

LEGISLATIVE SUMMARY FOR END OF 2019 LEGISLATIVE SESSION



**DEPARTMENT OF CONSUMER AFFAIRS
DENTAL BOARD OF CALIFORNIA**

Legislative Summary for 2019 Legislative Session

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**LEGISLATIVE SUMMARY FOR
2019 LEGISLATIVE SESSION**

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BILL SUMMARY

[AB 5](#)

Gonzalez (Chapter 296, Statutes of 2019)
WORKER STATUS: EMPLOYEES AND INDEPENDENT CONTRACTORS.

Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to establish that a worker is an independent contractor for those purposes.

Existing law, for purposes of unemployment insurance provisions, requires employers to make contributions with respect to unemployment insurance and disability insurance from the wages paid to their employees. Existing law defines “employee” for those purposes to include, among other individuals, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

This bill states the intent of the Legislature to codify the decision in the *Dynamex* case and clarify its application. The bill provides that for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, that a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation, or business. The bill, notwithstanding this provision, provides that any statutory exception from employment status or any extension of employer status or liability remains in effect, and that if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (*Borello*). The bill would exempt specified occupations from the application of *Dynamex* and would instead provide that these occupations are governed by *Borello*. These exempt occupations would include, among others, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, commercial fishermen, workers providing licensed barber or cosmetology services, and others performing work under a contract for professional services, with another business entity, or pursuant to a subcontract in the construction industry.

[AB 149](#)

Cooper (Chapter 04, Statutes of 2019)

CONTROLLED SUBSTANCES: PRESCRIPTIONS

Existing law classifies certain controlled substances into designated schedules. Existing law requires prescription forms for controlled substance prescriptions to be obtained from security printers approved by the department, as specified. Existing law requires those prescription forms to be printed with specified features, including a uniquely serialized number.

This bill delays the requirement for those prescription forms to include a uniquely serialized number until a date determined by the Department of Justice that is no later than January 1, 2020. The bill requires the serialized number to be utilizable as a barcode that may be scanned by dispensers. The bill makes any prescription written on a prescription form that was otherwise valid prior to January 1, 2019, but that does not include a uniquely serialized number, or any prescription written on a form approved by the Department of Justice as of January 1, 2019, a valid prescription that may be filled, compounded, or dispensed until January 1, 2021. The bill authorizes the Department of Justice to extend this time period for a period no longer than an additional 6 months, if there is an inadequate availability of compliant prescription forms.

This bill is to take effect immediately as an urgency statute.

[AB 528](#)

Low (Chapter 677, Statutes of 2019)

CONTROLLED SUBSTANCES: CURES DATABASE

(1) Existing law classifies certain controlled substances into Schedules I to V, inclusive. 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 a health care practitioner authorized to prescribe, order, administer, furnish, or dispense a Schedule II, Schedule III, or Schedule IV controlled substance. Existing law requires a dispensing pharmacy, clinic, or other dispenser to report specified information to the department as soon as reasonably possible, but no more than 7 days after a controlled substance is dispensed.

This bill, on and after January 1, 2021, requires a dispenser to report the information required by the CURES database no more than one working day after a controlled substance is released to a patient, except as specified. The bill requires the dispensing of a controlled substance included on Schedule V to be reported to the department using the CURES database.

(2) Existing law requires a health care practitioner authorized to prescribe, order, administer, furnish, or dispense controlled substances included on Schedule II, Schedule III, or Schedule IV, and a pharmacist upon licensure, to submit an application to obtain approval to electronically access information in the CURES database.

This bill, on and after a specified date, permits a licensed physician and surgeon who does not hold a DEA registration to submit an application to obtain approval to electronically access information in the CURES database.

(3) Existing law requires an authorized health care practitioner to consult the CURES database to review a patient's controlled substance history before prescribing a Schedule II, Schedule III, or Schedule IV controlled substance to the patient for the first time and at least once every 4 months thereafter if the controlled substance remains part of the treatment of the patient.

This bill instead requires the health care practitioner to consult the CURES database to review the patient's controlled substance history at least once every 6 months after the first time the substance is prescribed and the prescriber renews the prescription, except as specified. The bill also establishes a review and documentation requirement, as set forth, for a health care practitioner who receives the CURES database information from another authorized user.

The requirement to report dispensing within 1 working day instead of 7 working days does not significantly impact the board. The change in reporting requirements will not result in a change in the total reporting volume. The addition of Schedule V controlled substances to the reporting requirements will not greatly impact the Board. The drugs listed in Schedule V are almost exclusively anti-diarrheal medications and combination medications used to treat allergies and flu symptoms. Therefore, the listed Schedule V drugs are less likely to be dispensed by Dental practices, and the anticipated impact on the Board is expected to be minimal.

[AB 954](#)

Wood (Chapter 540, Statutes of 2019)

DENTAL SERVICES: THIRD-PARTY NETWORK ACCESS

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care, and makes a willful violation of the act a crime. Existing law provides for the regulation of health insurers by the Department of Insurance. Existing law authorizes a health care service plan or health insurer to contract with a provider for alternative rates of payment, and requires a plan or insurer to continuously review the quality of care and performance of providers contracting for alternative rates of payment. Existing law requires a health care service

plan or health insurer to publish and maintain a directory of contracting providers.

This bill authorizes a health care service plan or health insurer that issues, sells, renews, or offers a plan contract or policy covering dental services to grant a third party access to a provider network contract entered into on or after January 1, 2020, or access to services or discounts provided pursuant to that provider network contract if certain criteria are met, including if a health care services plan's or health insurer's provider network contract clearly identifies the third-party access provision and the provider network contract allows a provider to opt out of third-party access. The bill specifies that a provider is not bound by or required to perform dental treatment or services under a provider network contract granted to a third party in violation of these provisions.

[AB 1519](#)

Low (Chapter 865, Statutes of 2019)

HEALING ARTS

This bill extends the sunset date of the California Dental Board (Board) and combine the State Dental Assistant Fund and State Dentistry Fund. In addition, the bill requires the Board to promulgate regulations to implement the provisions relating to consumer notice, foreign dental schools, and applications for licensure. Specifically, this legislation does the following:

1. As of July 1, 2022, merges the State Dental Assistant Fund with the State Dentistry Fund and the State Dental Assistant Fund shall be abolished. (SEC. 2 Section 205 through SEC. 4. Section 205.2).
2. Authorizes each appointing authority, rather than only the Governor as authorized under current law, to remove any appointed member of the Board from office at any time who was appointed by that authority for the Board members' continued neglect of duty, incompetency, or unprofessional conduct required by the Dental Practice Act (Act). (SEC 10. Section 1605).
3. Extends the operations of the Board and executive officer until January 1, 2024. (SEC. 5 Section 1601.1, SEC. 13. Section 1616.5).
4. Requires the notice to consumers to be posted in a conspicuous location accessible to public view or accessible electronically for patients receiving dental services through telehealth. (SEC. 12 Section 1611.3).
5. Specifies applicants applying for dental licensure shall furnish satisfactory evidence of having graduated from a dental college approved by the board or by the Commission on Dental Accreditation of the American Dental Association and presenting satisfactory evidence of having completed at a dental school or schools the full number of

academic years of undergraduate courses required for graduation. (SEC. 28. Section 1628).

6. Authorizes the Board to deny an application to take an examination for licensure as a dentist or dental assistant or an application for registration as a dental corporation, or, at any time prior to licensure, the board may deny the issuance of a license to an applicant for licensure as a dentist or dental assistant, if the applicant has been convicted of a crime or subject to formal discipline pursuant to Business and Professions Code Section 480. (Sec. 29. Section 1628.5).

7. Requires applicants for licensure to practice dentistry to provide a signed release allowing disclosure of information from the National Practitioner Data Bank and verification of registration status with the federal Drug Enforcement Administration. Requires the Board to review this information to determine if it presents sufficient evidence to warrant the submission of additional information from the applicant or the denial of the application for licensure. (SEC. 30. Section 1629(c)).

8. Requires that the examination of applicants for a license to practice dentistry in this state shall be sufficiently thorough to test the fitness of the applicant to practice dentistry and shall include assessing competency in the areas of diagnosis, treatment planning, and restorative, endodontic, periodontic, and prosthetic dentistry. (SEC. 31. Section 1630).

9. Requires the Board to report on how many other states have recognized licensure by portfolio examination at the time of its next sunset review. (SEC. 32. Section 1632(B)).

10. Requires applicants applying for licensure who utilized the clinical and written examination results administered by the Western Regional Examining Board (WREB) and the American Board of Dental Examiners (ADEX) to have taken and passed such examinations within five years prior to the date of their application for licensure. (SEC. 32 Section 1632(2)(A)(B)).

11. Requires that applicants for a dentistry license complete an advanced education program in general dentistry or advanced education program in general practice residency within two years prior to the date of the resident's application for a license under this section. (SEC. 34. Section 1634.1(c)).

12. Beginning January 1, 2020, requires schools seeking approval as foreign dental school to complete the international consultative and accreditation process with the Commission on Dental Accreditation of the American Dental Association (CODA) or a comparable accrediting body approved by the Board. (SEC. 35. Section 1636.4 (h)).

13. Beginning January 1, 2024, in order to remain an approved foreign dental school in the state, all schools previously approved by the Board as a foreign dental school must have successfully completed the international consultative and accreditation process with CODA or a comparable accrediting body approved by the Board. (SEC. 35. Section 1636.4 (i))

14. Requires a person who applies a registered dental assistant license shall provide evidence of having successfully completed Board-approved courses in infection control, the Dental Practice Act, and basic life support. (SEC. 39. Section 1645.1(a))

15. On or after July 1, 2020, requires a licensee placed on probation to provide a patient or the patient's guardian or healthcare surrogate with a disclosure, and receive a signed copy of the disclosure, prior to the patient's first visit while the licensee is on probation (subject to certain exemptions) for the following:

- a. The commission of any act of sexual abuse, misconduct or relations with a patient or client;
- b. Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely;
- c. Criminal conviction involving harm to patient safety or health; or
- d. Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.

(SEC. 41. Section 1673(A-D), & Section 1673(b))

16. Beginning July 1, 2020, the Board shall provide information about licensees on probation, including the length of probation and probation end date, on the licensee's profile page on the Board's website. (SEC. 41. Section 1673(d))

17. Makes failure to review the most recent diagnostic digital or conventional radiographs or other equivalent bone imaging suitable for orthodontia prior to the initial diagnosis and correction of malpositions of human teeth or use of orthodontic appliances unprofessional conduct. (SEC. 42. Section 1680(ah))

18. Requires any entity that provides a service authorized under the Act through telehealth to make the name, telephone number, practice address and state license number of any dentist providing services available at any time prior to or during the rendering of services. (SEC. 43. Section 1683.1(a))

19. Specifies that a provider of dental services shall not require a patient to sign an agreement that limits the patient's ability to file a complaint with the Board. (SEC 44. Section 1683.2)

20. Requires recommendations by the Dental Assisting Council be approved, modified, or rejected by the Board within 120 days of submission of the recommendation to the Board during full Board

business. In the event the Board rejects, postpones, refers the matter back to the council for any reason, or significantly modifies the intent or scope of the recommendation, the Board is required to provide its reasons in writing for rejecting or significantly modifying the recommendation within 30 days. (SEC. 50. Section 1742(h)).

The bill makes numerous technical and clarifying changes to the Act. The bill has fiscal impacts associated with combining the State Dental Assistant Fund and State Dentistry Fund and promulgating regulations to implement the provisions relating to consumer notice, foreign dental schools, and applications for licensure, however these costs are anticipated to be minor and absorbable. There are IT costs of \$27,000 associated with this legislation.

[AB 1622](#)

Carillo (Chapter 632, Statutes of 2019)

FAMILY PHYSICIANS

Existing law, the Dental Practice Act, provides for the licensure and regulation of dentists by the Dental Board of California. Existing law makes it unprofessional conduct for a dentist to fail to obtain the written informed consent of a patient before administering general anesthesia and, until January 1, 2022, conscious sedation, and, for a minor, requires the written informed consent to include a statement encouraging the patient to explore all options available for the child's anesthesia for their dental treatment and consult with the child's dentist or pediatrician as needed.

This bill revises the content of the informed consent statement to specify that the patient is encouraged to consult with the child's dentist, pediatrician, or family physician as needed. Permit holders would need to update their operating procedures to comply with new requirements. Permit holders would need to update their written informed consent information to comply with the language in the statute. No fiscal impact to the Board is anticipated.

2019 ENROLLED BILLS

<u>BILL NUMBER</u>	<u>AUTHOR</u>	<u>FINAL STATUS</u>	<u>CHAPTER NUMBER</u>	<u>STATUTE YEAR</u>
<u>AB 5</u>	Gonzalez	Chaptered	296	2019
<u>AB 149</u>	Cooper	Chaptered	04	2019
<u>AB 528</u>	Low	Chaptered	677	2019
<u>AB 954</u>	Ting	Chaptered	540	2019
<u>AB 1519</u>	Low	Chaptered	865	2019
<u>AB 1622</u>	Carillo	Chaptered	632	2019