspended until July 1, 2017, at which date the practical examination shall be reinstated...." (Emphasis added.)

In summary, subdivision (j) authorizes the board, if the review conducted under subdivision (i) reaches certain conclusions, to suspend the practical examination until July 1, 2017.

To interpret the language of subdivision (j), we apply the general rules of statutory interpretation. In that regard, we construe statutory language in accordance with its ordinary and usual meaning, and consistent with the statutory framework of which it is a part. If the statutory language is unambiguous, the plain meaning controls. As described above, the act contains two interrelated requirements relating to the practical examination. First, it requires that the board issue a license to become a registered dental assistant only to an applicant who, among other things, demonstrates satisfactory performance on the practical examination. Second, it requires the board to administer the practical examination. The broad phrase “suspend the practical examination,” as used in subdivision (j), is not expressly limited to the administration of the practical examination. Rather, in this context, we think that the plain meaning of that phrase, as used in subdivision (j), is that the board is authorized to suspend all requirements relating to the practical examination during the applicable period, including the requirement that the board issue a registered dental assistant license only to an applicant who demonstrates satisfactory performance on the practical examination.

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3 See, e.g., City of Alhambra v. County of Los Angeles (2012) 55 Cal.4th 707, 719.

4 In re W.B., Jr. (2012) 55 Cal.4th 30, 52; hereafter In re W.B.
The Legislature's use of the phrase "notwithstanding any other law" at the beginning of subdivision (j) also supports this construction. Courts have interpreted "notwithstanding any other law" to be a comprehensive phrase indicating that a particular provision of law will override all other code sections in conflict therewith, "unless it is specifically modified by use of a term applying it only to a particular code section or phrase." Accordingly, by beginning subdivision (j) with that phrase, the Legislature demonstrated an intent that subdivision (j) apply over any statutory provision in conflict with it. If subdivision (j) affected only the requirement for the board to administer the practical examination, one could argue that subdivision (j) would not prevail over the requirement that an applicant pass the practical examination as a condition of licensure. In our view, however, that argument would not prevail because the plain meaning of subdivision (j) authorizes the board to suspend all requirements relating to the practical examination, including the requirement that it limit the issuance of registered dental assistant licenses to applicants who pass that examination.

You informed us that the board has interpreted subdivision (j) to authorize the board to suspend the requirement that it administer the practical examination, but not the requirement that it limit the issuance of registered dental assistant licenses to applicants who pass that examination. We recognize that, as the administrative entity in charge with implementing the act, a court would give weight to any administrative construction of subdivision (j) by the board. But the amount of weight a court will give to the administrative

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5 In re Marriage of Cutler (2000) 79 Cal.App.4th 460, 475; see also People v. Duff (2010) 50 Cal.4th 787, 798 (the phrase "notwithstanding any other law" will prevent or negate the operation of contrary law, even in the "absence of an express reference to that provision").

6 The Office of the Attorney General has opined that the phrase "notwithstanding any other law" indicates an intent that the provision "take precedence over other statutes affecting the same subject matter." (95 Ops.Cal. Atty.Gen. 102 (2012), quoting 90 Ops.Cal. Atty.Gen. 32, 37 (2007).) This test would not change our analysis, as statutory provisions conflict only when they affect the same subject matter.

7 As discussed above, in construing the effect of subdivision (j), we think a court would rely on the plain meaning of that subdivision. But presuming that a court found subdivision (j) to be ambiguous, a court would then examine its legislative history to determine the legislative intent. (See, e.g., In re W.B., supra, 55 Cal.4th at p. 52.) In that regard, the Assembly Floor Analysis of the bill that added subdivision (j) stated that if the board votes to suspend the practical examination, "Applicants for licensure would still need to meet all other existing requirements for licensure, including passing the written examination." (Assem. Floor Analysis, analysis of Assem. Bill No. 179 (2015-2016 Reg. Sess.) as amended Sept. 4, 2015, at p. 4.) That statement demonstrates that the Legislature intended to allow the board to continue to issue registered dental assistant licenses even if the board voted to suspend the practical examination.

construction of a statute is "fundamentally situational" and depends on complex factors. Generally, a court is more likely to give greater weight to an administrative construction of a statute if it "concerns technical and complex matters within the scope of the agency's expertise." In this instance, subdivision (j) does not implicate technical or complex matters within the board's medical expertise. Instead, for the reasons stated above, it is our view that subdivision (j) unambiguously authorizes the board, if it suspends the practical examination, to issue a registered dental assistant license to an applicant who has not taken that examination. For those reasons, while we acknowledge that a court considering the issue would give some weight to the board's interpretation of subdivision (j), we do not think the court would adopt that interpretation.

Accordingly, it is our opinion that if the Dental Board of California suspends the practical examination for registered dental assistants, the board may, during that suspension, license an applicant who has not taken the practical examination, so long as that applicant meets all other requirements for licensure.

Very truly yours,

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Legislative Counsel

By
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9 Yamaha Corp. of America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 12; hereafter Yamaha.

10 Center for Biological Diversity v. California Dept. of Fish and Wildlife (2015) 62 Cal.4th 204, 236; see also Yamaha, supra, at p. 11 (an agency's interpretation of statutory language is given a lesser degree of deference than an agency's application of legislative power delegated to it by the Legislature).