



FULL BOARD MEETING
Thursday, May 29, 2014



Red Lion Hotel
150 Hegenberger Road
Oakland, CA 94621



BOARD MEETING AGENDA

May 29, 2014

Red Lion Hotel

150 Hegenberger Road, Oakland, CA 94621

510-635-5300 or 916-263-2300

Members of the Board

Fran Burton, MSW, Public Member, President

Bruce Whitcher, DDS, Vice President

Judith Forsythe, RDA, Secretary

Steven Afriat, Public Member

Stephen Casagrande, DDS

Yvette Chappell-Ingram, Public Member

Katie Dawson, RDH

Luis Dominicis, DDS

Kathleen King, Public Member

Ross Lai, DDS

Huong Le, DDS, MA

Meredith McKenzie, Public Member

Steven Morrow, DDS, MS

Thomas Stewart, DDS

Debra Woo, DDS

During this two-day meeting, the Dental Board of California will consider and may take action on any of the agenda items. It is anticipated that the items of business before the Board on the first day of this meeting will be fully completed on that date. However, should items not be completed, it is possible that it could be carried over and be heard beginning at 9:00 a.m. on the following day. Anyone wishing to be present when the Board takes action on any item on this agenda must be prepared to attend the two-day meeting in its entirety.

Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. Time limitations for discussion and comment will be determined by the President. For verification of the meeting, call (916) 263-2300 or access the Board's website at www.dbc.ca.gov. This Board meeting is open to the public and is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Karen M. Fischer, MPA, Executive Officer, at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, or by phone at (916) 263-2300. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

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

Thursday, May 29, 2014

9:00 A.M. FULL BOARD MEETING – OPEN SESSION

1. Call to Order/Roll Call/Establishment of Quorum

CLOSED SESSION – FULL BOARD

Deliberate and Take Action on Disciplinary Matters

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

CLOSED SESSION – LICENSING, CERTIFICATION, AND PERMITS COMMITTEE

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

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

RETURN TO OPEN SESSION – FULL BOARD

2. Report from the Licensing, Certification and Permits Committee Regarding Closed Session
The Board may take action on recommendations by the Licensing Certification and Permits Committee regarding issuance of new license(s) to replace cancelled license(s).
3. Approval of the February 27-28, 2014 Board Meeting Minutes and the March 12, 2014 and April 9, 2014 Teleconference Minutes
4. President's Report
5. **COMMITTEE/COUNCIL MEETINGS – SEE ATTACHED AGENDAS**
 - EXAMINATION COMMITTEE
See attached Examination Committee agenda
 - DENTAL ASSISTING COUNCIL
See attached Dental Assisting Council agenda
 - LEGISLATIVE AND REGULATORY COMMITTEE
See attached Legislative and Regulatory Committee agenda
6. Presentation by a Representative from the California Dental Association (CDA) Regarding Recent Access to Care Events

7. Discussion and Possible Action Regarding:

- A. Comments Received During the 45-Day Public Comment Period for the Board's Proposed Rulemaking to Amend Section 1018 of Title 16 of the California Code of Regulations Relating to Revocation for Sexual Misconduct; and
- B. Adoption of Proposed Amendment to Section 1018 of Title 16 of the California Code of Regulations Relating to Revocation for Sexual Misconduct

8. Public Comment of Items Not on the Agenda

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

9. Recess



MEMORANDUM

DATE	May 19, 2014
TO	Dental Board of California
FROM	Linda Byers, Executive Assistant
SUBJECT	Agenda Item 2: Report from the Licensing, Certification and Permits Committee Regarding Closed Session

Dr. Whitcher, Chair of the Licensing, Certification and Permits Committee, will provide recommendations to the Board based on the outcome of the Closed Session meeting to grant a new license(s) to replace a cancelled license(s).



MEMORANDUM

DATE	May 19, 2014
TO	Dental Board of California
FROM	Linda Byers, Executive Assistant
SUBJECT	Agenda Item 3: Approval of Minutes

The Board may take action to approve the minutes from the February 27-28, 2014 Board Meeting and the March 12 and April 9, 2014 Teleconference meetings.



BOARD MEETING MINUTES
February 27-28, 2014
Wyndham Bayside San Diego
1355 North Harbor Drive, San Diego, CA, 92101

DRAFT

Members Present

Fran Burton, Public Member, President
Bruce Whitcer, DDS, Vice President
Judith Forsythe, RDA, Secretary
Steven Afriat, Public Member
Stephen Casagrande, DDS
Yvette Chappell-Ingram, Public Member
Katie Dawson, RDH
Luis Dominicis, DDS
Kathleen King, Public Member
Ross Lai, DDS
Huong Le, DDS, MA
Steven Morrow, DDS, MS
Thomas Stewart, DDS

Members Absent

Meredith McKenzie, Public Member
Debra Woo, DDS

Staff Present:

Karen Fischer, Executive Officer
Kim Trefry, Enforcement Chief
Dawn Dill, Licensing Manager
Sarah Wallace, Legislative and Regulatory Analyst
Linda Byers, Executive Assistant
Spencer Walker, DCA Senior Staff Counsel

Thursday, February 27, 2014

1. Call to Order/Roll Call/Establishment of Quorum

Fran Burton, President, called the meeting to order at 8:47 a.m. Judith Forsythe, Secretary, called the roll and a quorum was established.

2. Approval of the November 21-22, 2013 Board Meeting Minutes

Motioned/Seconded/Carried (M/S/C) (Afriat/Stewart) to approve the November 21-22, 2013 Board Meeting Minutes. There was no public comment. The motion passed unanimously.

3. President's Report

Dental Board President, Fran Burton gave an overview of her expectations of full participation by all Board members, doing the homework needed to be prepared for each meeting and staying until the meeting is adjourned. She stated that her goals for the coming year include defining the mission of each committee and promoting the Board's primary mission of Protecting the Public. She recognized

guests in the audience including; Dr. Nathaniel Tippet from the Western Regional Examination Board (WREB), Paul Glassman, DDS, MA, MBA. Professor of Dental Practice, Director of Community Oral Health, University of the Pacific, Kathryn Scott, Children's Partnership, Dr. Alan Felsenfeld, California Association of Oral and Maxillofacial Surgeons (CALAOMS), Gayle Mathe, California Dental Association (CDA), Dr. Lori Gagliardi, California Association of Dental Assisting Teachers (CADAT), Vickie Kimbrough-Walls, American Dental Education Association (ADEA), Lori Hubble, Dental Hygiene committee of California (DHCC), Susan Lopez, California Dental Hygienists Association (CDHA), Dr. William Langstaff, Dr. Guy Acheson, California Association of General Dentists (CAGD), Robert Hanlon, DMD, past Chair of CDA's Government Affairs Council and Stephenie Penginey, Center for Public Interest Law.

4. **Presentation by Paul Glassman, DDS, Office of Statewide Health Planning and Development (OSHDP), Regarding Health Workforce Pilot Project (HWPP) #172 and Assembly Bill 1174 (Bocanegra)**

Dr. Paul Glassman gave a presentation on the Virtual Dental Home Project. He and Kathryn Scott from the Children's Partnership provided an overview and results from the past six years of testing. There was discussion regarding the length of time for training allied personnel, fees, outcomes of treatment, standards of care, access to treatment and follow-up care.

RECESS

5. **Joint Meeting of the Legislative and Regulatory Committee and the Dental Assisting Council for the Purpose of Discussion and Possible Action Relating to Assembly Bill 1174 (Bocanegra)**

Fran Burton, Chair of the Legislative and Regulatory Committee called the roll. Teresa Lua, Chair of the Dental Assisting Council called the roll. A quorum was established. Sarah Wallace, Legislative and Regulatory Analyst gave an overview of Assembly Bill 1174 (Bocanegra) including possible concerns.

RECESS

6. **Discussion and Possible Action Regarding Assembly Bill 1174 (Bocanegra)**

Sarah Wallace, Legislative and Regulatory Analyst provided a summary of the joint meeting and the staff recommended proposed amendments to Assembly Bill 1174 (Bocanegra). There was discussion regarding concerns about leaving decay and Denti-Cal paying for interim fillings instead of permanent fillings. There was also discussion about the material used for the interim fillings and how it will be adjusted after it hardens. Mr. Afriat suggested embracing this change cautiously by taking a watch position and sending a letter to the author asking for the proposed amendments. Dr. Casagrande agreed with Mr. Afriat. M/S/C (Afriat/Casagrande) to take a watch position on AB 1174 and direct staff to send the proposed amendments to the author for inclusion. Ms. Burton and Ms. King proposed a substitute motion: M/S/C (Burton/King) to support AB 1174 if amended. There was discussion about how many amendments were acceptable and the importance of working with the Dental Board to insure that students are fully trained on the new duties and demonstrate full competency. Ms. Scott assured the Board members

that the author will work closely with the Dental Board. There was no further public comment. The substitute motion passed with 9 ayes and 4 noes.

7. COMMITTEE/COUNCIL MEETINGS

8. Discussion and Possible Action Regarding:

A. Comments Received During the 45-Day Public Comment Period for the Board's Proposed Rulemaking to: Amend §§ 1021, 1028, 1030, 1031, 1032, 1032.1, 1032.2, 1032.3, 1032.4, 1302.5, 1032.6, 1033, 1033.1, 1034, 1034.1, 1035, and 1036; Add §§ 1032.7, 1032.8, 1032.9, 1032.10; and Repeal §§ 1035.1, 1035.2, 1036.1, 1036.2, 1036.3, 1037, 1038, and 1038 of Title 16 of the California Code of Regulations Relating to the Portfolio Examination Requirements

Sarah Wallace, Board Legislative and Regulatory Analyst, reported that the Board approved proposed regulatory language relative to the Portfolio Examination Requirements and directed staff to initiate the rulemaking at its August 2013 meeting. 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.

Ms. Wallace reported that staff reviewed the comments received and developed recommended responses in consultation with the Board's Portfolio Examination subcommittee and Board Legal Counsel. Additionally, staff drafted modified text (attached) for the Board's consideration.

The Board had reviewed the summaries of the comments received and took action regarding the staff recommendations as follows:

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.

Staff recommended rejection of 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" was not relevant to this regulatory proposal, as this was a previous Board rulemaking that became effective in March 2012.

Motioned/Seconded/Carried (M/S/C) (Morrow/Dominicis) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

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.

Staff recommended rejection of 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.

M/S/C (Afriat/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended rejection of the term “applicant”; however, staff did recommend modifying 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, staff recommended adding a definition to clarify the meaning of “candidate”.

Staff did 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.

M/S/C (Morrow/Le) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.~~

Staff recommended rejection of 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. Staff 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.

M/S/C (Dominicis/Afriat) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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."

Staff recommended rejection of 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, staff recommended modifying the text to delete this provision from section 1032 and specify this requirement for each individual competency examination for the sake of clarity.

M/S/C (Morrow/Afriat) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended acceptance of this comment with the exception of replacing “applicant” with “candidate” for reasons previously specified.

M/S/C (Morrow/Burton) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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 implants.

(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 planing procedures.

(b) ~~Evidence of successful~~ 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.

Staff recommended acceptance of 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.” Staff 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”. Staff recommends using “shall”.

M/S/C (Morrow/Afriat) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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) 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.

Staff Recommended Response:

Staff recommended rejection of 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, staff did 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. Staff recommends clarifying the language in subdivision (a) to clarify that it is applicable to the portfolio examination in its entirety.

M/S/C (Burton/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended rejection of this comment. Staff believed 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. Staff 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, staff did recommend some grammatical and technical amendments to clean up the language and correct the inadvertent pluralizing of "patient".

M/S/C (Morrow/Burton) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended rejection of these comments. 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, staff did 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.

M/S/C (Afriat/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended acceptance of 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. Staff recommended modifying the text accordingly.

M/S/C (Morrow/Le) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #11 - Section 1032.5:

The CDA makes the same comment and suggestions regarding the title and subsection (a) made for previous sections.

Staff recommended rejection of these comments. 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, staff did 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.

M/S/C (Morrow/Afriat) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #12 - Section 1032.6:

The CDA makes the same comment and suggestions regarding the title and subsection (a) made for previous sections.

Staff recommended rejection of these comments. 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, staff did 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.

M/S/C (Morrow/Afriat) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended acceptance of this comment and recommended adding "within the established standard of care" to the text.

M/S/C (Morrow/Le) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #14 - Section 1032.7:

The CDA makes the same comment and suggestions regarding the title and subsection (a) made for previous sections.

Staff recommended rejection of these comments. 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, staff did 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.

M/S/C (Morrow/Chappell-Ingram) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.”

Staff recommended acceptance of this comment.

M/S/C (Dominicis/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #16 - Section 1032.8:

The CDA makes the same comment and suggestions regarding the title and subsection (a) made for previous sections.

Staff recommended rejection of these comments. 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, staff did 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.

M/S/C (Morrow/Le) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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:

Staff recommended acceptance of this comment.

M/S/C (Morrow/Burton) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended rejection of 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.

M/S/C (Afriat/Chappell-Ingram) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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).

Staff recommended rejection of this comment. Staff did 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 must submit documentation that the appointed examiners have satisfied the Board’s competency examiner training requirements.

M/S/C (Morrow/King) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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 meet the board's re-calibrated 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.

Staff recommended rejection of 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, staff did recommend adding 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.

M/S/C (Morrow/King) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended rejection of this comment. The contents of this section are specific to the grading of the competency examinations, not the portfolio examination in its entirety. Therefore, staff recommends modifying the title of the section to “Portfolio Competency Examination Grading”.

M/S/C (Morrow/King) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended rejection of 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, staff did recommend modifying 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.

M/S/C (Afriat/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended acceptance of the comment. Staff recommended modifying the language to only reference the relevant subsections of each competency so that the competency examination grading criteria may be clearly understood.

M/S/C (Morrow/Burton) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.~~

Staff recommended rejection of 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.

M/S/C (Morrow/Dominicis) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended acceptance of this comment and recommended modification of the text to differentiate between the remedial education process for the Board's portfolio examination and the WREB examination.

M/S/C (Dominicis/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

Comments Received from Steven W. Friedrichsen, DDS, Professor and Dean, College of Dental Medicine, Western University of Health Sciences

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.

Staff recommended rejection of 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.

M/S/C (Afriat/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended rejection of 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.

M/S/C (King/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended rejection of 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. Staff believes Western University's concern is only an individual concern that is unique to their particular education model.

M/S/C (Afriat/King) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended rejection of 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.

M/S/C (Dominicis/Afriat) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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.

Staff recommended rejection of 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.

M/S/C (King/Dawson) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

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 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. The Board did not take any action.

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

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.

Staff recommended rejection of 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.

M/S/C (Morrow/Chappell-Ingram) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

Additional Staff Recommendations:

Staff recommended modifying the text to correct technical and grammatical errors.

M/S/C (Afriat/King) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

B. Adoption of Proposed Amendment of §§ 1021, 1028, 1030, 1031, 1032, 1032.1, 1032.2, 1032.3, 1032.4, 1302.5, 1032.6, 1033, 1033.1, 1034, 1034.1, 1035, and 1036; Proposed Addition of §§ 1032.7, 1032.8, 1032.9, 1032.10; and Proposed Repeal of §§ 1035.1, 1035.2, 1036.1, 1036.2, 1036.3, 1037, 1038, and 1038 of Title 16 of the California Code of Regulations Relating to the Portfolio Examination Requirements

M/S/C (Afriat/Dominicis) to modify the text in response to the comments and recommendations received and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the Board at this meeting. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to sections 1021, 1028, 1030, 1031, 1032, 1032.1, 1032.2, 1032.3, 1032.4, 1302.5, 1032.6, 1033, 1033.1, 1034, 1034.1, 1035, and 1036, adopt the proposed addition of sections 1032.7, 1032.8, 1032.9, 1032.10, 1036.01, and adopt the proposed repeal of sections 1035.1, 1035.2, 1036.1, 1036.2, 1036.3, 1037, 1038, and 1038 of Title 16 of the California Code of Regulations Relating to the Portfolio Examination Requirements as noticed in the modified text.

9. Discussion and Possible Action Regarding a Special Teleconference Meeting in April to Consider Any Adverse Comments Received Regarding the Board's Modified Text Relative to the Portfolio Examination Requirements Rulemaking

The Board accepted the staff recommendations and voted to modify the text for the Portfolio Examination Requirements rulemaking in Agenda Item 8.

In the event the Board receives adverse comments in response to the modified text, the Board will need to hold a special teleconference meeting to respond to the comments to expedite the adoption of these regulations. If no adverse comments are received after the 15-day public comment period, there will be no need for the Board to hold a special teleconference meeting, since the Board would have already adopted the modified text as the final text at the Board meeting. Board staff would then prepare the final rulemaking documents.

M/S/C (Afriat/Stewart) to schedule a tentative special teleconference for Wednesday, April 9, 2014 at 12:00 p.m. to respond to any adverse comments that may be received

in response to the modified text. In the event the Board does not receive any adverse comments, the special teleconference will be cancelled. Confirmation or cancellation of the meeting will be sent to the Board members by March 19, 2014. There was no public comment. The motion passed unanimously.

10. **Public Comment of Items Not on the Agenda**

There was no public comment.

11. **Recess**

The Board recessed at 5:30 p.m.

DRAFT

Friday, February 28, 2014

12. Call to Order/Roll Call/Establishment of Quorum

President Fran Burton called the meeting to order at 8:10 a.m. Roll was called and a quorum was established. Ms. Burton introduced guests in the audience including Brooke Bodart, Center for Oral Health, Dr. Detsch, California Society of Periodontists, Susan Lopez, Past President of the California Dental Hygienists Association, Corrinne Fishman, Department of Consumer Affairs Executive Office, Gayle Mathe, California Dental Association, Lori Hubble, Executive Officer, Dental Hygiene Committee of California, Michelle Hurlbutt, President, Dental Hygiene Committee of California, Alan Felsenfeld, Speaker of the House, California Dental Association, Dr. Lori Gagliardi, California Association of Dental Assisting Teachers, and Dr. Michael Ricupito, California Association of Orthodontists. The Board immediately went into Closed Session. The Full Board reconvened at 11:08 a.m.

13. Executive Officer's Report

Karen Fischer, Executive Officer, gave an overview of her activities on behalf of the Dental Board. She reported on the status of staff recruitments and hiring.

14. Budget Report

Executive Officer, Karen Fischer, MPA, gave an overview of the budget including statistics on cost recovery. There was discussion about the consequences of going over budget.

15. Update from the Department of Consumer Affairs' Executive Office

Corinne Fishman from the Department of Consumer Affairs Executive Office reported on the Department's Strategic Plan and other activities.

16. Update from the Dental Hygiene Committee of California (DHCC)

Lori Hubble, Executive Officer of the DHCC and Michelle Hurlbutt, President of the DHCC reported that the DHCC Disciplinary Guidelines are finally in place. They will be having their Sunset Review Hearing on March 17, 2014. They invited Ms. Fischer and Ms. Burton to attend their meeting on May 5-6, 2014 in Southern California. Gayle Mathe, California Dental Association (CDA), commented that CDA wanted to go on record stating their concerns surrounding the proposed Dental Hygiene regulations that appear to define and/or interpret the scope of practice for Dental Hygienists. CDA submitted their comments to DHCC during the comment period and also sent a letter to the Dental Board and the Department of Consumer Affairs requesting legal analysis of those sections of the proposed language.

17. Presentation by Representative from the California Dental Association (CDA) Regarding "Give Kids a Smile"

Gayle Mathe, CDA, gave a presentation on their Give Kids a Smile Program. She reported that part of the program includes dentists who "adopt" children who need further care after the free care event in order to provide them with additional no fee care. 124 volunteer Sacramento dentists "adopted" 399 children providing \$195,076 worth of free care. Kathleen King commented that she attended the

Santa Clara event that CDA sponsored where she found that about 50% of the children seen had urgent or emergency dental needs.

18. Staff Presentation Regarding Pathways to Licensure for Dentists and Dental Assistants

Dawn Dill, Licensing Unit Manager, gave an overview of the information provided including a briefing on the requirements for all forms of licensure. Ms. Burton suggested that the Dental Board develop a pamphlet or brochure containing the information on all of the pathways to licensure. Ms. Fischer commented that Ms. Wallace is working on language for the Licensure by Credential regulations. Ms. Wallace stated that she hopes to have draft language available for review at the Board Meeting scheduled in May.

19. Discussion and Possible Action Regarding Adoption of the Revisions to the Board Member Administrative Procedure Manual

Ms. Fischer gave an overview of the material provided. She stated that the manual will be updated periodically. M/S/C (Afriat/Dominicis) to adopt the revisions to the Board Member Administrative Procedure Manual now titled the Dental Board of California Policy and Procedure Manual. Spencer Walker, Senior Legal Counsel, suggested an amendment to page 12 in reference to the President's message; strike the word quarterly. The motion passed with the amendment.

20. Discussion and Possible Action Regarding the Appointment of One Member and Reappointment of Four Members to the Diversion Evaluation Committee

Thomas Stewart, DDS, reported that he spoke with the candidate via telephone. He recommended acceptance of this candidate as a member of the Dental Board's Diversion Evaluation Committee. M/S/C (Stewart/Afriat) to accept the recommendation to appoint Anca Severin to fill the dental auxiliary vacancy on the Southern Diversion Evaluation Committee. The motion passed unanimously.

M/S/C (Afriat/Forsythe) to re-appoint the following members to a second term of four years: Dina Gillette, RDH, Lynn Zender, LCSW, Thomas Specht, MD and J. Steven Supancic, Jr. DDS, MD. The motion passed unanimously.

21. Discussion and Possible Action Regarding an Appointment to the Dental Assisting Council

Karen Fischer, Executive Officer, gave an overview of the information provided. Ms. Forsythe stated that she reviewed applications submitted by the candidates and she suggested reappointing Anne Contreras. M/S/C (Burton/Whitcher) to re-appoint Anne Contreras to the Dental Assisting Council. The motion passed unanimously.

22. Discussion and Possible Action To:

(A) Reconsider Promulgation of a Regulation to Require an Administrative Law Judge Who has Ordered a Decision Finding that a Licensee Engaged in Sexual Misconduct to Order Revocation Which May Not be Stayed

Sarah Wallace, Legislative and Regulatory Analyst, gave an overview of the information provided. M/S/C (Morrow/Afriat) to reconsider promulgation of a regulatory package to amend California Code of Regulations, Title 16, Section 1018 as it relates to revocation for sexual misconduct. Dr. Le suggested encouraging Continuing Education instructors to include this topic. The motion passed unanimously.

(B) Initiation of a Rulemaking to Amend California Code of Regulations, Title 16, Section 1018 Relating to Revocation for Sexual Misconduct

M/S/C (King/Afriat) to approve the proposed regulatory language relevant to revocation for sexual misconduct and direct staff to take all steps necessary to initiate the formal rulemaking process, including noticing the proposed language for 45-day public comment, setting the proposed language for a public hearing, and authorizing the Executive Officer to make any non-substantive changes to the rulemaking package. If after the close of the 45-day public comment period and public regulatory hearing, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to California Code of Regulations, Title 16, Section 1018 as noticed in the proposed text. The motion passed unanimously.

23. Dental Assisting Council Report

Teresa Lua, Chair of the Dental Assisting Council reported that the minutes from the August 26, 2013 and November 21, 2013 Dental Assisting Council meetings were approved. She appointed a subcommittee consisting of Ms. Forsythe and Ms. Contreras to work with staff to review the Registered Dental Assistant (RDA) examination process and Ms. Ramos and herself to work with staff to review the Registered Dental Assistant in Extended Functions (RDAEF) examination process in order to identify improvements.

24. Enforcement Committee Report

Steven Afriat, Chair of the Enforcement Committee reported that the minutes from the February 28, 2013 Enforcement Committee meeting were approved. He stated that he is soliciting recommendations for the Enforcement Committee's Mission Statement.

25. Legislative and Regulatory Committee Report

Fran Burton, Chair of the Legislative and Regulatory Committee reported that the minutes from the February 28, 2013 Legislative and Regulatory Committee meeting were approved. The committee did not extend its Mission Statement beyond what they are already doing.

26. Examination Committee Report

Dr. Casagrande, Chair of the Examination Committee reported that the minutes from the February 28, 2013 Examination committee meeting were approved. He stated that the Examination Committee's Missions are:

1. Implementation of the Portfolio Pathway to Licensure.

2. Research the possibility of including regional examinations as a pathway to licensure. He appointed a subcommittee of Drs. Le and Lai to do the research and update the Board.
3. Begin the process of implementing a Portfolio Pathway to Licensure for Registered Dental Assistants. He appointed a subcommittee of Yvette Chappell-Ingram and Judy Forsythe, RDA to research the possibilities and report back to the Board.
4. Initiate an occupational analysis on the Western Regional Examination Board (WREB) He appointed a subcommittee of Judy Forsythe, RDA, and Dr. Morrow to research this issue and report back to the Board.

27. Access to Care Committee Report

Dr. Le, Chair of the Access to Care Committee reported that they have deferred development of their mission statement until the May meeting.

28. Licensing, Certification & Permits Committee Report

Dr. Whitcher, Chair of the Licensing, Certification & Permits Committee reported that the minutes from the February 28, 2013 Licensing, Certification & Permits Committee meeting were approved.

29. Public Comment of Items Not on the Agenda

There was no public comment.

30. Future Agenda Items

There were no requests for future agenda items

31. Board Member Comments for Items Not on the Agenda

There were no Board Member comments.

32. Adjournment

The Dental Board meeting adjourned at 1:51 p.m.



**TELECONFERENCE – BOARD MEETING MINUTES
WEDNESDAY, MARCH 12, 2014
(Board Office)**

DRAFT

Members Present

Fran Burton, MSW, Public Member, President
Bruce Whitcher, DDS, Vice President
Judith Forsythe, RDA, Secretary
Steven Afriat, Public Member
Stephen Casagrande, DDS
Yvette Chappell-Ingram, Public Member
Luis Dominicus, DDS
Kathleen King, Public Member
Ross Lai, DDS
Huong Le, DDS, MA
Meredith McKenzie, Public Member
Steven Morrow, DDS, MS
Thomas Stewart, DDS

Members Absent

Katie Dawson, RDH
Debra Woo, DDS

1. Call to Order/Roll Call/Establishment of Quorum

Fran Burton, President called the teleconference meeting to order at 12:15 p.m. Roll was called and a quorum established.

2. Staff Report on State Dentistry Fund

Karen Fischer, Executive Officer commented that the reason we are here today is to discuss moving forward with putting our financial house in order. Throughout 2013, the Board received information from the Department of Consumer Affairs (DCA) budget office indicating that the board was spending more than it was taking in and that the current licensure fee should be raised from \$365 to \$525 based on workload analyses and expenditure projects for future budget years. The Board's response was to promulgate regulations to raise the initial licensure and renewal fees to \$450 – the highest fee allowed by statute. These regulations will become effective July 1, 2014.

Another step taken by the Board to correct the structural imbalance of our dentistry fund was to authorize staff to seek an author for legislation that would raise the statutory cap for licensure fees from \$450 to \$700. Doing this would allow the board the ability to come back in the future and raise fees through the regulatory process. Staff went to various members of the legislature and were unable to find an author to carry this important legislation until we approached Senator Marty Block's staff. They gave us an opportunity to sit down and discuss our situation. After hearing our plea, Senator Block came back with an offer I believe we cannot refuse – which is to carry legislation that would increase our fee in statute to \$525 – effective January 1, 2015. Since this turn of events was unanticipated by staff and the timing of the Senator's offer did not allow staff time to

properly notice discussion on this issue at the February board meeting – you are here today.

Before you today is a comprehensive package of what has been discussed at Board meetings regarding fee increases.

In preparation for entering the Sunset Review hearings in 2015, I believe that it is very important that the board go on record in support of legislation to raise our initial licensure and biennial renewal fees to \$525, effective January 1, 2015 in order to bridge the gap that currently exists between revenue and expenditures.

Regardless of whether or not Senator Block is successful in moving Senate Bill 1416 through the legislature, or if the governor vetoes it, the board will be on record as having tried to fulfill its fiduciary responsibility to the best of its ability. I believe this is an important statement to make before entering into oversight hearings. I recommend and respectfully request that the board support Senate Bill 1416 when it is amended to include our fee increase.

3. **Discussion and Possible Action Regarding:**

A. Proposed Legislation to Amend Business and Professions Code Section 1724 Relating to Dentistry Licensing Fees; and

Sarah Wallace gave an overview of the information provided.

B. Senate Bill 1416 (Block)

Dr. Dominicis commented that he is in favor of the fee increase. He stated that it is necessary in order to avoid a deficit but with the increase we should provide better service in the form of an option on renewal forms to “not renew” that does not carry a consequence of showing delinquent for an un-renewed license or permit. Dr. Le expressed her support for the proposed legislation.

Moved/Seconded/Carried (M/S/C) (Morrow/Casagrande) to support legislation moving forward to increase the current fees to \$525 beginning January 1, 2015.

Gayle Mathe, California Dental Association (CDA), commented that they are interested in the organizational work, particularly the workload analysis that the Board is doing. She stated that CDA’s Governmental Affairs Council will be reviewing the information provided in the meeting materials. Ms. Mathe reported that Dr. Stewart, Ms. Fischer and Ms. Burton would be presenting this information at the next CDA meeting. Dr. Bryce Docherty, California Association of Oral and Maxillofacial Surgeons (CalAOMS), commented that CalAOMS understands the need for the increase and hopes that the additional funds will be used judiciously and for public protection. They are monitoring this issue closely and are willing to work with the Board and stakeholders if necessary.

The motion passed unanimously.

4. **Public Comment of Items Not on the Agenda**

Ms. Fischer commented that she anticipates an ongoing discussion about the Boards financial situation at all Board meetings in the future and welcomes participation.

5. **Adjournment**

The meeting adjourned at 12:31 p.m.



TELECONFERENCE – BOARD MEETING MINUTES
WEDNESDAY, APRIL 9, 2014
DRAFT

Members Present

Fran Burton, MSW, Public Member
Bruce Witcher, DDS,
Steven Afriat, Public Member
Stephen Casagrande, DDS
Luis Dominicis, DDS
Kathleen King, Public Member
Huong Le, DDS, MA
Meredith McKenzie, Public Member
Steven Morrow, DDS, MS
Thomas Stewart, DDS
Debra Woo, DDS

Members Absent

Judith Forsythe, RDA, Secretary
Yvette Chappell-Ingram, Public Member
Katie Dawson, RDH
Ross Lai, DDS

OPEN SESSION – FULL BOARD – TELECONFERENCE

1. **Call to Order/Roll Call/Establishment of Quorum**

Fran Burton, President, called the meeting to order at 12:02. Roll was called and a quorum established.

2. **Discussion and Possible Action Regarding:**

A. The Dental Hygiene Committee of California’s (DHCC) Regulatory Proposal to Adopt California Code of Regulations, Title 16, §§ 1103, 1105, 1105.1, 1105.2, 1105.3, 1105.4, and 1106 Relative to Educational Program Requirements

Sarah Wallace, Legislative and Regulatory Analyst, gave an overview of the information provided. Dr. Le, a member of the subcommittee that reviewed this proposal commented that it is important to get further clarification of the term “diagnosis”. Dr. Witcher, the other member of the subcommittee commented that he had similar concerns that the term “diagnosis” was too broad and needs further clarification.

Regarding Section 1103. Definitions: Ms. Wallace commented that since Code Section 1908 specifically states that diagnosis and comprehensive treatment planning are not included procedures in the practice of dental hygiene, staff recommended the Board discuss whether it is within the authority of the DHCC to include “diagnosis” within the definition for “dental hygiene process of care”

Motioned/Seconded/Carried (M/S/C) (Burton/Afriat) to accept the staff recommendation to direct staff to submit a letter to the DHCC before the end of

the 45-day public comment period requesting that the DHCC delete references to “diagnosis” and replace with “assessment” or “evaluation” so as not to exceed the authority vested in Code Section 1908 and request that the DHCC revise the language to maintain consistency with Code Sections 1907, 1908, and 1914.

Sharon Golightly, Dental Hygiene educator commented that in talking about Dental Hygiene diagnosis, it is a Dental Hygiene treatment plan within the overall patient treatment plan. It is part of the Dental Hygiene process of care and a National standard. Noel Kelsch, DHCC, commented that Registered Hygienists in Alternative Practice (RDHAP) sometimes are rendering treatment prior to the patient receiving a diagnosis from a dentist. A diagnosis must be in place in order to bill for services so this is an area that may need to be addressed. Dr. Le commented that the regulations that are being addressed are for Registered Dental Hygienists (RDH) not RDHAP. Ms. Kelsch suggested making a clear delineation between the scope of practice for RDH’s and RDHAP’s. She commented that is within the scope of practice for an RDHAP to do an assessment that leads to a limited diagnosis for billing purposes. Gayle Mathe, California Dental Association (CDA), thanked staff for their excellent analysis and appreciates the Board’s consideration of these jurisdictional issues and the thoughtful deliberation. Lori Hubble, Executive Officer of DHCC, commented that the Dental Hygiene Process of Care has been in place since 1986. Dental Hygiene Diagnosis is part of this process. Dental Hygiene Diagnosis identifies human needs and deficits that can be met within the scope of Dental Hygiene practice versus Dental Diagnoses which identify disease or conditions for which the dentist directs or provides primary treatment. So, this should not be confused with Dental diagnosis versus Dental Hygiene diagnosis. She commented that Dental Hygiene students must be prepared to take the National Boards which include Dental Hygiene diagnosis as a component of their examination. The five components of a treatment plan, taught in Dental Hygiene educational programs are; Assessment, Dental Hygiene Diagnosis, Planning and Implementation, Evaluation and Documentation. Spencer Walker, Senior Legal Counsel stated that the term diagnosis is not stated anywhere in the Dental Practice Act (DPA) as it applies to Dental Hygienists. Ms. Hubble stated that it is within the Dental Hygiene Care Plan that is stated in the DPA. Mr. Walker stated that the DPA specifically states that Dental Hygienists may not diagnose. Ms. Kelsch stated that in a public health setting, where no dentist is present, hygienists are required to assess, evaluate and diagnose before they can treat the patient specifically for billing purposes.

The vote was taken with the motion passing.

Regarding Section 1105. Requirements for RDH Educational Programs: Ms. Wallace commented that staff assumes that an educational program would be required to follow the same supervision requirements provided in Code Sections 1909, 1910, and 1912. However, since the proposed language does not specify whether the supervision is “general” or “direct”, staff recommended that the Board consider directing staff to submit a letter to the DHCC before the end of the 45-day public comment period requesting that the DHCC amend section 1105(b)(5) to clarify whether the requirements contained in Code Sections 1909, 1910, and 1912 must also be followed in an educational setting.

M/S/C (Casagrande/Afriat) to direct staff to submit a letter to the DHCC before the end of the 45-day public comment period requesting that the DHCC amend section 1105(b)(5) to clarify whether the requirements contained in Code Sections 1909, 1910, and 1912 must also be followed in an educational setting.

Donna Kantner, DHCC, commented that it was the intention to have those requirements in the educational settings. She will strive to make them clearer.

The vote was taken and the motion passed.

Regarding Section 1106. Radiation Safety Certificate: Ms. Wallace commented that Code Section 1684.5 specifies that it is unprofessional conduct for any dentist to perform or allow to be performed any treatment on a patient who is not a patient of record of that dentist. A dentist may, however, after conducting a preliminary oral examination, require or permit any dental auxiliary to perform procedures necessary for diagnostic purposes, provided that the procedures are permitted under the auxiliary's authorized scope of practice. Additionally, a dentist may require or permit a dental auxiliary to perform all of the following duties prior to any examination of the patient by the dentist, provided that the duties are authorized for the particular classification of dental auxiliary:

- (1) Expose emergency radiographs upon direction of the dentist.
- (2) Perform extra-oral duties or functions specified by the dentist.
- (3) Perform mouth-mirror inspections of the oral cavity, to include charting of obvious lesions, malocclusions, existing restorations, and missing teeth.

Staff believes that the phrase "determination of radiographs", as it is used within the proposed section 1106(b), is vague and could be perceived to expand the dental hygiene scope of practice. Staff recommended the Board consider directing staff to submit a letter to the DHCC before the end of the 45-day public comment period requesting that the DHCC revise the language to maintain consistency with Code Section 1684.5.

Dr. Le commented that she would like clarity on the issue that the dentist is the only one who can determine the number of radiographs to be taken. Sharon Golightly commented that speaking as an educator; students are taught not to perform duties outside of their scope of practice. Dr. Witcher commented that the phrase "determination of radiograph" needs further clarification. Students should not be determining if radiographs should be taken or how many. Gayle Mathe, CDA, commented that section (b) in general appears to talk about practice not education. It appears to say that if certification has been granted, you are permitted to perform these things in practice. She stated that the whole section doesn't appear to belong in educational regulations because it appears to be defining what the person can do in practice. Ms. Mathe also commented that many times hygienists and auxiliaries are taking radiographs under the office protocol. If the student has not graduated as a hygienist, they are acting as a Dental Assistant and not under the purview of DHCC. She stated that CDA thinks that all of section (b) doesn't belong.

M/S/C (Afriat/Dominicis) to accept the staff recommendation to direct staff to submit a letter to the DHCC before the end of the 45-day public comment period requesting that the DHCC revise the language to maintain consistency with Code Section 1684.5.

The vote was taken and the motion passed.

B. **Providing Formal Comments Regarding Scope of Practice Concerns During the 45-Day Public Comment Period for the DHCC's Regulatory Proposal to Adopt California Code of Regulations, Title 16, §§ 1103, 1105, 1105.1, 1105.2, 1105.3, 1105.4, and 1106 Relative to Educational Program Requirements**

There was no action required on this item as the previous motions included this directive.

3. **Public Comment of Items Not on the Agenda**

There was no further public comment.

CLOSED SESSION – FULL BOARD

4. **Adjournment**

The meeting adjourned at 12:45 p.m.



MEMORANDUM

DATE	May 7, 2014
TO	Dental Board of California
FROM	Linda Byers, Executive Assistant
SUBJECT	Agenda Item 4: President's Report

The President of the Dental Board of California, Fran Burton, MSW, will provide a verbal report.

COMMITTEE MEETINGS

EXAMINATION COMMITTEE



NOTICE OF EXAMINATION COMMITTEE MEETING

Thursday, May 29, 2014

Upon Conclusion of Agenda Item 4

Red Lion Hotel

150 Hegenberger Road, Oakland, CA 94621

(510) 635-5300 or (916) 263-2300

MEMBERS OF THE EXAMINATION COMMITTEE

Chair – Stephen Casagrande, DDS

Vice Chair – Steven Morrow, DDS

Yvette Chappell-Ingram, Public Member

Judith Forsythe, RDA

Ross Lai, DDS

Huong Le, DDS, MA

Debra Woo, DDS

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 website at www.dbc.ca.gov. This Committee meeting is open to the public and is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Karen M. Fischer, MPA, Executive Officer, at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, or by phone at (916) 263-2300. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

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

1. Call to Order/Roll Call/Establishment of Quorum
2. Approval of the February 27, 2014 Examination Committee Meeting Minutes
3. Discussion and Possible Action Regarding the Subcommittee Report on the Western Regional Examination Board (WREB) Occupational Analysis Performed by the Department of Consumer Affairs' (DCA) Office of Professional Examination Services (OPES)
4. Update on the Implementation of the Portfolio Licensure Examination for Dentistry

5. **Public Comment of Items Not on the Agenda**
The Committee may not discuss or take action on any matter raised during the Public Comment section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting (Government Code §§ 11125 and 11125.7(a)).
6. **Future Agenda Items**
Stakeholders are encouraged to propose items for possible consideration by the Committee at a future meeting.
7. **Committee Member Comments for Items Not on the Agenda**
The Committee may not discuss or take action on any matter raised during the Committee Member Comments section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting (Government Code §§ 11125 and 11125.7(a)).
8. **Adjournment**



EXAMINATION COMMITTEE MEETING MINUTES

Thursday, February 27, 2014

Wyndham Bayside San Diego

1355 North Harbor Drive, San Diego, CA, 92101

DRAFT

MEMBERS PRESENT

Chair – Stephen Casagrande, DDS
Vice Chair – Steven Morrow, DDS
Yvette Chappell-Ingram, Public Member
Judith Forsythe, RDA
Ross Lai, DDS
Huong Le, DDS, MA

MEMBERS ABSENT

Debra Woo, DDS

1. Call to Order/Roll Call/Establishment of Quorum

Dr. Steve Casagrande, Chair, called the Examination Committee to order at 2:55 p.m. Roll was called and a quorum established.

2. Approval of the February 28, 2013 Examination Committee Meeting Minutes

M/S/C (Morrow/Chappell-Ingram) to approve the February 28, 2013 Enforcement Committee meeting minutes. The motion passed with one abstention.

3. Define the 2014 Mission of the Examination Committee

Dr. Casagrande gave an overview of why and how examinations are given. Dr. Morrow commented that he would like the committee to evaluate other regional examinations for possible inclusion as a Board approved examination for initial licensure giving students more options for mobility. Dr. Casagrande stated that the Mission of the Examination Committee is:

- 1) Implementation of the Portfolio Pathway to Licensure
- 2) Research into the possibility of approving an additional regional examination for initial licensure (Dr. Casagrande appointed a subcommittee of Dr. Lai and Dr. Le to research other regional examinations)

There was discussion about how to implement Portfolio for Registered Dental Assistants. Dr. Casagrande appointed Ms. Forsythe and Ms. Chappell-Ingram to research what would be required to implement Portfolio for Registered Dental Assistants.

4. Update on Western Regional Examining Board (WREB) Activities

Dr. Le provided an overview of information from the WREB meeting she attended.

5. **Staff Report on the WREB Occupational Analysis Performed by the Department of Consumer Affairs' (DCA) Office of Professional Examination Services (OPES)**

Karen Fischer, Executive Officer, gave an overview of the information provided. Dr. Casagrande appointed a subcommittee of Dr. Morrow and Judith Forsythe to review the findings and report back to the Board.

6. **Update on the Implementation of the Portfolio Licensure Examination for Dentistry**

Dawn Dill, Licensing Manager, gave an overview of the information provided. She reported that an implementation date of October 1, 2014 is the goal. Dr. Casagrande reported that the University of the Pacific (UOP) and the University of California at San Francisco (UCSF) are moving forward and recruiting examiners. He commented that since all of the schools will be using the same grading sheets that were developed by the Dental Board in collaboration with the psychometricians, calibration of the examiners should be easier.

Dr. Alan Felsenfeld, California Association of Oral and Maxillofacial Surgeons (CALAOMS), commented that the students he has talked to are anxiously awaiting the implementation of the Portfolio Pathway to Licensure.

7. **Public Comment of Items Not on the Agenda**

There were no public comments.

8. **Future Agenda Items**

There were no future agenda item requests.

9. **Committee Member Comments for Items Not on the Agenda**

There were no Committee member comments.

10. **Adjournment**

The Examination Committee meeting adjourned at 3:45 p.m.



MEMORANDUM

DATE	May 29, 2014
TO	Dental Board Members
FROM	Karen Fischer, Executive Officer
SUBJECT	EX 3: Discussion and Possible Action Regarding the Subcommittee Report on the Western Regional Examination Board (WREB) Occupational Analysis Performed by the Office of Professional Examination Services (OPES)

Background

Licensing boards and bureaus within the California Department of Consumer Affairs (DCA) are required to ensure that examination programs being used in the California licensure process comply with psychometric and legal standards. The California Dental Board (Board) requested that the DCA, Office of Professional Examination Services (OPES), complete a comprehensive review of the Western Region Examination Board's (WREB) licensing examination program. The purpose of the OPES review was to evaluate the suitability of the WREB examinations for continued use in California and to identify if there are areas of California dental practice not covered by the WREB examinations.

OPES received and reviewed documents provided by WREB. Follow-up phone calls were held to clarify WREB procedures and practices. A comprehensive evaluation of the documents was made to determine whether (a) job analysis, (b) examination development, (c) passing scores, (d) test administration, (e) examination performance, and (f) test security procedures met professional guidelines and technical standards. OPES utilized the professional guidelines and technical standards outlined in the *Standards for Educational and Psychological Testing (Standards)* and the California Business and Professions Code section 139 to determine the validity and defensibility of the WREB examination program components listed above.

OPES convened a panel of licensed California dentists to serve as subject matter experts (SMEs) to review the WREB examination content and to compare the content to the description of practice determined for California dentists. The SMEs were selected by the Board based on their geographic location, experience, and practice specialty.

The SMEs were asked to review the scope of practice for dentists as determined by the 2005 California General Dentist Occupational Analysis, performed by OPES (OPES, 2005), and link it with the examination content for WREB as determined by the 2007 General Dentist Practice Analysis performed by WREB.

The SMEs were also asked to link the job task and knowledge statements that make up the examination outline for the California Dentistry Law and Ethics Examination with the content for the WREB examination. This linkage was performed to identify if there are areas of California dental practice not covered by the WREB examination. The California Dentistry Law and Ethics Examination is structured into two content areas. The examination outline specifies the job tasks related to California laws and regulations that a dentist is expected to master at the time of licensure.

OPES has completed its comprehensive analysis and evaluation of the documents provided by WREB and has submitted its report to the Board. Due to the sensitive nature of the examination process, the full report is not available to the public. However the final recommendations will be made public after a subcommittee review.

At the February 2014 Board meeting, Dr. Stephen Casagrande, Chair of the Examination Committee appointed a subcommittee of Dr. Steven Morrow and Judith Forsythe, RDA, to review the findings of the OPES analysis.

The subcommittee will report its findings to the Committee along with any recommendations.

Action Requested

The subcommittee will submit recommendations to the Committee for discussion and possible action.



MEMORANDUM

DATE	May 20, 2014
TO	Examination Committee Members Dental Board of California
FROM	Dawn Dill, Manager, Licensing and Examination Unit
SUBJECT	EX 4: Update on the Implementation of the Portfolio Licensure Examination for Dentistry

Background

Staff submitted the final rulemaking file for the Portfolio Pathway to Licensure to the Department of Consumer Affairs (Department) on March 24, 2014. Final rulemaking files are required to be approved by the Director of the Department, the Secretary of the Business, Consumer Services, and Housing Agency (Agency) and the Director of the Department of Finance (Finance). Once approval signatures are obtained, the final rulemaking file will be submitted to the OAL. The OAL will have thirty (30) working days to review the file. Once approved, the rulemaking will be filed with the Secretary of State.

Beginning January 1, 2013, new quarterly effective dates for regulations will be dependent upon when the OAL approved rulemaking is filed with the Secretary of State, as follows:

- The regulation would take effect on January 1 if the OAL approved rulemaking is filed with the Secretary of State on September 1 to November 30, inclusive.
- The regulation would take effect on April 1 if the OAL approved rulemaking is filed with the Secretary of State on December 1 to February 29, inclusive.
- The regulation would take effect on July 1 if the OAL approved rulemaking is filed with the Secretary of State on March 1 to May 31, inclusive.
- The regulation would take effect on October 1 if the OAL approved regulation is filed on June 1 to August 31, inclusive.

Due to the importance of this rulemaking, staff will be requesting that this proposal become effective upon filing with the Secretary of State. The deadline to submit the final rulemaking file to the Office of Administrative Law for review and determination of approval is November 7, 2014.

As the regulatory package continues to move forward, staff has been working with the subcommittee and legal counsel to develop and finalize courtesy forms to be used by the schools. In addition, staff has updated the Candidate Handbook, Examiner Training Manual and Audit Process Manual to reflect the language in the regulatory package.

Staff will continue to work with the Subcommittee and Subject Matter Experts (SME) to finalize the standardized calibration presentations for each of the competencies. Additionally, staff will begin to schedule meetings with each dental school once the effective date of the regulations is determined.

Action Requested:

No action is being requested by staff for this item.

DENTAL ASSISTING COUNCIL



NOTICE OF DENTAL ASSISTING COUNCIL MEETING AGENDA

Thursday, May 29, 2014

Upon Conclusion of the Examination Committee meeting

Red Lion Hotel

150 Hegenberger Road, Oakland, CA 94621

(510) 635-5300 or (916) 263-2300

Members of the Dental Assisting Council

Chair - Teresa Lua, RDAEF

Vice Chair - Anne Contreras, RDA

Pamela Davis-Washington, RDA

Judith Forsythe, RDA

Emma Ramos, RDA

Bruce Whitcher, DDS

Public comments will be taken on agenda items at the time the specific item is raised. The Council 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 Council Chair. For verification of the meeting, call (916) 263-2300 or access the Board's website at www.dbc.ca.gov. This Council meeting is open to the public and is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Karen M. Fischer, MPA, Executive Officer, at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, or by phone at (916) 263-2300. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

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

1. Call to Order/Roll Call/Establishment of Quorum
2. Approval of the February 27, 2014 Dental Assisting Council Meeting Minutes
3. Presentation by a Representative from the California Association of Dental Assisting Teachers (CADAT)
4. Status of Dental Assisting Program and Course Applications
5. Dental Assisting Program Licensure and Permit Statistics
6. Dental Assisting Program Examination Statistics

7. Public Comment for Items Not on the Agenda
The Council may not discuss or take action on any matter raised during the Public Comment section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting (Government Code §§ 11125 and 11125.7(a)).
8. Future Agenda Items
Stakeholders are encouraged to propose items for possible consideration by the Council at a future meeting.
9. Council Member Comments for Items Not on the Agenda
The Council may not discuss or take action on any matter raised during the Council Member Comments section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting (Government Code §§ 11125 and 11125.7(a)).
10. Adjournment



DENTAL ASSISTING COUNCIL MEETING MINUTES

Thursday, February 27, 2014

Wyndham Bayside San Diego

1355 North Harbor Drive, San Diego, CA, 92101

DRAFT

Members Present

Chair - Teresa Lua, RDAEF,
Vice Chair - Anne Contreras, RDA,
Pamela Davis-Washington, RDA
Judith Forsythe, RDA
Emma Ramos, RDA
Bruce Whitcher, DDS

Members Absent

Michele Jawad, RDA

Staff Present

Karen Fischer, Executive Officer
Kim Trefry, Enforcement Chief
Dawn Dill, Licensing Manager
Sarah Wallace, Legislative and Regulatory Analyst
Linda Byers, Executive Assistant
Spencer Walker, DCA Senior Staff Counsel

1. Call to Order/Roll Call/Establishment of Quorum

Chair Teresa Lua called the meeting to order at 1:50 p.m. Roll was called and a quorum was established.

2. Approval of the August 26 and November 21, 2013 Dental Assisting Council Meeting Minutes

Dr. Lori Gagliardi, California Association of Dental Assisting Teachers (CADAT), commented that she would like to see an amendment to the August 26, 2013 Dental Assisting Council minutes on page three, number 9, change the word "examinations" to "course". M/S/C (Forsythe/Lua) to approve the August 26, 2013 Dental Assisting Council Meeting minutes as amended. The motion passed with one abstention.

M/S/C (Whitcher/Contreras) to approve the November 21, 2013 Dental Assisting Council Meeting minutes. The motion passed unanimously.

3. Status of Dental Assisting Program and Course Applications

Teresa Lua, Dental Assisting Council Chair, gave an overview of the statistics provided. Ms. Forsythe thanked staff for providing the list of schools.

4. **Dental Assisting Program Licensure and Permit Statistics**
Ms. Lua thanked staff for the new statistical graphs. She gave an overview of the statistics provided.
5. **Dental Assisting Program Examination Statistics**
Ms. Forsythe commented on the statistics from the February RDA practical exam saying that the pass rate was very good.
6. **Discussion and Possible Action Regarding Appointing a Subcommittee to Work with Staff to Review the Registered Dental Assistant (RDA) and Registered Dental Assistant in Extended Functions (RDAEF) Examination Process in Order to Identify Improvements**
Ms. Lua appointed a subcommittee consisting of Ms. Forsythe and Ms. Contreras to work on the RDA examination and Ms. Ramos and herself to work on the RDAEF exam.
7. **Update Regarding Dental Assisting Educational Program and Course Requirements Regulatory Proposal**
Sarah Wallace, Legislative and Regulatory Analyst, gave an overview of the Council's work up to this point and commented that the originally scheduled workshop has been postponed due to the impact Assembly Bill 1174 (Bocanegra) may have on the requirements relating to dental assisting programs.
8. **Public Comment for Items Not on the Agenda**
There were no further comments.
9. **Future Agenda Items**
There were no requests for future agenda items.
10. **Council Member Comments for Items Not on the Agenda**
There were no Council member comments.
11. **Adjournment**
The Council meeting adjourned at 2:09 p.m.



MEMORANDUM

DATE	May 16, 2014
TO	Dental Assisting Council Dental Board of California
FROM	Linda Byers, Executive Assistant
SUBJECT	DAC 3: Presentation by a Representative of the California Association of Dental Assisting Teachers (CADAT)

A representative from the California Association of Dental Assisting Teachers (CADAT) will provide a presentation.



MEMORANDUM

DATE	May 20, 2014
TO	Dental Assisting Council Dental Board of California
FROM	Marla Rocha, Educational Programs Analyst Dental Assisting Program
SUBJECT	DAC 4: Status of Dental Assisting Program and Course Applications

The first table below identifies the number of applications which have received approval since the last Board meeting, and those that are currently moving through the approval process. The second table identifies the total number of applications which were approved year to date (YTD) 2014. Attached is a list of names for the applicants who have received approval since the last Board meeting.

DA Program & Course Applications Approved and Received Since Last Board Meeting						
Program or Course Title	Approved	Denied	Withdrawn		Received	Currently Processing
			By Provider	By Board		
RDA Program/Prov	2	0	0		2	4
RDA Program/Full	1	0	0		N/A	N/A
Radiation Safety	0	0	0		4	8
Coronal Polish	0	0	0		0	5
Pit and Fissure	0	0	0		0	4
Ultrasonic Scaler	0	0	0		0	0
Infection Control	1	0	0		3	10
OA Permit	2	0	0		5	13
DSA Permit	0	0	0		0	6
Total Applications	6	0	0		14	50

Total DA Program and Course Applications Approved YTD 2014

	RDA Programs		RDAEF	Radiation Safety	Coronal Polish	Pit and Fissure Sealants	Ultrasonic Scaler	Infection Control	Orthodontic Assistant	Dental Sedation Assistant	Grand Total
	Provisional	Full									
Course Totals	3	1	0	0	0	0	0	1	2	0	7



MEMORANDUM

DATE	May 14, 2014
TO	Dental Assisting Council Members Dental Board of California
FROM	Marla Rocha, Associate Governmental Program Analyst Dental Assisting Program
SUBJECT	DAC 5: Dental Assisting Program Licensure and Permit Statistics

The following table provides current statistics by **license** type as of May 14, 2014

License Type	Registered Dental Assistant (RDA)	Registered Dental Assistant in Extended Functions (RDAEF)	Total Licenses
Active	34669	1330	35999
Inactive	8323	119	8442
Renewal in Process	606	14	620
Fingerprinting Hold	624	30	654
Delinquent	9100	182	9282
Suspended No Coronal Polish/X-ray	1319	0	1319
Total Current Population	54641	1675	56316
Total Cancelled Since Implementation	36352	176	36528

New RDAEF licenses issued since January 1, 2010 = 196

Existing RDAEF licenses enhanced since January 1, 2010 = 153

The following table provides current statistics by **permit** type as of May 14, 2014

Permit Type	Dental Sedation Assistant (DSA)	Orthodontic Assistant (OA)
Active	24	140
Inactive	0	1
Renewal in Process	0	3
Fingerprinting Hold	0	0
Delinquent	3	1
Total Current Population	27	145
Total Cancelled Since Implementation	0	0



MEMORANDUM

DATE	May 20, 2014
TO	Dental Assisting Council
FROM	Marla Rocha, Examination Analyst
SUBJECT	DAC 6: Dental Assisting Program Examination Statistics

Written Examination Statistics for **2014** ALL CANDIDATES

Written Exam	Total Candidates Tested	% Passed	% Failed
RDA	1161	62%	38%
RDA Law & Ethics	1100	65%	35%
RDAEF	46	41%	59%
Orthodontic Assistant	86	50%	50%
Dental Sedation Assistant	1	100%	0%

Written Examination Statistics for **2014** FIRST TIME CANDIDATES

Written Exam	Total Candidates Tested	% Passed	% Failed
RDA	789	67%	33%
RDA Law & Ethics	794	68%	32%
RDAEF	26	62%	38%
Orthodontic Assistant	55	56%	44%
Dental Sedation Assistant	1	100%	0%

Written Examination Statistics for **2014** REPEAT CANDIDATES

Written Exam	Total Candidates Tested	% Passed	% Failed
RDA	372	47%	53%
RDA Law & Ethics	306	55%	45%
RDAEF	20	15%	85%
Orthodontic Assistant	31	39%	61%
Dental Sedation Assistant	0	0%	0%

RDA Practical Examination Statistics for **2014** ALL CANDIDATES

Practical/Clinical Exam Type	Candidates Tested	% Passed	% Failed
RDA – February North	229	91%	9%
RDA – February South	271	78%	22%
RDA – April North	292	79%	21%
RDA – April South	365	50%	50%
RDA – August Central			
RDA – August North			
RDA – August South			
RDA – Nov – North			
RDA – Nov – South			
Total for Year			

RDA Practical Examination Statistics for **2014** FIRST TIME CANDIDATES

Practical/Clinical Exam Type	Candidates Tested	% Passed	% Failed
RDA – February North	172	92%	8%
RDA – February South	207	78%	22%
RDA – April North	269	80%	20%
RDA – April South	291	50%	50%
RDA – August Central			
RDA – August North			
RDA – August South			
RDA – Nov - North			
RDA – Nov - South			
Total for Year			

RDA Practical Examination Statistics for **2014** REPEAT CANDIDATES

Practical/Clinical Exam Type	Candidates Tested	% Passed	% Failed
RDA – February North	57	88%	12%
RDA – February South	64	80%	20%
RDA – April North	23	74%	26%
RDA – April South	74	53%	47%
RDA – August Central			
RDA – August North			
RDA – August South			
RDA – Nov - North			
RDA – Nov - South			
Total for Year			

RDAEF Clinical/Practical Examination Statistics for **2014** ALL CANDIDATES

Practical/Clinical Exam Type	Candidates Tested	% Passed	% Failed
RDAEF – May North			
RDAEF – May South			
RDAEF – Sept South			
Total for Year			

RDAEF Clinical/Practical Examination Statistics for **2014** FIRST TIME CANDIDATES

Practical/Clinical Exam Type	Candidates Tested	% Passed	% Failed
RDAEF – May North			
RDAEF – May South			
RDAEF – Sept South			
Total for Year			

RDAEF Clinical/Practical Examination Statistics for **2014** REPEAT CANDIDATES

Practical/Clinical Exam Type	Candidates Tested	% Passed	% Failed
RDAEF – May North			
RDAEF – May South			
RDAEF – Sept South			
Total for Year			

**LEGISLATIVE AND
REGULATORY
COMMITTEE**



NOTICE OF LEGISLATIVE AND REGULATORY COMMITTEE MEETING

Thursday, May 29, 2014

Upon Conclusion of the Dental Assisting Council meeting

Red Lion Hotel

150 Hegenberger Road, Oakland, CA 94621

(510) 635-5300 or (916) 263-2300

MEMBERS OF THE LEGISLATIVE & REGULATORY COMMITTEE

Chair – Fran Burton, MSW, Public Member

Vice Chair – Thomas Stewart, DDS

Huong Le, DDS, MA

Meredith McKenzie, Public Member

Steven Morrow, DDS, MS

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 website at www.dbc.ca.gov. This Committee meeting is open to the public and is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Karen M. Fischer, MPA, Executive Officer, at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, or by phone at (916) 263-2300. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

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

1. Call to Order/Roll Call/Establishment of Quorum
2. Approval of the February 27, 2014 Legislative and Regulatory Committee Meeting Minutes
3. 2014 Tentative Legislative Calendar – Information Only
4. Discussion and Possible Action on the Following Legislation:
 - AB 1174 (Bocanegra) Dental Professionals: Teledentistry Under Medi-Cal
 - AB 1702 (Maienschein) Professions and Vocations: Incarceration
 - AB 1711 (Cooley) Administrative Procedures Act: Impact Assessment
 - AB 1758 (Patterson) Healing Arts: Initial License Fees: Proration
 - AB 1903 (Donnelly) Business/Professions: Department of Consumer Affairs
 - AB 1962 (Skinner) Dental Plans: Medical Loss Ratios: Rebates

- AB 2058 (Wilk) Open Meetings
- AB 2147 (Melendez) State Government Web Sites: Information Practices
- AB 2165 (Patterson) Professions and Vocations: Licenses
- AB 2396 (Bonta) Convictions: Expungement: Licenses
- AB 2507 (Bocanegra) Public Records Act: Exemptions
- AB 2598 (Hagman) Department of Consumer Affairs: Administrative Expenses
- AB 2638 (Chau) The Department of Consumer Affairs
- AB 2720 (Ting) State Agencies: Meetings: Record of Action Taken
- SB 1091 (Galgiani) Administrative Procedures: Notice Register
- SB 1159 (Lara) License Applicants: Federal Tax Identification
- SB 1215 (Hernandez, E.) Healing Arts Licenses: Referrals
- SB 1245 (Lieu) Dental Hygiene Committee of California
- SB 1258 (DeSaulnier) Controlled Substances: Prescriptions: Reporting
- SB 1416 (Block) Dentistry: Fees
- SB 1466 (Senate Committee on Business, Professions and Economic Development) Health Care Professionals
- Any additional legislation impacting the Board that staff becomes aware of between the time the meeting notice is posted and the Board meeting

5. Update on Pending Regulatory Packages:

(A) Portfolio Examination Requirements (California Code of Regulations, Title 16, Sections 1021, 1028, 1030, 1031, 1032, 1032.1, 1032.2, 1032.3, 1032.4, 1032.5, 1032.6, 1032.7, 1032.8, 1032.9, 1032.10, 1033, 1033.1, 1034, 1034.1, 1035, 1035.1, 1035.2, 1036, 1036.1, 1036.2, 1036.3, 1037, 1038, and 1039);

(B) Revocation for Sexual Misconduct (California Code of Regulations, Title 16, Section 1018)

(C) Dental Assisting Educational Program and Course Requirements (California Code of Regulations, Title 16, Division 10, Chapter 3, Article 2);

(D) Abandonment of Applications (California Code of Regulations, Title 16, Section 1004); and

(E) Licensure by Credential Application Requirements

6. Discussion of 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

7. Public Comment of Items Not on the Agenda

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

8. Future Agenda Items
Stakeholders are encouraged to propose items for possible consideration by the Committee at a future meeting.
9. Committee Member Comments for Items Not on the Agenda
The Committee may not discuss or take action on any matter raised during the Committee Member Comments section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting (Government Code §§ 11125 and 11125.7(a)).
10. Adjournment



LEGISLATIVE AND REGULATORY COMMITTEE MEETING MINUTES

Thursday, February 27, 2014

Wyndham Bayside San Diego

1355 North Harbor Drive, San Diego, CA, 92101

DRAFT

Members Present

Chair – Fran Burton, MSW, Public Member

Vice Chair – Thomas Stewart, DDS

Huong Le, DDS, MA

Steven Morrow, DDS, MS

Members Absent

Meredith McKenzie, Public Member

Staff Present

Karen Fischer, Executive Officer

Kim Trefry, Enforcement Chief

Dawn Dill, Licensing Manager

Sarah Wallace, Legislative and Regulatory Analyst

Linda Byers, Executive Assistant

Spencer Walker, DCA Senior Staff Counsel

1. Call to Order/Roll Call/Establishment of Quorum

Fran Burton, Chair, called the Legislative and Regulatory Committee meeting to order at 2:35 p.m. Roll was called and a quorum established.

2. Approval of the February 28, 2013 Legislative and Regulatory Committee Meeting Minutes

M/S/C (Le/Stewart) to approve the February 28, 2013 Legislative and Regulatory Committee meeting minutes. The motion passed unanimously.

3. Define the 2014 Mission of the Legislative and Regulatory Committee

Ms. Burton remarked that her vision for this committee is that everyone work at their own pace. Dr. Stewart commented that a conversation about prioritization is important. There was discussion surrounding the amount of legislation that staff and the Board are working on. Ms. Burton stated that at least minimal research should be done before members present new ideas to the Committee. Ms. Fischer commented that the Sunset Review questions will arrive soon adding to staff and Committee workloads. There was no public comment.

4. 2014 Tentative Legislative Calendar – Information Only

Sarah Wallace, Legislative and Regulatory Analyst, reviewed the calendar along with some notable dates and deadlines. There was no public comment.

5. Discussion and Possible Action on the Following Legislation:

Ms. Wallace gave an overview of the information provided. There was no action needed. There was no public comment.

6. Update on Pending Regulatory Packages:

Ms. Wallace gave an overview of the information provided. There was no action necessary. There was no public comment.

7. Discussion of Prospective Legislative Proposals:

There were no proposals.

8. Public Comment of Items Not on the Agenda

There was no public comment.

9. Future Agenda Items

There were no future agenda item requests.

10. Committee Member Comments for Items Not on the Agenda

There were no comments from Committee members.

11. Adjournment

The Legislative and Regulatory meeting adjourned at 2:49 p.m.



MEMORANDUM

DATE	May 14, 2014
TO	Legislative and Regulatory Committee, Dental Board of California
FROM	Sarah Wallace, Assistant Executive Officer
SUBJECT	LEG 3: 2014 Tentative Legislative Calendar – Information Only

Background

The 2014 Tentative Legislative Calendar is enclosed for informational purposes

Action Requested:

No action necessary.

2014 TENTATIVE LEGISLATIVE CALENDAR

COMPILED BY THE OFFICES OF THE SECRETARY OF THE SENATE & THE ASSEMBLY CHIEF CLERK
October 22, 2013

DEADLINES

JANUARY						
S	M	T	W	TH	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

FEBRUARY						
S	M	T	W	TH	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	

MARCH						
S	M	T	W	TH	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

APRIL						
S	M	T	W	TH	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

MAY						
S	M	T	W	TH	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

- Jan. 1** Statutes take effect (Art. IV, Sec. 8(c)).
- Jan. 6** Legislature Reconvenes (J.R. 51(a)(4)).
- Jan. 10** Budget must be submitted by Governor (Art. IV, Sec. 12(a)).
- Jan. 17** Last day for **policy committees** to hear and report to Fiscal committees fiscal bills introduced in their house in 2013 (J.R. 61(b)(1)).
- Jan. 20** Martin Luther King, Jr. Day.
- Jan. 24** Last day for any committee to hear and report to the **Floor** bills introduced in their house in 2013 (J.R. 61(b)(2)). Last day to submit **bill requests** to the Office of Legislative Counsel.

Jan. 31 Last day for each house to **pass bills introduced in 2013** in their House (Art. IV, Sec. 10(c)), (J.R. 61(b)(3)).

Feb. 17 President's Day.

Feb. 21 Last day for bills to be **introduced** (J.R. 61(b)(4)), (J.R. 54(a)).

Mar. 31 Cesar Chavez Day

Apr. 10 **Spring Recess** begins at end of this day's session (J.R. 51(b)(1)).

Apr. 21 Legislature reconvenes from **Spring Recess** (J.R. 51(b)(1)).

May 2 Last day for **policy committees** to hear and report to Fiscal Committees **fiscal bills** introduced in their house (J.R. 61(b)(5)).

May 9 Last day for **policy committees** to hear and report to the floor **non-fiscal** bills introduced in their house (J.R. 61(b)(6)).

May 16 Last day for **policy committees** to meet prior to June 2 (J.R. 61(b)(7)).

May 23 Last day for **fiscal committees** to hear and report to the floor Bills introduced in their house (J.R. 61(b)(8)). Last day for **fiscal Committees** to meet prior to June 2 (J.R. 61 (b)(9)).

May 26 Memorial Day

May 27 - 30 Floor Session Only. No committee may meet for any purpose (J.R. 61(b)(10)).

May 30 Last day for bills to be **passed out of the house of origin** (J.R. 61(b)(11)).

2014 TENTATIVE LEGISLATIVE CALENDAR

COMPILED BY THE OFFICES OF THE SECRETARY OF THE SENATE & THE ASSEMBLY CHIEF CLERK
October 22, 2013

JUNE						
S	M	T	W	TH	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

- June 2** Committee meetings may resume (J.R. 61(b)(12)).
- June 15** Budget must be passed by midnight (Art. IV, Sec. 12(c)(3)).
- June 26** Last day for a legislative measure to qualify for the November 4 general election ballot (Election code Sec. 9040).
- June 27** Last day for policy committees to meet and report bills (J.R. 61(b)(13)).

JULY						
S	M	T	W	TH	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

- July 3** Summer Recess begins at the end of this day's session if Budget Bill has been passed (J.R. 51(b)(2)).
- July 4** Independence Day

AUGUST						
S	M	T	W	TH	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

- Aug. 4** Legislature reconvenes from Summer Recess (J.R. 51(b)(2)).
- Aug. 15** Last day for fiscal committees to meet and report bills to the Floor (J.R. 61(b)(14)).
- Aug. 18 – 31 Floor Session only.** No committees, other than conference committees and Rules committee, may meet for any purpose (J.R. 61(b)(15)).
- Aug. 22** Last day to amend bills on the Floor (J.R. 61(b)(16)).
- Aug. 31** Last day for each house to pass bills (Art. IV, Sec. 10(c)), (J.R. 61(b)(17)). Final recess begins at the end of this day's session (J.R. 51(b)(3)).

IMPORTANT DATES OCCURRING DURING FINAL RECESS

2014

- Sept. 30 Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1 and in the Governor's possession on or after Sept. 1 (Art. IV, Sec. 10(b)(2)).
- Nov. 4 General Election
- Nov. 30 Adjournment Sine Die at midnight (Art. IV, Sec. 3(a)).
- Dec. 1 12 m. convening of 2015-16 Regular Session (Art. IV, Sec. 3(a)).

2015

- Jan. 1 Statutes take effect (Art. IV, Sec. 8(c)).
- Jan. 5 Legislature reconvenes (JR 51(a)(1)).



MEMORANDUM

DATE	May 19, 2014
TO	Legislative and Regulatory Committee, Dental Board of California
FROM	Sarah Wallace, Assistant Executive Officer
SUBJECT	LEG 4: Discussion and Possible Action on Legislation

Background:

Board staff is currently tracking twenty-one (21) bills, the majority of which pertain to the Administrative Procedure Act and government accountability. However, there are several bills that would directly impact the Dental Practice Act or the operations of the Board itself.

In the interest of time, staff will only be presenting those bills that may directly impact the Board. However, if a Committee Member wish to discuss an additional measure, staff will pull the bill for discussion during the Committee's meeting.

Staff will be presenting the following eleven (11) bills to the Committee for review and consideration at the May meeting:

1. AB 1174 (Bocanegra) Dental Professionals: Teledentistry Under Medi-Cal
2. AB 1702 (Maienschein) Professions and Vocations: Incarceration
3. AB 1758 (Patterson) Healing Arts: Initial License Fees: Proration
4. AB 2058 (Wilk) Open Meetings
5. AB 2396 (Bonta) Convictions: Expungement: Licenses
6. AB 2720 (Ting) State Agencies: Meetings: Record of Action Taken
7. SB 1091 (Galgiani) Administrative Procedures: Notice Register
8. SB 1159 (Lara) License Applicants: Federal Tax Identification
9. SB 1245 (Lieu) Dental Hygiene Committee of California
10. SB 1258 (DeSaulnier) Controlled Substances: Prescriptions: Reporting
11. SB 1416 (Block) Dentistry: Fees

Copies of each of these bills and staff analyses are enclosed in the meeting packet.

**DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
MAY 29-30 BOARD MEETING**

BILL NUMBER: Assembly Bill 1174

AUTHOR: Assembly Member Bocanegra **SPONSOR:**

VERSION: Amended 01/06/2014 **INTRODUCED:** 02/22/2013

BILL STATUS: 02/06/2014 – To Senate
Committee on Business,
Professions and Economic
Development **BILL LOCATION:** Senate Committee
on Business,
Professions and
Economic
Development

SUBJECT: Dental Professionals:
Teledentistry Under Medi-Cal **RELATED
BILLS:**

SUMMARY

This bill authorizes Medi-Cal payments for teledentistry services provided to individuals participating in the Medi-Cal program and expands duties of registered dental assistants (RDAs), RDAs in extended functions (RDAEF), registered dental hygienists (RDH), and registered dental hygienists in alternative practice (RDHAP).

Specifically, this bill:

1) Applies existing law applicable to teleophthalmology and teledermatology to teledentistry, as follows:

a) Provides, to the extent federal financial participation (FFP) is available, that face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for teledentistry by store and forward. Subjects services appropriately provided through the store and forward process to billing and reimbursement policies developed by the Department of Health Care Services (DHCS);

b) Requires a patient receiving teledentistry by store and forward to be notified of their right to receive interactive communication with the distant dentist and to receive interactive communication with the distant dentist, upon request, which may occur either at the time of the consultation or within 30 days of the patient's notification of the results of the consultation; and,

c) Permits DHCS to implement, interpret, and make specific the provisions of this bill by means of all-county letters, provider bulletins, and similar instructions; On or before January 1, 2008, DHCS to report to the Legislature the number and type of services provided and the payments made related to the application of store and forward teledentistry provided as a Medi-Cal benefit.

2) Authorizes an RDA to determine which radiographs to perform if the RDA has completed an educational program in those duties approved by the Dental Board of California (Board), or if he or she has provided evidence satisfactory to the Board of having completed a Board-approved course in those duties.

3) Defines the following terms:

a) Clinical instruction means instruction in which students receive supervised experience in performing procedures in a clinical setting on patients. Requires clinical instruction to be performed only upon successful demonstration and evaluation of preclinical skills. Requires at least one instructor for every six students who are simultaneously engaged in clinical instruction;

b) Course means a Board-approved course preparing an RDAEF to perform the duties specified in 4) below;

c) Didactic instruction means lectures, demonstrations, and other instruction without active participation by students. Authorizes an approved provider or its designee to provide didactic instruction through electronic media, home study materials, or live lecture methodology if the provider has submitted that content to the Board for approval;

d) Interim therapeutic restoration (ITR) means a direct provisional restoration placed to stabilize the tooth until a licensed dentist diagnoses the need for further definitive treatment;

e) Laboratory instruction means instruction in which students receive supervised experience performing procedures using study models, mannequins, or other simulation methods; and,

f) Preclinical instruction means instruction in which students receive supervised experience performing procedures on students, faculty, or staff members. Requires at least one instructor for every six students who are simultaneously engaged in preclinical instruction.

4) Authorizes a RDAEF licensed on or after January 1, 2010, and pursuant to the order, control and full professional responsibility of a supervising dentist, a RDH, or a RDHAP to perform both of the following additional duties:

a) Choose radiographs without the supervising dentist having first examined the patient, following protocols established by the supervising dentist and, consistent with the use of as low as reasonably necessary radiation for the purpose of diagnosis and treatment planning by the dentist. Requires the radiographs to be taken only in either of the following settings:

i) In a dental office setting, under the direct or general supervision of a dentist as determined by the dentist; and for RDH and RDHAP, under the general supervision of a dentist; or,

ii) In public health settings, including but not limited to, schools, head start and preschool programs, and residential facilities and institutions, under the general supervision of a dentist.

b) Place protective restorations, which for this purpose are identified as ITRs, as defined, that compromise the removal of soft material from the tooth using only hand instrumentation, without the use of rotary instrumentation, and subsequent placement of an adhesive restorative material, and only when local anesthesia is not necessary. The protective restorations are to be placed only in accordance with both of the following:

i) In either of the settings specified in 4) a) i) and ii) above; and,

ii) After a diagnosis and treatment plan by a dentist.

5) Authorizes the functions specified in 4) above to be performed by an RDAEF, RDH, and RDHAP only after completion of a program that includes training in performing those functions, or after providing evidence, satisfactory to the Board or Dental Hygiene Committee (Committee), of having completed a Board- or Committee-approved course in those functions.

6) Deems RDAEF, RDH, or RDHAP who has completed the prescribed training in the Health Workforce Pilot Project No. 172 (HWPP No. 172) established by the Office of Statewide Health Planning and Development (OSHPD), as specified, to have satisfied the requirement for completion of a course of instruction approved by the Board or Committee.

7) Requires, in addition to the instructional components described in 8) and 9) below, a program to contain both of the following instructional components:

a) The course to be established at the postsecondary educational level; and,

b) All faculty responsible for clinical evaluation shall have completed a one-hour methodology course in clinical evaluation or have a faculty appointment at an accredited dental education program prior to conducting evaluations of students.

8) Requires a program or course to perform the duties specified in 4) a) above (choose radiographs) to contain all of the following additional instructional components:

a) The program must be of sufficient duration for the student to develop minimum competency making decisions about which radiographs to take to facilitate an evaluation by a dentist, but in no event be less than six hours, including at least two hours of didactic training, at least two hours of guided laboratory simulation training, and at least two hours of examination using simulated cases;

b) Didactic instruction must consist of instruction on both the following topics:

i) Guidelines for radiographic decisionmaking prepared by the American Dental Association and other professional dental associations; and,

ii) Specific decisionmaking protocols that incorporate information about the patient's health and radiographic history, the time span since previous radiographs were taken, the availability of previous radiographs, the general condition of the mouth including the extent of dental restorations present, and visible signs of abnormalities, including broken teeth, dark areas, and holes in teeth.

c) Laboratory instruction must consist of simulated decisionmaking using case studies containing the elements specified in 8) b) above. Requires at least one instructor for every 14 students who are simultaneously engaged in laboratory instruction; and,

d) Examinations to consist of decisionmaking where students make decisions and demonstrate competency to faculty on case studies containing the elements described in b) above.

9) Requires a program or course to perform the duties described in 4) b) above (place protective restorations) to contain all of the following additional instructional components:

a) The program must be of sufficient duration for the student to develop minimum competency in the application of protective restorations, including ITRs, but in no event be less than 16 clock hours, including at least four hours of didactic training, at least four hours of laboratory training, and at least eight hours of clinical training;

b) Didactic instruction to consist of instruction on specified topics, including: i) pulpal anatomy; ii) theory of adhesive restorative materials used in the placement of adhesive protective restorations related to mechanisms of bonding to tooth

structure, handling characteristics of the materials, preparation of the tooth prior to material placement, and placement techniques; iii) criteria that dentists use to make decisions about placement of adhesive protective restorations, as specified, including patient factors, as specified, and, tooth factors, as specified; iv) criteria for evaluating successful completion of adhesive protective restorations, as specified; v) protocols for handling sensitivity, complications, or unsuccessful completion of adhesive protective restorations including situations requiring immediate referral to a dentist; and vi) protocols for follow-up of adhesive protective restorations, as specified;

c) Laboratory instruction must consist of placement of adhesive protective restorations where students demonstrate competency in this technique on typodont teeth; and,

d) Clinical instruction must consist of experiences where students demonstrate placement of adhesive protective restorations under direct supervision of faculty.

10) The education requirements for the courses would be repealed as of January 1, 2018 with the expectation that the Board or the Committee would implement such requirements via the regulatory process.

11) Defines teledentistry consistent with existing law's definition of teleophthalmology and teledermatology.

12) Makes other conforming changes.

Existing law:

1) Establishes the Medi-Cal program under which qualified low-income persons receive health care benefits.

2) Provides, to the extent FFP is available, face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for teleophthalmology and teledermatology by store and forward. Indicates that services appropriately provided through the store and forward process are subject to billing and reimbursement policies developed by DHCS.

3) Defines, "teleophthalmology and teledermatology by store and forward" as an asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology or, for teleophthalmology, by a licensed optometrist where the physician or optometrist at the distant site reviews the medical information without the patient being present in real time.

4) Prohibits in-person contact between a health care provider and a patient from being required under the Medi-Cal program for services appropriately provided through

telehealth, subject to reimbursement policies adopted by DHCS to compensate a licensed health care provider who provides health care services through telehealth that are otherwise reimbursed pursuant to the Medi-Cal program.

5) Prohibits DHCS from requiring a health care provider to document a barrier to an in-person visit for Medi-Cal coverage of services provided via telehealth.

6) Prohibits DHCS, for the purposes of payment for covered treatment or services provided through telehealth, from limiting the type of setting where services are provided for the patient or by the health care provider.

7) Establishes the Dental Practice Act, administered by the Board, to regulate the practice of dentistry. Requires the Board to review and evaluate all applications for licensure in all dental assisting categories. Requires the Board at least every seven years to review the allowable duties for dental assistants, RDAs, and RDAEFs. Establishes the Dental Assisting Council of the Board to consider all matters relating to dental assistants.

8) Defines a dental assistant as someone who is without a license and may perform basic supportive dental procedures. Requires the Board to license RDAs and RDAEFs upon completion of specified education, work requirements, passage of a written examination and a clinical or practical examination.

9) Establishes the Committee within the jurisdiction of the Board to, among other functions, evaluate all RDH educational programs, determine the appropriate type of licensure examination, and deny, suspend, or revoke a license of a RDH.

10) Defines direct supervision as supervision of dental procedures based on instructions given by a licensed dentist who must be physically present in the treatment facility during the performance of these procedures. Defines general supervision as supervision of dental procedure based on instructions given by a licensed dentist but not requiring the physical presence of the supervising dentist during the performance of those procedures.

PURPOSE OF THIS BILL

The author believes existing law does not allow Medi-Cal to pay for the use of teledentistry services, especially store and forward dental care. The author is also concerned about the shortage of dental services in rural areas. The author cites a 2008 University of California, Los Angeles study that found that California has about 14% of the dentists in the nation (about 3.5 dentists for every 5,000), slightly higher than the national average, however, according to the author, California has 233 dental shortage areas. The author indicates that dentists cluster around urban communities which leave many rural and urban underserved communities without dentists. The author says Yuba County has less than one dentist for every 5,000 people, and counties such as Colusa, Imperial, Mariposa, Mono, and San Benito have less than 1.5 dentists for every 5,000 people. The author states that every dentist in these counties needs to be utilized to the

full extent of their ability. According to the author, the report found that California could soon be facing a dentist shortage since there will soon be more dentists retiring (19% have been licensed for 30+ years) compared to coming into the system (15% have been licensed for less than five years).

BACKGROUND

a) Virtual Dental Home. According to an article published in July 2012 in the *Journal of the California Dental Association (CDA Journal)*, “The Virtual Dental Home: Bringing Oral Health to Vulnerable and Underserved Populations,” the traditional office and clinic-based oral health delivery system is failing to reach a large and increasing segment of the population. The *CDA Journal* article says that in California, oral health disparities are more severe than the national average, particularly among low-income and disabled populations. Just 25% of Medi-Cal beneficiaries reported a dental visit in 2007 and among pregnant women with Medi-Cal coverage only one in seven received dental services. Almost one-quarter of all children in California have never seen a dentist and about 40% of California’s black, Latino, and Asian preschoolers and approximately 65% of elementary school children in these groups need dental care. In 2011, only 22% of the total number of people eligible for Medi-Cal dental services received any service, a decrease of 8% from 2009. A decrease was expected for adults since most adult dental benefits were eliminated in 2009; however there was also a decrease for children. In 2011, only 27% of eligible children received any dental service compared to 34% in 2009. In California, approximately 6.3 million children, or two-thirds of all children in the state, suffer needlessly from poor oral health by the time they reach the third grade. Approximately 7% of California children missed school due to a dental problem in 2007, excluding time for cleaning or routine check-up. In 2007, there were more than 83,000 visits to California hospital emergency departments for preventable dental conditions.

b) Institute of Medicine (IOM) Report on Oral Health (2011). In 2011 the IOM published a report titled, “Improving Access to Oral Health Care for Vulnerable and Underserved Populations.” Various factors create barriers, preventing access to care for vulnerable and underserved populations, such as children and Medicaid beneficiaries. The Health Resources and Services Administration and the California HealthCare Foundation (CHCF) asked the IOM and the National Research Council to assess the current oral health care system, to develop a vision for how to improve oral health care for these populations, and to recommend ways to achieve this vision. According to the IOM report, access to oral health care across the life cycle is critical to overall health, and it will take flexibility and ingenuity among multiple stakeholders—including government leaders, oral health professionals, and others—to make this access available. The IOM report says to improve provider participation in public programs, states should increase Medicaid and Children’s Health Insurance Program reimbursement rates. In addition, with proper training, nondental health care professionals can acquire the skills to perform oral disease screenings and provide other preventive services. The IOM report calls on dental schools to expand opportunities for dental students to care for patients with complex oral health care needs in community-based settings in order to improve the students’ comfort levels in caring for vulnerable and underserved populations.

Finally, according to the IOM report, states should examine and amend state practice laws to allow healthcare professionals to practice to their highest level of competence. The IOM's recommendations provide a roadmap for the important and necessary next steps to improve access to oral health care, reduce oral health disparities, and improve the oral health of the nation's vulnerable and underserved populations.

c) HWPP No. 172. The HWPP at OSHPD permits temporary legal waivers of certain practice restrictions or educational requirements to test expanded roles and accelerated training programs for health care professionals. In December 2010, OSHPD approved HWPP No. 172 that allowed RDAs and RDHS to perform an expanded scope of practice. Specifically, the HWPP involved RDAs making decisions on which radiographs to take, if any, to facilitate an initial oral evaluation by a dentist. Secondly, RDAs, RDHs, and RDHs in alternative practice will be permitted to place ITRs. The long-term objective of the project is to facilitate the development of new models of care designed to improve the oral health status of underserved populations. The project has been extended twice, with the second extension running from December 1, 2012 to December 1, 2013. Funding for HWPP No. 172 comes from various sources including CHCF, American Dental Hygiene Association, American Dental Association, Paradise Foundation, and Verizon Foundation. Evaluation of the project is also funded by CHCF. HWPP No. 172 is a project at the University of Pacific, School of Dentistry which creates a virtual dental home and is testing a concept where patients interact with RDAs and RDHs after a telehealth consultation with a collaborating dentist who makes diagnostic and treatment decisions and determines the best location for treatment, thus creating a true community-based dental home. There are nine sites currently operating this model of care in California. Preventive and early intervention care is being provided in the community (two elementary schools in Sacramento and San Diego counties, a consortium of Head Start centers in San Francisco and San Diego, residential facilities associated with three regional centers for persons with developmental disabilities, four long-term care facilities, and one community clinic). Patients with advanced disease requiring the service of a dentist are being referred to dental offices and clinics. A policy brief describing the model and the results of the current project indicates that under HWPP No. 172, allied dental personnel completed the following types of procedures: collect patient information (including medical and dental history, consent forms, and caries risk assessment); chart pre-existing conditions; take digital radiographs; take digital intra and extra-oral photographs; prophylaxis; fluoride varnish; sealants; ITRs; patient, parent, and staff oral health education; nutritional counseling; oral hygiene instructions; case management; referrals; and, communication with collaborating dentists. As of March 31, 2013, a total of 1,494 patients have been seen: Head Start centers (797); elementary schools (212); long-term care facilities (176); multifunction community centers (197); and, regional centers (112). The policy brief also indicates that 110 ITRs were placed during the training phase of the program in addition to the 295 placed in the utilization phase for a total of 405.

d) ITR. According to the American Academy of Pediatric Dentistry, an ITR may be used to restore and prevent further decalcification and caries in young patients, uncooperative patients, or patients with special health care needs or when traditional

cavity preparation and/or placement of traditional dental restorations are not feasible and need to be postponed. Additionally, ITR may be used for step-wise excavation in children with multiple open carious lesions prior to definitive restoration of the teeth. The use of ITR has been shown to reduce the levels of cariogenic oral bacteria (e.g., mutans streptococci, lactobacilli) in the oral cavity. The ITR procedure involves removal of caries using hand or slow speed rotary instruments with caution not to expose the pulp. Leakage of the restoration can be minimized with maximum caries removal from the periphery of the lesion. Following preparation, the tooth is restored with an adhesive restorative material such as self-setting or resin-modified glass ionomer cement. ITR has the greatest success when applied to single surface or small two surface restorations. Inadequate cavity preparation with subsequent lack of retention and insufficient bulk can lead to failure. Follow-up care with topical fluorides and oral hygiene instruction may improve the treatment outcome in high caries-risk dental populations.

e) Regulation of RDAs, RDAEFs, and RDHs in California. In 2008, AB 2637 (Eng), Chapter 499, Statutes of 2008, established the current practice structures for RDAs, RDAEFs, and other dental assisting categories. AB 2637 contains a consensus language that was a product of several years of negotiation. The California Dental Association, the Dental Assisting Alliance which represents dental assisting schools and dental assistants, the California Association of Oral and Maxillofacial Surgeons, the California Society of Periodontists, and the California Association of Orthodontists all participated in a process of evaluating a more feasible and effective dental assisting structure, the result of which are the provisions adopted in AB 2637. Current law authorizes an RDA to, among various functions, apply and activate bleaching agents, obtain intraoral images for computer-aided design, chemically prepare teeth for bonding, place, adjust, and finish direct provisional restorations, place periodontal dressing, and place ligature ties and archwires. On the other hand, RDAEFs can perform all the functions of an RDA, and under direct supervision, and pursuant to the order of, control, and full professional responsibility of a licensed dentist: conduct preliminary evaluation of the patient's oral health; perform oral health assessments in school-based community health projects settings, as specified; size and fit endodontic master points and accessory points; and, adjust and cement permanent indirect restorations. These additional procedures could only be performed by a RDAEF upon evidence of having completed Board-approved courses in the additional procedures. Additionally, a RDAEF must also successfully complete an examination consisting of the additional procedures that would be performed. This examination is administered by the Board. Unlike for RDAs and RDAEFs, the Committee exists to license, regulate, and discipline RDHs. RDHs can perform soft tissue curettage, administer local anesthesia or nitrous oxide and oxygen, whether administered alone or in combination with each other, but only under the direct supervision (the dentist is physically present in the treatment facility). Under general supervision, RDHs are authorized to perform preventive and therapeutic interventions (including oral prophylaxis, scaling, and root planing), application of topical, therapeutic, and subgingival agents used for the control of caries and periodontal disease, and the taking of impressions for bleaching trays, as

specified. The law also authorizes RDHs licensed as of December 31, 2005, to perform the duties of an RDA.

BOARD STAFF ANALYSIS

Board staff has concerns regarding the language's impact on the existing RDA licensure program and the implementation of these provisions.

Specifically, staff has the following concerns.

- Amendment of Business and Professions Code (BPC) § 1752.4(b): RDAs must complete Board-approved educational requirements in order to perform the duties contained in subdivision (b), the Board currently has existing regulatory requirements for the approval of ultrasonic scaling courses, orthodontic assistant permit courses, and dental sedation assistant permit courses. Pursuant to BPC 1752.1, applicants for RDA licensure on or after January 1, 2002 are required to successfully complete a Board-approved course in radiation safety and a Board-approved course in coronal polishing as a condition of licensure. Since the proposed provisions relating to the course an RDAEF would have to take to be able to choose radiographs does not apply to the RDA licensure category, the Board would need clarification as to what course requirements would need to be satisfied for an RDA to be able to determine which radiographs to perform.
- Addition of BPC § 1753.55: Staff has several concerns regarding this section. Specifically, staff has identified the following issues:
 - The definitions contained in this section seem to be derived from existing Board regulations pertaining to dental assisting educational programs and courses. Since the Board and the Dental Assisting Council are in the process of updating the requirements, staff will need to evaluate how these new definitions may impact existing law and the proposal that is being developed.
 - Since the educational component of this bill has a repeal date of January 1, 2018, the Board will need to promulgate a regulation to implement the course approval requirements to amend the current requirements for RDAEF programs and implement the requirements for the Board-approved courses in the additional duties.
 - There does not appear to be a Board examination requirement, and the authorization to perform these additional duties seems to rely entirely on completion of a program or course that includes training in performing these additional duties. Applicants for RDAEF licensure are required to pass a written examination and a clinical and practical examination in specified procedures. Additionally, RDAEFs that were licensed prior to January 1, 2010 are required to pass the practical portion of the exam to be able to perform the expanded duties allowed after January 1, 2010.

Staff believes the Board may want to discuss if an RDAEF should have to pass some sort of examination to ensure minimum competency for the purpose of promoting consumer protection.

- The Board will need to make changes to the licensing systems in order to provide a mechanism by which members of the public, licensees, and stakeholders may easily identify a RDAEFs authorization to perform the additional duties. This would require changes to the existing Legacy systems and BreEze.
- It should be noted that not all RDAEFs are authorized to perform the same duties. Those RDAEFs licensed prior to January 1, 2010 have had to complete additional education and examination requirements in order to perform the duties in BPC § 1753.5(1), (2), (5), and (7) – (11). The Board had developed a license type (RDAEF2) to distinguish those RDAEFs license prior to January 1, 2010 who have complied with the educational requirements and have successfully passed the examination to perform the new duties from those who have not. Board staff believes clarification may be needed as to whether an RDAEF2 would be able to be licensed in the proposed additional duties.
- The Board would need to develop a process to be able to verify a RDAEFs completion of the training in HWPP #172. The Board may want to discuss what requirements would be considered satisfactory.
- Amendments to BPC § 1753.6: The amendments to this section may adversely impact the provisions and how they apply to existing licensees. This section was applicable when AB 2637 expanded the scope of the RDAEF duties.
- Addition of BPC §1910.5: Staff believes the DHCC would initially need dentists to teach the course in ITR's since they have never been trained or licensed to perform the procedure. The Board may want to discuss whether there should be a requirement for work experience before allowing RDAEFs or RDHs to teach the course.
- Since the Board and the DHCC have separate rulemaking authority, there is potential for the course requirements to take separate directions if the regulations are promulgated separately.
- The Board may want to consider discussing requesting a delayed effective date of the bill if it enacted to ensure adequate implementation time and to make necessary modifications to the Board's licensing system.
- The number of licensees that would be interested in expanding their scope of practice as a result of this bill is unknown.

- The Board does not have existing staff resources to dedicate to the implementation and ongoing approval of the new programs and courses required by this bill. We anticipate needing to hire an additional staff person.
- In its current version, it is not clear the impact the bill will have on the dental assisting licensing staff that issue licenses to RDAs and RDAEFs; it is possible that the Board may need to hire an additional staff person.
- As currently written, changes to the Legacy and Breeze systems will be necessary to implement a license type so that the Board, licensees, and consumers will know if an RDAEF is permitted to perform the proposed duties.
- Staff anticipates that the Board will incur expenses to pursue disciplinary action on those licensees who may commit gross negligence as a result of the new scope of duties proposed. We estimate that the Board may see up to 10 additional cases annually that will require referral to the Attorney General's Office. The Board estimates that each case costs an average of \$5,000 (\$3,500 Attorney General's Office fees + \$750 Office of Administrative Hearing + \$750 evidence/witness expenses).

REGISTERED SUPPORT/OPPOSITION

Support

100% Campaign
 Alzheimer's Association
 Brighter Smiles for You Mobile Dental Hygiene Services
 California Academy of Physician Assistants
 California Coverage & Health Initiatives
 California Primary Care Association
 California School Health Centers Association
 California School-Based Health Alliance
 Children Now
 Children's Defense Fund California
 Children's Partnership
 Community Clinic Association of Los Angeles County
 Connecting to Care
 Golden Gate Regional Center
 La Maestro Community Health Centers
 Los Angeles Area Chamber of Commerce
 Los Angeles Trust for Children's Health
 Los Angeles Unified School District
 Maternal and Child Health Access
 Open Door Community Health Centers
 Oral Health Access Council
 PICO California
 United Ways California
 Venice Family Clinic

Western Dental Services Inc
Worksite Wellness LA
Several individuals

Support if Amended:

California Association of Oral and Maxillofacial Surgeons (CALAOMS)
California Dental Association (CDA)

Oppose Unless Amended:

California Dental Hygienists' Association (CDHA)

Opposition

None on File

BOARD POSITION

The Board took a position of "Support if Amended" at its February 2014 meeting. The Board requested amendments be made to the bill to address staff's concerns.

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY APRIL 9, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1174

Introduced by Assembly Members Bocanegra and Logue

February 22, 2013

An act to amend Sections 1752.4, ~~1753.5, 1753.6,~~ and 1910, and 1926 of, to amend, repeal, and add Section 1753.6 of, and to add, repeal, and add Sections 1753.55, 1910.5, and 1926.05 of, the Business and Professions Code, and to ~~add Section 14132.726 to amend Section 14132.725 of~~ the Welfare and ~~Institution~~ Institutions Code, relating to oral health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1174, as amended, Bocanegra. Dental professionals: teledentistry under Medi-Cal.

(1) Existing law, the Dental Practice Act, establishes the Dental Board of California. Existing law creates, within the jurisdiction of the board, a Dental Assisting Council that is responsible for the regulation of dental assistants, registered dental assistants, and registered dental assistants in extended functions and a Dental Hygiene Committee of California, that is responsible for the regulation of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions. Existing law governs the scope of practice for those professionals.

This bill would authorize a registered dental assistant *who has completed a specified educational program* to determine which

~~radiographs to perform if he or she has completed a specified educational program. The bill would authorize a registered dental assistant in extended functions licensed on or after January 1, 2010, to place interim therapeutic restorations, as defined, pursuant to the order, control, and full professional responsibility of a licensed dentist, as specified. The bill would authorize a registered dental hygienist to, after submitting to the committee evidence of satisfactory completion of a course of instruction approved by the committee, determine which a registered dental hygienist, and a registered dental hygienist in alternative practice to choose radiographs to perform and place interim therapeutic protective restorations upon the order of a licensed dentist, as specified.~~

(2) Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services, including certain dental services, as specified. Existing law provides that, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for “teleophthalmology and teledermatology by store and forward,” as defined to mean the asynchronous transmission of medical information to be reviewed at a later time by a licensed physician or optometrist, as specified, at a distant site.

~~This bill would enact similar provisions relating to the use of teledentistry, as defined, under the Medi-Cal program. The bill would provide that, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for “teledentistry by store and forward.” The bill would define that term to mean an asynchronous transmission of dental information to be reviewed at a later time by a licensed dentist at a distant site, where the dentist at the distant site reviews the dental information without the patient being present in real time, as defined and as specified. The bill would also provide that dentist participation in services provided at an intermittent clinic, as defined, through the use of telehealth, as defined, shall be considered a billable encounter under Medi-Cal. The bill would also require, on or before January 1, 2017, the department to report to the Legislature the number and type of services provided, and the payments made related to the application of teledentistry, as specified.~~

This bill would additionally provide that face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for teledentistry by store and forward, as defined.

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

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

- 1 SECTION 1. Section 1752.4 of the Business and Professions
2 Code is amended to read:
3 1752.4. (a) A registered dental assistant may perform all of
4 the following duties:
5 (1) All duties that a dental assistant is allowed to perform.
6 (2) Mouth-mirror inspections of the oral cavity, to include
7 charting of obvious lesions, existing restorations, and missing
8 teeth.
9 (3) Apply and activate bleaching agents using a nonlaser
10 light-curing device.
11 (4) Use of automated caries detection devices and materials to
12 gather information for diagnosis by the dentist.
13 (5) Obtain intraoral images for computer-aided design (CAD),
14 milled restorations.
15 (6) Pulp vitality testing and recording of findings.
16 (7) Place bases, liners, and bonding agents.
17 (8) Chemically prepare teeth for bonding.
18 (9) Place, adjust, and finish direct provisional restorations.
19 (10) Fabricate, adjust, cement, and remove indirect provisional
20 restorations, including stainless steel crowns when used as a
21 provisional restoration.
22 (11) Place postextraction dressings after inspection of the
23 surgical site by the supervising licensed dentist.
24 (12) Place periodontal dressings.
25 (13) Dry endodontically treated canals using absorbent paper
26 points.
27 (14) Adjust dentures extra-orally.
28 (15) Remove excess cement from surfaces of teeth with a hand
29 instrument.
30 (16) Polish coronal surfaces of the teeth.
31 (17) Place ligature ties and archwires.
32 (18) Remove orthodontic bands.

1 (19) All duties that the board may prescribe by regulation.

2 (b) A registered dental assistant may only perform the following
3 additional duties if he or she has completed a board-approved
4 registered dental assistant educational program in those duties, or
5 if he or she has provided evidence, satisfactory to the board, of
6 having completed a board-approved course in those ~~duties~~. *duties*:

7 (1) Remove excess cement with an ultrasonic scaler from
8 supragingival surfaces of teeth undergoing orthodontic treatment.

9 (2) The allowable duties of an orthodontic assistant permitholder
10 as specified in Section 1750.3. A registered dental assistant shall
11 not be required to complete further instruction in the duties of
12 placing ligature ties and archwires, removing orthodontic bands,
13 and removing excess cement from tooth surfaces with a hand
14 instrument.

15 (3) The allowable duties of a dental sedation assistant
16 permitholder as specified in Section 1750.5.

17 (4) The application of pit and fissure sealants.

18 (5) Determine which radiographs to perform.

19 (c) Except as provided in Section 1777, the supervising licensed
20 dentist shall be responsible for determining whether each
21 authorized procedure performed by a registered dental assistant
22 should be performed under general or direct supervision.

23 ~~SEC. 2. Section 1753.5 of the Business and Professions Code~~
24 ~~is amended to read:~~

25 ~~1753.5. (a) A registered dental assistant in extended functions~~
26 ~~licensed on or after January 1, 2010, is authorized to perform all~~
27 ~~duties and procedures that a registered dental assistant is authorized~~
28 ~~to perform as specified in and limited by Section 1752.4, and those~~
29 ~~duties that the board may prescribe by regulation.~~

30 ~~(b) A registered dental assistant in extended functions licensed~~
31 ~~on or after January 1, 2010, is authorized to perform the following~~
32 ~~additional procedures under direct supervision and pursuant to the~~
33 ~~order, control, and full professional responsibility of a licensed~~
34 ~~dentist:~~

35 ~~(1) Conduct preliminary evaluation of the patient's oral health,~~
36 ~~including, but not limited to, charting, intraoral and extra-oral~~
37 ~~evaluation of soft tissue, classifying occlusion, and myofunctional~~
38 ~~evaluation.~~

39 ~~(2) Perform oral health assessments in school-based, community~~
40 ~~health project settings under the direction of a dentist, registered~~

1 dental hygienist, or registered dental hygienist in alternative
2 practice:

- 3 (3) Cord retraction of gingiva for impression procedures.
- 4 (4) Size and fit endodontic master points and accessory points.
- 5 (5) Cement endodontic master points and accessory points.
- 6 (6) Take final impressions for permanent indirect restorations.
- 7 (7) Take final impressions for tooth-borne removable prosthesis.
- 8 (8) Polish and contour existing amalgam restorations.
- 9 (9) Place, contour, finish, and adjust all direct restorations.
- 10 (10) Adjust and cement permanent indirect restorations.
- 11 (11) Other procedures authorized by regulations adopted by the
12 board.

13 (c) All procedures required to be performed under direct
14 supervision shall be checked and approved by the supervising
15 licensed dentist prior to the patient's dismissal from the office.

16 (d) (1) A registered dental assistant in extended functions
17 licensed on or after January 1, 2010, is authorized to place interim
18 therapeutic restorations, defined as the removal of caries using
19 hand instruments and placement of an adhesive restorative material,
20 upon the order of the supervising dentist under general supervision,
21 except as authorized pursuant to paragraph (3), and pursuant to
22 the order, control, and full professional responsibility of a licensed
23 dentist.

24 (2) A registered dental assistant in extended function may only
25 perform the functions authorized pursuant to paragraph (1) if he
26 or she has completed a board-approved registered dental assistant
27 in extended function education program in performing those
28 functions, or if he or she has provided evidence, satisfactory to the
29 board, of having completed a board-approved course in those
30 functions.

31 (3) The supervising licensed dentist shall be responsible for
32 determining whether the functions authorized pursuant to paragraph
33 (1) may be performed under general or direct supervision.

34 *SEC. 2. Section 1753.55 is added to the Business and*
35 *Professions Code, to read:*

36 *1753.55. (a) For the purposes of this section, the following*
37 *definitions shall apply:*

38 (1) "Clinical instruction" means instruction in which students
39 receive supervised experience in performing procedures in a
40 clinical setting on patients. Clinical instruction shall only be

1 performed upon successful demonstration and evaluation of
2 preclinical skills. There shall be at least one instructor for every
3 six students who are simultaneously engaged in clinical instruction.

4 (2) “Course” means a board-approved course preparing a
5 registered dental assistant in extended functions to perform the
6 duties described in subdivision (b).

7 (3) “Didactic instruction” means lectures, demonstrations, and
8 other instruction without active participation by students. The
9 approved provider or its designee may provide didactic instruction
10 through electronic media, home study materials, or live lecture
11 methodology if the provider has submitted that content to the board
12 for approval.

13 (4) “Interim therapeutic restoration” means a direct provisional
14 restoration placed to stabilize the tooth until a licensed dentist
15 diagnoses the need for further definitive treatment.

16 (5) “Laboratory instruction” means instruction in which
17 students receive supervised experience performing procedures
18 using study models, mannequins, or other simulation methods.

19 (6) “Preclinical instruction” means instruction in which students
20 receive supervised experience performing procedures on students,
21 faculty, or staff members. There shall be at least one instructor
22 for every six students who are simultaneously engaged in
23 preclinical instruction.

24 (7) “Program” means a board-approved registered dental
25 assistant in extended functions educational program.

26 (b) In addition to the duties specified in Section 1753.5, a
27 registered dental assistant in extended functions licensed on or
28 after January 1, 2010, is authorized to perform both of the
29 following additional duties pursuant to the order, control, and full
30 professional responsibility of a supervising dentist:

31 (1) Choose radiographs without the supervising dentist having
32 first examined the patient, following protocols established by the
33 supervising dentist and, consistent with the use of as low as
34 reasonably necessary radiation, for the purpose of diagnosis and
35 treatment planning by the dentist. The radiographs shall be taken
36 only in either of the following settings:

37 (A) In a dental office setting, under the direct or general
38 supervision of a dentist as determined by the dentist.

39 (B) In public health settings, including, but not limited to,
40 schools, head start and preschool programs, and residential

1 facilities and institutions, under the general supervision of a
2 dentist.

3 (2) Place protective restorations, which for this purpose are
4 identified as interim therapeutic restorations, as defined by
5 paragraph (4) of subdivision (a), that compromise the removal of
6 soft material from the tooth using only hand instrumentation,
7 without the use of rotary instrumentation, and subsequent
8 placement of an adhesive restorative material. Local anesthesia
9 shall not be necessary. The protective restorations shall be placed
10 only in accordance with both of the following:

11 (A) In either of the following settings:

12 (i) In a dental office setting, under the direct or general
13 supervision of a dentist as determined by the dentist.

14 (ii) In public health settings, including, but not limited to,
15 schools, head start and preschool programs, and residential
16 facilities and institutions, under the general supervision of a
17 dentist.

18 (B) After a diagnosis and treatment plan by a dentist.

19 (c) The functions described in subdivision (b) may be performed
20 by a registered dental assistant in extended functions only after
21 completion of a program that includes training in performing those
22 functions, or after providing evidence, satisfactory to the board,
23 of having completed a board-approved course in those functions.

24 (1) A registered dental assistant in extended functions who has
25 completed the prescribed training in the Health Workforce Pilot
26 Project #172 established by the Office of Statewide Health
27 Planning and Development pursuant to Article 1 (commencing
28 with Section 128125) of Chapter 3 of Part 3 of Division 107 of the
29 Health and Safety Code shall be deemed to have satisfied the
30 requirement for completion of a course of instruction approved
31 by the board.

32 (2) In addition to the instructional components described in
33 subdivision (d) or (e), a program shall contain both of the
34 instructional components described in this paragraph:

35 (A) The course shall be established at the postsecondary
36 educational level.

37 (B) All faculty responsible for clinical evaluation shall have
38 completed a one-hour methodology course in clinical evaluation
39 or have a faculty appointment at an accredited dental education
40 program prior to conducting evaluations of students.

1 (d) A program or course to perform the duties described in
2 paragraph (1) of subdivision (b) shall contain all of the additional
3 instructional components described in this subdivision.

4 (1) The program shall be of sufficient duration for the student
5 to develop minimum competency making decisions about which
6 radiographs to take to facilitate an evaluation by a dentist, but
7 shall in no event be less than six hours, including at least two hours
8 of didactic training, at least two hours of guided laboratory
9 simulation training, and at least two hours of examination using
10 simulated cases.

11 (2) Didactic instruction shall consist of instruction on both of
12 the following topics:

13 (A) Guidelines for radiographic decisionmaking prepared by
14 the American Dental Association and other professional dental
15 associations.

16 (B) Specific decisionmaking protocols that incorporate
17 information about the patient's health and radiographic history,
18 the time span since previous radiographs were taken, the
19 availability of previous radiographs, the general condition of the
20 mouth including the extent of dental restorations present, and
21 visible signs of abnormalities, including broken teeth, dark areas,
22 and holes in teeth.

23 (3) Laboratory instruction shall consist of simulated
24 decisionmaking using case studies containing the elements
25 described in paragraph (2). There shall be at least one instructor
26 for every 14 students who are simultaneously engaged in
27 laboratory instruction.

28 (4) Examinations shall consist of decisionmaking where students
29 make decisions and demonstrate competency to faculty on case
30 studies containing the elements described in paragraph (2).

31 (e) A program or course to perform the duties described in
32 paragraph (2) of subdivision (b) shall contain all of the additional
33 instructional components described in this subdivision.

34 (1) The program shall be of sufficient duration for the student
35 to develop minimum competency in the application of protective
36 restorations, including interim therapeutic restorations, but shall
37 in no event be less than 16 clock hours, including at least four
38 hours of didactic training, at least four hours of laboratory
39 training, and at least eight hours of clinical training.

- 1 (2) *Didactic instruction shall consist of instruction on all of the*
2 *following topics:*
- 3 (A) *Pulpal anatomy.*
- 4 (B) *Theory of adhesive restorative materials used in the*
5 *placement of adhesive protective restorations related to*
6 *mechanisms of bonding to tooth structure, handling characteristics*
7 *of the materials, preparation of the tooth prior to material*
8 *placement, and placement techniques.*
- 9 (C) *Criteria that dentists use to make decisions about placement*
10 *of adhesive protective restorations including all of the following:*
- 11 (i) *Patient factors:*
- 12 (I) *The patient's American Society of Anesthesiologists Physical*
13 *Status Classification is Class III or less.*
- 14 (II) *The patient is cooperative enough to have the restoration*
15 *placed without the need for special protocols, including sedation*
16 *or physical support.*
- 17 (III) *The patient, or responsible party, has provided consent for*
18 *the procedure.*
- 19 (IV) *The patient reports that the tooth is asymptomatic, or if*
20 *there is mild sensitivity to sweet, hot, or cold that the sensation*
21 *stops within a few seconds of the stimulus being removed.*
- 22 (ii) *Tooth factors:*
- 23 (I) *The cavity is accessible without the need for creating access*
24 *using a dental handpiece.*
- 25 (II) *The margins of the cavity are accessible so that clean*
26 *noncarious margins can be obtained around the entire periphery*
27 *of the cavity with the use of hand instruments.*
- 28 (III) *The depth of the lesion is more than two millimeters from*
29 *the pulp on radiographic examination or is judged by the dentist*
30 *to be a shallow lesion such that the treatment does not endanger*
31 *the pulp or require the use of local anesthetic.*
- 32 (IV) *The tooth is restorable and does not have other significant*
33 *pathology.*
- 34 (D) *Criteria for evaluating successful completion of adhesive*
35 *protective restorations including all of the following:*
- 36 (i) *The restorative material is not in hyperocclusion.*
- 37 (ii) *There are no marginal voids.*
- 38 (iii) *There is minimal excess material.*

1 (E) Protocols for handling sensitivity, complications, or
2 unsuccessful completion of adhesive protective restorations
3 including situations requiring immediate referral to a dentist.

4 (F) Protocols for followup of adhesive protective restorations.

5 (3) Laboratory instruction shall consist of placement of adhesive
6 protective restorations where students demonstrate competency
7 in this technique on typodont teeth.

8 (4) Clinical instruction shall consist of experiences where
9 students demonstrate placement of adhesive protective restorations
10 under direct supervision of faculty.

11 (f) This section shall remain in effect only until January 1, 2018,
12 and as of that date is repealed, unless a later enacted statute, that
13 is enacted before January 1, 2018, deletes or extends that date.

14 SEC. 3. Section 1753.55 is added to the Business and
15 Professions Code, to read:

16 1753.55. (a) For the purposes of this section, “interim
17 therapeutic restoration” means a direct provisional restoration
18 placed to stabilize the tooth until a licensed dentist diagnoses the
19 need for further definitive treatment.

20 (b) In addition to the duties specified in Section 1753.5, a
21 registered dental assistant in extended functions licensed on or
22 after January 1, 2010, is authorized to perform both of the
23 following additional duties pursuant to the order, control, and full
24 professional responsibility of a supervising dentist:

25 (1) Choose radiographs without the supervising dentist having
26 first examined the patient, following protocols established by the
27 supervising dentist and, consistent with the use of as low as
28 reasonably necessary radiation, for the purpose of diagnosis and
29 treatment planning by the dentist. The radiographs shall be taken
30 only in either of the following settings:

31 (A) In a dental office setting, under the direct or general
32 supervision of a dentist as determined by the dentist.

33 (B) In public health settings, including, but not limited to,
34 schools, head start and preschool programs, and residential
35 facilities and institutions, under the general supervision of a
36 dentist.

37 (2) Place protective restorations through interim therapeutic
38 restorations that remove soft material from the tooth using only
39 hand instrumentation, without the use of rotary instrumentation,
40 and subsequent placement of an adhesive restorative material,

1 *without the use of local anesthesia. The protective restorations*
2 *shall only be placed subject to both of the following:*

3 (A) *In either of the following settings:*

4 (i) *In a dental office setting, under the direct or general*
5 *supervision of a dentist as determined by the dentist.*

6 (ii) *In public health settings, including, but not limited to,*
7 *schools, head start and preschool programs, and residential*
8 *facilities and institutions, under the general supervision of a*
9 *dentist.*

10 (B) *After a diagnosis and treatment plan by a dentist.*

11 (c) *This section shall become operative on January 1, 2018.*

12 ~~SEC. 3.~~

13 SEC. 4. Section 1753.6 of the Business and Professions Code
14 is amended to read:

15 1753.6. (a) Each person who holds a license as a registered
16 dental assistant in extended functions on the operative date of this
17 section may only perform those procedures that a registered dental
18 assistant is allowed to perform as specified in and limited by
19 Section 1752.4, and the procedures specified in paragraphs (1) to
20 (6), inclusive, until he or she provides evidence of having
21 completed a board-approved course in the additional procedures
22 specified in paragraphs (1), (2), (5), and (7) to (11), inclusive, of
23 subdivision (b), ~~and paragraph (1) of subdivision (d),~~ of Section
24 1753.5, and an examination as specified in Section 1753.4:

25 (1) Cord retraction of gingiva for impression procedures.

26 (2) Take final impressions for permanent indirect restorations.

27 (3) Formulate indirect patterns for endodontic post and core
28 castings.

29 (4) Fit trial endodontic filling points.

30 (5) Apply pit and fissure sealants.

31 (6) Remove excess cement from subgingival tooth surfaces with
32 a hand instrument.

33 ~~(b) This section shall become operative on January 1, 2010.~~

34 (b) *This section shall remain in effect only until January 1, 2018,*
35 *and as of that date is repealed, unless a later enacted statute, that*
36 *is enacted before January 1, 2018, deletes or extends that date.*

37 SEC. 5. Section 1753.6 is added to the Business and Professions
38 Code, to read:

39 1753.6. (a) Each person who holds a license as a registered
40 dental assistant in extended functions on the operative date of this

1 *section may only perform those procedures that a registered dental*
 2 *assistant is allowed to perform as specified in and limited by*
 3 *Section 1752.4, and the procedures specified in paragraphs (1) to*
 4 *(6), inclusive, until he or she provides evidence of having completed*
 5 *a board-approved course in the additional procedures specified*
 6 *in paragraphs (1), (2), (5), and (7) to (11), inclusive, of subdivision*
 7 *(b) of Section 1753.5, procedures specified in Section 1753.55,*
 8 *and an examination as specified in Section 1753.4:*

9 (1) *Cord retraction of gingiva for impression procedures.*

10 (2) *Take final impressions for permanent indirect restorations.*

11 (3) *Formulate indirect patterns for endodontic post and core*
 12 *castings.*

13 (4) *Fit trial endodontic filling points.*

14 (5) *Apply pit and fissure sealants.*

15 (6) *Remove excess cement from subgingival tooth surfaces with*
 16 *a hand instrument.*

17 (b) *This section shall become operative on January 1, 2018.*

18 ~~SEC. 4.~~

19 *SEC. 6.* Section 1910 of the Business and Professions Code is
 20 amended to read:

21 1910. A registered dental hygienist is authorized to perform
 22 the following procedures under general supervision:

23 (a) Preventive and therapeutic interventions, including oral
 24 prophylaxis, scaling, and root planing.

25 (b) Application of topical, therapeutic, and subgingival agents
 26 used for the control of caries and periodontal disease.

27 (c) The taking of impressions for bleaching trays and application
 28 and activation of agents with nonlaser, light-curing devices.

29 (d) The taking of impressions for bleaching trays and placements
 30 of in-office, tooth-whitening devices.

31 (e) After submitting to the committee evidence of satisfactory
 32 completion of a course of instruction approved by the committee,
 33 the following:

34 (1) Determine which radiographs to perform.

35 (2) Place interim therapeutic restorations, defined as the removal
 36 of caries using hand instruments and placement of an adhesive
 37 restorative material, upon the order of a licensed dentist.

38 ~~SEC. 5.~~ Section 14132.726 is added to the Welfare and
 39 Institutions Code, to read:

1 14132.726. (a) To the extent that federal financial participation
2 is available, face-to-face contact between a health care provider
3 and a patient shall not be required under the Medi-Cal program
4 for teledentistry by store and forward. Services appropriately
5 provided through the store and forward process are subject to
6 billing and reimbursement policies developed by the department.

7 (b) A patient receiving teledentistry by store and forward shall
8 be notified of the right to receive interactive communication with
9 the distant dentist, and shall receive an interactive communication
10 with the distant dentist, upon request. If requested, communication
11 with the distant dentist may occur either at the time of the
12 consultation, or within 30 days of the patient's notification of the
13 results of the consultation.

14 (c) Dentist participation in services provided at an intermittent
15 clinic, as defined in Section 1206 of the Health and Safety Code,
16 through the use of telehealth, as defined in Section 2290.5 of the
17 Business and Professions Code, shall be considered a billable
18 encounter under Medi-Cal.

19 (d) Notwithstanding Chapter 3.5 (commencing with Section
20 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
21 the department may implement, interpret, and make specific this
22 section by means of all-county letters, provider bulletins, and
23 similar instructions.

24 (e) On or before January 1, 2017, the department shall report
25 to the Legislature the number and type of services provided, and
26 the payments made related to the application of store and forward
27 teledentistry as provided, under this section as a Medi-Cal benefit.

28 (f) For purposes of this section, the following definitions apply:

29 (1) "Asynchronous store and forward" means the transmission
30 of a patient's dental information from an originating site to the
31 health care provider at a distant site without the presence of the
32 patient.

33 (2) "Distant site" means a site where a health care provider who
34 provides health care services is located while providing these
35 services via a telecommunications system.

36 (3) "Health care provider" means a person who is licensed under
37 Chapter 4 (commencing with Section 1600) of Division 2 of the
38 Business and Professions Code.

39 (4) "Originating site" means a site where a patient is located at
40 the time health care services are provided via a telecommunications

1 system or where the asynchronous store and forward service
2 originates.

3 (5) “Synchronous interaction” means a real-time interaction
4 between a patient and a health care provider located at a distant
5 site.

6 (6) “Teledentistry” means the mode of delivering dental health
7 care services and public dental health via information and
8 communication technologies to facilitate the diagnosis,
9 consultation, treatment, education, care management, and
10 self-management of a patient’s dental health care while the patient
11 is at the originating site and the dental health care provider is at a
12 distant site. Teledentistry includes synchronous interactions and
13 asynchronous store and forward transfers.

14 (7) “Teledentistry by store and forward” means an asynchronous
15 transmission of dental information to be reviewed at a later time
16 by a licensed dentist at a distant site, where the dentist at the distant
17 site reviews the dental information without the patient being present
18 in real time.

19 *SEC. 7. Section 1910.5 is added to the Business and Professions*
20 *Code, to read:*

21 *1910.5. (a) For the purposes of this section, the following*
22 *definitions shall apply:*

23 (1) “Clinical instruction” means instruction in which students
24 receive supervised experience in performing procedures in a
25 clinical setting on patients. Clinical instruction shall only be
26 performed upon successful demonstration and evaluation of
27 preclinical skills. There shall be at least one instructor for every
28 six students who are simultaneously engaged in clinical instruction.

29 (2) “Course” means a committee-approved course preparing
30 registered dental hygienist to perform the duties described in
31 subdivision (b).

32 (3) “Didactic instruction” means lectures, demonstrations, and
33 other instruction without active participation by students. The
34 approved provider or its designee may provide didactic instruction
35 through electronic media, home study materials, or live lecture
36 methodology if the provider has submitted that content to the
37 committee for approval.

38 (4) “Interim therapeutic restoration” means a direct provisional
39 restoration placed to stabilize the tooth until a licensed dentist
40 diagnoses the need for further definitive treatment.

1 (5) *“Laboratory instruction” means instruction in which*
2 *students receive supervised experience performing procedures*
3 *using study models, mannequins, or other simulation methods.*

4 (6) *“Preclinical instruction” means instruction in which students*
5 *receive supervised experience performing procedures on students,*
6 *faculty, or staff members. There shall be at least one instructor*
7 *for every six students who are simultaneously engaged in*
8 *preclinical instruction.*

9 (7) *“Program” means a committee-approved registered dental*
10 *hygienist educational program.*

11 (b) *A registered dental hygienist may perform both of the*
12 *following duties:*

13 (1) *Choose radiographs without the supervising dentist having*
14 *first examined the patient, following protocols established by the*
15 *supervising dentist and, consistent with the use of as low as*
16 *reasonably necessary radiation, for the purpose of diagnosis and*
17 *treatment planning by the dentist. The radiographs shall be taken*
18 *only in either of the following settings:*

19 (A) *In a dental office setting, under the general supervision of*
20 *a dentist.*

21 (B) *In a public health setting, including, but not limited to,*
22 *schools, head start and preschool programs, and residential*
23 *facilities and institutions, under the general supervision of a*
24 *dentist.*

25 (2) *Place protective restorations, which for this purpose are*
26 *identified as interim therapeutic restorations, as defined by*
27 *paragraph (4) of subdivision (a), that compromise the removal of*
28 *soft material from the tooth using only hand instrumentation,*
29 *without the use of rotary instrumentation, and subsequent*
30 *placement of an adhesive restorative material. Local anesthesia*
31 *shall not be necessary. The protective restorations shall be placed*
32 *only in accordance with both of the following:*

33 (A) *In either of the following settings:*

34 (i) *In a dental office setting, under the general supervision of a*
35 *dentist.*

36 (ii) *In a public health setting, including, but not limited to,*
37 *schools, head start and preschool programs, and residential*
38 *facilities and institutions, under the general supervision of a*
39 *dentist.*

40 (B) *After a diagnosis and treatment plan by a dentist.*

1 (c) *The functions described in subdivision (b) may be performed*
2 *by a registered dental hygienist only after completion of a program*
3 *that includes training in performing those functions, or after*
4 *providing evidence, satisfactory to the committee, of having*
5 *completed a committee-approved course in those functions.*

6 (1) *A registered dental hygienist who has completed the*
7 *prescribed training in the Health Workforce Pilot Project #172*
8 *established by the Office of Statewide Health Planning and*
9 *Development pursuant to Article 1 (commencing with Section*
10 *128125) of Chapter 3 of Part 3 of Division 107 of the Health and*
11 *Safety Code shall be deemed to have satisfied the requirement for*
12 *completion of a course of instruction approved by the committee.*

13 (2) *In addition to the instructional components described in*
14 *subdivision (d) or (e), a program shall contain both of the*
15 *instructional components described in this paragraph:*

16 (A) *The course shall be established at the postsecondary*
17 *educational level.*

18 (B) *All faculty responsible for clinical evaluation shall have*
19 *completed a one-hour methodology course in clinical evaluation*
20 *or have a faculty appointment at an accredited dental education*
21 *program prior to conducting evaluations of students.*

22 (d) *A program or course to perform the duties described in*
23 *paragraph (1) of subdivision (b) shall contain all of the additional*
24 *instructional components described in this subdivision.*

25 (1) *The program shall be of sufficient duration for the student*
26 *to develop minimum competency making decisions about which*
27 *radiographs to take to facilitate an evaluation by a dentist, but*
28 *shall in no event be less than six hours, including at least two hours*
29 *of didactic training, at least two hours of guided laboratory*
30 *simulation training, and at least two hours of examination using*
31 *simulated cases.*

32 (2) *Didactic instruction shall consist of instruction on both of*
33 *the following topics:*

34 (A) *Guidelines for radiographic decision making prepared by*
35 *the American Dental Association and other professional dental*
36 *associations.*

37 (B) *Specific decisionmaking protocols that incorporate*
38 *information about the patient's health and radiographic history,*
39 *the time span since previous radiographs were taken, the*
40 *availability of previous radiographs, the general condition of the*

1 *mouth including the extent of dental restorations present, and*
2 *visible signs of abnormalities, including broken teeth, dark areas,*
3 *and holes in teeth.*

4 *(3) Laboratory instruction shall consist of simulated decision*
5 *making using case studies containing the elements described in*
6 *paragraph (2). There shall be at least one instructor for every 14*
7 *students who are simultaneously engaged in laboratory instruction.*

8 *(4) Examination shall consist of decisionmaking where students*
9 *make decisions and demonstrate competency to faculty on case*
10 *studies containing the elements described in paragraph (2).*

11 *(e) A program or course to perform the duties described in*
12 *paragraph (2) of subdivision (b) shall contain all of the additional*
13 *instructional components described in this subdivision.*

14 *(1) The program shall be of sufficient duration for the student*
15 *to develop minimum competency in the application of protective*
16 *restorations, including interim therapeutic restorations, but shall*
17 *in no event be less than 16 clock hours, including at least four*
18 *hours of didactic training, at least four hours of laboratory*
19 *training, and at least eight hours of clinical training.*

20 *(2) Didactic instruction shall consist of instruction on all of the*
21 *following topics:*

22 *(A) Pulpal anatomy.*

23 *(B) Theory of adhesive restorative materials used in the*
24 *placement of adhesive protective restorations related to*
25 *mechanisms of bonding to tooth structure, handling characteristics*
26 *of the materials, preparation of the tooth prior to material*
27 *placement, and placement techniques.*

28 *(C) Criteria that dentists use to make decisions about placement*
29 *of adhesive protective restorations including all of the following:*

30 *(i) Patient factors:*

31 *(I) The patient's American Society of Anesthesiologists Physical*
32 *Status Classification is Class III or less.*

33 *(II) The patient is cooperative enough to have the restoration*
34 *placed without the need for special protocols, including sedation*
35 *or physical support.*

36 *(III) The patient, or responsible party, has provided consent for*
37 *the procedure.*

38 *(IV) The patient reports that the tooth is asymptomatic, or if*
39 *there is mild sensitivity to sweet, hot, or cold that the sensation*
40 *stops within a few seconds of the stimulus being removed.*

- 1 (ii) *Tooth factors:*
2 (I) *The cavity is accessible without the need for creating access*
3 *using a dental handpiece.*
4 (II) *The margins of the cavity are accessible so that clean*
5 *noncarious margins can be obtained around the entire periphery*
6 *of the cavity with the use of hand instruments.*
7 (III) *The depth of the lesion is more than two millimeters from*
8 *the pulp on radiographic examination or is judged by the dentist*
9 *to be a shallow lesion such that the treatment does not endanger*
10 *the pulp or require the use of local anesthetic.*
11 (IV) *The tooth is restorable and does not have other significant*
12 *pathology.*
13 (D) *Criteria for evaluating successful completion of adhesive*
14 *protective restorations including all of the following:*
15 (i) *The restorative material is not in hyperocclusion.*
16 (ii) *There are no marginal voids.*
17 (iii) *There is minimal excess material.*
18 (E) *Protocols for handling sensitivity, complications, or*
19 *unsuccessful completion of adhesive protective restorations*
20 *including situations requiring immediate referral to a dentist.*
21 (F) *Protocols for followup of adhesive protective restorations.*
22 (3) *Laboratory instruction shall consist of placement of adhesive*
23 *protective restorations where students demonstrate competency*
24 *in this technique on typodont teeth.*
25 (4) *Clinical instruction shall consist of experiences where*
26 *students demonstrate competency in placement of adhesive*
27 *protective restorations under direct supervision of faculty.*
28 (f) *This section shall remain in effect only until January 1, 2018,*
29 *and as of that date is repealed, unless a later enacted statute, that*
30 *is enacted before January 1, 2018, deletes or extends that date.*
31 SEC. 8. *Section 1910.5 is added to the Business and Professions*
32 *Code, to read:*
33 1910.5. (a) *For the purposes of this section, “interim*
34 *therapeutic restoration” means a direct provisional restoration*
35 *placed to stabilize the tooth until a licensed dentist diagnoses the*
36 *need for further definitive treatment.*
37 (b) *A registered dental hygienist may perform both of the*
38 *following duties:*
39 (1) *Choose radiographs without the supervising dentist having*
40 *first examined the patient, following protocols established by the*

1 supervising dentist and, consistent with the use of as low as
2 reasonably necessary radiation, for the purpose of diagnosis and
3 treatment planning by the dentist. The radiographs shall be taken
4 only in either of the following settings:

5 (A) In a dental office setting, under the general supervision of
6 a dentist.

7 (B) In a public health setting, including, but not limited to,
8 schools, head start and preschool programs, and residential
9 facilities and institutions, under the general supervision of a
10 dentist.

11 (2) Place protective restorations, which for this purpose are
12 identified as interim therapeutic restorations, as defined by
13 subdivision (a), that comprise the removal of soft material from
14 the tooth using only hand instrumentation, without the use of rotary
15 instrumentation, and subsequent placement of an adhesive
16 restorative material. Local anesthesia shall not be necessary. The
17 protective restorations shall be placed only in accordance with
18 both of the following:

19 (A) In either of the following settings:

20 (i) In a dental office setting, under the general supervision of a
21 dentist.

22 (ii) In a public health setting, including, but not limited to,
23 schools, head start and preschool programs, and residential
24 facilities and institutions, under the general supervision of a
25 dentist.

26 (B) After a diagnosis and treatment plan by a dentist.

27 (c) The functions described in subdivision (b) may be performed
28 by a registered dental hygienist only after completion of a program
29 that includes training in performing those functions, or after
30 providing evidence, satisfactory to the committee, of having
31 completed a committee-approved course in those functions.

32 (d) This section shall become operative on January 1, 2018.

33 SEC. 9. Section 1926 of the Business and Professions Code is
34 amended to read:

35 1926. A registered dental hygienist in alternative practice may
36 perform the duties authorized pursuant to subdivision (a) of Section
37 1907, subdivision (a) of Section 1908, ~~and~~ subdivisions (a) and
38 (b) of Section 1910, and Section 1926.05 in the following settings:

39 (a) Residences of the homebound.

40 (b) Schools.

1 (c) Residential facilities and other institutions.

2 (d) Dental health professional shortage areas, as certified by the
3 Office of Statewide Health Planning and Development in
4 accordance with existing office guidelines.

5 *SEC. 10. Section 1926.05 is added to the Business and
6 Professions Code, to read:*

7 *1926.05. (a) For the purposes of this section, the following
8 definitions shall apply:*

9 (1) *“Clinical instruction” means instruction in which students
10 receive supervised experience in performing procedures in a
11 clinical setting on patients. Clinical instruction shall only be
12 performed upon successful demonstration and evaluation of
13 preclinical skills. There shall be at least one instructor for every
14 six students who are simultaneously engaged in clinical instruction.*

15 (2) *“Course” means a committee-approved course preparing
16 registered dental hygienist in alternative practice to perform the
17 duties described in subdivision (b).*

18 (3) *“Didactic instruction” means lectures, demonstrations, and
19 other instruction without active participation by students. The
20 approved provider or its designee may provide didactic instruction
21 through electronic media, home study materials, or live lecture
22 methodology if the provider has submitted that content to the
23 committee for approval.*

24 (4) *“Interim therapeutic restoration” means a direct provisional
25 restoration placed to stabilize the tooth until a licensed dentist
26 diagnoses the need for further definitive treatment.*

27 (5) *“Laboratory instruction” means instruction in which
28 students receive supervised experience performing procedures
29 using study models, mannequins, or other simulation methods.*

30 (6) *“Preclinical instruction” means instruction in which students
31 receive supervised experience performing procedures on students,
32 faculty, or staff members. There shall be at least one instructor
33 for every six students who are simultaneously engaged in
34 preclinical instruction.*

35 (7) *“Program” means a committee-approved registered dental
36 hygienist in alternative practice educational program.*

37 (b) *A registered dental hygienist in alternative practice may
38 perform both of the following duties:*

39 (1) *Choose radiographs without the supervising dentist having
40 first examined the patient, following protocols established by the*

1 *supervising dentist and, consistent with the use of as low as*
2 *reasonably necessary radiation, for the purpose of diagnosis and*
3 *treatment planning by the dentist. The radiographs shall be taken*
4 *only in either of the following settings:*

5 (A) *In a dental office setting, under the general supervision of*
6 *a dentist.*

7 (B) *In a public health setting, including, but not limited to,*
8 *schools, head start and preschool programs, and residential*
9 *facilities and institutions, under the general supervision of a*
10 *dentist.*

11 (2) *Place protective restorations, which for this purpose are*
12 *identified as interim therapeutic restorations, as defined by*
13 *paragraph (4) of subdivision (a), that compromise the removal of*
14 *soft material from the tooth using only hand instrumentation,*
15 *without the use of rotary instrumentation, and subsequent*
16 *placement of an adhesive restorative material. Local anesthesia*
17 *shall not be necessary. The protective restorations shall be placed*
18 *only in accordance with both of the following:*

19 (A) *In either of the following settings:*

20 (i) *In a dental office setting, under the general supervision of a*
21 *dentist.*

22 (ii) *In a public health setting, including, but not limited to,*
23 *schools, head start and preschool programs, and residential*
24 *facilities and institutions, under the general supervision of a*
25 *dentist.*

26 (B) *After a diagnosis and treatment plan by a dentist.*

27 (c) *The functions described in subdivision (b) may be performed*
28 *by a registered dental hygienist in alternative practice only after*
29 *completion of a course or program that includes training in*
30 *performing those functions, or after providing evidence,*
31 *satisfactory to the committee, of having completed a*
32 *committee-approved course in those functions.*

33 (1) *A registered dental hygienist in alternative practice who*
34 *has completed the prescribed training in the Health Workforce*
35 *Pilot Project #172 established by the Office of Statewide Health*
36 *Planning and Development pursuant to Article 1 (commencing*
37 *with Section 128125) of Chapter 3 of Part 3 of Division 107 of the*
38 *Health and Safety Code shall be deemed to have satisfied the*
39 *requirement for completion of a course of instruction approved*
40 *by the committee.*

1 (2) *In addition to the instructional components described in*
2 *subdivision (d) or (e), a program shall contain both of the*
3 *instructional components described in this paragraph:*

4 (A) *The course shall be established at the postsecondary*
5 *educational level.*

6 (B) *All faculty responsible for clinical evaluation shall have*
7 *completed a one-hour methodology course in clinical evaluation*
8 *or have a faculty appointment at an accredited dental education*
9 *program prior to conducting evaluations of students.*

10 (d) *A program or course to perform the duties described in*
11 *paragraph (1) of subdivision (b) shall contain all of the additional*
12 *instructional components described in this subdivision.*

13 (1) *The program shall be of sufficient duration for the student*
14 *to develop minimum competency making decisions about which*
15 *radiographs to take to facilitate an evaluation by a dentist, but*
16 *shall in no event be less than six hours, including at least two hours*
17 *of didactic training, at least two hours of guided laboratory*
18 *simulation training, and at least two hours of examination using*
19 *simulated cases.*

20 (2) *Didactic instruction shall consist of instruction on both of*
21 *the following topics:*

22 (A) *Guidelines for radiographic decision making prepared by*
23 *the American Dental Association and other professional dental*
24 *associations.*

25 (B) *Specific decisionmaking protocols that incorporate*
26 *information about the patient's health and radiographic history,*
27 *the time span since previous radiographs were taken, the*
28 *availability of previous radiographs, the general condition of the*
29 *mouth including the extent of dental restorations present, and*
30 *visible signs of abnormalities, including broken teeth, dark areas,*
31 *and holes in teeth.*

32 (3) *Laboratory instruction shall consist of simulated decision*
33 *making using case studies containing the elements described in*
34 *paragraph (2). There shall be at least one instructor for every 14*
35 *students who are simultaneously engaged in laboratory instruction.*

36 (4) *Examination shall consist of decisionmaking where students*
37 *make decisions and demonstrate competency to faculty on case*
38 *studies containing the elements described in paragraph (2).*

1 (e) A program or course to perform the duties described in
2 paragraph (2) of subdivision (b) shall contain all of the additional
3 instructional components described in this subdivision.

4 (1) The program shall be of sufficient duration for the student
5 to develop minimum competency in the application of protective
6 restorations, including interim therapeutic restorations, but shall
7 in no event be less than 16 clock hours, including at least four
8 hours of didactic training, at least four hours of laboratory
9 training, and at least eight hours of clinical training.

10 (2) Didactic instruction shall consist of instruction on all of the
11 following topics:

12 (A) Pulpal anatomy.

13 (B) Theory of adhesive restorative materials used in the
14 placement of adhesive protective restorations related to
15 mechanisms of bonding to tooth structure, handling characteristics
16 of the materials, preparation of the tooth prior to material
17 placement, and placement techniques.

18 (C) Criteria that dentists use to make decisions about placement
19 of adhesive protective restorations including all of the following:

20 (i) Patient factors:

21 (I) The patient's American Society of Anesthesiologists Physical
22 Status Classification is Class III or less.

23 (II) The patient is cooperative enough to have the restoration
24 placed without the need for special protocols, including sedation
25 or physical support.

26 (III) The patient, or responsible party, has provided consent for
27 the procedure.

28 (IV) The patient reports that the tooth is asymptomatic, or if
29 there is mild sensitivity to sweet, hot, or cold that the sensation
30 stops within a few seconds of the stimulus being removed.

31 (ii) Tooth factors:

32 (I) The cavity is accessible without the need for creating access
33 using a dental handpiece.

34 (II) The margins of the cavity are accessible so that clean
35 noncarious margins can be obtained around the entire periphery
36 of the cavity with the use of hand instruments.

37 (III) The depth of the lesion is more than two millimeters from
38 the pulp on radiographic examination or is judged by the dentist
39 to be a shallow lesion such that the treatment does not endanger
40 the pulp or require the use of local anesthetic.

1 (IV) *The tooth is restorable and does not have other significant*
2 *pathology.*

3 (D) *Criteria for evaluating successful completion of adhesive*
4 *protective restorations including all of the following:*

5 (i) *The restorative material is not in hyperocclusion.*

6 (ii) *There are no marginal voids.*

7 (iii) *There is minimal excess material.*

8 (E) *Protocols for handling sensitivity, complications, or*
9 *unsuccessful completion of adhesive protective restorations*
10 *including situations requiring immediate referral to a dentist.*

11 (F) *Protocols for followup of adhesive protective restorations.*

12 (3) *Laboratory instruction shall consist of placement of adhesive*
13 *protective restorations where students demonstrate competency*
14 *in this technique on typodont teeth.*

15 (4) *Clinical instruction shall consist of experiences where*
16 *students demonstrate competency in placement of adhesive*
17 *protective restorations under direct supervision of faculty.*

18 (f) *This section shall remain in effect only until January 1, 2018,*
19 *and as of that date is repealed, unless a later enacted statute, that*
20 *is enacted before January 1, 2018, deletes or extends that date.*

21 SEC. 11. *Section 1926.05 is added to the Business and*
22 *Professions Code, to read:*

23 1926.05. (a) *For the purposes of this section, “interim*
24 *therapeutic restoration” means a direct provisional restoration*
25 *placed to stabilize the tooth until a licensed dentist diagnoses the*
26 *need for further definitive treatment.*

27 (b) *A registered dental hygienist in alternative practice may*
28 *perform both of the following duties:*

29 (1) *Choose radiographs without the supervising dentist having*
30 *first examined the patient, following protocols established by the*
31 *supervising dentist and, consistent with the use of as low as*
32 *reasonably necessary radiation, for the purpose of diagnosis and*
33 *treatment planning by the dentist. The radiographs shall be taken*
34 *only in either of the following settings:*

35 (A) *In a dental office setting, under the general supervision of*
36 *a dentist.*

37 (B) *In a public health setting, including, but not limited to,*
38 *schools, head start and preschool programs, and residential*
39 *facilities and institutions, under the general supervision of a*
40 *dentist.*

1 (2) *Place protective restorations, which for this purpose are*
2 *identified as interim therapeutic restorations, as defined by*
3 *subdivision (a), that compromise the removal of soft material from*
4 *the tooth using only hand instrumentation, without the use of rotary*
5 *instrumentation, and subsequent placement of an adhesive*
6 *restorative material. Local anesthesia shall not be necessary. The*
7 *protective restorations shall be placed only in accordance with*
8 *both of the following:*

9 (A) *In either of the following settings:*

10 (i) *In a dental office setting, under the general supervision of a*
11 *dentist.*

12 (ii) *In a public health setting, including, but not limited to,*
13 *schools, head start and preschool programs, and residential*
14 *facilities and institutions, under the general supervision of a*
15 *dentist.*

16 (B) *After a diagnosis and treatment plan by a dentist.*

17 (c) *The functions described in subdivision (b) may be performed*
18 *by a registered dental hygienist in alternative practice only after*
19 *completion of a course or program that includes training in*
20 *performing those functions, or after providing evidence,*
21 *satisfactory to the committee, of having completed a*
22 *committee-approved course in those functions.*

23 (d) *This section shall become operative on January 1, 2018.*

24 *SEC. 12. Section 14132.725 of the Welfare and Institutions*
25 *Code is amended to read:*

26 14132.725. (a) ~~Commencing July 1, 2006, to~~ *To the extent*
27 *that federal financial participation is available, face-to-face contact*
28 *between a health care provider and a patient shall is not be required*
29 *under the Medi-Cal program for teleophthalmology—and,*
30 *teledermatology, and teledentistry by store and forward. Services*
31 *appropriately provided through the store and forward process are*
32 *subject to billing and reimbursement policies developed by the*
33 *department.*

34 (b) *For purposes of this section, “teleophthalmology—and,*
35 *teledermatology, and teledentistry by store and forward” means*
36 *an asynchronous transmission of medical or dental information to*
37 *be reviewed at a later time by a physician at a distant site who is*
38 *trained in ophthalmology or dermatology or, for teleophthalmology,*
39 *by an optometrist who is licensed pursuant to Chapter 7*
40 *(commencing with Section 3000) of Division 2 of the Business*

1 and Professions Code, *or a dentist*, where the physician-~~or~~,
2 optometrist, *or dentist* at the distant site reviews the medical *or*
3 *dental* information without the patient being present in real time.
4 A patient receiving teleophthalmology-~~or~~, teledermatology, *or*
5 *teledentistry* by store and forward shall be notified of the right to
6 receive interactive communication with the distant specialist
7 physician-~~or~~, optometrist, *or dentist* and shall receive an interactive
8 communication with the distant specialist physician-~~or~~, optometrist,
9 *or dentist*, upon request. If requested, communication with the
10 distant specialist physician-~~or~~, optometrist, *or dentist* may occur
11 either at the time of the consultation, or within 30 days of the
12 patient's notification of the results of the consultation. If the
13 reviewing optometrist identifies a disease or condition requiring
14 consultation or referral pursuant to Section 3041 of the Business
15 and Professions Code, that consultation or referral shall be with
16 an ophthalmologist or other appropriate physician and surgeon, as
17 required.

18 (c) Notwithstanding Chapter 3.5 (commencing with Section
19 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
20 the department may implement, interpret, and make specific this
21 section by means of all-county letters, provider bulletins, and
22 similar instructions.

23 (d) On or before January 1, 2008, the department shall report
24 to the Legislature the number and type of services provided, and
25 the payments made related to the application of store and forward
26 telehealth as provided, under this section as a Medi-Cal benefit.

**DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
MAY 29-30 BOARD MEETING**

BILL NUMBER: Assembly Bill 1702

AUTHOR: Assembly Member
Maienschein

SPONSOR:

VERSION: Amended 04/23/2014

INTRODUCED: 02/13/2014

BILL STATUS: 05/15/2014 – In Assembly.
Read third time. Passed
Assembly. To Senate.

BILL LOCATION: Senate

SUBJECT: Professions and Vocations:
Incarceration

**RELATED
BILLS:**

SUMMARY

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, among other entities. Existing law establishes various eligibility criteria needed to qualify for a license and authorizes a board to deny a license on the grounds that the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

This bill would provide that an individual who has satisfied any of the requirements needed to obtain a license while incarcerated, who applies for that license upon release from incarceration, and who is otherwise eligible for the license shall not be subject to a delay in processing the application or a denial of the license solely on the basis that some or all of the licensure requirements were completed while the individual was incarcerated.

EXISTING LAW

Existing law:

1. Allows a board to deny a license, as specified, on the grounds that the applicant has done one of the following:
 - a. Been convicted of a crime, as specified;
 - b. Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another; or,

- c. Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. (Business & Professions Code (BPC) Section 480(a))
2. Authorizes a board to deny a license, as specified, only if a crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. (BPC 480(a)(3)(B))
3. Specifies that no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation, as specified, or that he or she has been convicted of a misdemeanor, if he or she has met all applicable requirements of the criteria of rehabilitation, developed by the board, to evaluate the rehabilitation of a person when considering the denial of a license, as specified. (BPC 480(b))
4. Requires each board, as specified, to develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. (BPC 481)
5. Requires each board, as specified, to develop criteria to evaluate the rehabilitation of a person when:
 - a. Considering the denial of a license by the board, as specified; or,
 - b. Considering suspension or revocation of a license, as specified. (BPC 482)
 - c. Requires a board who has denied an application for a license, as specified, to include a copy of the criteria relating to rehabilitation, as specified, and to inform the applicant of the following:
 - i. The earliest date on which the applicant may reapply for licensure, as specified; and
 - ii. That all competent evidence of rehabilitation presented will be considered upon reapplication. (BPC 486).

PURPOSE OF THIS BILL

In order to alleviate unnecessary barriers to employment after incarceration, this bill specifies that an individual who has completed certain requirements for licensure while incarcerated cannot have their application for licensure denied or delayed solely based on their prior incarceration.

According to the author, "The purpose of [this bill] is to remove any obstacles preventing individuals who have obtained specific job training [and education], while incarcerated, from receiving a license for that particular profession. This bill is necessary because many of the licensing boards have provisions in place to delay or prevent a person with a criminal record from receiving a professional license."

Each board under the Department of Consumer Affairs (DCA) is responsible for enforcing their licensing standards and ensuring that an applicant has met all of the specified educational, examination, and experience requirements necessary for licensure, based on the criteria set forth in each specified practice act. The individual boards are tasked with the duty of examining the content of applications to ensure they have met the appropriate criteria, including the investigation of criminal convictions. Current law authorizes boards to deny a license based on certain elements, including the conviction of a crime for duties substantially related to the criteria of the profession, and each board determines what those duties are. Additionally, boards are required to develop criteria for rehabilitation in order to potentially address individuals who have been denied a license based on past convictions. Rehabilitation criteria are determined directly by the boards and are not uniform.

In 2010, one of the boards under DCA, the Board of Barbering and Cosmetology (BBC), established a licensing process which allows an applicant with past convictions to submit an application prior to enrolling in a school. This allows BBC to review the convictions and determine if the convictions are substantially related to the practice prior to a student paying tuition and completing schooling only to later be denied licensure.

Additionally, BBC currently has a program in which examinations for their specific licensure categories are offered in state correctional facilities. According to BBC, they work closely with the California Department of Corrections and Rehabilitation to schedule and administer examinations in the correctional facilities. However, this is a unique program which is not consistent across the boards, and this bill would not interfere with the current program offered by BBC.

The boards under DCA are primarily responsible for establishing the criteria for curriculum, coursework, equipment and other relevant materials for schools within their profession. In addition, most schools are also approved by the Bureau for Private Postsecondary Education (BPPE), which requires disclosure of critical information to students such as program outlines, graduation and job placement rates, and license examination information, and ensures colleges justify those figures. This bill would help to ensure that individuals applying for licensure who have obtained an education from institutions approved by both board-approved schools and the BPPE will not be denied licensure, nor will their application for licensure be delayed simply because they attended an institution while incarcerated. If a school has received the appropriate approval or accreditation, this should not be the reason for licensure delay.

Barriers to employment for individuals with criminal convictions. According to the author, numerous studies and research have been conducted about employment barriers for

individuals who have criminal records. In 2011, Attorney General Eric Holder established the Reentry Council to assist in the coordination of helping to remove federal barriers to successful reentry, so that motivated individuals--who have served their time--are able to compete for a job, attain stable housing, and support their children and their families. Information provided by the Council of State Governments, Justice Center, found that each year nearly 700,000 individuals are released from state and federal prisons and another 12 million cycle through local jails. More than two-thirds of state prisoners are rearrested within three years of their release; half are re-incarcerated. Further, it was reported that two out of every three men were employed before they were incarcerated, and many were the primary financial contributors in their households. Individuals who have been incarcerated can expect future annual earnings to be reduced by some 40 percent after they return to their communities. Under current law, boards under DCA are permitted to make licensure decisions based on the specific criminal history reported by an applicant or identified through background check requirements. This bill does not alter or impede a board's ability to deny a license if the criminal conviction merits denial under current law, but may assist other individuals seeking licensure for different professions if boards are delaying or denying applications solely on the fact the applicant's education was achieved during incarceration.

This bill makes clear that BCE is exempt from the provisions of this bill because the Chiropractic Act was created through an initiative measure approved by the electors of California on November 7, 1922. As is common with many initiatives, unless the initiative measure states otherwise, it may not be amended or repealed by the Legislature without a vote of approval of the electors, thus prohibiting a legislative change.

REGISTERED SUPPORT / OPPOSITION

Support

AFSCME Local 2620
California Board of Accountancy
California Communities United Institute
California Correctional Peace Officers Association
Legal Services for Prisoners with Children
National Employment Law Project
Riverside Sheriffs' Association
The Los Angeles Probation Officers' Union, AFSCME Local 685
The Women's Foundation
Fifty-two individuals

Opposition

None on file.

STAFF RECOMMENDATION

Staff recommends a "watch" position.

AMENDED IN ASSEMBLY APRIL 23, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1702

Introduced by Assembly Member Maienschein
(Coauthor: Senator Mitchell)

February 13, 2014

An act to add Section 480.5 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1702, as amended, Maienschein. Professions and vocations: incarceration.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, among other entities. Existing law establishes various eligibility criteria needed to qualify for a license and authorizes a board to deny a license on the grounds that the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

This bill would provide that an individual who has satisfied any of the requirements needed to obtain a license while incarcerated, who applies for that license upon release from incarceration, and who is otherwise eligible for the license shall not be subject to a delay in processing the application or a denial of the license solely based on the prior incarceration, except when the incarceration was for a crime substantially related to the qualifications, functions, or duties of the business or profession. *on the basis that some or all of the licensure requirements were completed while the individual was incarcerated.*

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

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

- 1 SECTION 1. Section 480.5 is added to the Business and
2 Professions Code, to read:
3 480.5. (a) An individual who has satisfied any of the
4 requirements needed to obtain a license regulated under this ~~code~~
5 *division* while incarcerated, who applies for that license upon
6 release from incarceration, and who is otherwise eligible for the
7 license shall not be subject to a delay in processing his or her
8 application or a denial of the license solely ~~based on the prior~~
9 ~~incarceration, except as provided in Section 480.~~ *on the basis that*
10 *some or all of the licensure requirements were completed while*
11 *the individual was incarcerated.*
12 (b) Nothing in this section shall be construed to apply to a
13 petition for reinstatement of a license *or to limit the ability of a*
14 *board to deny a license pursuant to Section 480.*
15 (c) This section shall not apply to the licensure of individuals
16 under the initiative act referred to in Chapter 2 (commencing with
17 Section 1000) of Division 2.

**DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
MAY 29-30 BOARD MEETING**

BILL NUMBER: Assembly Bill 1758

AUTHOR: Assembly Member Patterson **SPONSOR:**

VERSION: Amended 04/03/2014 **INTRODUCED:** 02/14/2014

BILL STATUS: 05/07/2014 – In Assembly
Committee on Appropriations.
To Suspense File. **BILL LOCATION:** Assembly
Appropriations
Committee –
Hearing on
05/23/2014

SUBJECT: Healing Arts: Initial License
Fees: Proration **RELATED
BILLS:**

SUMMARY

This bill requires the initial license fee for the following licensing categories to be prorated on a monthly basis: dentists; dental hygienists; physicians and surgeons; hearing aid dispensers; occupational therapists; physical therapists; psychologists; veterinary technicians; veterinarians; acupuncturists; and architects.

ANALYSIS

This bill would require initial licensing fees for specified healing arts practitioners and architects to be prorated on a monthly basis, to ensure that licensees are charged fees in a fair manner and are not disadvantaged based on their birth month. This bill is author-sponsored.

According to the author, "Various sections of the [BPC] state that licenses for acupuncturists, dentists, dental assistants, dental hygienists, podiatrists, dispensing opticians, osteopathic physicians and surgeons, speech-language pathologists and audiologists, psychologists, physician assistants, and veterinary technicians and veterinarians expire at 12 midnight on the last day of the licensee's birth month on the second year of their second term. These licenses, with some exceptions, are required to pay a full two-year renewal fee when this date occurs after they first receive their licenses. In some cases, if a licensee's birthday falls even one month after initial licensure, that licensee is liable to pay a full renewal fee even if they have just paid to receive their license...For professionals just starting out, full two-year renewal fees that must be paid so soon after licensure present a financial hardship."

Many boards and bureaus under Department of Consumer Affairs operate a birth date

renewal program, which is a program in which the license expires on the birth date of the licensee or the last date of the birth month of the licensee on the second year of a two-year term, if not renewed. As many licensees apply for licensure at the same time, perhaps because they graduate from schools during specific times of the year, boards may be hit with a flood of applications for initial licenses during those peak times. Instead of basing license renewals on the date of issuance of the initial license, which would result in the boards facing the same influx of applications year after year, most boards renew licenses based on birth date, rather than the date the license was issued, which allows the boards to spread out that work throughout the year. Under the birth date renewal program, an initial license period can vary from just a few months up to 24 months, depending on the applicant's birth month. For example, if an applicant was born in January and applied for a license in January 2014, that initial license would typically expire in the birth month of the second year term, or January 2015. That license would be effective for roughly 12 months. However, if that applicant was born in December, that license would be effective for nearly two years. On the other hand, if that applicant who was born in January applied in December 2014, that license might only be effective for two months. In all of these cases, the licensee would be paying the full initial fee amount, regardless of how long their initial license was in effect. This bill would address this inconsistency by requiring licenses to be prorated on a monthly basis.

Some boards, including the Dental Board of California (DBC), Board of Psychology (BOP), and Veterinary Medical Board (VMB), are required by statute to establish a birth date renewal program that includes the establishment of a pro rata formula for the payment of fees. Of those boards, both the DBC and the VMB pro-rate initial license fees. The VMB has a yearly pro rata formula in place, under which a license that is valid for less than one year pays half the initial license fee, and a license that is valid between one to two years pays the full license fee. The DBC has a monthly pro rata formula and provides an initial license fee chart to an applicant that specifies what his or her initial licensee fee will be based on how many months the license will be in effect. Once those applications are processed, the license fees are manually put into the system, which has already been configured to meet DBC's needs. Other boards have adopted, either formally or informally, a pro rata formula for initial licenses. For example, California Architects Board (CAB) has adopted in regulations a formula that prorates initial license fees on a monthly basis and that has been in place for over a decade. According to CAB, its pro rata formula has been operating well and has long been integrated into their licensing program, and has not received complaints relating to calculation of those fees from licensees. Because CAB is included in this bill, this bill would codify their existing practices.

There are two potential challenges to implementing a pro rata formula for license fees: the cost of implementing the formula, and the time it would take to implement the formula and to process applications. Licensing programs that do not pro-rate initial license fees on a monthly basis would have to modify their fee schedules and licensing programs, which may require changes to database systems in order to accommodate new fee amounts and additional changes to ensure that DCA's new BreZE system would be able to accommodate these new fee amounts. Boards may also have to adjust

their budgets to reflect a decline in licensing revenues based on reduced fees. In addition, changes to cashiering functions, whether those cashiering functions are performed by DCA or performed in-house by a board, and changes to other licensing procedures may be required. As such, the amount of time it takes to process an application may increase if an applicant is more likely to submit the wrong fee amount using a pro rata formula than under the old fee schedule. However, because some boards, such as CAB and DBC, have already successfully implemented initial license fee formulas that are prorated on a monthly basis, other boards may look to these existing programs for guidance, which may reduce the time and resources required to implement a pro rata formula.

IMPACT ON THE DENTAL BOARD OF CALIFORNIA

The impact on the DBC would be negligible. Pursuant to Business and Professions Code Section 1715 and California Code of Regulations, Title 16, Section 1021, the Board currently prorates the initial licensure fee for DDS licensees based on the applicant's birth date. The DDS licensee would then pay the applicable license renewal fee based on the birth date of the licensee (\$365 up until June 30th; \$450 on and after July 1st; possibly \$525 on and after January 1, 2015 if SB 1416 is enacted).

Applicants for RDA/RDAEF licensure are not assessed an "initial license fee". Rather, applicants for the RDA pay a \$20 application fee plus a \$60 examination fee to take the RDA practical examination. If the examination is passed successfully and all other requirements are fulfilled, they are issued a license without having to pay an additional "initial license" fee. The same applies to applicants for the RDAEF – they pay a \$20 application fee plus a \$250 examination fee for the Board's practical/clinical exam. If the examination is passed successfully and all other requirements are fulfilled, they are issued a license without having to pay an additional "initial license" fee. Both license types would then pay the \$70 license renewal fee based on the birth date of the licensee. Once the renewal fee is paid, the licensee would be authorized to continue practicing for the next two years.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

STAFF RECOMMENDATION

Staff recommends a "watch" position.

AMENDED IN ASSEMBLY APRIL 3, 2014
AMENDED IN ASSEMBLY MARCH 20, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1758

Introduced by Assembly Member Patterson

February 14, 2014

An act to amend Sections ~~1715, 1935, 2423, 2456.1, 2535, 2570.10, 2644, 2982, 3523, 4900, 4965, and 5600~~ *1724, 1944, 2435, 2538.57, 2570.16, 2688, 2987, 4842.5, 4905, 4970, and 5604* of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1758, as amended, Patterson. Healing arts: ~~license renewal fees:~~ *initial license fees: proration.*

Existing law provides for the regulation and licensure of various professions and vocations. Existing law requires that licenses issued to certain licensees, including, among others, architects, acupuncturists, ~~dental auxiliaries,~~ dental hygienists, dentists, occupational therapists, physical therapists, physicians and surgeons, psychologists, ~~speech-language pathologists,~~ and veterinarians, expire at 12 midnight on either the last day of the birth month of the licensee or at 12 midnight of the legal birth date of the licensee during the second year of a two-year term if not renewed.

This bill would ~~provide~~ *require* that the fee *for an initial temporary or permanent license, or an original license, as specified,* imposed ~~for the first renewal of a license issued~~ pursuant to these provisions ~~shall~~ be prorated on a monthly basis.

~~This bill would instead provide that a license issued to a dental hygienist expires, if not renewed or specifically excepted, 2 years after the date the license was issued or last renewed.~~

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

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

1 SECTION 1. Section 1724 of the Business and Professions
2 Code is amended to read:

3 1724. The amount of charges and fees for dentists licensed
4 pursuant to this chapter shall be established by the board as is
5 necessary for the purpose of carrying out the responsibilities
6 required by this chapter as it relates to dentists, subject to the
7 following limitations:

8 (a) The fee for application for examination shall not exceed five
9 hundred dollars (\$500).

10 (b) The fee for application for reexamination shall not exceed
11 one hundred dollars (\$100).

12 (c) The fee for examination and for reexamination shall not
13 exceed eight hundred dollars (\$800). Applicants who are found to
14 be ineligible to take the examination shall be entitled to a refund
15 in an amount fixed by the board.

16 (d) The fee for an initial license and for the renewal of a license
17 shall not exceed four hundred fifty dollars (\$450). *The fee for an*
18 *initial license shall be prorated on a monthly basis.*

19 (e) The fee for a special permit shall not exceed three hundred
20 dollars (\$300), and the renewal fee for a special permit shall not
21 exceed one hundred dollars (\$100).

22 (f) The delinquency fee shall be the amount prescribed by
23 Section 163.5.

24 (g) The penalty for late registration of change of place of
25 practice shall not exceed seventy-five dollars (\$75).

26 (h) The application fee for permission to conduct an additional
27 place of practice shall not exceed two hundred dollars (\$200).

28 (i) The renewal fee for an additional place of practice shall not
29 exceed one hundred dollars (\$100).

30 (j) The fee for issuance of a substitute certificate shall not exceed
31 one hundred twenty-five dollars (\$125).

1 (k) The fee for a provider of continuing education shall not
2 exceed two hundred fifty dollars (\$250) per year.

3 (l) The fee for application for a referral service permit and for
4 renewal of that permit shall not exceed twenty-five dollars (\$25).

5 (m) The fee for application for an extramural facility permit
6 and for the renewal of a permit shall not exceed twenty-five dollars
7 (\$25).

8 The board shall report to the appropriate fiscal committees of
9 each house of the Legislature whenever the board increases any
10 fee pursuant to this section and shall specify the rationale and
11 justification for that increase.

12 *SEC. 2. Section 1944 of the Business and Professions Code is*
13 *amended to read:*

14 1944. (a) The committee shall establish by resolution the
15 amount of the fees that relate to the licensing of a registered dental
16 hygienist, a registered dental hygienist in alternative practice, and
17 a registered dental hygienist in extended functions. The fees
18 established by board resolution in effect on June 30, 2009, as they
19 relate to the licensure of registered dental hygienists, registered
20 dental hygienists in alternative practice, and registered dental
21 hygienists in extended functions, shall remain in effect until
22 modified by the committee. The fees are subject to the following
23 limitations:

24 (1) The application fee for an original license and the fee for
25 *the* issuance of an original license shall not exceed two hundred
26 fifty dollars (\$250). *The fee for the issuance of an original license*
27 *shall be prorated on a monthly basis.*

28 (2) The fee for examination for licensure as a registered dental
29 hygienist shall not exceed the actual cost of the examination.

30 (3) For third- and fourth-year dental students, the fee for
31 examination for licensure as a registered dental hygienist shall not
32 exceed the actual cost of the examination.

33 (4) The fee for examination for licensure as a registered dental
34 hygienist in extended functions shall not exceed the actual cost of
35 the examination.

36 (5) The fee for examination for licensure as a registered dental
37 hygienist in alternative practice shall not exceed the actual cost of
38 administering the examination.

39 (6) The biennial renewal fee shall not exceed one hundred sixty
40 dollars (\$160).

1 (7) The delinquency fee shall not exceed one-half of the renewal
2 fee. Any delinquent license may be restored only upon payment
3 of all fees, including the delinquency fee, and compliance with all
4 other applicable requirements of this article.

5 (8) The fee for issuance of a duplicate license to replace one
6 that is lost or destroyed, or in the event of a name change, shall
7 not exceed twenty-five dollars (\$25) or one-half of the renewal
8 fee, whichever is greater.

9 (9) The fee for certification of licensure shall not exceed one-half
10 of the renewal fee.

11 (10) The fee for each curriculum review and site evaluation for
12 educational programs for dental hygienists who are not accredited
13 by a committee-approved agency shall not exceed two thousand
14 one hundred dollars (\$2,100).

15 (11) The fee for each review of courses required for licensure
16 that are not accredited by a committee-approved agency, the
17 Council for Private Postsecondary and Vocational Education, or
18 the Chancellor's Office of the California Community Colleges
19 shall not exceed three hundred dollars (\$300).

20 (12) The initial application and biennial fee for a provider of
21 continuing education shall not exceed five hundred dollars (\$500).

22 (13) The amount of fees payable in connection with permits
23 issued under Section 1962 is as follows:

24 (A) The initial permit fee is an amount equal to the renewal fee
25 for the applicant's license to practice dental hygiene in effect on
26 the last regular renewal date before the date on which the permit
27 is issued.

28 (B) If the permit will expire less than one year after its issuance,
29 then the initial permit fee is an amount equal to 50 percent of the
30 renewal fee in effect on the last regular renewal date before the
31 date on which the permit is issued.

32 (b) The renewal and delinquency fees shall be fixed by the
33 committee by resolution at not more than the current amount of
34 the renewal fee for a license to practice under this article nor less
35 than five dollars (\$5).

36 (c) Fees fixed by the committee by resolution pursuant to this
37 section shall not be subject to the approval of the Office of
38 Administrative Law.

39 (d) Fees collected pursuant to this section shall be collected by
40 the committee and deposited into the State Dental Hygiene Fund,

1 which is hereby created. All money in this fund shall, upon
2 appropriation by the Legislature in the annual Budget Act, be used
3 to implement the provisions of this article.

4 (e) No fees or charges other than those listed in this section shall
5 be levied by the committee in connection with the licensure of
6 registered dental hygienists, registered dental hygienists in
7 alternative practice, or registered dental hygienists in extended
8 functions.

9 (f) The fee for registration of an extramural dental facility shall
10 not exceed two hundred fifty dollars (\$250).

11 (g) The fee for registration of a mobile dental hygiene unit shall
12 not exceed one hundred fifty dollars (\$150).

13 (h) The biennial renewal fee for a mobile dental hygiene unit
14 shall not exceed two hundred fifty dollars (\$250).

15 (i) The fee for an additional office permit shall not exceed two
16 hundred fifty dollars (\$250).

17 (j) The biennial renewal fee for an additional office as described
18 in Section 1926.4 shall not exceed two hundred fifty dollars (\$250).

19 (k) The initial application and biennial special permit fee is an
20 amount equal to the biennial renewal fee specified in paragraph
21 (6) of subdivision (a).

22 (l) The fees in this section shall not exceed an amount sufficient
23 to cover the reasonable regulatory cost of carrying out the
24 provisions of this article.

25 *SEC. 3. Section 2435 of the Business and Professions Code is*
26 *amended to read:*

27 2435. The following fees apply to the licensure of physicians
28 and surgeons:

29 (a) Each applicant for a certificate based upon a national board
30 diplomate certificate, each applicant for a certificate based on
31 reciprocity, and each applicant for a certificate based upon written
32 examination, shall pay a nonrefundable application and processing
33 fee, as set forth in subdivision (b), at the time the application is
34 filed.

35 (b) The application and processing fee shall be fixed by the
36 board by May 1 of each year, to become effective on July 1 of that
37 year. The fee shall be fixed at an amount necessary to recover the
38 actual costs of the licensing program as projected for the fiscal
39 year commencing on the date the fees become effective.

1 (c) Each applicant who qualifies for a certificate, as a condition
2 precedent to its issuance, in addition to other fees required herein,
3 shall pay an initial license fee, if any, in an amount fixed by the
4 board consistent with this section. The initial license fee shall not
5 exceed seven hundred ninety dollars (\$790). *The initial license fee*
6 *shall be prorated on a monthly basis.* An applicant enrolled in an
7 approved postgraduate training program shall be required to pay
8 only 50 percent of the initial license fee.

9 (d) The biennial renewal fee shall be fixed by the board
10 consistent with this section and shall not exceed seven hundred
11 ninety dollars (\$790).

12 (e) Notwithstanding subdivisions (c) and (d), and to ensure that
13 subdivision (k) of Section 125.3 is revenue neutral with regard to
14 the board, the board may, by regulation, increase the amount of
15 the initial license fee and the biennial renewal fee by an amount
16 required to recover both of the following:

17 (1) The average amount received by the board during the three
18 fiscal years immediately preceding July 1, 2006, as reimbursement
19 for the reasonable costs of investigation and enforcement
20 proceedings pursuant to Section 125.3.

21 (2) Any increase in the amount of investigation and enforcement
22 costs incurred by the board after January 1, 2006, that exceeds the
23 average costs expended for investigation and enforcement costs
24 during the three fiscal years immediately preceding July 1, 2006.
25 When calculating the amount of costs for services for which the
26 board paid an hourly rate, the board shall use the average number
27 of hours for which the board paid for those costs over these prior
28 three fiscal years, multiplied by the hourly rate paid by the board
29 for those costs as of July 1, 2005. Beginning January 1, 2009, the
30 board shall instead use the average number of hours for which it
31 paid for those costs over the three-year period of fiscal years
32 2005–06, 2006–07, and 2007–08, multiplied by the hourly rate
33 paid by the board for those costs as of July 1, 2005. In calculating
34 the increase in the amount of investigation and enforcement costs,
35 the board shall include only those costs for which it was eligible
36 to obtain reimbursement under Section 125.3 and shall not include
37 probation monitoring costs and disciplinary costs, including those
38 associated with the citation and fine process and those required to
39 implement subdivision (b) of Section 12529 of the Government
40 Code.

1 (f) Notwithstanding Section 163.5, the delinquency fee shall be
2 10 percent of the biennial renewal fee.

3 (g) The duplicate certificate and endorsement fees shall each
4 be fifty dollars (\$50), and the certification and letter of good
5 standing fees shall each be ten dollars (\$10).

6 (h) It is the intent of the Legislature that, in setting fees pursuant
7 to this section, the board shall seek to maintain a reserve in the
8 Contingent Fund of the Medical Board of California in an amount
9 not less than two nor more than four months' operating
10 expenditures.

11 (i) Not later than January 1, 2012, the Office of State Audits
12 and Evaluations within the Department of Finance shall commence
13 a preliminary review of the board's financial status, including, but
14 not limited to, its projections related to expenses, revenues, and
15 reserves, and the impact of the loan from the Contingent Fund of
16 the Medical Board of California to the General Fund made pursuant
17 to the Budget Act of 2008. The office shall make the results of this
18 review available upon request by June 1, 2012. This review shall
19 be funded from the existing resources of the office during the
20 2011–12 fiscal year.

21 *SEC. 4. Section 2538.57 of the Business and Professions Code*
22 *is amended to read:*

23 2538.57. The amount of fees and penalties prescribed by this
24 article shall be those set forth in this section unless a lower fee is
25 fixed by the board:

26 (a) The fee for applicants applying for the first time for a license
27 is seventy-five dollars (\$75), which shall not be refunded, except
28 to applicants who are found to be ineligible to take an examination
29 for a license. Those applicants are entitled to a refund of fifty
30 dollars (\$50).

31 (b) The fees for taking or retaking the written and practical
32 examinations shall be amounts fixed by the board, which shall be
33 equal to the actual cost of preparing, grading, analyzing, and
34 administering the examinations.

35 (c) The initial temporary license fee is one hundred dollars
36 (\$100). *The fee for an initial temporary license shall be prorated*
37 *on a monthly basis.* The fee for renewal of a temporary license is
38 one hundred dollars (\$100) for each renewal.

39 (d) The initial permanent license fee is two hundred eighty
40 dollars (\$280). *The fee for an initial permanent license shall be*

1 *prorated on a monthly basis.* The fee for renewal of a permanent
2 license is not more than two hundred eighty dollars (\$280) for each
3 renewal.

4 (e) The initial branch office license fee is twenty-five dollars
5 (\$25). The fee for renewal of a branch office license is twenty-five
6 dollars (\$25) for each renewal.

7 (f) The delinquency fee is twenty-five dollars (\$25).

8 (g) The fee for issuance of a replacement license is twenty-five
9 dollars (\$25).

10 (h) The continuing education course approval application fee
11 is fifty dollars (\$50).

12 (i) The fee for official certification of licensure is fifteen dollars
13 (\$15).

14 *SEC. 5. Section 2570.16 of the Business and Professions Code*
15 *is amended to read:*

16 2570.16. Initial license and renewal fees shall be established
17 by the board in an amount that does not exceed a ceiling of one
18 hundred fifty dollars (\$150) per year. *The initial license fee shall*
19 *be prorated on a monthly basis.* The board shall establish the
20 following additional fees:

21 (a) An application fee not to exceed fifty dollars (\$50).

22 (b) A late renewal fee as provided for in Section 2570.10.

23 (c) A limited permit fee.

24 (d) A fee to collect fingerprints for criminal history record
25 checks.

26 *SEC. 6. Section 2688 of the Business and Professions Code is*
27 *amended to read:*

28 2688. The amount of fees assessed in connection with licenses
29 issued under this chapter is as follows:

30 (a) (1) The fee for an application for licensure as a physical
31 therapist submitted to the board prior to March 1, 2009, shall be
32 seventy-five dollars (\$75). The fee for an application submitted
33 under Section 2653 to the board prior to March 1, 2009, shall be
34 one hundred twenty-five dollars (\$125).

35 (2) The fee for an application for licensure as a physical therapist
36 submitted to the board on or after March 1, 2009, shall be one
37 hundred twenty-five dollars (\$125). The fee for an application
38 submitted under Section 2653 to the board on or after March 1,
39 2009, shall be two hundred dollars (\$200).

1 (3) Notwithstanding paragraphs (1) and (2), the board may
2 decrease or increase the amount of an application fee under this
3 subdivision to an amount that does not exceed the cost of
4 administering the application process, but in no event shall the
5 application fee amount exceed three hundred dollars (\$300).

6 (b) The examination and reexamination fees for the physical
7 therapist examination, physical therapist assistant examination,
8 and the examination to demonstrate knowledge of the California
9 rules and regulations related to the practice of physical therapy
10 shall be the actual cost to the board of the development and writing
11 of, or purchase of the examination, and grading of each written
12 examination, plus the actual cost of administering each
13 examination. The board, at its discretion, may require the licensure
14 applicant to pay the fee for the examinations required by Section
15 2636 directly to the organization conducting the examination.

16 (c) (1) The fee for a physical therapist license issued prior to
17 March 1, 2009, shall be seventy-five dollars (\$75).

18 (2) The fee for a physical therapist license issued on or after
19 March 1, 2009, shall be one hundred dollars (\$100).

20 (3) Notwithstanding paragraphs (1) and (2), the board may
21 decrease or increase the amount of the fee under this subdivision
22 to an amount that does not exceed the cost of administering the
23 process to issue the license, but in no event shall the fee to issue
24 the license exceed one hundred fifty dollars (\$150).

25 (4) *The fee assessed pursuant to this subdivision for an initial*
26 *physical therapist license issued on or after January 1, 2015, shall*
27 *be prorated on a monthly basis.*

28 (d) (1) The fee to renew a physical therapist license that expires
29 prior to April 1, 2009, shall be one hundred fifty dollars (\$150).

30 (2) The fee to renew a physical therapist license that expires on
31 or after April 1, 2009, shall be two hundred dollars (\$200).

32 (3) Notwithstanding paragraphs (1) and (2), the board may
33 decrease or increase the amount of the renewal fee under this
34 subdivision to an amount that does not exceed the cost of the
35 renewal process, but in no event shall the renewal fee amount
36 exceed three hundred dollars (\$300).

37 (e) (1) The fee for application and for issuance of a physical
38 therapist assistant license shall be seventy-five dollars (\$75) for
39 an application submitted to the board prior to March 1, 2009.

1 (2) The fee for application and for issuance of a physical
2 therapist assistant license shall be one hundred twenty-five dollars
3 (\$125) for an application submitted to the board on or after March
4 1, 2009. The fee for an application submitted under Section 2653
5 to the board on or after March 1, 2009, shall be two hundred dollars
6 (\$200).

7 (3) Notwithstanding paragraphs (1) and (2), the board may
8 decrease or increase the amount of the fee under this subdivision
9 to an amount that does not exceed the cost of administering the
10 application process, but in no event shall the application fee amount
11 exceed three hundred dollars (\$300).

12 (f) (1) The fee to renew a physical therapist assistant license
13 that expires prior to April 1, 2009, shall be one hundred fifty dollars
14 (\$150).

15 (2) The fee to renew a physical therapist assistant license that
16 expires on or after April 1, 2009, shall be two hundred dollars
17 (\$200).

18 (3) Notwithstanding paragraphs (1) and (2), the board may
19 decrease or increase the amount of the renewal fee under this
20 subdivision to an amount that does not exceed the cost of the
21 renewal process, but in no event shall the renewal fee amount
22 exceed three hundred dollars (\$300).

23 (g) Notwithstanding Section 163.5, the delinquency fee shall
24 be 50 percent of the renewal fee in effect.

25 (h) (1) The duplicate wall certificate fee shall be fifty dollars
26 (\$50). The duplicate renewal receipt fee amount shall be fifty
27 dollars (\$50).

28 (2) Notwithstanding paragraph (1), the board may decrease or
29 increase the amount of the fee under this subdivision to an amount
30 that does not exceed the cost of issuing duplicates, but in no event
31 shall that fee exceed one hundred dollars (\$100).

32 (i) (1) The endorsement or letter of good standing fee shall be
33 sixty dollars (\$60).

34 (2) Notwithstanding paragraph (1), the board may decrease or
35 increase the amount of the fee under this subdivision to an amount
36 that does not exceed the cost of issuing an endorsement or letter,
37 but in no event shall the fee amount exceed one hundred dollars
38 (\$100).

39 *SEC. 7. Section 2987 of the Business and Professions Code is*
40 *amended to read:*

1 2987. The amount of the fees prescribed by this chapter shall
2 be determined by the board, and shall be as follows:

3 (a) The application fee for a psychologist shall not be more than
4 fifty dollars (\$50).

5 (b) The examination and reexamination fees for the
6 examinations shall be the actual cost to the board of developing,
7 purchasing, and grading of each examination, plus the actual cost
8 to the board of administering each examination.

9 (c) The initial license fee is an amount equal to the renewal fee
10 in effect on the last regular renewal date before the date on which
11 the license is issued. *The initial license fee shall be prorated on a*
12 *monthly basis.*

13 (d) The biennial renewal fee for a psychologist shall be four
14 hundred dollars (\$400). The board may increase the renewal fee
15 to an amount not to exceed five hundred dollars (\$500).

16 (e) The application fee for registration and supervision of a
17 psychological assistant by a supervisor under Section 2913, which
18 is payable by that supervisor, shall not be more than seventy-five
19 dollars (\$75).

20 (f) The annual renewal fee for registration of a psychological
21 assistant shall not be more than seventy-five dollars (\$75).

22 (g) The duplicate license or registration fee is five dollars (\$5).

23 (h) The delinquency fee is twenty-five dollars (\$25).

24 (i) The endorsement fee is five dollars (\$5).

25 Notwithstanding any other ~~provision~~ of law, the board may
26 reduce any fee prescribed by this section, when, in its discretion,
27 the board deems it administratively appropriate.

28 *SEC. 8. Section 4842.5 of the Business and Professions Code*
29 *is amended to read:*

30 4842.5. The amount of fees prescribed by this article is that
31 fixed by the following schedule:

32 (a) The fee for filing an application for examination shall be set
33 by the board in an amount it determines is reasonably necessary
34 to provide sufficient funds to carry out the purposes of this chapter,
35 not to exceed three hundred fifty dollars (\$350).

36 (b) The fee for the California registered veterinary technician
37 examination shall be set by the board in an amount it determines
38 is reasonably necessary to provide sufficient funds to carry out the
39 purposes of this chapter, not to exceed three hundred dollars (\$300).

1 (c) The initial registration fee shall be set by the board at not
2 more than three hundred fifty dollars (\$350), ~~except that, if the~~
3 ~~license is issued less than one year before the date on which it will~~
4 ~~expire, then the fee shall be set by the board at not more than one~~
5 ~~hundred seventy-five dollars (\$175) and shall be prorated on a~~
6 ~~monthly basis.~~ The board may adopt regulations to provide for the
7 waiver or refund of the initial registration fee ~~where~~ when the
8 registration is issued less than 45 days before the date on which it
9 will expire.

10 (d) The biennial renewal fee shall be set by the board at not
11 more than three hundred fifty dollars (\$350).

12 (e) The delinquency fee shall be set by the board at not more
13 than fifty dollars (\$50).

14 (f) Any charge made for duplication or other services shall be
15 set at the cost of rendering the services.

16 (g) The fee for filing an application for approval of a school or
17 institution offering a curriculum for training registered veterinary
18 technicians pursuant to Section 4843 shall be set by the board at
19 an amount not to exceed three hundred dollars (\$300). The school
20 or institution shall also pay for the actual costs of an onsite
21 inspection conducted by the board pursuant to Section 2065.6 of
22 Title 16 of the California Code of Regulations, including, but not
23 limited to, the travel, food, and lodging expenses incurred by an
24 inspection team sent by the board.

25 (h) The fee for failure to report a change in the mailing address
26 is twenty-five dollars (\$25).

27 *SEC. 9. Section 4905 of the Business and Professions Code is*
28 *amended to read:*

29 4905. The following fees shall be collected by the board and
30 shall be credited to the Veterinary Medical Board Contingent Fund:

31 (a) The fee for filing an application for examination shall be set
32 by the board in an amount it determines is reasonably necessary
33 to provide sufficient funds to carry out the purpose of this chapter,
34 not to exceed three hundred fifty dollars (\$350).

35 (b) The fee for the California state board examination shall be
36 set by the board in an amount it determines is reasonably necessary
37 to provide sufficient funds to carry out the purpose of this chapter,
38 not to exceed three hundred fifty dollars (\$350).

39 (c) The fee for the Veterinary Medicine Practice Act
40 examination shall be set by the board in an amount it determines

1 reasonably necessary to provide sufficient funds to carry out the
2 purpose of this chapter, not to exceed one hundred dollars (\$100).

3 (d) The initial license fee shall be set by the board not to exceed
4 five hundred dollars (\$500) ~~except that, if the license is issued less~~
5 ~~than one year before the date on which it will expire, then the fee~~
6 ~~shall be set by the board at not to exceed two hundred fifty dollars~~
7 ~~(\$250) and shall be prorated on a monthly basis.~~ The board may,
8 by appropriate regulation, provide for the waiver or refund of the
9 initial license fee ~~where~~ *when* the license is issued less than 45
10 days before the date on which it will expire.

11 (e) The renewal fee shall be set by the board for each biennial
12 renewal period in an amount it determines is reasonably necessary
13 to provide sufficient funds to carry out the purpose of this chapter,
14 not to exceed five hundred dollars (\$500).

15 (f) The temporary license fee shall be set by the board in an
16 amount it determines is reasonably necessary to provide sufficient
17 funds to carry out the purpose of this chapter, not to exceed two
18 hundred fifty dollars (\$250).

19 (g) The delinquency fee shall be set by the board, not to exceed
20 fifty dollars (\$50).

21 (h) The fee for issuance of a duplicate license is twenty-five
22 dollars (\$25).

23 (i) Any charge made for duplication or other services shall be
24 set at the cost of rendering the service, except as specified in
25 subdivision (h).

26 (j) The fee for failure to report a change in the mailing address
27 is twenty-five dollars (\$25).

28 (k) The initial and annual renewal fees for registration of
29 veterinary premises shall be set by the board in an amount not to
30 exceed four hundred dollars (\$400) annually.

31 (l) If the money transferred from the Veterinary Medical Board
32 Contingent Fund to the General Fund pursuant to the Budget Act
33 of 1991 is redeposited into the Veterinary Medical Board
34 Contingent Fund, the fees assessed by the board shall be reduced
35 correspondingly. However, the reduction shall not be so great as
36 to cause the Veterinary Medical Board Contingent Fund to have
37 a reserve of less than three months of annual authorized board
38 expenditures. The fees set by the board shall not result in a
39 Veterinary Medical Board Contingent Fund reserve of more than
40 10 months of annual authorized board expenditures.

1 *SEC. 10. Section 4970 of the Business and Professions Code*
2 *is amended to read:*

3 4970. The amount of fees prescribed for licensed acupuncturists
4 shall be those set forth in this section unless a lower fee is fixed
5 by the board in accordance with Section 4972:

6 (a) The application fee shall be seventy-five dollars (\$75).

7 (b) The examination and reexamination fees shall be the actual
8 cost to the Acupuncture Board for the development and writing
9 of, grading, and administering of each examination.

10 (c) The initial license fee shall be three hundred twenty-five
11 dollars (\$325), ~~except that if the license will expire less than one~~
12 ~~year after its issuance, then the initial license fee shall be an amount~~
13 ~~equal to 50 percent of the initial license fee and shall be prorated~~
14 ~~on a monthly basis.~~

15 (d) The renewal fee shall be three hundred twenty-five dollars
16 (\$325) and in the event a lower fee is fixed by the board, shall be
17 an amount sufficient to support the functions of the board in the
18 administration of this chapter. The renewal fee shall be assessed
19 on an annual basis until January 1, 1996, and on and after that date
20 the board shall assess the renewal fee biennially.

21 (e) The delinquency fee shall be set in accordance with Section
22 163.5.

23 (f) The application fee for the approval of a school or college
24 under Section 4939 shall be three thousand dollars (\$3,000).

25 (g) The duplicate wall license fee is an amount equal to the cost
26 to the board for the issuance of the duplicate license.

27 (h) The duplicate renewal receipt fee is ten dollars (\$10).

28 (i) The endorsement fee is ten dollars (\$10).

29 (j) The fee for a duplicate license for an additional office
30 location as required under Section 4961 shall be fifteen dollars
31 (\$15).

32 *SEC. 11. Section 5604 of the Business and Professions Code*
33 *is amended to read:*

34 5604. The fees prescribed by this chapter for architect
35 applicants or architect licenseholders shall be fixed by the board
36 as follows:

37 (a) The application fee for reviewing a candidate's eligibility
38 to take any section of the examination may not exceed one hundred
39 dollars (\$100).

1 (b) The fee for any section of the examination administered by
2 the board may not exceed one hundred dollars (\$100).

3 (c) The fee for an original license at an amount equal to the
4 renewal fee in effect at the time the license is issued, ~~except that,~~
5 ~~if the license is issued less than one year before the date on which~~
6 ~~it will expire, then the fee shall be fixed at an amount equal to 50~~
7 ~~percent of the renewal fee in effect at the time the license is issued.~~
8 *The fee for an original license shall be prorated on a monthly*
9 *basis.* The board may, by appropriate regulation, provide for the
10 waiver or refund of the fee for an original license if the license is
11 issued less than 45 days before the date on which it will expire.

12 (d) The fee for an application for reciprocity may not exceed
13 one hundred dollars (\$100).

14 (e) The fee for a duplicate license may not exceed twenty-five
15 dollars (\$25).

16 (f) The renewal fee may not exceed four hundred dollars (\$400).

17 (g) The delinquency fee may not exceed 50 percent of the
18 renewal fee.

19 (h) The fee for a retired license may not exceed the fee
20 prescribed in subdivision (c).

21 ~~SECTION 1.—Section 1715 of the Business and Professions~~
22 ~~Code is amended to read:~~

23 ~~1715.—(a) Licenses issued pursuant to this chapter, unless~~
24 ~~specifically excepted, expire at 12 midnight on the legal birth date~~
25 ~~of a licentiate of the board during the second year of a two-year~~
26 ~~term if not renewed.~~

27 ~~(b) The board shall establish procedures for the administration~~
28 ~~of the birth date renewal program, including, but not limited to,~~
29 ~~the establishment of a pro rata formula for the payment of fees by~~
30 ~~licentiates affected by the implementation of the program and the~~
31 ~~establishment of a system of staggered license expiration dates to~~
32 ~~ensure that a relatively equal number of licenses expire annually.~~

33 ~~(c) The fee imposed for the first renewal of a license issued~~
34 ~~pursuant to this chapter shall be prorated on a monthly basis.~~

35 ~~SEC. 2.—Section 1935 of the Business and Professions Code is~~
36 ~~amended to read:~~

37 ~~1935.—If not renewed, a license issued under the provisions of~~
38 ~~this article, unless specifically excepted, expires at 12 midnight~~
39 ~~on the last day of the month of the legal birth date of the licensee~~
40 ~~during the second year of a two-year term. To renew an unexpired~~

1 license, the licensee shall, before the time at which the license
2 would otherwise expire, apply for renewal on a form prescribed
3 by the committee and pay the renewal fee prescribed by this article.
4 The fee imposed for the first renewal of the license shall be
5 prorated on a monthly basis.

6 SEC. 3. Section 2423 of the Business and Professions Code is
7 amended to read:

8 2423. (a) Notwithstanding Section 2422:

9 (1) All physician and surgeon's certificates, certificates to
10 practice podiatric medicine, registrations of spectacle lens
11 dispensers and contact lens dispensers, and certificates to practice
12 midwifery shall expire at 12 midnight on the last day of the birth
13 month of the licensee during the second year of a two-year term
14 if not renewed.

15 (2) Registrations of dispensing opticians will expire at midnight
16 on the last day of the month in which the license was issued during
17 the second year of a two-year term if not renewed.

18 (b) The Division of Licensing shall establish by regulation
19 procedures for the administration of a birth date renewal program,
20 including, but not limited to, the establishment of a system of
21 staggered license expiration dates such that a relatively equal
22 number of licenses expire monthly.

23 (c) To renew an unexpired license, the licensee shall, on or
24 before the dates on which it would otherwise expire, apply for
25 renewal on a form prescribed by the licensing authority and pay
26 the prescribed renewal fee. The fee imposed for the first renewal
27 of the license shall be prorated on a monthly basis.

28 SEC. 4. Section 2456.1 of the Business and Professions Code
29 is amended to read:

30 2456.1. (a) All osteopathic physician's and surgeon's
31 certificates shall expire at 12 midnight on the last day of the birth
32 month of the licensee during the second year of a two-year term
33 if not renewed on or before that day.

34 (b) The board shall establish by regulation procedures for the
35 administration of a birth date renewal program, including, but not
36 limited to, the establishment of a system of staggered license
37 expiration dates such that a relatively equal number of licenses
38 expire monthly.

39 (c) To renew an unexpired license, the licensee shall, on or
40 before the dates on which it would otherwise expire, apply for

1 renewal on a form prescribed by the board and pay the prescribed
2 renewal fee. The fee imposed for the first renewal of the license
3 shall be prorated on a monthly basis.

4 SEC. 5. Section 2535 of the Business and Professions Code is
5 amended to read:

6 2535. (a) All licenses issued as of January 1, 1992, shall expire
7 at 12 a.m. of the last day of the birth month of the licensee during
8 the second year of a two-year term if not renewed.

9 (b) All licenses issued under this chapter, except those licenses
10 issued pursuant to subdivision (a), shall expire at 12 a.m. of the
11 last day of the birth month of the licensee during the second year
12 of a two-year term, if not renewed.

13 (c) To renew an unexpired license, the licensee shall, on or
14 before the date of expiration of the license, apply for renewal on
15 a form provided by the board, accompanied by the prescribed
16 renewal fee. The fee imposed for the first renewal of the license
17 shall be prorated on a monthly basis.

18 SEC. 6. Section 2570.10 of the Business and Professions Code
19 is amended to read:

20 2570.10. (a) Any license issued under this chapter shall be
21 subject to renewal as prescribed by the board and shall expire
22 unless renewed in that manner. The board may provide for the late
23 renewal of a license as provided for in Section 163.5. The fee
24 imposed for the first renewal of the license shall be prorated on a
25 monthly basis.

26 (b) In addition to any other qualifications and requirements for
27 licensure renewal, the board may by rule establish and require the
28 satisfactory completion of continuing competency requirements
29 as a condition of renewal of a license.

30 SEC. 7. Section 2644 of the Business and Professions Code is
31 amended to read:

32 2644. (a) Every license issued under this chapter shall expire
33 at 12 a.m. on the last day of the birth month of the licensee during
34 the second year of a two-year term, if not renewed.

35 (b) To renew an unexpired license, the licensee shall, on or
36 before the date on which it would otherwise expire, apply for
37 renewal on a form prescribed by the board, pay the prescribed
38 renewal fee, and submit proof of the completion of continuing
39 competency required by the board pursuant to Section 2649. The
40 licensee shall disclose on his or her license renewal application

1 any misdemeanor or other criminal offense for which he or she
2 has been found guilty or to which he or she has pleaded guilty or
3 no contest. The fee imposed for the first renewal of the license
4 shall be prorated on a monthly basis.

5 SEC. 8. Section 2982 of the Business and Professions Code is
6 amended to read:

7 2982. (a) All licenses expire and become invalid at 12 midnight
8 on the last day of February, 1980, and thereafter shall expire at 12
9 midnight of the legal birth date of the licensee during the second
10 year of a two-year term, if not renewed.

11 (b) The board shall establish by regulation procedures for the
12 administration of the birth date renewal program, including but
13 not limited to, the establishment of a pro rata formula for the
14 payments of fees by licentiates affected by the implementation of
15 that program and the establishment of a system of staggered license
16 application dates such that a relatively equal number of licenses
17 expire annually.

18 (c) To renew an unexpired license, the licensee shall, on or
19 before the date on which it would otherwise expire, apply for
20 renewal on a form provided by the board, accompanied by the
21 prescribed renewal fee. The fee imposed for the first renewal of
22 the license shall be prorated on a monthly basis.

23 SEC. 9. Section 3523 of the Business and Professions Code is
24 amended to read:

25 3523. (a) All physician assistant licenses shall expire at 12
26 midnight of the last day of the birth month of the licensee during
27 the second year of a two-year term if not renewed.

28 (b) The board shall establish by regulation procedures for the
29 administration of a birthdate renewal program, including, but not
30 limited to, the establishment of a system of staggered license
31 expiration dates and a pro rata formula for the payment of renewal
32 fees by physician assistants affected by the implementation of the
33 program.

34 (c) To renew an unexpired license, the licensee shall, on or
35 before the date of expiration of the license, apply for renewal on
36 a form provided by the board, accompanied by the prescribed
37 renewal fee. The fee imposed for the first renewal of the license
38 shall be prorated on a monthly basis.

39 SEC. 10. Section 4900 of the Business and Professions Code
40 is amended to read:

1 ~~4900.—(a) All veterinary licenses and veterinary technician~~
2 ~~registrations shall expire at 12 midnight of the last day of the birth~~
3 ~~month of the licensee or registrant during the second year of a~~
4 ~~two-year term if not renewed.~~

5 ~~(b) The board shall establish by regulation procedures for the~~
6 ~~administration of a birth date renewal program, including, but not~~
7 ~~limited to, the establishment of a system of staggered license and~~
8 ~~registration expiration dates and a pro rata formula for the payment~~
9 ~~of renewal fees by veterinarians and registered veterinary~~
10 ~~technicians affected by the implementation of the program.~~

11 ~~(c) To renew an unexpired license or registration, the licensee~~
12 ~~or registrant shall, on or before the date of expiration of the license~~
13 ~~or registration, apply for renewal on a form provided by the board,~~
14 ~~accompanied by the prescribed renewal fee. The fee imposed for~~
15 ~~the first renewal of the license shall be prorated on a monthly basis.~~

16 ~~(d) Renewal under this section shall be effective on the date on~~
17 ~~which the application is filed, on the date on which the renewal~~
18 ~~fee is paid, or on the date on which the delinquency fee, if any, is~~
19 ~~paid, whichever occurs last. If so renewed, the license or~~
20 ~~registration shall continue in effect through the expiration date~~
21 ~~provided in this section which next occurs after the effective date~~
22 ~~of the renewal, when it shall expire, if it is not again renewed.~~

23 ~~SEC. 11. Section 4965 of the Business and Professions Code~~
24 ~~is amended to read:~~

25 ~~4965.—(a) Licenses issued pursuant to this chapter shall expire~~
26 ~~on the last day of the birth month of the licensee during the second~~
27 ~~year of a two-year term, if not renewed.~~

28 ~~(b) The board shall establish and administer a birth date renewal~~
29 ~~program.~~

30 ~~(c) To renew an unexpired license, the holder shall apply for~~
31 ~~renewal on a form provided by the board and pay the renewal fee~~
32 ~~fixed by the board. The fee imposed for the first renewal of the~~
33 ~~license shall be prorated on a monthly basis.~~

34 ~~SEC. 12. Section 5600 of the Business and Professions Code~~
35 ~~is amended to read:~~

36 ~~5600.—(a) All licenses issued or renewed under this chapter~~
37 ~~shall expire at 12 midnight on the last day of the birth month of~~
38 ~~the licensesholder in each odd-numbered year following the issuance~~
39 ~~or renewal of the license.~~

1 ~~(b) To renew an unexpired license, the licenseholder shall,~~
2 ~~before the time at which the license would otherwise expire, apply~~
3 ~~for renewal on a form prescribed by the board and pay the renewal~~
4 ~~fee prescribed by this chapter. The fee imposed for the first renewal~~
5 ~~of the license shall be prorated on a monthly basis.~~

6 ~~(c) The renewal form shall include a statement specifying~~
7 ~~whether the licensee was convicted of a crime or disciplined by~~
8 ~~another public agency during the preceding renewal period and~~
9 ~~that the licensee's representations on the renewal form are true,~~
10 ~~correct, and contain no material omissions of fact, to the best~~
11 ~~knowledge and belief of the licensee.~~

**DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
MAY 29-30 BOARD MEETING**

BILL NUMBER: Assembly Bill 2058

AUTHOR: Assembly Member Wilk

SPONSOR:

VERSION: Amended 04/09/2014

INTRODUCED: 02/20/2014

BILL STATUS: 04/30/2014 – In Assembly
Committee on Appropriations:
To Suspense File.

BILL LOCATION: Assembly
Appropriations
Committee –
Hearing on
05/23/2014

SUBJECT: Open Meetings

**RELATED
BILLS:**

SUMMARY

This bill modifies the definition of "state body" to clarify that standing committees, even if composed of less than three members, are a "state body" for the purposes of the Bagley-Keene Open Meeting Act (Act). Specifically, this bill:

1. Clarifies that advisory bodies created to consist of fewer than three individuals are not a state body, except that standing committees of a state body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by resolution, policies, bylaws, or formal action of a state body are state bodies for the purposes of the Bagley-Keene Open Meeting Act; and,
2. Makes various legislative findings.

ANALYSIS

Existing law:

1. The Act generally requires that all meetings of a state body be open and public and that all persons be permitted to attend and participate in any meeting of a state body.
2. Defines a "state body" as each of the following:
 - a. Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.

commissions. The Act facilitates transparency of government activities and protects the rights of citizens to participate in state government deliberations. Therefore, absent a specific reason to keep the public out of meetings, the public should be allowed to monitor and participate in the decision-making process. Similarly, the California's Brown Act of 1953 protects citizen's rights to open meetings at the local and county government levels.

Similar language in the Brown Act: As discussed above, the Brown Act currently contains language that is very similar to the language found in AB 2058 (Wilk). The Brown Act defines a "legislative body" as a:

A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committee, composed solely of the members of the legislative body that are less than a quorum of the legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter. (CA Government Code Section 54952, subdivision (b))

As the above language shows, local governments are currently abiding by regulations that AB 2058 (Wilk) is currently trying to apply to state bodies. AB 2058 (Wilk) would, in simple terms, simply align the definitions of a "state body" in the Bagley-Keene Act to the definitions of a "legislative body" in the Brown Act.

Arguments in opposition: The California Board of Accountancy (CBA) writes in opposition of the bill stating that AB 2058 would prevent the CBA, and all of its various committees, from asking fewer than three members to review a document, draft a letter, provide expert analysis, or work on legal language without giving public notice. Under current law, the advisory activities of these one or two members are already vetted and voted upon in a publically noticed meeting of the whole committee or board. This bill would prevent the CBA, and all of its various committees, from asking fewer than three members to review a document, draft a letter, provide expert analysis, or work on legal language without giving public notice.

In Addition, CBA states that making advisory activities of one or two members open to the public will greatly increase costs as a staff member would need to travel to attend the meeting for the purpose of recording minutes. Agencies would also need to contract for meeting space that would be able to accommodate the public, thus incurring further costs.

IMPACT ON THE DENTAL BOARD OF CALIFORNIA

This bill would prohibit the Dental Board of California (Board), and all of its various committees, and the Dental Assisting Council (Council) from asking fewer than three members (subcommittee) to review a document, draft a letter, provide expert analysis,

or work on legal language in an advisory capacity without giving notice. Currently, the advisory activities of these subcommittees are vetted and voted upon in publically noticed meetings of the whole Board, thus affording transparency.

The Board uses subcommittees in the advisory capacity for every regulatory proposal, legislative proposal, special project, and special research request so that thorough analyses and staff recommendation may be presented to the whole Board for discussion and possible action during noticed meetings. The use of these subcommittees affords the Board and the Council the opportunity to complete preliminary work and research without interruption. Minimal staff normally participate in the subcommittee meetings and by officially noticing/agendizing a meeting due to this bill, staff would need to prepare the meeting materials, notice it, send out an email blast, arrange a meeting location large enough to accommodate the public, record the meeting, complete minutes of the meeting, arrange for DCA legal to participate, if needed, and other duties associated with meetings.

The work handled by existing subcommittees would be hindered, as noticing each of the subcommittee meetings would take time, responding to any issues/questions presented at the meeting would take time (and it may only be addressing preliminary language and not final language that would be discussed), and the work that goes into such planned meetings will pull staff from their normal everyday functions to address the meeting workload.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

California Board of Accountancy

STAFF RECOMMENDATION

Staff recommends a “watch” position.

AMENDED IN ASSEMBLY APRIL 9, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2058

Introduced by Assembly Member Wilk
(Coauthors: Assembly Members Hagman and Harkey)
~~(Coauthor: Senator DeSaulnier)~~
(Coauthors: Senators DeSaulnier, Gaines, and Vidak)

February 20, 2014

An act to amend Section 11121 of the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2058, as amended, Wilk. Open meetings.

The Bagley-Keene Open Meeting Act requires that all meetings of a state body, as defined, be open and public and that all persons be permitted to attend and participate in any meeting of a state body, subject to certain conditions and exceptions.

This bill would modify the definition of "state body" to exclude an advisory body with less than 3 individuals, except for certain standing committees. ~~This bill would also make legislative findings and declarations in this regard.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 ~~SECTION 1. The Legislature finds and declares all of the~~
2 ~~following:~~

3 ~~(a) The unpublished decision of the Third District Court of~~
4 ~~Appeals in *Funeral Security Plans v. State Board of Funeral*~~
5 ~~Directors (1994) 28 Cal. App.4th 1470 is an accurate reflection of~~
6 ~~legislative intent with respect to the applicability of the~~
7 ~~Bagley-Keene Open Meeting Act (Article 9 (commencing with~~
8 ~~Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of~~
9 ~~the Government Code) (Bagley-Keene Act) to a two-member~~
10 ~~standing advisory committee of a state body. A two-member~~
11 ~~standing committee of a state body, even if operating solely in an~~
12 ~~advisory capacity, already is a “state body,” as defined in~~
13 ~~subdivision (d) of Section 11121 of the Government Code,~~
14 ~~irrespective of its size, if a member of the state body sits on the~~
15 ~~committee and the committee receives funds from the state body.~~
16 ~~For this type of two-member standing advisory committee, this~~
17 ~~bill is declaratory of existing law.~~

18 ~~(b) A two-member standing committee of a state body, even if~~
19 ~~operating solely in an advisory capacity, already is a “state body,”~~
20 ~~as defined in subdivision (b) of Section 11121 of the Government~~
21 ~~Code, irrespective of its composition, if it exercises any authority~~
22 ~~of a state body delegated to it by that state body. For this type of~~
23 ~~two-member standing advisory committee, this bill is declaratory~~
24 ~~of existing law.~~

25 ~~(c) All two-member standing advisory committees of a local~~
26 ~~body are subject to open meeting requirements under the Ralph~~
27 ~~M. Brown Act (Chapter 9 (commencing with Section 54950) of~~
28 ~~Part 1 of Division 2 of Title 5 of the Government Code) (Brown~~
29 ~~Act). It is the intent of the Legislature in this act to reconcile~~
30 ~~language in the Brown Act and Bagley-Keene Act with respect to~~
31 ~~all two-member standing advisory committees, including, but not~~
32 ~~limited to, those described in subdivisions (a) and (b).~~

33 ~~SEC. 2.~~

34 ~~SECTION 1. Section 11121 of the Government Code is~~
35 ~~amended to read:~~

36 ~~11121. As used in this article, “state body” means each of the~~
37 ~~following:~~

38 ~~(a) Every state board, or commission, or similar multimember~~
39 ~~body of the state that is created by statute or required by law to~~

1 conduct official meetings and every commission created by
2 executive order.

3 (b) A board, commission, committee, or similar multimember
4 body that exercises any authority of a state body delegated to it by
5 that state body.

6 (c) An advisory board, advisory commission, advisory
7 committee, advisory subcommittee, or similar multimember
8 advisory body of a state body, if created by formal action of the
9 state body or of any member of the state body. ~~Advisory bodies~~
10 *An advisory body* created to consist of fewer than three individuals
11 ~~are is~~ not a state body, except that ~~a standing committees committee~~
12 of a state body, irrespective of ~~their~~ *its* composition, which ~~have~~
13 *has* a continuing subject matter jurisdiction, or a meeting schedule
14 fixed by resolution, policies, bylaws, or formal action of a state
15 body ~~are is a state bodies body~~ for the purposes of this chapter.

16 (d) A board, commission, committee, or similar multimember
17 body on which a member of a body that is a state body pursuant
18 to this section serves in his or her official capacity as a
19 representative of that state body and that is supported, in whole or
20 in part, by funds provided by the state body, whether the
21 multimember body is organized and operated by the state body or
22 by a private corporation.

23 ~~SEC. 3.~~

24 *SEC. 2.* This act is an urgency statute necessary for the
25 immediate preservation of the public peace, health, or safety within
26 the meaning of Article IV of the Constitution and shall go into
27 immediate effect. The facts constituting the necessity are:

28 In order to avoid unnecessary litigation and ensure the people's
29 right to access of the meetings of public bodies pursuant to Section
30 3 of Article 1 of the California Constitution, it is necessary that
31 act take effect immediately.

**DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
MAY 29-30 BOARD MEETING**

BILL NUMBER: Assembly Bill 2396

AUTHOR: Assembly Member Bonta

SPONSOR:

VERSION: Amended 05/15/2014

INTRODUCED: 02/20/2014

BILL STATUS: 05/15/2014 – In Assembly.
Read third time and amended.
To third reading.

BILL LOCATION: Assembly Third
Reading File

SUBJECT: Convictions: Expungement:
Licenses

**RELATED
BILLS:**

SUMMARY

This bill prohibits boards within the Department of Consumer Affairs (DCA) from denying a professional license based solely on a criminal conviction that has been withdrawn, set aside or dismissed by the court.

ANALYSIS

This bill would prohibit boards and bureaus within DCA from denying a professional license based solely on a prior conviction that was dismissed by a court which determined that the individual completed all the terms of his or her sentence without committing any additional offenses, or which determined a dismissal would serve the interests of justice. In doing so, the author aims to alleviate barriers to employment after incarceration. This bill is sponsored by the Alameda County Board of Supervisors.

According to the author, "[This bill] is designed to reduce employment barriers for people with criminal records who have been rehabilitated. [This bill] allows them the opportunity to pursue meaningful employment and work towards entering the middle class, instead of struggling in low-wage jobs or returning to crime. "In many cases, individuals seeking a professional license struggle to achieve self-sufficiency because of consideration of a dismissed record that is irrelevant to their ability to perform the job. Under current law, even applicants who are presumed to be rehabilitated by the court system may still have their license denied. "According to a 2007 report prepared by the Board of Barbering and Cosmetology, of the 501 applicants denied by the Board over the preceding five years, all 501 applicants possessed criminal records. Only 33 applicants were determined to have produced evidence of rehabilitation. [This bill] will eliminate this fundamental unfairness within the law. In addition, [this bill] will help address the shortage of qualified labor in many fields, increase employment in those fields, and spur economic growth."

Obtaining a dismissal of a conviction. Penal Code Sections 1203.4, 1203.4(a), and 1203.41 provide expungement relief to an individual who has committed certain types of crimes. This relief is not available to persons who were sentenced to prison, or who have committed certain sex or other offenses, as specified. While most major felonies result in a prison sentence, not all felonies require a defendant to serve a prison sentence. As a result, only persons who were convicted of misdemeanors or felonies who were sentenced to probation, which may include jail time, or who were convicted of misdemeanors or infractions and were not sentenced to probation, may have their conviction dismissed. In order to obtain a dismissal, a person must successfully serve and complete all the terms of their sentence, including paying any restitution and fines, and not be charged with any other offenses. In addition, a person must file a petition with the court, which may include information about the offense, letters of recommendation, proof of compliance with the terms of probation, and any other materials that may assist the court in making a decision. The petition must also be served to the applicable district or city attorney, who may object to the petition and provide evidence to the court that the dismissal should not be granted. The court will decide on the petition, and if the petition is denied, an individual may file for reconsideration or refile the petition at a later date. As a result, this "set aside and dismissal" remedy is limited both in terms of scope and application.

Over half of the boards under DCA require criminal history information, and other boards require applicants to self-report any criminal history. While criminal background checks are supposed to show whether a conviction has been dismissed, this does not always occur. If a board denies a license, it is required to notify the applicant by letter, which provides the applicant with the specific reasons why the application was denied. An applicant has the right to appeal the denial of the application by requesting a statement of issues hearing, and must submit a request for that hearing within 60 days of the date of the letter. Once a written request for a hearing is made, it is forwarded to the Attorney General's office. At the hearing, an applicant may present evidence and witnesses to prove that his or her application for a certificate or license should not be denied.

Professional boards have great discretion when determining whether to deny a license. Existing law authorizes each board to deny a professional license based on an applicant's past conviction, "act involving dishonest, fraud, or deceit," or other act that could subject a licensee to license suspension or revocation, if that conviction or act is "substantially related" to the qualifications, functions, or duties of the business or profession for which application is made. This discretion does not distinguish between types of convictions or types of dishonest acts, and these terms are so broad that many convictions or acts could be determined by a board to be cause for denial of a license. In addition, there are no other qualifications, such as how long ago a person was convicted or had committed a bad act, or whether a board has to take that length of time into consideration. It is up to each board to determine what they consider as criteria for license denial or rehabilitation.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

STAFF RECOMMENDATION

Staff recommends a “watch” position.

AMENDED IN ASSEMBLY MAY 15, 2014
AMENDED IN ASSEMBLY APRIL 21, 2014
AMENDED IN ASSEMBLY MARCH 28, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2396

**Introduced by Assembly Member Bonta
(Coauthor: Assembly Member Skinner)**

February 21, 2014

An act to amend Section 480 of the Business and Professions Code, relating to expungement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2396, as amended, Bonta. Convictions: expungement: licenses. Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license on various grounds, including, but not limited to, conviction of a crime if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law prohibits a board from denying a license on the ground that the applicant has committed a crime if the applicant shows that he or she obtained a certificate of rehabilitation in the case of a felony, or that he or she has met all applicable requirements of the criteria of rehabilitation developed by the board, as specified, in the case of a misdemeanor.

Existing law permits a defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty in any case in which a defendant has fulfilled the conditions of probation for the entire

period of probation, or has been discharged prior to the termination of the period of probation, or has been convicted of a misdemeanor and not granted probation and has fully complied with and performed the sentence of the court, or has been sentenced to a county jail for a felony, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted this or other specified relief and requires the defendant to be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

This bill would prohibit a board from denying a license based solely on a conviction that has been dismissed pursuant to the above provisions.

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

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

- 1 SECTION 1. Section 480 of the Business and Professions Code
- 2 is amended to read:
- 3 480. (a) A board may deny a license regulated by this code
- 4 on the grounds that the applicant has one of the following:
- 5 (1) Been convicted of a crime. A conviction within the meaning
- 6 of this section means a plea or verdict of guilty or a conviction
- 7 following a plea of nolo contendere. Any action that a board is
- 8 permitted to take following the establishment of a conviction may
- 9 be taken when the time for appeal has elapsed, or the judgment of
- 10 conviction has been affirmed on appeal, or when an order granting
- 11 probation is made suspending the imposition of sentence,
- 12 irrespective of a subsequent order under the provisions of Section
- 13 1203.4, 1203.4a, or 1203.41 of the Penal Code.
- 14 (2) Done any act involving dishonesty, fraud, or deceit with the
- 15 intent to substantially benefit himself or herself or another, or
- 16 substantially injure another.
- 17 (3) (A) Done any act that if done by a licentiate of the business
- 18 or profession in question, would be grounds for suspension or
- 19 revocation of license.
- 20 (B) The board may deny a license pursuant to this subdivision
- 21 only if the crime or act is substantially related to the qualifications,
- 22 functions, or duties of the business or profession for which
- 23 application is made.

1 (b) Notwithstanding any other provision of this code, a person
2 shall not be denied a license solely on the basis that he or she has
3 been convicted of a felony if he or she has obtained a certificate
4 of rehabilitation under Chapter 3.5 (commencing with Section
5 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she
6 has been convicted of a misdemeanor if he or she has met all
7 applicable requirements of the criteria of rehabilitation developed
8 by the board to evaluate the rehabilitation of a person when
9 considering the denial of a license under subdivision (a) of Section
10 482.

11 (c) Notwithstanding any other provisions of this code, a person
12 shall not be denied a license solely on the basis of a conviction
13 that has been dismissed pursuant to Section 1203.4, 1203.4a, or
14 1203.41 *of the Penal Code*.

15 (d) A board may deny a license regulated by this code on the
16 ground that the applicant knowingly made a false statement of fact
17 that is required to be revealed in the application for the license.

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**DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
MAY 29-30 BOARD MEETING**

BILL NUMBER: Assembly Bill 2720

AUTHOR: Assembly Member Ting

SPONSOR:

VERSION: Amended 04/02/2014

INTRODUCED: 02/21/2014

BILL STATUS: 05/15/2014 – In Assembly.
Read third time. Passed
Assembly. To Senate

BILL LOCATION: Senate

SUBJECT: State Agencies: Meetings:
Record of Action Taken

**RELATED
BILLS:**

SUMMARY

This bill requires a state body to publicly report any action taken and the vote or abstention on that action of each member present for the action.

ANALYSIS

Existing law:

1. Requires under the Bagley-Keene open Meeting Act (Bagley Act) that all meetings of a state body be open and public and that all persons be permitted to attend and participate in any meeting of a state body.
2. Defines a "state body" as each of the following:
 - a. Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.
 - b. A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.
 - c. An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.

- d. A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this sections serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.
3. Defines "action taken" as a collective decision by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

According to the author, current law requires that the meetings of state boards and commissions be open to the public, so that their deliberations and actions are conducted in service of the public's interest. However, there is no specific requirement that actions taken by state boards and commissions during regular meetings are publicly reported and reveal vote or abstention of each member present for the action. Consequently, there are multiple examples of state boards and commissions that do not make this important information readily accessible to the public. Final votes are often reported, for example, as 20 Ayes and 10 Noes, making it impossible to determine how individual members, who represent different industry interests, voted on the action taken. Some votes do not even report the final vote numerically, only reporting whether the action passed or failed. If a member of the public was not able to attend the meeting, then it is impossible for that individual to be wholly informed about the outcome of the action taken.

Bagley-Keene Act: When the Legislature enacted the Bagley-Keene Act of 1967 it essentially said that when a body sits down to develop its consensus, there needs to be a seat at the table reserved for the public. In doing so, the Legislature has provided the public with the ability to monitor and be part of the decision-making process. The Bagley Act explicitly mandates open meetings for California State agencies, boards, and commissions. It facilitates transparency of government activities and protects the rights of citizens to participate in state government deliberations. Therefore, absent a specific reason to keep the public out of meetings, the public should be allowed to monitor and participate in the decision-making process. Similarly, the California's Brown Act of 1953 protects citizen's rights to open meetings at the local and county government levels.

Ralph M. Brown Act (Brown Act): While the Bagley Act ensures open meetings at the state level, the Brown Act governs open meetings at the local level. Last year, the Legislature unanimously approved and the Governor signed SB 751 (Yee), which guaranteed that local agencies publicly report the vote of each member of their governing bodies on actions taken. AB 2720 will make conforming changes to the Bagley Act to ensure that all state boards and commissions are similarly held accountable to the public they serve.

Arguments in support: The California Taxpayers Association (CalTax) states that all levels of government need to continue to promote a transparent government. Empowering people to engage in government allows them to become stakeholders in the political process. Giving access, in turn, allows people to see how their government is run, and how policymakers' decisions will impact their lives.

The California Newspaper Publishers Association states that the need for AB 2720 arose when several state agencies governed by the Bagley Act, failed to conduct either a roll call vote or a specific tally and report the votes of each member of the boards. Consequently, constituents found it difficult, if not impossible to determine who voted for or against a measure when the agencies took action. AB 2720 would prevent anonymous voting by large agencies and would improve the ability of the public and others who monitor legislative meetings of state agencies to be certain of how members vote on an issue. The costs associated with the implementation of AB 2720 would be minimal because the task of identifying how a member votes is a simple one requiring little, if any, effort by the agency to perform.

Related legislation: AB 2058 (Wilk), 2013-2014 Legislative session. The bill would modify the definition of "state body" to clarify that standing committees, even if composed of less than three members, are a "state body" for the purposes of the Bagley Act. (Pending in Assembly Appropriations Committee)

Prior legislation: SB 751 (Yee), Chapter 257, Statutes of 2013. The bill required local agencies to publicly report any action taken and the vote or abstention of each member of a legislative body.

REGISTERED SUPPORT / OPPOSITION:

Support

California Newspaper Publishers Association
California Taxpayers Association

Opposition

None on file.

STAFF RECOMMENDATION

Staff recommends a "watch" position.

AMENDED IN ASSEMBLY APRIL 2, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2720

Introduced by Assembly Member Ting

February 21, 2014

An act to amend Section ~~11122~~ *11123* of the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL’S DIGEST

AB 2720, as amended, Ting. State agencies: meetings: record of action taken.

The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body, as defined, be open and public and all persons be permitted to attend any meeting of a state body. The act defines various terms for its purposes, including “action taken,” which means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision, or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order, or similar action.

~~This bill would, if the action taken by the members of a state body is a recorded vote, require that the vote be counted and identified in the minutes of the state body~~ *require a state body to publicly report any action taken and the vote or abstention on that action of each member present for the action.*

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

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

1 SECTION 1. Section 11123 of the Government Code is
2 amended to read:

3 11123. (a) All meetings of a state body shall be open and
4 public and all persons shall be permitted to attend any meeting of
5 a state body except as otherwise provided in this article.

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

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

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

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

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

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

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

34 (2) For the purposes of this subdivision, “teleconference” means
35 a meeting of a state body, the members of which are at different
36 locations, connected by electronic means, through either audio or
37 both audio and video. This section does not prohibit a state body
38 from providing members of the public with additional locations

1 in which the public may observe or address the state body by
2 electronic means, through either audio or both audio and video.

3 *(3) The state body shall publicly report any action taken and*
4 *the vote or abstention on that action of each member present for*
5 *the action.*

6 ~~SECTION 1. Section 11122 of the Government Code is~~
7 ~~amended to read:~~

8 ~~11122. As used in this article “action taken” means a collective~~
9 ~~decision made by the members of a state body, a collective~~
10 ~~commitment or promise by the members of the state body to make~~
11 ~~a positive or negative decision, or an actual vote by the members~~
12 ~~of a state body when sitting as a body or entity upon a motion,~~
13 ~~proposal, resolution, order or similar action. If the action taken by~~
14 ~~the members of a state body is a recorded vote, the vote shall be~~
15 ~~counted and identified in the minutes of the state body.~~

**DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
MAY 29-30 BOARD MEETING**

BILL NUMBER: Senate Bill 1091

AUTHOR: Senator Galgiani

SPONSOR:

VERSION: Introduced 02/19/2014

INTRODUCED: 02/19/2014

BILL STATUS: 04/07/2014 – In Senate
Committee on Appropriations:
To Suspense File.

BILL LOCATION: Senate
Appropriations
Committee –
Hearing on
05/23/2014

SUBJECT: Administrative Procedures:
Notice Register

**RELATED
BILLS:**

SUMMARY

This bill would require state agencies to provide advance notice of specified meetings and hearings that occur prior to publication of formal notice of proposed regulatory action in the California Regulatory Notice Register (Register). The new notice must be published in the Register at least 15 days in advance of the meeting or hearing. The bill would also require the Office of Administrative Law (OAL) to make the Register available in an electronically searchable web-based format and provide for specified subscription services related to the Register by January 1, 2017.

ANALYSIS

The author's office notes that, under the Administrative Procedures Act (APA), the Office of Administrative Law (OAL) is responsible for reviewing regulations proposed by over 200 state agencies. According to OAL, there were 3,830 new regulations adopted, approved, or repealed by state agencies in 2011, and 2,630 for 2012. Current state law requires state agencies to provide at least 45 days' notice (formal rulemaking) to interested parties prior to the close of the public comment period and adoption, amendment or repeal of the regulation. State agencies are only required to notice a hearing of formal rulemaking in the Regulatory Notice Register - they are not required provide notice in the Register for informational hearings, workshops and stakeholder meetings.

Unfortunately for the public, it is often in these less formal meetings where the actual agenda or roadmap for the regulation is determined. More and more regulation development occurs during proposed rulemaking activities, hearings, workshops and

scoping hearings. These activities are noticed only on agency websites, forcing citizens to navigate many websites on a daily basis to obtain updates on these important regulatory activities.

The author notes that agencies are already required to post all meeting information and notices to their respective websites. This bill will simply require a re-posting of that information within a usable and searchable Internet-based format, complete with an email notification system.

Little Hoover Commission: In a comprehensive review of the state's rulemaking process, the Little Hoover Commission recently observed that:

"California's process lacks any requirement to bring in the affected public before a rule is released for public comment. This prevents parties who stand to be impacted by the regulation - regulated and unregulated - from offering their expertise about real world conditions or suggesting better approaches before a proposed regulation is released for public comment." [9]

This bill would address this issue by requiring a state agency that does hold workshops, public meetings, and the like to let the public know about them by publishing a notice in the Regulatory Notice Register at least 15 days in advance.

The Federal Register: In contrast to the California APA, the Federal APA requires federal agencies to publish, in a single website (the Federal Register), all proposed rules, final rules, public notices, Presidential actions, and formal notices of proposed rulemaking. The federal government is required by federal law to maintain the Federal Register in electronic format that permits public access to its contents online. In January, 2009, President Obama signed a "transparency and Open Government" memorandum that calls upon federal agencies to "harness new technologies to put information about their operations and decisions online and readily available to the public." In response, the Office of the Federal Register established an electronically searchable Federal Register to which the public may subscribe. It went online in the summer of 2010.

California Regulatory Notice Register: In comparison to the Federal Register, the Regulatory Notice Register contains rather cursory information. It is published every Friday in PDF format. It differs significantly from the Federal Register website, an interactive website that contains very extensive and informative information concerning proposed federal rulemaking actions.

But the Regulatory Notice Register does contain all notices of proposed regulatory actions by state regulatory agencies to adopt, amend, or repeal regulations. In addition, OAL publishes an index to the Notice Register that covers all state agency regulatory actions taken over the past twelve months, sorted according to agency name.

Support: Proponents suggest that California should join other states and begin offering

centrally located, searchable, rulemaking notices to which the public can subscribe. Supporters state that 24 other states already have a single, searchable database that the public can use to gain access to all proposed state agency regulations; 12 states offer a central website for pre-rulemaking notices; and 37 states offer some type of subscription service for state rulemaking activities.

SB 1091 will provide notice to the public in a manner similar to states like Delaware, Florida, Virginia, and West Virginia, who already offer a central, searchable online repository for pre-rulemaking and formal rulemaking activity, to which the public can subscribe.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
California Association of Realtors
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Construction & Industrial Materials Association
California Independent Petroleum Association
California Land and Title Association
California Manufacturers & Technology Association
California Restaurant Association
California Retailers Association
Industrial Environmental Association
National Federation of Independent Business
USANA Health Sciences, Inc.
Western Manufactured Housing Communities Association

Opposition

None on file.

STAFF RECOMMENDATION

Staff recommends a “watch” position.

Introduced by Senator GalgianiFebruary 19, 2014

An act to amend Section 11344.1 of, and to add Section 11344.15 to, the Government Code, relating to administrative procedures.

LEGISLATIVE COUNSEL'S DIGEST

SB 1091, as introduced, Galgiani. Administrative procedures: California Regulatory Notice Register: proposed rulemaking activities.

Existing law 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, including procedures relating to increased public participation in the adoption, amendment, and repeal of these regulations. Existing law requires that an agency mail a notice of proposed action to specified entities at least 45 days prior to the hearing and close of the public comment period on the adoption, amendment, or repeal of a regulation. Existing law requires the office to provide for the publication of the California Regulatory Notice Register and to include specified information in the register, including notices of proposed action prepared by regulatory agencies.

This bill would require each state agency to submit a notice to the office for publication in the California Regulatory Notice Register of any meeting or hearing that occurs prior to the mailing or posting of the notice of proposed action, for which the agency posts on its Internet Web site a public notice of a meeting or hearing, as provided.

This bill would also require the office, before January 1, 2017, to make the California Regulatory Notice Register available in an electronically searchable Internet Web-based format, and to include the ability for interested parties to subscribe to an electronic mail notification subscription to the California Regulatory Notice Register or other

specific notices contained within the California Regulatory Notice Register.

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

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

1 SECTION 1. Section 11344.1 of the Government Code is
2 amended to read:

3 11344.1. The office shall do all of the following:

4 (a) Provide for the publication of the California Regulatory
5 Notice Register, which shall be an official publication of the State
6 of California and which shall contain the following:

7 (1) Notices of proposed action prepared by regulatory agencies,
8 subject to the notice requirements of this chapter, and which have
9 been approved by the office.

10 (2) A summary of all regulations filed with the Secretary of
11 State in the previous week.

12 (3) Summaries of all regulation decisions issued in the previous
13 week detailing the reasons for disapproval of a regulation, the
14 reasons for not filing an emergency regulation, and the reasons for
15 repealing an emergency regulation. The California Regulatory
16 Notice Register shall also include a quarterly index of regulation
17 decisions.

18 (4) Material that is required to be published under Sections
19 11349.5, 11349.7, and 11349.9.

20 (5) Determinations issued pursuant to Section 11340.5.

21 (6) *Materials and notices required to be published under Section*
22 *11344.15.*

23 (b) Establish the publication dates and manner and form in
24 which the California Regulatory Notice Register shall be prepared
25 and published and ensure that it is published and distributed in a
26 timely manner to the presiding officer and rules committee of each
27 house of the Legislature and to all subscribers.

28 (c) Post on its ~~website~~ *Internet Web site*, on a weekly basis:

29 (1) The California Regulatory Notice Register. Each issue of
30 the California Regulatory Notice Register on the office's ~~website~~
31 *Internet Web site* shall remain posted for a minimum of 18 months.

32 (2) One or more Internet links to assist the public to gain access
33 to the text of regulations proposed by state agencies.

1 (d) Before January 1, 2017, the office shall make the California
2 Regulatory Notice Register available in an electronically
3 searchable Internet-Web based format, and shall include the ability
4 for interested parties to subscribe to an electronic mail notification
5 subscription to the California Regulatory Notice Register or other
6 specific notices contained within the California Regulatory Notice
7 Register.

8 SEC. 2. Section 11344.15 is added to the Government Code,
9 to read:

10 11344.15. (a) Each state agency shall submit a notice to the
11 office for publication in the California Regulatory Notice Register
12 of proposed rulemaking activity. For purposes of this section,
13 “proposed rulemaking activity” means any meeting or hearing that
14 occurs prior to the mailing or posting of the notice required
15 pursuant to Sections 11346.4 and 11346.5, for which the agency
16 posts on its Internet Web site a public notice of a meeting or
17 hearing. The notice required pursuant to this section shall appear
18 in the California Regulatory Notice Register at least 15 days prior
19 to the meeting or hearing date.

20 (b) The notice required by subdivision (a) shall include all of
21 the following:

22 (1) The name of the state agency organizing the meeting.

23 (2) The date, time, place, location, and nature of the meeting.

24 (3) A brief statement identifying each topic under consideration
25 or discussion.

26 (4) An Internet Web site address for the public meeting notice.

27 (5) An Internet Web site address to any other information
28 prepared in connection with the meeting.

29 (c) Proposed rulemaking activity subject to the notice
30 requirement of subdivision (a) shall include the following:

31 (1) Informational hearings.

32 (2) Workshops.

33 (3) Scoping hearings.

34 (4) Preliminary meetings.

35 (5) Public and stakeholder outreach meetings.

36 (d) Failure to publish proposed rulemaking activity shall not
37 invalidate an action taken by a state agency pursuant to Section
38 11346.4 or 11346.5 if upon the agency’s discovery or notification
39 of failure to publish the agency submits the required notice to the
40 office for publication in the California Regulatory Notice Register

1 that notifies the public of the publication error. If an agency is
2 required to republish a notice pursuant to this subdivision, the
3 agency shall permit public comments related to the unnoticed
4 meeting to be submitted for an additional 15 days, once the agency
5 has posted all relevant meeting materials, presentations, studies,
6 recordings, or minutes of the meeting to its Internet Web site. The
7 notice required by this subdivision shall include the requirements
8 specified in subdivision (b) and include an Internet Web site
9 address for transcript, recording, or minutes of the improperly
10 noticed meeting or hearing.

11 (e) An intentional failure of the public to delay notice to an
12 agency regarding a known publication oversight constitutes a
13 waiver of the right to object and shall not invalidate a state agency's
14 ability to enact a regulation if both of the following apply:

15 (1) The public comment period as prescribed in Section 11346.4
16 has been published in the California Regulatory Notice Register.

17 (2) The agency has made every reasonable attempt to comply
18 with the procedures set forth in subdivision (d) which would
19 remedy any publication oversight that may have occurred.

20 (f) Agencies shall not condition consideration of comments
21 received during the period described in Section 11346.4 on
22 attendance of proposed rulemaking activities as described in
23 subdivision (a), and shall consider all issues pertinent to the
24 regulation that may not have been raised during proposed
25 rulemaking activities.

**DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
MAY 29-30 BOARD MEETING**

BILL NUMBER: Senate Bill 1159

AUTHOR: Senator Lara

SPONSOR:

VERSION: Amended 04/07/2014

INTRODUCED: 02/20/2014

BILL STATUS: 05/19/2014 – To Assembly
Committee on Business,
Professions & Consumer
Protection

BILL LOCATION: Assembly
Committee on
Business,
Professions &
Consumer
Protection

SUBJECT: License Applicants: Federal
Tax Identification

**RELATED
BILLS:**

SUMMARY

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, among other licensing bodies. Existing law requires those licensing bodies to require a licensee, at the time of issuance of the license, to provide its federal employer identification number, if the licensee is a partnership, or his or her social security number for all other licensees. Existing law requires those licensing bodies to report to the Franchise Tax Board any licensee who fails to provide the federal employer identification number or social security number, and subjects the licensee to a penalty for failing to provide the information after notification, as specified.

This bill would require those licensing bodies to require an applicant other than a partnership to provide either a federal tax identification number or social security number, if one has been issued to the applicant, and would require the licensing bodies to report to the Franchise Tax Board, and subject a licensee to a penalty, for failure to provide that information, as described above. The bill would make other conforming changes.

ANALYSIS

Purpose. The Author is the sponsor of this measure. According to the Author, Business and Profession Code Section 30 currently requires professional licensing boards to request, and applicants to provide, social security numbers for the issuance of a professional license; thereby limiting who may apply and obtain a professional license in California. The Author argues that this section is now inconsistent with sections of the

Business and Professions Code recently amended by AB 1024 (Gonzalez) in 2013 and AB 1822 (Berryhill) in 2012. As indicated by the Author, AB 1024 clarified that all applicants who meet the requirements for admission to the State Bar may be licensed to practice law, regardless of immigration status. On January 2, 2014, the State Supreme Court unanimously ruled to allow for the admission of an applicant for licensure, an undocumented immigrant who passed the bar exam, to the State Bar of California, specifically citing the enactment of AB 1024. AB 1822 authorized, for purposes of processing a licensing application or a renewal application, submission of an individual tax identification number, or other appropriate identification number as determined by the California Architects Board, in lieu of a social security number, if the individual is not eligible for a social security account number at the time of application and is not in noncompliance with a judgment or order for support pursuant to Section 17520 of the Family Code. The Author states that while the requirement for a social security number was intended to ensure the payment and collection of taxes associated with the practice of the profession under the given license, the requirement has created inconsistencies and ambiguity in the law. "While in some sections of the B&P Code (Sec. 6064 and Sec. 5550.5) we authorize an individual access to a professional license, regardless of immigration status, in another section we still require that same individual to provide a social security number in order to access the license." The Author further explains that it is in the best social and economic interest of our state to support efforts to educate our workforce and enable our residents, including immigrants to improve their economic mobility and self-sufficiency, which will increase their contributions back to the state. SB 1159 would authorize an applicant to provide a licensing board a federal identification number, if one has been issued, in lieu of a social security number, as part of the application for a professional license in California. "Over the last decade our state has understood the importance of a continued investment in immigrant children. The natural step is to ensure that as these young people complete their education a professional license is accessible to them in their respective fields. SB 1159 clarifies this ambiguity in the law."

Taxpayer Identification Numbers. A Taxpayer Identification Number (TIN) is an identification number used by the Internal Revenue Service (IRS) in the administration of tax laws. It is issued by the Social Security Administration (SSA) or by the IRS. A Social Security Number is issued by the SSA whereas all other TINs are issued by the IRS. The Individual Taxpayer Identification Number, or ITIN, is a tax processing number only available for certain nonresident and resident aliens, their spouses, and dependents who cannot get a SSN. It is a 9-digit number, beginning with the number "9" and is formatted like a SSN. To obtain an ITIN, an individual must complete an IRS form. The form requires documentation substantiating foreign/alien status and true identity for the individual. The person may either mail the documentation, along with the required form, present it at the IRS office, or process the application through an acceptable agent authorized by the IRS.

REGISTERED SUPPORT / OPPOSITION:
Support

ACLU
California Immigrant Policy Center
Coalition for Humane Immigrant Rights of Los Angeles
Educators for Fair Consideration
Pre-Health Dreamers

ARGUMENTS IN SUPPORT: Proponents write, "SB 1159 recognizes the continued importance of investment in young immigrants in California. It will remove a barrier in the law that prevents young people who complete their education from obtaining a license to practice in their field."

Opposition
None on file.

STAFF RECOMMENDATION
Staff recommends a "watch" position.

Introduced by Senator Lara

February 20, 2014

An act to amend Section ~~494~~ 30 of the Business and Professions Code, *and to amend Section 19528 of the Revenue and Taxation Code*, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, as amended, Lara. Professions and vocations: license ~~suspension or restriction~~. *applicants: federal tax identification number.*

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, among other entities *licensing bodies*. Existing law ~~authorizes a board or an administrative law judge to, upon petition, issue an interim order suspending a licensee or imposing license restrictions if the petition demonstrates that the licensee has engaged in specified violations of law or has been convicted of a crime related to the licensed activity and permitting the licensee to continue to practice would endanger the public~~ *requires those licensing bodies to require a licensee, at the time of issuance of the license, to provide its federal employer identification number, if the licensee is a partnership, or his or her social security number for all other licensees. Existing law requires those licensing bodies to report to the Franchise Tax Board any licensee who fails to provide the federal employer identification number or social security number, and subjects the licensee to a penalty for failing to provide the information after notification, as specified.*

This bill would ~~make technical, nonsubstantive changes to that provision~~ *require those licensing bodies to require an applicant other*

than a partnership to provide either a federal tax identification number or social security number, if one has been issued to the applicant, and would require the licensing bodies to report to the Franchise Tax Board, and subject a licensee to a penalty, for failure to provide that information, as described above. The bill would make other conforming changes.

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

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

1 *SECTION 1. Section 30 of the Business and Professions Code*
2 *is amended to read:*

3 30. (a) Notwithstanding any other law, any board, as defined
4 in Section 22, and the State Bar and the Bureau of Real Estate shall
5 at the time of issuance of ~~the~~ *an initial or renewal* license require
6 that the ~~licensee~~ *applicant* provide its federal employer
7 identification number, if the ~~licensee~~ *applicant* is a partnership, or
8 ~~his or her~~ *the applicant's* federal taxpayer identification number
9 or social security number, if one has been issued, for all ~~others~~
10 *other applicants.*

11 (b) Any ~~licensee~~ *applicant* failing to provide the federal
12 *employer identification number* number, or *the federal taxpayer*
13 *identification number* or social security number, if one has been
14 issued to the individual, shall be reported by the licensing board
15 to the Franchise Tax Board ~~and, if failing~~ *Board. If the applicant*
16 *fails* to provide *that information* after notification pursuant to
17 paragraph (1) of subdivision (b) of Section 19528 of the Revenue
18 and Taxation Code, *the applicant* shall be subject to the penalty
19 provided in paragraph (2) of subdivision (b) of Section 19528 of
20 the Revenue and Taxation Code.

21 (c) In addition to the penalty specified in subdivision (b), a
22 licensing board ~~may~~ *shall* not process ~~any~~ *an* application for an
23 ~~original~~ *initial* license unless the applicant or licensee provides its
24 federal employer identification number, or *federal taxpayer*
25 *identification number* or social security number, if one has been
26 issued to the individual, where requested on the application.

27 (d) A licensing board shall, upon request of the Franchise Tax
28 Board, furnish to the Franchise Tax Board the following
29 information with respect to every licensee:

- 1 (1) Name.
- 2 (2) Address or addresses of record.
- 3 (3) Federal employer identification number if the ~~entity licensee~~
4 is a partnership, or *the licensee's federal taxpayer identification*
5 *number or social security number, if one has been issued to the*
6 *individual, for all ~~others~~ other licensees.*
- 7 (4) Type of license.
- 8 (5) Effective date of license or a renewal.
- 9 (6) Expiration date of license.
- 10 (7) Whether license is active or inactive, if known.
- 11 (8) Whether license is new or a renewal.
- 12 (e) For the purposes of this section:
 - 13 (1) "Licensee" means ~~any~~ *a person or* entity, other than a
14 corporation, authorized by a license, certificate, registration, or
15 other means to engage in a business or profession regulated by
16 this code or referred to in Section 1000 or 3600.
 - 17 (2) "License" includes a certificate, registration, or any other
18 authorization needed to engage in a business or profession
19 regulated by this code or referred to in Section 1000 or 3600.
 - 20 (3) "Licensing board" means any board, as defined in Section
21 22, the State Bar, and the Bureau of Real Estate.
- 22 (f) The reports required under this section shall be filed on
23 magnetic media or in other machine-readable form, according to
24 standards furnished by the Franchise Tax Board.
- 25 (g) Licensing boards shall provide to the Franchise Tax Board
26 the information required by this section at a time that the Franchise
27 Tax Board may require.
- 28 (h) Notwithstanding Chapter 3.5 (commencing with Section
29 6250) of Division 7 of Title 1 of the Government Code, ~~the social~~
30 ~~security number and~~ *a federal employer identification number,*
31 *federal taxpayer identification number, or social security number*
32 furnished pursuant to this section shall not be deemed to be a public
33 record and shall not be open to the public for inspection.
- 34 (i) Any deputy, agent, clerk, officer, or employee of any
35 licensing board described in subdivision (a), or any former officer
36 or employee or other individual who in the course of his or her
37 employment or duty has or has had access to the information
38 required to be furnished under this section, may not disclose or
39 make known in any manner that information, except as provided

1 in this section to the Franchise Tax Board or as provided in
2 subdivision (k).

3 (j) It is the intent of the Legislature in enacting this section to
4 utilize the ~~social security account number~~ or federal employer
5 identification number, *federal taxpayer identification number*, or
6 *social security number* for the purpose of establishing the
7 identification of persons affected by state tax laws and for purposes
8 of compliance with Section 17520 of the Family Code and, to that
9 end, the information furnished pursuant to this section shall be
10 used exclusively for those purposes.

11 (k) If the board utilizes a national examination to issue a license,
12 and if a reciprocity agreement or comity exists between the State
13 of California and the state requesting release of the *federal taxpayer*
14 *identification number* or social security number, any deputy, agent,
15 clerk, officer, or employee of any licensing board described in
16 subdivision (a) may release a *federal taxpayer identification*
17 *number* or social security number to an examination or licensing
18 entity, only for the purpose of verification of licensure or
19 examination status.

20 (l) For the purposes of enforcement of Section 17520 of the
21 Family Code, and notwithstanding any other ~~provision~~ of law, any
22 board, as defined in Section 22, and the State Bar and the Bureau
23 of Real Estate shall at the time of issuance of the license require
24 that each licensee provide the *federal taxpayer identification*
25 *number* or social security number, *if any has been issued to the*
26 *licensee*, of each individual listed on the license and any person
27 who qualifies the license. For the purposes of this subdivision,
28 “licensee” means any entity that is issued a license by any board,
29 as defined in Section 22, the State Bar, the Bureau of Real Estate,
30 and the Department of Motor Vehicles.

31 *SEC. 2. Section 19528 of the Revenue and Taxation Code is*
32 *amended to read:*

33 19528. (a) Notwithstanding any other ~~provision~~ of law, the
34 Franchise Tax Board may require any board, as defined in Section
35 22 of the Business and Professions Code, and the State Bar, the
36 Bureau of Real Estate, and the Insurance Commissioner (hereinafter
37 referred to as licensing board) to provide to the Franchise Tax
38 Board the following information with respect to every licensee:

39 (1) Name.

40 (2) Address or addresses of record.

1 (3) Federal employer identification number ~~(if the entity is a~~
2 ~~partnership)~~ or social security number ~~(for all others)~~, *if the licensee*
3 *is a partnership, or the licensee's federal taxpayer identification*
4 *number or social security number, if any has been issued, of all*
5 *other licensees.*

6 (4) Type of license.

7 (5) Effective date of license or renewal.

8 (6) Expiration date of license.

9 (7) Whether license is active or inactive, if known.

10 (8) Whether license is new or renewal.

11 (b) The Franchise Tax Board may do the following:

12 (1) Send a notice to any licensee failing to provide the *federal*
13 *employer identification number, federal taxpayer identification*
14 *number, or social security number as required by subdivision (a)*
15 *of Section 30 of the Business and Professions Code and subdivision*
16 *(a) of Section 1666.5 of the Insurance Code, describing the*
17 *information that was missing, the penalty associated with not*
18 *providing it, and that failure to provide the information within 30*
19 *days will result in the assessment of the penalty.*

20 (2) After 30 days following the issuance of the notice described
21 in paragraph (1), assess a one hundred dollar (\$100) penalty, due
22 and payable upon notice and demand, for any licensee failing to
23 provide either its federal employer identification number (if the
24 licensee is a partnership) or his or her social security number (for
25 all others) as required in Section 30 of the Business and Professions
26 Code and Section 1666.5 of the Insurance Code.

27 (c) Notwithstanding Chapter 3.5 (commencing with Section
28 6250) of Division 7 of Title 1 of the Government Code, the
29 information furnished to the Franchise Tax Board pursuant to
30 Section 30 of the Business and Professions Code or Section 1666.5
31 of the Insurance Code shall not be deemed to be a public record
32 and shall not be open to the public for inspection.

33 ~~SECTION 1. Section 494 of the Business and Professions Code~~
34 ~~is amended to read:~~

35 ~~494. (a) A board or an administrative law judge sitting alone,~~
36 ~~as provided in subdivision (h), may, upon petition, issue an interim~~
37 ~~order suspending a licensee or imposing license restrictions,~~
38 ~~including, but not limited to, mandatory biological fluid testing,~~
39 ~~supervision, or remedial training. The petition shall include~~

1 affidavits that demonstrate, to the satisfaction of the board, both
2 of the following:

3 (1) ~~The licensee has engaged in acts or omissions constituting~~
4 ~~a violation of this code or has been convicted of a crime~~
5 ~~substantially related to the licensed activity.~~

6 (2) ~~Permitting the licensee to continue to engage in the licensed~~
7 ~~activity, or permitting the licensee to continue in the licensed~~
8 ~~activity without restrictions, would endanger the public health,~~
9 ~~safety, or welfare.~~

10 (b) ~~An interim order provided for in this section shall not be~~
11 ~~issued without notice to the licensee unless it appears from the~~
12 ~~petition and supporting documents that serious injury would result~~
13 ~~to the public before the matter could be heard on notice.~~

14 (c) ~~Except as provided in subdivision (b), the licensee shall be~~
15 ~~given at least 15 days' notice of the hearing on the petition for an~~
16 ~~interim order. The notice shall include documents submitted to the~~
17 ~~board in support of the petition. If the order was initially issued~~
18 ~~without notice as provided in subdivision (b), the licensee shall be~~
19 ~~entitled to a hearing on the petition within 20 days of the issuance~~
20 ~~of the interim order without notice. The licensee shall be given~~
21 ~~notice of the hearing within two days after issuance of the initial~~
22 ~~interim order, and shall receive all documents in support of the~~
23 ~~petition. The failure of the board to provide a hearing within 20~~
24 ~~days following the issuance of the interim order without notice,~~
25 ~~unless the licensee waives his or her right to the hearing, shall~~
26 ~~result in the dissolution of the interim order by operation of law.~~

27 (d) ~~At the hearing on the petition for an interim order, the~~
28 ~~licensee may do all of the following:~~

29 (1) ~~Be represented by counsel.~~

30 (2) ~~Have a record made of the proceedings, copies of which~~
31 ~~shall be available to the licensee upon payment of costs computed~~
32 ~~in accordance with the provisions for transcript costs for judicial~~
33 ~~review contained in Section 11523 of the Government Code.~~

34 (3) ~~Present affidavits and other documentary evidence.~~

35 (4) ~~Present oral argument.~~

36 (e) ~~The board, or an administrative law judge sitting alone as~~
37 ~~provided in subdivision (h), shall issue a decision on the petition~~
38 ~~for interim order within five business days following submission~~
39 ~~of the matter. The standard of proof required to obtain an interim~~
40 ~~order pursuant to this section shall be a preponderance of the~~

1 evidence standard. If the interim order was previously issued
2 without notice, the board shall determine whether the order shall
3 remain in effect, be dissolved, or modified.

4 (f) The board shall file an accusation within 15 days of the
5 issuance of an interim order. In the case of an interim order issued
6 without notice, the time shall run from the date of the order issued
7 after the noticed hearing. If the licensee files a Notice of Defense,
8 the hearing shall be held within 30 days of the agency's receipt of
9 the Notice of Defense. A decision shall be rendered on the
10 accusation no later than 30 days after submission of the matter.
11 Failure to comply with any of the requirements in this subdivision
12 shall dissolve the interim order by operation of law.

13 (g) Interim orders shall be subject to judicial review pursuant
14 to Section 1094.5 of the Code of Civil Procedure and shall be heard
15 only in the superior court in and for the Counties of Sacramento,
16 San Francisco, Los Angeles, or San Diego. The review of an
17 interim order shall be limited to a determination of whether the
18 board abused its discretion in the issuance of the interim order.
19 Abuse of discretion is established if the respondent board has not
20 proceeded in the manner required by law, or if the court determines
21 that the interim order is not supported by substantial evidence in
22 light of the whole record.

23 (h) The board may, in its sole discretion, delegate the hearing
24 on a petition for an interim order to an administrative law judge
25 in the Office of Administrative Hearings. If the board hears the
26 noticed petition itself, an administrative law judge shall preside at
27 the hearing, rule on the admission and exclusion of evidence, and
28 advise the board on matters of law. The board shall exercise all
29 other powers relating to the conduct of the hearing but may
30 delegate any or all of them to the administrative law judge. When
31 the petition has been delegated to an administrative law judge, he
32 or she shall sit alone and exercise all of the powers of the board
33 relating to the conduct of the hearing. A decision issued by an
34 administrative law judge sitting alone shall be final when it is filed
35 with the board. If the administrative law judge issues an interim
36 order without notice, he or she shall preside at the noticed hearing,
37 unless unavailable, in which case another administrative law judge
38 may hear the matter. The decision of the administrative law judge
39 sitting alone on the petition for an interim order is final, subject
40 only to judicial review in accordance with subdivision (g).

1 (i) ~~Failure to comply with an interim order issued pursuant to~~
2 ~~subdivision (a) or (b) shall constitute a separate cause for~~
3 ~~disciplinary action against a licensee, and may be heard at, and as~~
4 ~~a part of, the noticed hearing provided for in subdivision (f).~~
5 ~~Allegations of noncompliance with the interim order may be filed~~
6 ~~at any time prior to the rendering of a decision on the accusation.~~
7 ~~Violation of the interim order is established upon proof that the~~
8 ~~licensee was on notice of the interim order and its terms, and that~~
9 ~~the order was in effect at the time of the violation. The finding of~~
10 ~~a violation of an interim order made at the hearing on the~~
11 ~~accusation shall be reviewed as a part of any review of a final~~
12 ~~decision of the agency.~~

13 ~~If the interim order issued by the agency provides for anything~~
14 ~~less than a complete suspension of the licensee from his or her~~
15 ~~business or profession, and the licensee violates the interim order~~
16 ~~prior to the hearing on the accusation provided for in subdivision~~
17 ~~(f), the agency may, upon notice to the licensee and proof of~~
18 ~~violation, modify or expand the interim order.~~

19 (j) ~~A plea or verdict of guilty or a conviction after a plea of nolo~~
20 ~~contendere is deemed to be a conviction within the meaning of~~
21 ~~this section. A certified record of the conviction shall be conclusive~~
22 ~~evidence of the fact that the conviction occurred. A board may~~
23 ~~take action under this section notwithstanding the fact that an~~
24 ~~appeal of the conviction may be taken.~~

25 (k) ~~The interim orders provided for by this section shall be in~~
26 ~~addition to, and not a limitation on, the authority to seek injunctive~~
27 ~~relief provided in any other provision of law.~~

28 (l) ~~In the case of a board, a petition for an interim order may be~~
29 ~~filed by the executive officer. In the case of a bureau or program,~~
30 ~~a petition may be filed by the chief or program administrator, as~~
31 ~~the case may be.~~

32 (m) ~~“Board,” as used in this section, shall include any agency~~
33 ~~described in Section 22, and any allied health agency within the~~
34 ~~jurisdiction of the Medical Board of California. Board shall also~~
35 ~~include the Osteopathic Medical Board of California and the State~~
36 ~~Board of Chiropractic Examiners. The provisions of this section~~
37 ~~shall not apply to the Medical Board of California, the Board of~~
38 ~~Podiatric Medicine, or the State Athletic Commission.~~

O

**DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
MAY 29-30 BOARD MEETING**

BILL NUMBER: Senate Bill 1245

AUTHOR: Senator Lieu

SPONSOR:

VERSION: Introduced 02/20/2014

INTRODUCED: 02/20/2014

BILL STATUS: 05/12/2014 – In Senate
Committee on Appropriations:
To Suspense File.

BILL LOCATION: Senate
Appropriations
Committee –
Hearing on
05/23/2014

SUBJECT: Dental Hygiene Committee of
California

**RELATED
BILLS:**

SUMMARY

This bill extends the operation of the Dental Hygiene Committee of California (DHCC) within the jurisdiction of the Dental Board of California (DBC) and provides for an extension of the appointments of the committee members and the executive officer until January 1, 2019.

ANALYSIS

Purpose. This bill is one of six "sunset review bills" authored by the Chair of this Committee. This bill provides for the DHCC to be reviewed by the appropriate policy committees of the Legislature, and makes legislative changes regarding the DHCC recommended in the Committee's background paper.

Oversight Hearings and Sunset Review of Licensing Boards and Commission of DCA. In 2014, the Senate Business and Professions Committee and the Assembly Business, Professions and Consumer Protection Committee (Committees) conducted joint oversight hearings to review 9 regulatory entities: Bureau of Automotive Repair; Bureau of Home Furnishings and Thermal Insulation; Bureau for Private Postsecondary Education (BPPE); California Massage Therapy Certification program; California Board of Acupuncture; California Tax Preparers Program; Dental Hygiene Committee of California; Professional Fiduciaries Bureau; and Structural Pest Control Board. This Committee also reviewed the performance and effectiveness of the Community Interest Development Manager's Certification Program. The Committees began their review of the aforementioned licensing agencies in March and conducted two days of hearings and then more recently held a hearing on the BPPE. This bill, and the accompanying

sunset bills, are intended to implement legislative changes as recommended by staff of the Committee's and which are reflected in the Background Papers prepared by Committee staff for each agency and program reviewed for this year.

Review of the DHCC, Issues Identified and Recommended Changes. There were only six issues raised by the BP&ED Committee and none required any statutory changes; therefore, the only statutory change considered necessary was the possible extension of this Program's sunset date for four years, to January 1, 2019.

a) Issue: DHCC Staff Workload.

Background: The DHCC has indicated that a lack of staff continues to hinder the DHCC's ability to function efficiently in the areas of reviewing applications and auditing continuing education, auditing education programs, promulgating regulations, legislation and utilizing its cite and fine authority. In addition, they have not been able to fulfill their strategic plan objectives. They also note that there are new regulations that require review and processing of additional application types which is anticipated to result in additional workload. Lastly, they outline the need for a managerial position in order to alleviate the EO who is presently over-burdened between office oversight/managerial duties and EO functions. The DHCC suggests that the CalHR standards have been met and thus they should be granted permission to create a managerial position.

Recommendation: The DHCC should confer with administrative staff of the DCA to review the recently submitted request for a managerial position. Both parties should work to create a solution for filling the vacant position in order to assist the DHCC with their increasing workload.

b) Issue: Continued Regulation by the DHCC.

Background: The health, safety and welfare of consumers are protected by a well-regulated dental hygiene profession. Despite a quickly growing profession and the impact of a lack of staff, it appears as if the DHCC has shown a strong commitment to improving efficiency in its operations and protecting the public. As such, the only statutory change considered necessary was the extension of this Committee's sunset date for four years, to January 1, 2019.

Recommendation: The DHCC should be continued with a four-year extension of its sunset date.

[The current language in this measure reflects this recommended change.]

3. Arguments in Support. The California Dental Hygienists' Association supports the bill and writes, "Many hygienists have their own practices outside the dental office setting where they go to the patient to provide preventative care. They visit patients who lack access to a dentist in their region or to those who are not able to visit a dental office [such as] needy students, the elderly in skilled nursing facilities and the developmentally

disabled living in group homes. We are pleased the legislature has provided a way for more Californians to receive the preventative dental care so necessary in order to be healthy. We fully support extending the life of the DHCC."

4. Current Related Legislation. SB 1242 (Lieu, 2014) amends the Automotive Repair Act and updates the sunset provisions for the Bureau of Automotive Repair. (Status: This bill will also be heard before the BP&ED Committee during today's hearing) SB 1243 (Lieu, 2014) Extends until January 1, 2017, the term of the Veterinary Medical Board, which provides for the licensing and registration of veterinarians and registered veterinary technicians and the regulation of the practice of veterinary medicine by the Veterinary Medical Board. The bill also extends the terms of the executive officer of the Veterinary Medical Board. This bill also extends to January 1, 2019, the law regulating the practice of common interest development managers, and the law establishing the California Tax Education Council, which provides for the Council to register and regulate tax preparers. This bill also subjects the Board and programs to be reviewed by the appropriate policy committees of the Legislature. (Status: This bill will also be heard before the BP&ED Committee during today's hearing) SB 1244 (Lieu, 2014) Extends until January 1, 2019 the term of the Structural Pest Control Board which provides for the licensing and regulation of individuals and business involved in the structural pest control industry in California. The bill also extends the term of the Board's executive officer and subjects the Board to be reviewed by the appropriate policy committees of the Legislature. (Status: This bill will also be heard before the BP&ED Committee during today's hearing) SB 1246 (Lieu, 2014) Extends until January 1, 2017 the term of the Acupuncture Board which provides for the licensing and regulation of doctors of acupuncture under the Acupuncture Licensure Act. The bill also subjects the board to be reviewed by the appropriate policy committees of the Legislature. (Status: This bill will also be heard before the BP&ED Committee during today's hearing)

SB 1247 (Lieu, 2014) Extends until January 1, 2019 the term of the California Private Postsecondary Education Act of 2009, which provides for the regulation of private postsecondary educational institutions by the Bureau for Private Postsecondary Education in the Department of Consumer Affairs. The bill also extends the term of the Student Tuition Recovery Fund under the administration of the bureau, and subjects the bureau to review by the appropriate policy committees of the Legislature. (Status: This bill will also be heard before the BP&ED Committee during today's hearing)

REGISTERED SUPPORT / OPPOSITION:

Support

Dental Hygiene Committee of California

Opposition

None on file.

STAFF RECOMMENDATION

Staff recommends a "watch" position.

Introduced by Senator Lieu
(Principal coauthor: Assembly Member Bonilla)

February 20, 2014

An act to amend Sections 1901 and 1903 of the Business and Professions Code, relating to the Dental Hygiene Committee of California.

LEGISLATIVE COUNSEL'S DIGEST

SB 1245, as introduced, Lieu. The Dental Hygiene Committee of California.

Existing law establishes the Dental Hygiene Committee of California, within the jurisdiction of the Dental Board of California, and provides for the appointment of the committee members. Existing law requires the committee to administer the laws regulating dental hygienists. Under existing law those provisions remain in effect only until January 1, 2015.

This bill would extend the operation of those provisions until January 1, 2019.

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

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

- 1 SECTION 1. Section 1901 of the Business and Professions
- 2 Code is amended to read:
- 3 1901. (a) There is hereby created within the jurisdiction of the
- 4 Dental Board of California a Dental Hygiene Committee of
- 5 California in which the administration of this article is vested.

1 (b) This section shall remain in effect only until January 1, ~~2015~~
2 2019, and as of that date is repealed, unless a later enacted statute,
3 that is enacted before January 1, ~~2015~~ 2019, deletes or extends
4 that date. Notwithstanding any other ~~provision~~ of law, the repeal
5 of this section renders the committee subject to review by the
6 appropriate policy committees of the Legislature.

7 SEC. 2. Section 1903 of the Business and Professions Code is
8 amended to read:

9 1903. (a) (1) The committee shall consist of nine members
10 appointed by the Governor. Four shall be public members, one
11 member shall be a practicing general or public health dentist who
12 holds a current license in California, and four members shall be
13 registered dental hygienists who hold current licenses in California.
14 Of the registered dental hygienists members, one shall be licensed
15 either in alternative practice or in extended functions, one shall be
16 a dental hygiene educator, and two shall be registered dental
17 hygienists. No public member shall have been licensed under this
18 chapter within five years of the date of his or her appointment or
19 have any current financial interest in a dental-related business.

20 (2) For purposes of this subdivision, a public health dentist is
21 a dentist whose primary employer or place of employment is in
22 any of the following:

23 (A) A primary care clinic licensed under subdivision (a) of
24 Section 1204 of the Health and Safety Code.

25 (B) A primary care clinic exempt from licensure pursuant to
26 subdivision (c) of Section 1206 of the Health and Safety Code.

27 (C) A clinic owned or operated by a public hospital or health
28 system.

29 (D) A clinic owned and operated by a hospital that maintains
30 the primary contract with a county government to fill the county's
31 role under Section 17000 of the Welfare and Institutions Code.

32 (b) (1) Except as specified in paragraph (2), members of the
33 committee shall be appointed for a term of four years. Each
34 member shall hold office until the appointment and qualification
35 of his or her successor or until one year shall have lapsed since
36 the expiration of the term for which he or she was appointed,
37 whichever comes first.

38 (2) For the term commencing on January 1, 2012, two of the
39 public members, the general or public health dentist member, and
40 two of the registered dental hygienist members, other than the

- 1 dental hygiene educator member or the registered dental hygienist
2 member licensed in alternative practice or in extended functions,
3 shall each serve a term of two years, expiring January 1, 2014.
- 4 (c) Notwithstanding any other provision of law and subject to
5 subdivision (e), the Governor may appoint to the committee a
6 person who previously served as a member of the committee even
7 if his or her previous term expired.
- 8 (d) The committee shall elect a president, a vice president, and
9 a secretary from its membership.
- 10 (e) No person shall serve as a member of the committee for
11 more than two consecutive terms.
- 12 (f) A vacancy in the committee shall be filled by appointment
13 to the unexpired term.
- 14 (g) Each member of the committee shall receive a per diem and
15 expenses as provided in Section 103.
- 16 (h) The Governor shall have the power to remove any member
17 from the committee for neglect of a duty required by law, for
18 incompetence, or for unprofessional or dishonorable conduct.
- 19 (i) The committee, with the approval of the director, may appoint
20 a person exempt from civil service who shall be designated as an
21 executive officer and who shall exercise the powers and perform
22 the duties delegated by the committee and vested in him or her by
23 this article.
- 24 (j) This section shall remain in effect only until January 1, ~~2015~~
25 ~~2019~~, and as of that date is repealed, unless a later enacted statute,
26 that is enacted before January 1, ~~2015~~ ~~2019~~, deletes or extends
27 that date.

**DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
MAY 29-30 BOARD MEETING**

BILL NUMBER: Senate Bill 1258

AUTHOR: Senator DeSaulnier

SPONSOR:

VERSION: Amended 04/23/2014

INTRODUCED: 02/21/2014

BILL STATUS: 05/12/2014 – In Senate
Committee on Appropriations:
To Suspense File.

BILL LOCATION: Senate
Appropriations
Committee –
Hearing on
05/23/2014

SUBJECT: Controlled Substances:
Prescriptions: Reporting

**RELATED
BILLS:**

SUMMARY

This bill: requires the prescribing and dispensing of Schedule V controlled substances to be monitored in the Controlled Substance Utilization Review and Evaluation System (CURES); authorizes an individual who is investigating a holder of a professional license to apply for access to the CURES regarding the controlled substance history of a licensee; requires that controlled substance electronic prescriptions meet specified regulations; and, relates to the allowable time period for certain substance prescriptions.

ANALYSIS

The purpose of this bill is to 1) require controlled substances to be prescribed electronically in compliance with federal DEA standards; 2) add Schedule V controlled substances to the CURES electronic reporting system and Prescription Drug Monitoring Program (PDMP) for tracking prescriptions for controlled substances; 3) grant specific authority to Department of Consumer Affairs investigators to access CURES information if the investigator has probable cause of misconduct by a licensee; 4) limit any controlled substance prescription to a 30-day supply, unless that limit would pose a specified hardship; 5) limit the number of authorized refills of drugs on specified schedules; and 6) impose other additional controls and limits on the prescribing and medical use of controlled substances.

Existing law authorizes a physician and surgeon to prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

* A physician and surgeon shall not be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances according to certain requirements.

* The Medical Board of California (MBC) may take any action against a physician and surgeon who violates laws related to inappropriate prescribing. Provides that a physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist. (Bus. & Prof. Code Section 2241.5.)

Existing law requires the Division of Medical Quality (DMQ) within MBC, to develop standards before June 1, 2002 to ensure competent review in cases concerning the management, including, but not limited to, the under-treatment, under-medication, and overmedication of a patient's pain. Authorizes DMQ to consult with entities such as the American Pain Society, the American Academy of Pain Medicine, the California Society of Anesthesiologists, the California Chapter of the American College of Emergency Physicians, and any other medical entity specializing in pain control therapies to develop the standards utilizing, to the extent they are applicable, current authoritative clinical practice guidelines. (Bus. & Prof. Code Section 2241.6.)

Existing law defines "prescription" as an oral, written, or electronic transmission order that includes certain information. "Electronic transmission prescription" includes both image and data prescriptions and means any prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber and, other than an electronic image transmission prescription, is electronically transmitted from a licensed prescriber to a pharmacy. (Bus. and Prof. Code Section 4040.)

Existing law specifies requirements for pharmacists related to filling oral and electronic data transmission prescriptions (e-prescriptions) and allows a prescriber to authorize his or her agent on his or her behalf to orally or electronically transmit a prescription, except for Schedule II controlled substance orders. (Bus. & Prof. Code Section ; 4070 and 4071.)

Existing law authorizes a pharmacist, registered nurse, licensed vocational nurse, licensed psychiatric technician, or other healing arts licentiate, if authorized by administrative regulation, employed by or serves as a consultant for a licensed skilled nursing, intermediate care, or other health care facility, to orally or electronically transmit a prescription lawfully ordered by a person authorized to prescribe drugs or devices. This authority does not extend to Schedule II controlled substances. (Bus. & Prof. Code Section 4072.)

Existing law defines a drug as:

* A substance recognized as drugs in the official United States Pharmacopoeia,

official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

* A substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; and,

* A substances (other than food) intended to affect the structure or any function of the body of man or animals. (Health & Saf. Code (HSC) Section 11014.)

Existing law defines an opiate as a substance having an addiction-forming or addiction-sustaining effect similar to morphine, or that can be converted into a drug having addiction-forming or addiction-sustaining effects. (Health & Saf. Code Section 11020.)

Existing law classifies controlled substances in five schedules according to their danger and potential for abuse. (Health & Saf. Code Section ; 11054-11058.)

Existing law specifies that a prescription for a controlled substance shall only be issued for a legitimate medical purpose and establishes responsibility for proper prescribing on the prescribing practitioner. A violation shall result in imprisonment for up to one year or a fine of up to \$20,000, or both. (Health & Saf. Code Section 11153.)

Existing law requires special prescription forms for controlled substances to be obtained from security printers approved by DOJ, establishes certain criteria for features on the forms and requires controlled substance prescriptions to be made on the specified form. (Health & Saf. Code Section ; 11161.5, 11162.1, 11164.)

Existing law establishes the Controlled Substances Utilization Review and Evaluation System (CURES) for electronic monitoring of Schedule II, III and IV controlled substance prescriptions.

* CURES provides for electronic transmission of Schedule II, III and IV controlled substance prescription information to the Department of Justice (DOJ) at the time prescriptions are dispensed. (Health & Saf. Code Section 11165.)

* CURES is intended to assist law enforcement and regulatory agencies in controlling diversion and abuse of Schedule II, III and IV controlled substances and for statistical analysis, education and research. (Health & Saf. Code Section 11165, subd. (a).)

Existing law establishes privacy protections for patient data and specifies that CURES data can only be accessed by appropriate state, local and federal public agencies or authorized for disciplinary, civil or criminal actions. CURES data shall also only be provided, as determined by DOJ, to other agencies or entities for educating practitioners and others, in lieu of disciplinary, civil or criminal actions. Non-identifying CURES data can be provided to public and private entities for education, research, peer review and statistical analysis. (Health & Saf. Code Section 11165, subd. (c).)

Existing law provides that a pharmacy or clinic, in filling a controlled substance prescription, shall provide weekly information to DOJ including the patient's name, date of birth, the name, form, strength and quantity of the drug, and the pharmacy name, pharmacy number and the prescribing physician information. (Health & Saf. Code Section 11165, subd. (d).)

Existing law provides that a licensed health care practitioner eligible to prescribe Schedule II, III or IV controlled substances, or a pharmacist, shall apply to participate in the CURES Prescription Drug Monitoring Program (PDMP) by January 1, 2016. DOJ may deny an application or suspend a subscriber for certain violations and falsifying information. A patient's controlled substance CURES received by a practitioner or pharmacy is medical information, subject to provisions of the Confidentiality of Medical Information Act. (Health & Saf. Code Section 11165.1.)

Existing law authorizes DOJ to seek private, voluntary funds from insurers, health care service plans, qualified manufacturers and other donors to support CURES. DOJ shall make all the sources and amounts of such contributions available to the public. (Health & Saf. Code Section 11165.5.)

Existing law requires health practitioners who prescribe or administer a controlled substance classified in Schedule II to make a record containing the name and address of the patient, date, and the character, name, strength, and quantity of the controlled substance prescribed, as well as the pathology and purpose for which the controlled substance was administered or prescribed. (Health & Saf. Code Section 11190, subds. (a) and (b).)

Existing law requires authorized prescribers who dispense Schedule II, III or IV controlled substance in their office or place of practice to record and maintain information for three years for each such prescription that includes the patient's name, address, gender, and date of birth, prescriber's license and license number, federal controlled substance registration number, state medical license number, National Drug Code number of the controlled substance dispensed, quantity dispensed, diagnosis code and original date of dispensing. This information shall be provided to DOJ on a monthly basis. (Health & Saf. Code Section ; 11190, subd. (c) and 11191.)

This bill authorizes a Schedule II controlled substance to be orally or electronically transmitted by a prescriber's agent on his or her behalf.

This bill provides that a person may prescribe, fill, compound, or dispense a prescription for a controlled substance in a quantity not exceeding a 90-day supply if the prescription is issued to treat a panic disorder, attention deficit disorder, chronic debilitating neurologic condition characterized as a movement disorder or exhibiting seizure, convulsive or spasm activity, pain in patients with conditions or diseases known to be chronic or incurable or narcolepsy.

This bill provides that a prescription for a Schedule III or IV controlled substance shall not be refilled more than five times and in an amount, for all refills of that prescription taken together, exceeding a 120-day supply.

This bill prohibits a person from issuing, filling, compounding, or dispensing a prescription for a controlled substance for an ultimate user for whom a previous prescription for a controlled substance was issued within the immediately preceding 30 days until the ultimate user has exhausted all but a seven-day supply of the controlled substance filled, compounded, or dispensed from the previous prescription.

This bill deletes the requirements under current law for controlled substance prescriptions to be made on a specified form and instead requires a prescription for a controlled substance classified in Schedule II, III, IV, or V of the Controlled Substances Act (Act) to be made by an e-prescription that complies with regulations promulgated by the Drug Enforcement Agency (DEA).

This bill requires the prescribing and dispensing of Schedule V controlled substances to be monitored in CURES.

This bill specifies that a prescription for a controlled substance must contain the prescriber's address and telephone number; the name of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services; refill information, such as the number of refills ordered and whether the prescription is a first-time request or a refill; and the name, quantity, strength, and directions for use of the controlled substance prescribed.

This bill specifies that a prescription for a controlled substance must contain the address of the person for whom the controlled substance is prescribed, and specifies that if the prescriber does not specify the address on the prescription, the pharmacist filling the prescription, or an employee acting under the direction of the pharmacist, shall include the address on the prescription or maintain the information in a readily retrievable form in the pharmacy.

This bill deletes the authority for an oral transmission of a controlled substance prescription.

This bill makes certain allowances for a Schedule II, III, IV, or V controlled substance prescription to be transmitted on a form or transmitted orally so that in instances where a technological failure prevents the e-prescription from being received, or in the case of an out-of-state-pharmacist filling the order, the prescription may be written on a specified form so long as it is also signed and dated by a prescriber in ink. For these instances, an agent of the prescriber on his or her behalf may orally transmit the prescription.

This bill requires a pharmacy or hospital to receive e-prescriptions.

This bill requires the prescribing and dispensing of Schedule V controlled substances to be monitored in CURES.

This bill authorizes an individual designated by a board, bureau, or program within the DCA who is investigating the alleged substance abuse of an applicant or a licensee, to submit an application for approval to access CURES information upon a showing of probable cause.

This bill requires DOJ to release electronic history of controlled substances dispensed to the applicant or licensee based on data contained in the CURES to the investigating individual.

This bill prohibits a person from prescribing, filling, compounding or dispensing a prescription for a controlled substance in a quantity exceeding a 30-day supply.

This bill extends the deadline for healthcare providers to comply with electronic prescribing requirements to January 1, 2016.

This bill includes exceptions to the 30-day supply for controlled substance prescriptions for persons who face barriers to obtaining prescriptions for a 30-day supply.

This bill authorizes specified patients to have prescriptions for more than one controlled substance at a time.

According to the author:

The automated Prescription Drug Monitoring Program (PDMP) is a valuable investigative, preventative, and educational tool for healthcare providers, law enforcement, and regulatory boards. However, increased protections are needed to prevent prescription drug abuse and to make the PDMP a better tool. By enabling designated, background-checked investigators at the Department of Consumer Affairs to utilize CURES data, boards will be more quickly able to look into physicians and pharmacists who are being investigated for overprescribing.

Currently, abuse of promethazine-cough syrup and other Schedule V drugs is a public health concern. These drugs are scheduled as controlled substances because it has been determined in federal clinical trials that they do indeed have potential for abuse. However, Schedule V controlled substances are not tracked in CURES. Including tracking of Schedule V drugs, as in 34 states and the District of Columbia, will help to curb abuse.

Prescription pads, despite extensive security features, are prone to theft and fraud by organized criminals. Pads also are prone to error, due to handwriting and transcription errors. Pads also do not track and aggregate population level data in the way that

electronic prescription systems have the potential to do.

Electronic prescribing will reduce prescription pad theft, fraud, and forgery. Ultimately, an electronic prescribing could advance accurate prescribing technology by reducing error and enabling better monitoring.

Lastly, diversion of controlled substances from the patients for whom they were originally prescribed and into the community for illicit use is the main source of abused prescription drugs. A 30-day dosage limit, with flexibility for professional discretion on medical necessity, may reduce the supply of controlled substances available for abuse by the patient and the amount of controlled substances to be given to friends, family, or others within the community without physician supervision. States that have enacted dosage limits, like Rhode Island, have seen significant reductions in prescription narcotic overdose deaths.

The bill contains four operative functions:

1. Mandates that controlled substances be prescribed electronically to reduce error rates, eliminate prescription pad fraud and theft.
2. Limits the amount of controlled substance prescription to a quantity not to a 30-day supply, thus limiting controlled substances available for diversion in the community.
3. Adds schedule V controlled substances to be monitored by the CURES program to better monitor controlled substances prior to epidemic abuse occurring.
4. Allows designated investigators at the Department of Consumer Affairs to access the CURES data for purposes of investigations of licensees to establish misconduct or clear the person's name.

2. Recent Amendments Address Some Concerns Raised in Prior Hearings

This bill was the subject of a lengthy hearing in the Senate Business, Professions and Economic Development Committee on April 21, 2014. In response to concerns raised by the California Hospital Association (CHA) and the California Medical Association (CMA), the author agreed to the following amendments prior to the hearing of the bill is this Committee on April 29, 2014. The bill was amended on April 23, 2014 to do the following:

Lengthen the timeline for mandatory electronic prescribing and exempt certain providers.

The amendments extend the deadline for e-prescribing of controlled substances from January 1, 2015 to January 1, 2016 to allow healthcare providers to update systems to ensure safe e-prescribing. The deadline for practices of no more than two practitioners, and providers in rural areas was set at January 1, 2017, as small practices, especially in

rural areas, will have difficulty acquiring and implementing e-prescribing systems that meet DEA requirements.

Provide for Certain Exemptions from the 30-Day Supply Limit for Controlled Substances Prescriptions.

The amendments provide that physicians can prescribe controlled substances in excess of the 30-day supply limit in cases of a documented and noted medical necessity.

Clarify Grounds for Access to CURES and PDMP information by Department of Consumer Affairs Investigators.

The amendments specifically provide that an investigator designated by a Department of Consumer Affairs to investigate alleged controlled substance abuse by a professional licensee shall be supported by probable cause. The amendments strike a reference to license applicants in this regard.

Make Technical Corrections

The technical and clarifying amendments ensure that patients are not prohibited from having more than one controlled substance prescription at one time.

3. National All Schedules Prescription Electronic Reporting (NASPER) Act of 2005 - Federal Grants to States for Electronic Reporting of Controlled Substance Prescriptions

NASPER was signed into law on August 12, 2005. The purpose of the Act is to "foster the establishment of state-administered controlled substance monitoring systems in order to ensure that health care providers have access to the accurate, timely prescription history information that they may use as a tool for the early identification of patients at risk for addiction in order to initiate appropriate medical interventions and avert the ... consequences of untreated addiction." The additional purpose of the Act is to establish "best practices ... [for] new state programs and the improvement of existing programs."^[1]

The Act included a grant program under which a state submits an application to demonstrate how the state has adopted an electronic controlled substance reporting system that complies with federal guidelines. These guidelines appear to require electronic reporting and evaluation of prescriptions for controlled substances in Schedules II, III and IV and frequent reporting of data.

4. California CURES Data Processed by Private Contractor - Atlantic Associates, a New Hampshire Corporation

By statute, DOJ is tasked with operating CURES. DOJ has contracted with private entities to handle and process CURES data. DOJ previously contracted with Infinite

Solutions. DOJ now uses Atlantic Associates, a firm headquartered in Manchester New Hampshire specializing in prescription drug data management.[2]

The company Website states: "AAI serves as a liaison between the State agencies, the pharmacies and their software vendors to ensure the State agencies in charge of the PMP's has the time to concentrate on core operations, leaving all the Pharmacy support, clerical duties and file processing to us."

5. Electronic Prescribing

Electronic Prescribing Generally

Electronic prescribing is lauded as a key component in the future of health care and one of many strategies states have promoted in an attempt to improve patient safety and quality of care while reducing health care costs. Streamlining the practice of medicine to be more efficient through tools such as e-prescribing and electronic health care records has the potential to, among other benefits, minimize dangerous prescription errors. In November of 1999, the Institute of Medicine (IOM) released a report, "To Err is Human: Building a Safer Health System," which found that approximately 7,000 hospital patients die annually across the country from preventable medication-related errors. The IOM report found that 2 out of every 100 hospital patients will die or be injured as a result of preventable medication errors, and that each medication error increases the cost of a hospital stay by an average of \$4,700. A white paper issued in 2000 by the Institute for Safe Medications Practices (ISMP) called for the elimination of handwritten prescriptions within 3 years. The ISMP paper stated that the health care industry has been slow to adopt new technologies, and that prescription writing is perhaps the most important paper transaction remaining in our increasingly digital society. Previous hurdles to modernization seem to be phasing out, as doctors more frequently utilize computers personal digital assistants (PDAs) and the hardware and software that will allow for electronic prescribing are more readily available.

A November 2008 issue brief by the California HealthCare Foundation (CHCF) entitled, "The Outlook for Electronic Prescribing in California" reported that in 2007, California's retail pharmacies (excluding Kaiser and the Veterans Administration) filled more than 268 million prescriptions, but, of these transactions, only about 2.4 million were sent electronically between physician practices and pharmacies. While this amount is a significant improvement from the 311,097 recorded in 2005, it represented only 1.2 percent of the total prescriptions written in California each year. The CHCF report stated that the adoption of e-prescribing in California has been slow for a number of reasons, including the cost involved in implementing the technology at provider practices, clinics and pharmacies, legal restrictions that prevent electronic prescribing of controlled substance prescriptions, and fees associated with using electronic prescribing networks.

In 2008, the U.S. Congress passed the Medicare Improvements for Patients and Providers Act (MIPPA) which contained electronic prescribing incentive payments

starting in 2009, and imposed penalties for those who do not adopt e-prescribing by 2012. Specifically, pursuant to MIPPA, providers would receive a reimbursement bonus of 2 percent from Medicare for switching to e-prescribing by 2009, an amount that is reduced to 1 percent in 2011 and 0.5 percent in 2013. Providers who failed to make use of the technology would begin to see their payments decreased by 1 percent in 2012, 1.5 percent in 2013, and 2 percent in 2014 and beyond.

DEA Regulation of Electronic Prescriptions for Controlled Substances

The use of electronic prescriptions for controlled substances is part of a push for conversion of all medical records to electronic forms. It appears that implementation of the Affordable Care Act will accelerate the transition to electronic medical records, including prescribing and dispensing of controlled substances.

The federal DEA has been developing regulations and standards for electronic prescribing of controlled substances. A glance at the DEA Website concerning electronic controlled substance prescriptions demonstrates that the subject and the DEA directives are very detailed and complex. Physicians and medical organizations have testified that meeting the DEA requirements for electronic prescribing of controlled substances for many practitioners will be burdensome, if not impossible. It is clear from the DEA publications and commentaries that the agency has serious concerns about the security of electronic prescriptions, especially because entities with different electronic systems must communicate rapidly and often have to handle the information involved in these transactions.

As noted above, the DEA Website on electronic prescribing is extensive and complex. The DEA Website summarizes the agency's main requirements for electronic prescribers:

Based on DEA's concerns, certain requirements must exist for any system to be used for the electronic prescribing of controlled substances:

Only DEA registrants may be granted the authority to sign controlled substance electronic prescriptions. The approach must, to the greatest extent possible, protect against the theft of registrants' identities. The method used to authenticate a practitioner to the electronic prescribing system must ensure to the greatest extent possible that the practitioner cannot repudiate the prescription. Authentication methods that can be compromised without the practitioner being aware of the compromise are not acceptable. The prescription records must be reliable enough to be used in legal actions (enforcing laws relating to controlled substances) without diminishing the ability to establish the relevant facts and without requiring the calling of excessive numbers of witnesses to verify records. The security systems used by any electronic prescription application must, to the greatest extent possible, prevent the possibility of insider creation or alteration of controlled substance prescriptions.[3]

6. Fourth Amendment Issues

It appears from the history of bills on the California CURES system, similar programs in other states and federal controlled substance monitoring that it has been largely assumed that allowing law enforcement access to controlled substance prescription information or data does not violate the 4th Amendment prohibition on unreasonable searches and seizures. However, it does appear that challenges are being made to law enforcement access to these systems.

The American Civil Liberties Union (ACLU) joined with the State of Oregon to challenge a DEA claim that the agency could obtain Oregon prescription records with a non-judicial administrative subpoena, not a warrant. The Oregon prescription drug monitoring law includes a requirement that law enforcement agencies obtain a warrant to access information in the database for an investigation:

In 2009, the Oregon legislature created the Oregon Prescription Drug Monitoring Program, a database that tracks prescriptions for use as a public health tool by physicians and pharmacists. The state included privacy protections, including a warrant requirement for police access. However, the DEA claimed that a federal law allowed them to access the database using only an "administrative subpoena," which does not involve a judge or require the government to show probable cause

"We opposed creating a massive database that would contain the prescription records of Oregon patients and physicians who had done nothing wrong," said David Fidanque, executive director of the ACLU of Oregon. "Nevertheless, we helped convince Oregon lawmakers to add important safeguards to the program, and we're pleased that the court has recognized the importance of protecting medical privacy.

The State of Oregon filed a lawsuit against the DEA, and the ACLU joined the case. Today's ruling granted the ACLU's motion for summary judgment and denied the federal government's motion, with the result that the DEA must get a warrant to access the prescription records in Oregon. (*Italics added.*)[4]

7. Controlled Substances - Definitions and Background

Through the Controlled Substances Act of 1970, the federal government regulates the manufacture, distribution and dispensing of controlled substances. The act ranks drugs into five schedules with decreasing potential for physical or psychological harm, based on three considerations: (a) their potential for abuse; (b) their accepted medical use; and, (c) their accepted safety under medical supervision. Federal law includes relatively detailed explanations of the factors and standards for placement of drugs in the various schedules. California law does not explain how the schedules are organized.

Schedule I controlled substances, such as heroin, ecstasy, and LSD, have a high potential for abuse and no generally accepted medical use. Schedule II controlled substances have a currently accepted medical use in treatment, or a currently accepted

medical use with severe restrictions, and have a high potential for abuse and psychological or physical dependence. Schedule II drugs can be narcotics or non-narcotic. Examples of Schedule II controlled substances include morphine, methadone, Ritalin, Demerol, Dilaudid, Percocet, Percodan, and Oxycontin. Schedule III and IV controlled substances have a currently accepted medical use in treatment, less potential for abuse but are known to be mixed in specific ways to achieve a narcotic-like end product. Examples include drugs include Vicodin, Zanax, Ambien and other anti-anxiety drugs. Schedule V drugs have a low potential for abuse relative to substances listed in Schedule IV and consist primarily of preparations containing limited quantities of certain narcotics.

The three classes of prescription drugs that are most commonly abused are: opioids, which are most often prescribed to treat pain; central nervous system (CNS) depressants, which are used to treat anxiety and sleep disorders; and stimulants, which are usually prescribed to treat the sleep disorder narcolepsy and attention-deficit hyperactivity disorder (ADHD). Most of the drugs in each class of drugs can induce euphoria or intoxication. When drugs producing euphoria or intoxication are administered by routes other than recommended, such as snorting or dissolving into a liquid to drink or inject, the effect of the drug is typically intensified. Synthetic opioids act on the same receptors as heroin and morphine and therefore can be highly addictive. Common opioids are: hydrocodone (Vicodin), oxycodone (OxyContin), propoxyphene (Darvon), hydromorphone (Dilaudid), meperidine (Demerol), and diphenoxylate (Lomotil).

8. Prescription Drug Abuse

For the past number of years, abuse of prescription drugs (taking a prescription medication that is not prescribed for you, or taking it for reasons or in dosages other than as prescribed) to get high has become increasingly prevalent. Federal data shows in the past year abuse of prescription pain killers now ranks second, just behind marijuana, as the nation's most widespread illegal drug problem. According to the 2008 National Survey on Drug Use and Health (NSDUH), approximately 52 million Americans aged 12 or older reported non-medical use of any psychotherapeutic at some point in their lifetimes, representing 20.8% of the population aged 12 or older. The National Institute on Drug Abuse's (NIDA) research report Prescription Drugs: Abuse and Addiction states that the elderly are among those most vulnerable to prescription drug abuse or misuse because they are prescribed more medications than their younger counterparts. Persons 65 years of age and above comprise only 13 percent of the population, yet account for approximately one-third of all medications prescribed in the United States. Older patients are more likely to be prescribed long-term and multiple prescriptions, which could lead to unintentional misuse. The report also notes that studies suggest that women are more likely (in some cases, 55 percent more likely) than men to be prescribed a drug which can be abused, particularly narcotics and anti-anxiety drugs. A 2010 report, Monitoring the Future Study, showed that as many as 4 percent of high school students and 3 percent of young adults say they have used OxyContin in the past year.

Abuse can stem from the fact that prescription drugs are legal and potentially more easily accessible, as they can be found at home in a medicine cabinet. Data shows that individuals who misuse prescription drugs, particularly teens, believe these substances are safer than illicit drugs because they are prescribed by a health care professional and thus are safe to take under any circumstances. NIDA data states that in actuality, prescription drugs act directly or indirectly on the same brain systems affected by illicit drugs, thus, their abuse carries substantial addiction liability and can lead to a variety of other adverse health effects.

The Senate Committee on Labor held a hearing on March 20, 2013 entitled Opioids and the Workers Compensation System: A Discussion on Mitigating Abuse and Ensuring Access, during which the Committee reviewed a series of studies conducted by the California Workers' Compensation Institute (CWCI) which highlighted a rise in opioid prescriptions by physicians in the state workers' compensation system. The studies identified trends in widespread, potent use of Schedule II drugs by patients with low back pain, significant growth in the prescribing of all Schedule II drugs in the workers' compensation system, and found that 6.7 percent of all prescriptions in the system for the first half of 2011 alone were for opioids.

9. Prescription Drug Deaths

A 2013 Centers for Disease Control (CDC) analysis found that drug overdose deaths increased for the 11th consecutive year in 2010 and prescription drugs, particularly opioid analgesics, are the top drugs leading the list of those responsible for fatalities. According to CDC, 38,329 people died from a drug overdose in 2010, up from 37,004 deaths in 2009, and 16,849 deaths in 1999. CDC found that nearly 60 percent of the overdose deaths in 2010, involved pharmaceutical drugs, with opioids associated with approximately 75 percent of these deaths. Nearly three out of four prescription drug overdoses are caused by opioid pain relievers. CDC recommends the use of PDMPs with a focus on both patients at highest risk in terms of prescription painkiller dosage, numbers of prescriptions and numbers of prescribers, as well as prescribers who deviate from accepted medical practice and those with a high proportion of doctor shoppers among their patients. CDC also recommends that PDMPs link to electronic health records systems so that the information is better integrated into health care providers' day-to-day practices. CDC believes that state benefits programs like Medicaid and workers' compensation should consider monitoring prescription claims information and PDMP data for signs and inappropriate use of controlled substances. The organization also acknowledges the value of PDMPs in taking regulatory action against health care providers who do operate outside the limits of appropriate medical practice when it comes to prescription drug prescribing.

A 2012-13 Los Angeles Times series, "Dying For Relief," highlighted the role of prescription drugs in overdose deaths as determined through the examination of coroners' reports. Reporters conducted an analysis of coroners' reports for over 3000 deaths occurring in four counties (Los Angeles, Orange, Ventura and San Diego) where

toxicology tests found a prescription drug in the deceased's system, usually a painkiller, anti-anxiety drug or other narcotic; coroners' investigators reported finding a container of the same medication bearing the doctor's name, or records of a prescription; the coroner determined that the drug caused or contributed to the death. The analysis found that in nearly half of the cases where prescription drug toxicity was listed as the cause of death, there was a direct connection to a prescribing physician. The Times created a database linking overdose deaths to the doctors who prescribed drugs. They also found that more than 80 of the doctors whose names were listed on prescription bottles found at the home of or on the body of a decedent had been the prescribing physician for 3 or more dead patients. Their analysis found that one doctor was linked to as many as 16 dead patients.

10. Prescription Drug Monitoring and CURES

With rising levels of abuse, PDMPs are a critical tool in assisting law enforcement and regulatory bodies with their efforts to reduce drug diversion. 49 states currently have monitoring programs (Missouri is the only state currently without a PDMP). California has the oldest prescription drug monitoring program in the nation. Of these 50 programs throughout the nation, seven are or will be housed at the state's Department of Justice, 18 are or will be housed at a state Department of Health or substance abuse agency and 25 are or will be housed at a state Board of Pharmacy or state professional licensing agency. There currently is momentum to share data across these programs from state to state. The National Boards of Pharmacy (NABP) currently operates a PDMP, InterConnect, that allows participating states to be linked, providing a more effective means of combating drug diversion and drug abuse nationwide. It is anticipated that approximately 30 states will be sharing data or in a Memorandum of Understanding to share data using InterConnect by the end of 2014.

In California, CURES is an electronic tracking program that reports all pharmacy (and specified types of prescriber) dispensing of controlled drugs by drug name, quantity, prescriber, patient, and pharmacy. AB 3042 (Takasugi, Chapter 738, Statutes of 1996) established a three year pilot program, beginning in July 1997, for the electronic monitoring of prescribing and dispensing of Schedule II controlled substances. Subsequent legislation (SB 1308, Committee on Business and Professions, Chapter 655, Statutes of 1999) extended the sunset date on the CURES program to July 1, 2003 and required DOJ to submit annual status reports on the program to the Legislature. In 2002, the Legislature passed AB 2655 (Matthews, Chapter 345, Statutes of 2002) which extended the CURES program to 2008 and provided access to CURES data by licensed health care providers. Finally, in 2003, SB 151 (Burton, Chapter 406, Statutes of 2003) made the program permanent. In 2009, then Attorney General Brown launched an online CURES system at DOJ to replace the previous system that required mailing or faxing written requests for information, giving health professionals (doctors, pharmacists, midwives, and registered nurses), law enforcement agencies and medical profession regulatory boards instant computer access to patients' controlled-substance records.

Data from CURES is managed by DOJ to assist state law enforcement and regulatory agencies in their efforts to reduce prescription drug diversion. DOJ hires a private contractor to actually manage the information in CURES. CURES provides information that offers the ability to identify if a person is "doctor shopping" (when a prescription-drug addict visits multiple doctors to obtain multiple prescriptions for drugs, or uses multiple pharmacies to obtain prescription drugs). Information tracked in the system contains the patient name, prescriber name, pharmacy name, drug name, amount and dosage, and is available to law enforcement agencies, regulatory bodies and qualified researchers. The system can also report on the top drugs prescribed for a specific time period, drugs prescribed in a particular county, doctor prescribing data, pharmacy dispensing data, and is a critical tool for assessing whether multiple prescriptions for the same patient may exist. In addition to the Board, CURES data can be obtained by the MBC, Dental Board of California, Board of Registered Nursing, Osteopathic Medical Board of California and Veterinary Medical Board.

Since 2009, more than 8,000 doctors and pharmacists have signed up to use CURES, which has more than 100 million prescriptions. The system also has been accessed more than 1 million times for patient activity reports and has been key in investigations of doctor shoppers and nefarious physicians. According to the AG's office, CURES assisted in targeting the top 50 doctor shoppers in the state, who averaged more than 100 doctor and pharmacy visits to collect massive quantities of addictive drugs and the crackdown led to the arrest of dozens of suspects. CURES also provided information with the prescribing history of a Southern California physician accused of writing hundreds of fraudulent prescriptions to feed his patients' drug addictions, seven of whom died from prescription-drug overdoses. The system has also been successful in alerting law enforcement and licensed medical professionals to signs of illegal drug diversions, including a criminal ring that stole the identities of eight doctors, illegally wrote prescriptions, stole the identities of dozens of innocent citizens who they designated as patients in order to fill the fraudulent prescriptions, resulting in the group obtaining more than 11,000 pills of highly addictive drugs like OxyContin and Vicodin. DOJ is currently in the process of modernizing CURES to more efficiently serve prescribers, pharmacists and entities that may utilize the data.

11. Limits on Prescribing Controlled Substances

In response to rising concerns about the quantity of certain prescriptions, a number of entities and states have attempted to address issues related to the amount of controlled substances that can be prescribed in a given time frame, with exceptions usually made for certain types of patients like those suffering from cancer or other terminal illnesses and diagnosed chronic pain conditions as a means of preventing abuse and death. Examples of states limiting controlled substance prescriptions, include: Maine, whose MaineCare (Maine's Medicaid) allowed a 45 day maximum prescription for non-cancer pain beginning in April, 2012; Washington state (described in detail below); Rhode Island, which requires a physical examination prior to prescribing a controlled substance; Ohio, whose Medical Board guidelines recently were updated to include an 80mg/day Morphine Equivalent Dose/day (MED/d) dosing "yellow flag"; and

Connecticut, whose workers compensation policy was updated in 2013 to advise that the total daily dose of opioids should not be increased above 90mg oral MED/d unless the patient improves in function, pain, or work capacity.

Updates to prescriber guidelines are also being undertaken to address the possible role of overprescribing in prescription drug abuse. In California, MBC is currently working to update its Guidelines for Prescribing Controlled Substances for Pain and policy statement entitled "Prescribing Controlled Substances for Pain." Stemming from studies and discussions about controlled substances, this policy statement was designed to provide guidance to improve prescriber standards for pain management, while simultaneously undermining opportunities for drug diversion and abuse. The guidelines outline appropriate steps related to a patient's examination, treatment plan, informed consent, periodic review, consultation, records, and compliance with controlled substances laws. Guidelines are used by physicians as well as MBC in its regulation of licensees.

In 2007, the Washington State Agency Medical Director's Group (AMDG), a collaboration of state agencies, joined with clinical scholars to revise the state's prescriber guidelines. The Interagency Guidelines on Opioid Dosing for Chronic Non Cancer Pain advises "that providers not exceed a dosing threshold of 120 mg MED/d for patients who did not have clinically meaningful improvement in pain and function without first obtaining a pain specialist consultation." According to studies and outcomes following the implementation of the guidelines for workers compensation patients, this threshold was found to specifically lower long-acting Schedule II drugs by 27 percent and cut the amount of workers on doses greater than or equal to 120 mg/day MED by 35 percent. The guidelines and this limit is seen as not only helping combat substance abuse but also helping preserve funds for the state's workers compensation program. Most notably, studies in Washington highlighted that the mortality rate decreased by 50 percent after the 120 mg MED/d threshold was implemented. Along with the

implementation of this threshold, Washington also provided tools for calculated dosages of opioids during treatment and when tapering should begin. Washington was also the first state to repeal intractable pain laws that allowed long-term opioid therapy without a threshold.

REGISTERED SUPPORT / OPPOSITION:

Support

California Statewide Law Enforcement Association
California Narcotic Officers Association
California Police Chiefs Association
National Coalition Against Prescription Drug Abuse
Troy and Alana Pack Foundation

Opposition

American Civil Liberties Union (Unless Amended)
Association of Northern California Oncologists

California Hospital Association
California Medical Association
Medical Oncology Association of Southern California

STAFF RECOMMENDATION

Staff recommends a “watch” position.

AMENDED IN SENATE APRIL 23, 2014
AMENDED IN SENATE MARCH 25, 2014

SENATE BILL

No. 1258

Introduced by Senator DeSaulnier

February 21, 2014

An act to amend Sections 4071 and 4072 of the Business and Professions Code, and to amend Sections 11151, 11158, 11164, 11164.1, 11164.5, 11165, 11165.1, 11165.5, 11166, and 11200 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 1258, as amended, DeSaulnier. Controlled substances: prescriptions: reporting.

(1) Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe or dispense these controlled substances. Existing law requires specified information regarding prescriptions for Schedule II, Schedule III, and Schedule IV controlled substances, including the ultimate user of the prescribed controlled substance and the National Drug ~~Control~~ *Code* number of the controlled substance dispensed, to be reported to the Department of Justice.

This bill would additionally require the prescribing and dispensing of Schedule V controlled substances to be monitored in CURES and would require specified information regarding prescriptions for Schedule V controlled substances to be reported to the Department of Justice.

(2) Existing law requires licensed health care practitioners, as specified, and pharmacists to apply to the Department of Justice to obtain approval to access information contained in the CURES Prescription Drug Monitoring System Program (PDMP) regarding the controlled substance history of a patient under his or her care. Existing law requires the Department of Justice, upon approval of that application, to provide to that health care practitioner or pharmacist the history of controlled substances dispensed to an individual under his or her care.

This bill would also authorize an individual designated to investigate ~~an applicant for, or a holder of,~~ of a professional license to apply to the Department of Justice to obtain approval to access information contained in the CURES PDMP regarding the controlled substance history of ~~an applicant or a licensee~~ for the purpose of investigating the alleged substance abuse of ~~an applicant or a licensee~~. The bill would, upon approval of that application, require the department to provide to that individual the history of controlled substances dispensed to the applicant or licensee.

(3) Existing law generally requires, subject to specified exceptions, that a prescription for Schedule II, Schedule III, Schedule IV, or Schedule V controlled substances be made on a certain controlled substance prescription form and meet several requirements, including that the prescription be signed and dated by the prescriber in ink. Existing law authorizes, as an exception to that requirement, a Schedule III, Schedule IV, or Schedule V controlled substance to be dispensed upon an oral or electronically transmitted prescription, which must be produced in hard copy form and signed and dated by the pharmacist filling the prescription or another authorized person.

This bill would instead require, subject to specified exceptions, *commencing January 1, 2016*, that a prescription for a controlled substance be made by an electronically transmitted prescription that complies with regulations promulgated by the Drug Enforcement Agency, which, except as specified, must be produced in hard copy form and signed and dated by the pharmacist filling the prescription or another authorized person. *The bill would provide that those requirements apply to medical practices with 2 or fewer physicians and medical providers in underserved rural areas commencing January 1, 2017.*

(4) Existing law prohibits a prescription for a Schedule II controlled substance from being refilled and prohibits a prescription for a Schedule

III or IV controlled substance from being refilled more than 5 times and in an amount, for all refills of that prescription taken together, exceeding a 120-day supply.

This bill would prohibit, subject to specified exceptions, a person from prescribing a controlled substance, or filling, compounding, or dispensing a prescription for a controlled substance, in a quantity exceeding a ~~30-day~~ 30-day supply. The bill would also prohibit a person from issuing a prescription for a controlled substance, or from filling, compounding, or dispensing a prescription for a controlled substance, for an ultimate user for whom a previous prescription for ~~a that~~ that controlled substance was issued within the immediately preceding 30 days until the ultimate user has exhausted all but a 7-day supply of ~~the~~ that controlled substance filled, compounded, or dispensed from the previous prescription.

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

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

1 SECTION 1. Section 4071 of the Business and Professions
2 Code is amended to read:

3 4071. Notwithstanding any other ~~provision of~~ law, a prescriber
4 may authorize his or her agent on his or her behalf to orally or
5 electronically transmit a prescription to the furnisher. The furnisher
6 shall make a reasonable effort to determine whether the person
7 who transmits the prescription is authorized to do so and shall
8 record the name of the authorized agent of the prescriber who
9 transmits the order.

10 SEC. 2. Section 4072 of the Business and Professions Code is
11 amended to read:

12 4072. (a) Notwithstanding any other law, a pharmacist,
13 registered nurse, licensed vocational nurse, licensed psychiatric
14 technician, or other healing arts licentiate, if so authorized by
15 administrative regulation, who is employed by or serves as a
16 consultant for a licensed skilled nursing, intermediate care, or other
17 health care facility, may orally or electronically transmit to the
18 furnisher a prescription lawfully ordered by a person authorized
19 to prescribe drugs or devices pursuant to Sections 4040 and 4070.
20 The furnisher shall take appropriate steps to determine whether
21 the person who transmits the prescription is authorized to do so

1 and shall record the name of the person who transmits the order.
2 This section does not apply to oral orders for Schedule II controlled
3 substances.

4 (b) In enacting this section, the Legislature recognizes and
5 affirms the role of the State Department of Public Health in
6 regulating drug order processing requirements for licensed health
7 care facilities as set forth in Title 22 of the California Code of
8 Regulations as they may be amended from time to time.

9 SEC. 3. Section 11151 of the Health and Safety Code is
10 amended to read:

11 11151. A prescription issued by an unlicensed person lawfully
12 practicing medicine pursuant to Section 2065 of the Business and
13 Professions Code, shall be filled only at a pharmacy maintained
14 in the hospital which employs ~~such~~ that unlicensed person.

15 SEC. 4. Section 11158 of the Health and Safety Code is
16 amended to read:

17 11158. (a) Except as provided in Section 11159, 11159.1,
18 11159.2, 11167, or 11167.5, or in subdivision (b) of this section,
19 a controlled substance classified in Schedule II shall not be
20 dispensed without a prescription meeting the requirements of this
21 chapter. Except as provided in Section 11159, 11159.1, 11159.2,
22 11167, or 11167.5, or when dispensed directly to an ultimate user
23 by a practitioner, other than a pharmacist or pharmacy, a controlled
24 substance classified in Schedule III, IV, or V shall not be dispensed
25 without a prescription meeting the requirements of this chapter.

26 (b) A practitioner specified in Section 11150 may dispense
27 directly to an ultimate user a controlled substance classified in
28 Schedule II in an amount not to exceed a 72-hour supply for the
29 patient in accordance with directions for use given by the
30 dispensing practitioner only if the patient is not expected to require
31 any additional amount of the controlled substance beyond the 72
32 hours.

33 (c) Except as otherwise prohibited or limited by law, a
34 practitioner specified in Section 11150, may administer controlled
35 substances in the regular practice of his or her profession.

36 SEC. 5. Section 11164 of the Health and Safety Code is
37 amended to read:

38 11164. Except as provided in Section 11158, 11159, 11159.1,
39 11159.2, 11167, or 11167.5, a person shall not prescribe a
40 controlled substance, nor shall any person fill, compound, or

1 dispense a prescription for a controlled substance, unless it
2 complies with the requirements of this section.

3 (a) (1) ~~A~~—(A) *Except as provided in subparagraph (B),*
4 *commencing January 1, 2016,* a prescription for a controlled
5 substance classified in Schedule II, III, IV, or V shall be made by
6 an electronically transmitted prescription that complies with
7 regulations promulgated by the *United States Drug Enforcement*
8 ~~Agency Administration~~, which shall be produced in hard copy
9 form and signed and dated by the pharmacist filling the prescription
10 or by any other person expressly authorized by provisions of the
11 Business and Professions Code. Any person who transmits,
12 maintains, or receives any electronically transmitted prescription
13 shall ensure the security, integrity, authority, and confidentiality
14 of the prescription.

15 (B) *For medical practices with two or fewer physicians, and*
16 *for medical providers in underserved rural areas, the requirements*
17 *in subparagraph (A) shall apply commencing January 1, 2017.*

18 (2) A prescription issued pursuant to this subdivision shall meet
19 the following requirements:

20 (A) The prescription shall contain the prescriber’s address and
21 telephone number; the name of the ultimate user or research
22 subject, or contact information as determined by the Secretary of
23 the United States Department of Health and Human Services; refill
24 information, such as the number of refills ordered and whether the
25 prescription is a first-time request or a refill; and the name,
26 quantity, strength, and directions for use of the controlled substance
27 prescribed.

28 (B) The prescription shall contain the address of the person for
29 whom the controlled substance is prescribed. If the prescriber does
30 not specify this address on the prescription, the pharmacist filling
31 the prescription or an employee acting under the direction of the
32 pharmacist shall include the address on the prescription or maintain
33 this information in a readily retrievable form in the pharmacy.

34 (3) Pursuant to an authorization of the prescriber, an agent of
35 the prescriber on behalf of the prescriber may electronically
36 transmit a prescription for a controlled substance classified in
37 Schedule II, III, IV, or V, if the prescription specifies the name of
38 the agent of the prescriber transmitting the prescription.

39 (b) (1) A prescription for a controlled substance classified in
40 Schedule II, III, IV, or V, may be written on a controlled substance

1 prescription form as specified in Section 11162.1, or for a
2 controlled substance classified in Schedule III, IV, or V, may be
3 made orally, if technological failure prevents the electronic
4 transmission of a prescription pursuant to subdivision (a) or if the
5 prescription will be filled by a pharmacist located outside of
6 California, provided that the order contains all information required
7 by subdivision (a) and, if the prescription is written on a controlled
8 substance prescription form, is signed and dated by the prescriber
9 in ink.

10 (2) If a prescriber is permitted to make an oral prescription
11 pursuant to this section, pursuant to an authorization of the
12 prescriber, an agent of the prescriber on behalf of the prescriber
13 may orally transmit a prescription for a controlled substance
14 classified in Schedule II, III, IV, or V, if the written record of the
15 prescription specifies the name of the agent of the prescriber
16 transmitting the prescription.

17 (c) The use of commonly used abbreviations shall not invalidate
18 an otherwise valid prescription.

19 (d) Notwithstanding any provision of subdivisions (a) and (b),
20 prescriptions for a controlled substance classified in Schedule V
21 may be for more than one person in the same family with the same
22 medical need.

23 SEC. 6. Section 11164.1 of the Health and Safety Code is
24 amended to read:

25 11164.1. (a) (1) Notwithstanding any other law, a prescription
26 for a controlled substance issued by a prescriber in another state
27 for delivery to a patient in another state may be dispensed by a
28 California pharmacy, if the prescription conforms with the
29 requirements for controlled substance prescriptions in the state in
30 which the controlled substance was prescribed.

31 (2) All prescriptions for Schedule II, Schedule III, Schedule IV,
32 and Schedule V controlled substances dispensed pursuant to this
33 subdivision shall be reported by the dispensing pharmacy to the
34 Department of Justice in the manner prescribed by subdivision (d)
35 of Section 11165.

36 (b) Pharmacies may dispense prescriptions for Schedule III,
37 Schedule IV, and Schedule V controlled substances from
38 out-of-state prescribers pursuant to Section 4005 of the Business
39 and Professions Code and Section 1717 of Title 16 of the California
40 Code of Regulations.

1 SEC. 7. Section 11164.5 of the Health and Safety Code is
2 amended to read:

3 11164.5. (a) A pharmacy or hospital shall receive electronic
4 data transmission prescriptions or computer entry prescriptions or
5 orders as specified in Section 4071.1 of the Business and
6 Professions Code, for controlled substances in Schedule II, III, IV,
7 or V in accordance with regulations promulgated by the *United*
8 *States Drug Enforcement Administration*.

9 (b) Notwithstanding paragraph (1) of subdivision (a) of Section
10 11164, a pharmacy or hospital receiving an electronic transmission
11 prescription or a computer entry prescription or order for a
12 controlled substance classified in Schedule II, III, IV, or V is not
13 required to reduce that prescription or order to writing or to hard
14 copy form, if for three years from the last day of dispensing that
15 prescription, the pharmacy or hospital is able, upon request of the
16 board or the Department of Justice, to immediately produce a hard
17 copy report that includes for each date of dispensing of a controlled
18 substance in Schedules II, III, IV, and V pursuant to the
19 prescription all of the information described in subparagraphs (A)
20 to (E), inclusive, of paragraph (1) of subdivision (a) of Section
21 4040 of the Business and Professions Code and the name or
22 identifier of the pharmacist who dispensed the controlled substance.

23 (c) If only recorded and stored electronically, on magnetic
24 media, or in any other computerized form, the pharmacy's or
25 hospital's computer system shall not permit the received
26 information or the controlled substance dispensing information
27 required by this section to be changed, obliterated, destroyed, or
28 disposed of, for the record maintenance period required by law,
29 once the information has been received by the pharmacy or the
30 hospital and once the controlled substance has been dispensed,
31 respectively. Once the controlled substance has been dispensed,
32 if the previously created record is determined to be incorrect, a
33 correcting addition may be made only by or with the approval of
34 a pharmacist. After a pharmacist enters the change or enters his
35 or her approval of the change into the computer, the resulting
36 record shall include the correcting addition and the date it was
37 made to the record, the identity of the person or pharmacist making
38 the correction, and the identity of the pharmacist approving the
39 correction.

1 (d) Nothing in this section shall be construed to exempt any
2 pharmacy or hospital dispensing Schedule II controlled substances
3 pursuant to electronic transmission prescriptions from existing
4 reporting requirements.

5 SEC. 8. Section 11165 of the Health and Safety Code is
6 amended to read:

7 11165. (a) To assist health care practitioners in their efforts
8 to ensure appropriate prescribing, ordering, administering,
9 furnishing, and dispensing of controlled substances, law
10 enforcement and regulatory agencies in their efforts to control the
11 diversion and resultant abuse of Schedule II, Schedule III, Schedule
12 IV, and Schedule V controlled substances, and for statistical
13 analysis, education, and research, the Department of Justice shall,
14 contingent upon the availability of adequate funds in the CURES
15 Fund, maintain the Controlled Substance Utilization Review and
16 Evaluation System (CURES) for the electronic monitoring of, and
17 Internet access to information regarding, the prescribing and
18 dispensing of Schedule II, Schedule III, Schedule IV, and Schedule
19 V controlled substances by all practitioners authorized to prescribe,
20 order, administer, furnish, or dispense these controlled substances.

21 (b) The Department of Justice may seek and use grant funds to
22 pay the costs incurred by the operation and maintenance of
23 CURES. The department shall annually report to the Legislature
24 and make available to the public the amount and source of funds
25 it receives for the support of CURES.

26 (c) (1) The operation of CURES shall comply with all
27 applicable federal and state privacy and security laws and
28 regulations.

29 (2) CURES shall operate under existing law to safeguard the
30 privacy and confidentiality of patients. Data obtained from CURES
31 shall only be provided to appropriate state, local, and federal public
32 agencies for disciplinary, civil, or criminal purposes and to other
33 agencies or entities, as determined by the Department of Justice,
34 for the purpose of educating practitioners and others in lieu of
35 disciplinary, civil, or criminal actions. Data may be provided to
36 public or private entities, as approved by the Department of Justice,
37 for educational, peer review, statistical, or research purposes,
38 provided that patient information, including any information that
39 may identify the patient, is not compromised. Further, data
40 disclosed to an individual or agency as described in this subdivision

1 shall not be disclosed, sold, or transferred to a third party. The
2 Department of Justice shall establish policies, procedures, and
3 regulations regarding the use, access, evaluation, management,
4 implementation, operation, storage, disclosure, and security of the
5 information within CURES, consistent with this subdivision.

6 (d) For each prescription for a Schedule II, Schedule III,
7 Schedule IV, or Schedule V controlled substance, as defined in
8 the controlled substances schedules in federal law and regulations,
9 specifically Sections 1308.12, 1308.13, 1308.14, and 1308.15,
10 respectively, of Title 21 of the Code of Federal Regulations, the
11 dispensing pharmacy, clinic, or other dispenser shall report the
12 following information to the Department of Justice as soon as
13 reasonably possible, but not more than seven days after the date a
14 controlled substance is dispensed, in a format specified by the
15 Department of Justice:

16 (1) Full name, address, and, if available, telephone number of
17 the ultimate user or research subject, or contact information as
18 determined by the Secretary of the United States Department of
19 Health and Human Services, and the gender, and date of birth of
20 the ultimate user.

21 (2) The prescriber's category of licensure, license number,
22 ~~national provider identifier~~ *National Provider Identifier* (NPI)
23 number, if applicable, the federal controlled substance registration
24 number, and the state medical license number of any prescriber
25 using the federal controlled substance registration number of a
26 government-exempt facility.

27 (3) Pharmacy prescription number, license number, NPI number,
28 and federal controlled substance registration number.

29 (4) National Drug Code (NDC) number of the controlled
30 substance dispensed.

31 (5) Quantity of the controlled substance dispensed.

32 (6) International Statistical Classification of Diseases, 9th
33 revision (ICD-9) or 10th revision (ICD-10) Code, if available.

34 (7) Number of refills ordered.

35 (8) Whether the drug was dispensed as a refill of a prescription
36 or as a first-time request.

37 (9) Date of origin of the prescription.

38 (10) Date of dispensing of the prescription.

39 (e) The Department of Justice may invite stakeholders to assist,
40 advise, and make recommendations on the establishment of rules

1 and regulations necessary to ensure the proper administration and
2 enforcement of the CURES database. All prescriber and dispenser
3 invitees shall be licensed by one of the boards or committees
4 identified in subdivision (d) of Section 208 of the Business and
5 Professions Code, in active practice in California, and a regular
6 user of CURES.

7 (f) The Department of Justice shall, prior to upgrading CURES,
8 consult with prescribers licensed by one of the boards or
9 committees identified in subdivision (d) of Section 208 of the
10 Business and Professions Code, one or more of the boards or
11 committees identified in subdivision (d) of Section 208 of the
12 Business and Professions Code, and any other stakeholder
13 identified by the department, for the purpose of identifying
14 desirable capabilities and upgrades to the CURES Prescription
15 Drug Monitoring Program (PDMP).

16 (g) The Department of Justice may establish a process to educate
17 authorized subscribers of the CURES PDMP on how to access and
18 use the CURES PDMP.

19 SEC. 9. Section 11165.1 of the Health and Safety Code is
20 amended to read:

21 11165.1. (a) (1) (A) (i) A health care practitioner authorized
22 to prescribe, order, administer, furnish, or dispense Schedule II,
23 Schedule III, Schedule IV, or Schedule V controlled substances
24 pursuant to Section 11150 shall, before January 1, 2016, or upon
25 receipt of a federal Drug Enforcement Administration (DEA)
26 registration, whichever occurs later, submit an application
27 developed by the Department of Justice to obtain approval to access
28 information online regarding the controlled substance history of
29 a patient that is stored on the Internet and maintained within the
30 Department of Justice, and, upon approval, the department shall
31 release to that practitioner the electronic history of controlled
32 substances dispensed to an individual under his or her care based
33 on data contained in the CURES Prescription Drug Monitoring
34 Program (PDMP).

35 (ii) A pharmacist shall, before January 1, 2016, or upon
36 licensure, whichever occurs later, submit an application developed
37 by the Department of Justice to obtain approval to access
38 information online regarding the controlled substance history of
39 a patient that is stored on the Internet and maintained within the
40 Department of Justice, and, upon approval, the department shall

1 release to that pharmacist the electronic history of controlled
2 substances dispensed to an individual under his or her care based
3 on data contained in the CURES PDMP.

4 (iii) An individual designated by a board, bureau, or program
5 within the Department of Consumer Affairs to investigate ~~an~~
6 ~~applicant for, or a holder of,~~ a professional license may, for the
7 purpose of investigating the alleged substance abuse of ~~an applicant~~
8 ~~or a licensee,~~ submit an application developed by the Department
9 of Justice to obtain approval to access information online regarding
10 the controlled substance history of ~~an applicant or~~ a licensee that
11 is stored on the Internet and maintained within the Department of
12 Justice, and, upon approval, the department shall release to that
13 individual the electronic history of controlled substances dispensed
14 to the ~~applicant or~~ licensee based on data contained in the CURES
15 PDMP. *The application shall contain facts demonstrating the*
16 *probable cause to believe the licensee has violated a law governing*
17 *controlled substances.*

18 (B) An application may be denied, or a subscriber may be
19 suspended, for reasons which include, but are not limited to, the
20 following:

21 (i) Materially falsifying an application for a subscriber.

22 (ii) Failure to maintain effective controls for access to the patient
23 activity report.

24 (iii) Suspended or revoked federal DEA registration.

25 (iv) Any subscriber who is arrested for a violation of law
26 governing controlled substances or any other law for which the
27 possession or use of a controlled substance is an element of the
28 crime.

29 (v) Any subscriber accessing information for any other reason
30 than caring for his or her patients.

31 (C) Any authorized subscriber shall notify the Department of
32 Justice within 30 days of any changes to the subscriber account.

33 (2) A health care practitioner authorized to prescribe, order,
34 administer, furnish, or dispense Schedule II, Schedule III, Schedule
35 IV, or Schedule V controlled substances pursuant to Section 11150
36 or a pharmacist shall be deemed to have complied with paragraph
37 (1) if the licensed health care practitioner or pharmacist has been
38 approved to access the CURES database through the process
39 developed pursuant to subdivision (a) of Section 209 of the
40 Business and Professions Code.

1 (b) Any request for, or release of, a controlled substance history
2 pursuant to this section shall be made in accordance with guidelines
3 developed by the Department of Justice.

4 (c) In order to prevent the inappropriate, improper, or illegal
5 use of Schedule II, Schedule III, Schedule IV, or Schedule V
6 controlled substances, the Department of Justice may initiate the
7 referral of the history of controlled substances dispensed to an
8 individual based on data contained in CURES to licensed health
9 care practitioners, pharmacists, or both, providing care or services
10 to the individual.

11 (d) The history of controlled substances dispensed to an
12 individual based on data contained in CURES that is received by
13 an authorized subscriber from the Department of Justice pursuant
14 to this section shall be considered medical information subject to
15 the provisions of the Confidentiality of Medical Information Act
16 contained in Part 2.6 (commencing with Section 56) of Division
17 1 of the Civil Code.

18 (e) Information concerning a patient's controlled substance
19 history provided to an authorized subscriber pursuant to this section
20 shall include prescriptions for controlled substances listed in
21 Sections 1308.12, 1308.13, 1308.14, and 1308.15 of Title 21 of
22 the Code of Federal Regulations.

23 SEC. 10. Section 11165.5 of the Health and Safety Code is
24 amended to read:

25 11165.5. (a) The Department of Justice may seek voluntarily
26 contributed private funds from insurers, health care service plans,
27 qualified manufacturers, and other donors for the purpose of
28 supporting CURES. Insurers, health care service plans, qualified
29 manufacturers, and other donors may contribute by submitting
30 their payment to the Controller for deposit into the CURES Fund
31 established pursuant to subdivision (c) of Section 208 of the
32 Business and Professions Code. The department shall make
33 information about the amount and the source of all private funds
34 it receives for support of CURES available to the public.
35 Contributions to the CURES Fund pursuant to this subdivision
36 shall be nondeductible for state tax purposes.

37 (b) For purposes of this section, the following definitions apply:

38 (1) "Controlled substance" means a drug, substance, or
39 immediate precursor listed in any schedule in Section 11055,
40 11056, 11057, or 11058 of the Health and Safety Code.

1 (2) “Health care service plan” means an entity licensed pursuant
2 to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter
3 2.2 (commencing with Section 1340) of Division 2 of the Health
4 and Safety Code).

5 (3) “Insurer” means an admitted insurer writing health insurance,
6 as defined in Section 106 of the Insurance Code, and an admitted
7 insurer writing workers’ compensation insurance, as defined in
8 Section 109 of the Insurance Code.

9 (4) “Qualified manufacturer” means a manufacturer of a
10 controlled substance, but does not mean a wholesaler or nonresident
11 wholesaler of dangerous drugs, regulated pursuant to Article 11
12 (commencing with Section 4160) of Chapter 9 of Division 2 of
13 the Business and Professions Code, a veterinary food-animal drug
14 retailer, regulated pursuant to Article 15 (commencing with Section
15 4196) of Chapter 9 of Division 2 of the Business and Professions
16 Code, or an individual regulated by the Medical Board of
17 California, the Dental Board of California, the California State
18 Board of Pharmacy, the Veterinary Medical Board, the Board of
19 Registered Nursing, the Physician Assistant Committee of the
20 Medical Board of California, the Osteopathic Medical Board of
21 California, the State Board of Optometry, or the California Board
22 of Podiatric Medicine.

23 SEC. 11. Section 11166 of the Health and Safety Code is
24 amended to read:

25 11166. A person shall not fill a prescription for a controlled
26 substance after six months has elapsed from the date the
27 prescription was issued by the prescriber. A person shall not
28 knowingly fill a mutilated or forged or altered prescription for a
29 controlled substance except for the addition of the address of the
30 person for whom the controlled substance is prescribed as provided
31 by paragraph (2) of subdivision (b) of Section 11164.

32 SEC. 12. Section 11200 of the Health and Safety Code is
33 amended to read:

34 11200. (a) A person shall not dispense or refill a controlled
35 substance prescription more than six months after the date thereof.

36 (b) (1) Except as provided in paragraph (2), a person shall not
37 prescribe a controlled substance, nor shall a person fill, compound,
38 or dispense a prescription for a controlled substance, in a quantity
39 exceeding a 30-day supply.

1 (2) A person may prescribe a controlled substance, and a person
2 may fill, compound, or dispense a prescription for a controlled
3 substance, in a quantity not exceeding a 90-day supply if the
4 prescription is issued in the treatment of one of the following:

5 (A) A panic disorder.

6 (B) Attention deficit disorder.

7 (C) A chronic debilitating neurologic condition characterized
8 as a movement disorder or exhibiting seizure, convulsive, or spasm
9 activity.

10 (D) Pain in patients with conditions or diseases known to be
11 chronic or incurable.

12 (E) Narcolepsy.

13 (F) *Any other condition or circumstance for which the physician*
14 *determines is a medical necessity, provided the reason for the*
15 *medical necessity is noted in the prescription and in the patient's*
16 *medical record.*

17 (c) (1) A prescription for a Schedule III or IV substance shall
18 not be refilled more than five times and in an amount, for all refills
19 of that prescription taken together, exceeding a 120-day supply.

20 (2) A prescription for a Schedule II substance shall not be
21 refilled.

22 (d) A person shall not issue a prescription for a controlled
23 substance, nor shall a person fill, compound, or dispense a
24 prescription for a controlled substance, for an ultimate user for
25 whom a previous prescription for ~~a~~ *that* controlled substance was
26 issued within the immediately preceding 30 days until the ultimate
27 user has exhausted all but a seven-day supply of ~~the~~ *that* controlled
28 substance filled, compounded, or dispensed from the previous
29 prescription. *This subdivision does not prohibit an ultimate user*
30 *from being issued multiple prescriptions, each for a different*
31 *controlled substance, at a given time.*

**DENTAL BOARD OF CALIFORNIA
BILL ANALYSIS
MAY 29-30 BOARD MEETING**

BILL NUMBER: Senate Bill 1416

AUTHOR: Senator Block

SPONSOR:

VERSION: Amended 04/10/2014

INTRODUCED: 02/21/2014

BILL STATUS: 05/15/2014 – To Assembly
Committee on Business,
Professions & Consumer
Protection

BILL LOCATION: Assembly
Committee on
Business,
Professions, and
Consumer
Protection

SUBJECT: Dentistry: Fees

**RELATED
BILLS:**

SUMMARY

Existing law, the Dental Practice Act, provides for the licensure and regulation of the practice of dentistry by the Dental Board of California. The act, among other things, requires the board to examine all applicants for a license to practice dentistry and to collect and apply all fees, as specified. The act requires the charges and fees for licensed dentists to be established by the board as is necessary for the purpose of carrying out the responsibilities required by these provisions, subject to specified limitations. Existing law prohibits the fee for an initial license and for the renewal of the license from exceeding \$450.

This bill would instead set the fee for an initial license and for the renewal of the license at \$525. The bill would make related findings and declarations.

ANALYSIS

This bill is sponsored by the Dental Board of California (DBC). According to the Author, averting or delaying an immediate fee increase will cause the DBC to become insolvent in Budget Year 2015-2016. In order to provide better public protection, the DBC has made enhancements to its enforcement program over the last fifteen years. These enhancements have included increased analytical and investigative staffing to process and investigate consumer complaints in an effective and efficient manner. The proposed fee increases will support the DBC's enforcement program so that it may continue to process and investigate consumer complaints efficiently and effectively.

According to the State Dentistry Fund Condition for the Governor's Budget 2014-2015,

the DBC is projecting a fund balance deficit of \$2.239 million in Budget Year 2015-2016, as well as an ongoing fund balance deficit thereafter. The DBC has worked in consultation with the DCA Budget Office and has determined that it is necessary for the DBC to increase the initial licensure and biennial renewal fees assessed to its dentist licensees.

If the DBC is not authorized to increase the fees, the following will likely occur:

- Reduction of staff, operating resources and equipment.
- Delayed response times to licensing inquiries and application approvals.
- Delays in enforcement, such as delays in processing consumer complaints, conducting investigations and referring egregious cases to the Attorney General's Office for prosecution.

REGISTERED SUPPORT / OPPOSITION:

Support

Dental Board of California

Opposition

None on file.

BOARD POSITION

The Board took a “support” position at its March 2014 teleconference.

AMENDED IN SENATE APRIL 10, 2014
AMENDED IN SENATE MARCH 25, 2014

SENATE BILL

No. 1416

Introduced by Senator Block

February 21, 2014

An act to amend Section 1724 of the Business and Professions Code, relating to dentistry.

LEGISLATIVE COUNSEL'S DIGEST

SB 1416, as amended, Block. Dentistry: fees.

Existing law, the Dental Practice Act, provides for the licensure and regulation of the practice of dentistry by the Dental Board of California. The act, among other things, requires the board to examine all applicants for a license to practice dentistry and to collect and apply all fees, as specified. The act requires the charges and fees for licensed dentists to be established by the board as is necessary for the purpose of carrying out the responsibilities required by these provisions, subject to specified limitations. Existing law prohibits the fee for an initial license and for the renewal of the license from exceeding \$450.

This bill would instead ~~prohibit~~ *set* the fee for an initial license and for the renewal of the license ~~from exceeding~~ *at* \$525. The bill would make related findings and declarations.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

1 (a) It is necessary for the initial license and license renewal fee
2 for dentists to be increased to five hundred twenty-five dollars
3 (\$525) in order for the Dental Board of California to continue its
4 licensing, regulatory, and disciplinary functions.

5 (b) Failure to increase the fee amount will result in spending
6 reductions that will cause delays in processing times for license
7 applications, consumer complaints, investigations, and disciplinary
8 actions.

9 SEC. 2. Section 1724 of the Business and Professions Code is
10 amended to read:

11 1724. The amount of charges and fees for dentists licensed
12 pursuant to this chapter shall be established by the board as is
13 necessary for the purpose of carrying out the responsibilities
14 required by this chapter as it relates to dentists, subject to the
15 following limitations:

16 (a) The fee for application for examination shall not exceed five
17 hundred dollars (\$500).

18 (b) The fee for application for reexamination shall not exceed
19 one hundred dollars (\$100).

20 (c) The fee for examination and for reexamination shall not
21 exceed eight hundred dollars (\$800). Applicants who are found to
22 be ineligible to take the examination shall be entitled to a refund
23 in an amount fixed by the board.

24 (d) The fee for an initial license and for the renewal of a license
25 ~~shall not exceed~~ *is* five hundred twenty-five dollars (\$525).

26 (e) The fee for a special permit shall not exceed three hundred
27 dollars (\$300), and the renewal fee for a special permit shall not
28 exceed one hundred dollars (\$100).

29 (f) The delinquency fee shall be the amount prescribed by
30 Section 163.5.

31 (g) The penalty for late registration of change of place of
32 practice shall not exceed seventy-five dollars (\$75).

33 (h) The application fee for permission to conduct an additional
34 place of practice shall not exceed two hundred dollars (\$200).

35 (i) The renewal fee for an additional place of practice shall not
36 exceed one hundred dollars (\$100).

37 (j) The fee for issuance of a substitute certificate shall not exceed
38 one hundred twenty-five dollars (\$125).

39 (k) The fee for a provider of continuing education shall not
40 exceed two hundred fifty dollars (\$250) per year.

1 (l) The fee for application for a referral service permit and for
2 renewal of that permit shall not exceed twenty-five dollars (\$25).

3 (m) The fee for application for an extramural facility permit
4 and for the renewal of a permit shall not exceed twenty-five dollars
5 (\$25).

6 The board shall report to the appropriate fiscal committees of
7 each house of the Legislature whenever the board increases any
8 fee pursuant to this section and shall specify the rationale and
9 justification for that increase.

O



MEMORANDUM

DATE	May 14, 2014
TO	Legislative and Regulatory Committee, Dental Board of California
FROM	Sarah Wallace, Assistant Executive Officer
SUBJECT	LEG 5: Update on Pending Regulatory Packages

A. Portfolio Examination Requirements (California Code of Regulations, Title 16, Sections 1021, 1028, 1030, 1031, 1032, 1032.1, 1032.2, 1032.3, 1032.4, 1032.5, 1032.6, 1032.7, 1032.8, 1032.9, 1032.10, 1033, 1033.1, 1034, 1034.1, 1035, 1035.1, 1035.2, 1036, 1036.1, 1036.2, 1036.3, 1037, 1038, and 1039):

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).

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.

Staff submitted the final rulemaking file to the Department of Consumer Affairs (Department) on March 24, 2014. Final rulemaking files are required to be approved by the Director of the Department, the Secretary of the Business, Consumer Services, and Housing Agency (Agency) and the Director of the Department of Finance (Finance). Once approval signatures are obtained, the final rulemaking file will be submitted to the OAL. The OAL will have thirty (30) working days to review the file. Once approved, the rulemaking will be filed with the Secretary of State. Beginning January 1, 2013, new quarterly effective dates for regulations will be dependent upon the timeframe on OAL approved rulemaking is filed with the Secretary of State, as follows:

- The regulation would take effect on January 1 if the OAL approved rulemaking is filed with the Secretary of State on September 1 to November 30, inclusive.
- The regulation would take effect on April 1 if the OAL approved rulemaking is filed with the Secretary of State on December 1 to February 29, inclusive.
- The regulation would take effect on July 1 if the OAL approved rulemaking is filed with the Secretary of State on March 1 to May 31, inclusive.
- The regulation would take effect on October 1 if the OAL approved regulation is filed on June 1 to August 31, inclusive.

Due to the importance of this rulemaking, staff will be requesting that this proposal become effective upon filing with the Secretary of State. The deadline to submit the final rulemaking file to the Office of Administrative Law for review and determination of approval is November 7, 2014.

B. Revocation for Sexual Misconduct (California Code of Regulations, Title 16, Section 1018):

At its February 2014 meeting, the Board approved proposed regulatory language relative to Revocation of Licensure for Sexual Misconduct and directed staff to initiate the rulemaking. Board staff filed the initial rulemaking documents with the OAL on March 18th and the proposal was published in the California Regulatory Notice Register on Friday, March 28, 2014. The 45-day public comment period began on Friday, March 28, 2014 and ended on Monday, May 12, 2014. The Board held a regulatory hearing in Sacramento on Tuesday, May 13, 2014. The Board received written comments from the CDA.

Staff has reviewed the comments received and has developed recommended responses in consultation with the Board's Legal Counsel. The full Board will be responding to the comments at its meeting on Thursday, May 29th.

The deadline to submit the final rulemaking file to the OAL for review and determination of approval is March 27, 2015.

C. Dental Assisting Educational Program and Course Requirements (California Code of Regulations, Title 16, Division 10, Chapter 3, Article 2)

The Dental Assisting Council held its first regulatory development workshop on December 12, 2013. The Dental Assisting Council will continue to hold regulatory development workshops in 2014.

D. Abandonment of Applications (California Code of Regulations, Title 16, §1004):

At its May 18, 2012 meeting, the Board discussed and approved proposed regulatory language relative to the abandonment of applications. The Board directed staff to initiate a rulemaking. The Board has deemed other regulatory packages as priority; staff will continue working on the initial rulemaking documents in priority order.

E. Licensure by Credential Application Requirements

Board staff has been meeting to discuss necessary provisions to include in the regulatory proposal relative to licensure by credential application requirements. Staff anticipates forwarding proposed language to the Board for consideration at the August meeting.

Action Requested:

No action necessary.



MEMORANDUM

DATE	May 9, 2014
TO	Legislative and Regulatory Committee, Dental Board of California
FROM	Sarah Wallace, Assistant Executive Officer
SUBJECT	LEG 6: Discussion of 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.



MEMORANDUM

DATE	May 9, 2014
TO	Dental Board of California
FROM	Linda Byers, Executive Assistant
SUBJECT	Agenda Item 6: Presentation by a Representative from the California Dental Association (CDA) Regarding Recent Access to Care Events.

A representative from CDA will provide a verbal report.



MEMORANDUM

DATE	May 15, 2014
TO	Dental Board Members
FROM	Sarah Wallace, Assistant Executive Officer
SUBJECT	Agenda Item 7(A): Discussion and Possible Action Regarding Comments Received During the 45-Day Public Comment Period for the Board's Proposed Rulemaking to Amend §1018 of Title 16 of the California Code of Regulations Relating Revocation for Sexual Misconduct

Background:

At its February 2014 meeting, the Dental Board of California (Board) approved proposed regulatory language relative to Revocation of Licensure for Sexual Misconduct and directed staff to initiate the rulemaking. Board staff filed the initial rulemaking documents with the Office of Administrative Law (OAL) on March 18th and the proposal was published in the California Regulatory Notice Register on Friday, March 28, 2014. The 45-day public comment period began on Friday, Friday, March 28, 2014 and ended on Monday, May 12, 2014. The Board held a regulatory hearing in Sacramento on Tuesday, May 13, 2014. The Board received written comments from the California Dental Association (CDA).

Staff has reviewed the comments received and has developed recommended responses in consultation with the Board's Legal Counsel.

Comments Received from the CDA:

The CDA submitted a letter to the Board in response to the Board's rulemaking proposal. The CDA commented that it was concerned that two different and seemingly conflicting statutes define unprofessional conduct with regard to sexual contact with a patient. The first is section 1680 in the Dental Practice Act, which defines unprofessional conduct for dentists and addresses sexual misconduct in subsection (e) as follows: "The committing of any act or acts of sexual abuse, misconduct or relations with a patient *that are substantially related to the practice of dentistry*" (italics added). The conflicting statute is section 726, which is located in the overall division for healthcare providers. Section 726 restates the first portion of 1680 (e), but deletes the phrase that links the misconduct to the practice of dentistry. Of particular concern to CDA on this matter is a recent understanding that the interpretation that the section 726 exemption for sexual contact with spouses and domestic partners does not include dentists, and despite the limitation under

1680(e), it would be illegal for a dentist to provide dental care to his or her spouse or domestic partner.

Further adding to the confusion on this matter is that the authorization cited for the proposed regulatory amendments does not reference section 1680 (e) at all. The CDA found this omission curious because it is the relevant statute governing dentists within the Dental Practice Act. The CDA commented that the general rules of statutory construction suggest that a more specific statute, such as section 1680(e), prevails over a general statute, such as section 726, especially if the two statutes are conflicting, as in this case (see Code of Civil Procedure §1859). The CDA requested that, at a minimum, the Board provide a legal analysis of this issue, including recommendations for possible remedial action. Notwithstanding the discussion above and CDA's request for legal examination, CDA recommends the board consider the following amendment to section (d) of the regulatory proposal:

(d) For the purposes of this section, "sexual contact" means sexual intercourse or the touching of an intimate part of a patient, not including a spouse or domestic partner, for the purpose of sexual arousal, gratification, or abuse ~~has the same meaning as defined in subdivision (c) of Section 729 of the Business and Professions Code~~ and "sex offense" has the same meaning as defined in Section 44010 of the Education Code.

Staff Recommended Response:

Staff recommends rejection of the CDA's comments for the following reasons:

Staff does not share the view that Business and Professions Code sections 726 and 1680 are conflicting statutes; rather staff believes that both provisions operate concurrently in the interest of consumer protection. Section 726 provides that the commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and is grounds for disciplinary action for any healing arts professional licensed under Division 2 of the Business and Professions Code. Section 1680(e) defines the committing of any act or acts of sexual abuse, misconduct, or relations with a patient that are substantially related to the practice of dentistry as unprofessional conduct by a person licensed by the Board. Both sections 726 and 1680 are applicable to licensees of the Board; one provision does not prevail over the other unless there is express authority, such as utilizing the term "notwithstanding", as is customary within the statutes contained in the Dental Practice Act.

Additionally, since Section 726 does not expressly exempt its provisions from applying to dentists, like it does for physicians and surgeons licensed by the Medical Board of California, one could subjectively argue that sexual contact with any patient, regardless of the relationship status, could be conceived to be substantially related to the practice of dentistry.

It should be noted that the provisions of Section 726 that provides the exemption for sexual relations between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship, has been in effect for the last twenty (20) years. Neither dentists, nor any other healing arts professional licensed under Division 2 of the Business and Professions Code have ever shared a like exemption.

Section 1680 is not cited as an “authority”, rather it has been cited as a “reference” for the following reasons:

- Pursuant to the California Code of Regulations, Title 1, Section 14, an “authority” source is considered a California constitutional or statutory provision which expressly permits or obligates the rulemaking agency to adopt, amend, or repeal the regulation, or a California constitutional or statutory provision that grants a power to the agency which impliedly permits or obligates the agency to adopt, amend, or repeal the regulation in order to achieve the purpose for which the power was granted. Pursuant to Business and Professions Code Section 1614, the Board is granted rulemaking authority and is authorized to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Dental Practice Act. Therefore, section 1614 is cited as the “authority”.
- California Code of Regulations, Title 1, Section 14 also provides that a “reference” source is presumed to exist if an agency is empowered to implement, interpret or make specific a California constitutional provision, a California statute, federal statute or regulation, or a court decision or order. Consequently, this proposed rulemaking lists sections 1680 and 726 as “reference” sources to implement how an Administrative Law Judge (ALJ) handles cases when issuing proposed decisions for the Board that contain findings of fact that the licensee engaged in any act of sexual contact with a patient, client, or customer, or the licensee has been convicted of or committed a sex offense.

No further legal analysis of the issue would be warranted as the rulemaking’s *Notice of Proposed Action* and *Initial Statement of Reasons* clearly explains the purpose of this rulemaking and provides a comprehensive analysis of the factual basis and rationale for the Board’s adoption of this proposed rule.

Recommendations for possible remedial action are unnecessary as this proposal merely provides direction from the Board to the ALJs that specifies that proposed decisions that contain findings of fact that the licensee engaged in any act of sexual contact with a patient, client, or customer, or the licensee has been convicted of or committed a sex offense are required to contain an order of revocation which may not be stayed. As provided in the *Initial Statement of Reasons*, ALJs are not granted any discretion to decide a matter. They can only propose a decision

predicated upon findings made during a hearing in which he or she presided. This allows a Board to retain the sole discretion to decide a matter. As provided in Government Code section 11517(c)(2)(B), the Board has the authority and discretion to “reduce or otherwise mitigate the proposed penalty and adopt the balance of a proposed decision”.

Lastly, the staff recommends rejection of the CDA’s proposed amendment to the rulemaking language. The Board does not have the express statutory authority to provide an exemption from the provisions of Business and Professions Code Section 726 to permit sexual relationships between a dentist and a patient who is a spouse or significant other. Doing so would exceed the Board’s rulemaking authority.

Action Requested:

The Board may take action to accept, reject, or modify staff’s recommended response to comments. If staff recommendations are rejected or modified, staff requests that the Board provide a rationale to demonstrate necessity for inclusion in the rulemaking’s *Final Statement of Reasons*.



May 12, 2014

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

RE: Sexual Misconduct: Amendments to California Code of Regulations, Title 16,
Section 1018

Dear Ms. Wallace:

The California Dental Association (CDA) appreciates the opportunity to comment on proposed amendments to the California Code of Regulations, Title 16, Section 1018. This proposal seeks to strengthen the penalty for unprofessional sexual contact or sexual misconduct by dentists and dental assistants by requiring the Administrative Law Judge (ALJ) to recommend license revocation, without the option to stay revocation, in specified situations.

CDA, representing more than 24,000 California dentists, holds members to a professional code of ethics that expects the highest levels of professional responsibility and patient protection. We appreciate the Dental Board's execution of its responsibility in these matters.

With regard to the proposal referenced above, CDA is concerned that two different and seemingly conflicting statutes define unprofessional conduct with regard to sexual contact with a patient. The first is section 1680 in the Dental Practice Act, which defines unprofessional conduct for dentists and addresses sexual misconduct in subsection (e) as follows: "The committing of any act or acts of sexual abuse, misconduct or relations with a patient *that are substantially related to the practice of dentistry*" (italics added). The conflicting statute is section 726, which is located in the overall division for healthcare providers. Section 726 restates the first portion of 1680 (e), but deletes the phrase that links the misconduct to the practice of dentistry. Of particular concern to CDA on this matter is a recent

understanding that the interpretation that the section 726 exemption for sexual contact with spouses and domestic partners does not include dentists, and despite the limitation under 1680(e), it would be illegal for a dentist to provide dental care to his or her spouse or domestic partner.

Further adding to the confusion on this matter is that the authorization cited for the proposed regulatory amendments does not reference section 1680 (e) at all. This omission is particularly curious given it is the relevant statute governing dentists within the Dental Practice Act. Moreover, general rules of statutory construction suggest that a more specific statute, such as section 1680(e), prevails over a general statute, such as section 726, especially if the two statutes are conflicting, as in this case (see Code of Civil Procedure §1859).

These inconsistencies lead CDA to request that, at a minimum, the dental board provide a legal analysis of this issue, including recommendations for possible remedial action.

Notwithstanding the discussion above and CDA's request for legal examination, CDA recommends the board consider the following amendment to section (d) of the regulatory proposal:

(d) For the purposes of this section, "sexual contact" means sexual intercourse or the touching of an intimate part of a patient, not including a spouse or domestic partner, for the purpose of sexual arousal, gratification, or abuse ~~has the same meaning as defined in subdivision (c) of Section 729 of the Business and Professions Code~~ and "sex offense" has the same meaning as defined in Section 44010 of the Education Code.

CDA appreciates the patient protections Sections 1680 (e), 726, and the proposed regulations seek to ensure. In the execution of our responsibilities to the public and the profession, we seek a thorough analysis of applicable law and its full and fair application. We look forward to working with the board toward this common goal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gayle Mathe".

Gayle Mathe

Liaison, Dental Board of California



MEMORANDUM

DATE	May 15, 2014
TO	Dental Board Members
FROM	Sarah Wallace, Assistant Executive Officer
SUBJECT	Agenda Item 7(B): Discussion and Possible Action Regarding Adoption of Proposed Amendment of §1018 of Title 16 of the California Code of Regulations Relating to Revocation for Sexual Misconduct

Background:

Following the Board's consideration of comments received during the required 45-day public comment period and at the May 13, 2014 regulatory hearing, the Board may hold discussion and take action to adopt the proposed amendments to section 1018 of Title 16 of the California Code of Regulations Relating to Revocation for Sexual Misconduct.

Action Requested:

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

- A. If the Board rejects the comments received, and wishes to adopt the proposed text as the final text, then the Board would:

Adopt the final text as noticed and direct staff to take all steps necessary to complete the rulemaking process, including filing the final rulemaking package with the Office of Administrative Law and authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to Section 1018 of Title 16 of the California Code of Regulations Relating to Revocation for Sexual Misconduct.

- B. If the Board accepts any comments received, then the Board would:

Modify the text in response to the comments received and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the Board at this meeting. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before

completing the rulemaking process, and adopt the proposed amendments to Section 1018 of Title 16 of the California Code of Regulations Relating to Revocation for Sexual Misconduct as noticed in the modified text.

RECESS