



## **Responses to the Background Paper for the Joint Sunset Review Oversight Hearing, March 12, 2024 Senate on Business, Professions, and Economic Development and Assembly Committee on Business and Professions**

**Submitted electronically April 5, 2024**

### **BRIEF OVERVIEW OF THE DENTAL BOARD OF CALIFORNIA**

The Dental Board of California (DBC) was created by the California State Legislature in 1885 and was originally established to regulate dentists. DBC currently regulates approximately 112,000 licensees: 43,000 dentists (DDS), 46,000 registered dental assistants (RDAs), and 2,300 registered dental assistants in extended functions (RDAEFs). In addition, DBC has the responsibility for setting the duties and functions of unlicensed dental assistants. Pursuant to Business and Professions Code (BPC) section 1601.2, DBC's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. While working to enable dental professionals to practice in California, DBC licenses only those individuals who are qualified. And while addressing the needs and concerns of dentists and dental auxiliaries, DBC investigates complaints against licensees and enforces the Dental Practice Act (Act).

### **DBC ADMINISTRATION ISSUES**

**ISSUE #1: (BOARD COMPOSITION AND ORGANIZATIONAL STRUCTURE.) Is DBC reflective of its licensing population and are there potential efficiencies that could be realized through updated DBC composition or structural changes?**

**Background:** DBC is comprised of 15 members, including eight practicing dentists, one registered dental hygienist (RDH), one RDA, and five public members. DBC's structure includes four statutorily established committees and one statutorily designated council. In addition to those required by law, DBC has established several other subject or issue-specific committees to meet identified needs.

One statutorily mandated credentialing committee reviews the qualifications of each applicant seeking an Elective Facial Cosmetic Surgery (EFCS) Permit. Established by SB 438 (Migden, Chapter 909, Statutes of 2006), the EFCS Permit Credentialing Committee makes recommendations to DBC about whether to issue or deny a permit to an applicant, but DBC is ultimately responsible for the mechanics of this permitting process. Committee members are not DBC members and in practice, their important work reflects that like other highly trained subject matter experts from which regulatory entities may consult with or receive specified information.

DBC recommends a number of changes related to the EFCS permit process to improve clarity and reflect other updates to the Act in recent years, including: revising the permit requirements to be consistent with the new anesthesia and sedation permit requirements; replacing the six-year check on continued competency with a requirement for permit holders to complete 24 hours of continuing education (CE) courses related to elective cosmetic surgery in order to renew the permit; and adding a definition of good standing. DBC has also suggested the elimination of the EFCS Permit Credentialing Committee. It would be helpful to understand the additional value a statutorily established review committee has and the cost implications to DBC for this added step in its determination of who should be issued a EFCS permit, particularly if there are rising costs incurred for maintaining committee operations and work as, has been the experience of virtually every Department of Consumer Affairs (DCA) program for the past number of years. It would be helpful for the Committees to understand whether the EFCS Permit Credentialing Committee's input can still be provided without a formal, statutory construct and the benefits to either retaining this body or eliminating it, absorbing its functions into DBC operations, given that DBC ultimately determines permit approval or denial. It would be helpful for the Committees to understand whether there are other means by which the oral surgeon profession can advise DBC.

The issue of dental auxiliary professional input at DBC and pathways to appropriate regulation of these licensees has long been a source of Legislative interest. In 1974, the Legislature created the Committee on Dental Auxiliaries (COMDA) to provide advice on the functions of and work settings of dental auxiliaries, including dental assistants and dental hygienists. COMDA was vested with the authority to administer dental auxiliary license examinations, issue, and renew dental auxiliary licenses, evaluate auxiliary educational programs, and recommend regulatory changes regarding dental auxiliaries. Senate Bill (SB) 853 (Perata, Chapter 31, Statutes of 2008) abolished COMDA and transferred the regulation of dental hygienists to a Dental Hygiene Committee within DBC's jurisdiction, and the regulation of RDAs and RDAEFs to DBC. The bill also stated legislative intent that DBC create and implement an effective forum where dental assistant services and regulatory oversight of dental assistants can be

heard and discussed in full and where all matters relating to dental assistants can be discussed, including matters related to licensure and renewal, duties, standards or conduct and enforcement. In response to SB 853, in 2009, DBC established two groups to deal with dental assisting issues: The Dental Assisting Committee composed of DBC members and chaired by the RDA appointee to DBC; and the Dental Assisting Forum, composed of RDAs and RDAEFs. The Dental Assisting Committee met at every board meeting and the Dental Assisting Forum held short meetings sporadically. Advocates for dental assistants at the time weighed in during the DBC's 2011 sunset review oversight about frustration related to the practical implementation of these efforts, including a lack of consistency in how these entities met and provided valuable input to DBC. It was determined that the establishment of two groups to deal with dental assisting issues at DBC resulted in a very inefficient and ineffective process so the DBC's 2011 sunset bill (SB 540, Price, Chapter 385, Statutes of 2011) created a formal Dental Assisting Council (Council) to provide recommendations on dental assisting matters. At the time, dental hygienists were still regulated by a committee within DBC's jurisdiction – today, dental hygienists are regulated by a standalone Dental Hygiene Board of California (DHBC).

Despite the single Council structure within DBC, concerns remain that dental assisting issues are not effectively promoted at the board level. Dental assistant representatives like the California Dental Assistants Association, California Association of Dental Assisting Teachers, and the California Extended Functions Association note that Council recommendations made to the DBC are not supported and voted down, regulations packages developed almost 10 years ago have stalled and scope of practice evaluations have not been undertaken appropriately and may not reflect current dentistry needs. It would be helpful for the Committees to understand challenges that may exist from maintaining a separate, but formal entity, within DBC's structure and how dental assistants play a role in DBC oversight of the profession.

Given the costs and workload associated with maintaining entities like the Council and EFCS within the broader DBC organization, and fact that DBC accepts recommendations from these other entities that do not necessarily have to be acted on, it would be helpful for the Committees to understand whether there is a more meaningful way for DBC to maintain expertise for the regulation of all individuals it licenses and permits.

**Staff Recommendation:** DBC should inform the Committees of options that exist to ensure participation at the board level for all licensees. DBC should provide information to the Committees about efficiencies that may be gained in its functions through various organizational efforts, while ensuring that it retains expertise and knowledge about all about all DBC-regulated professions.

**DBC Response:** Regarding the EFCS Permit Credentialing Committee issues outlined, DBC believes that to be more efficient, the EFCS Permit process should operate like the anesthesia/sedation permit process in that a committee review is not required. Instead, EFCS permitholders would be used as subject matter experts, review applications, and provide feedback, as needed, before DBC staff approve the permits. This process change would allow for faster processing of EFCS permit applications. This process would also save DBC the costs of committee meetings, including travel, lodging, and per diem payments for a minimum of three committee members. The legislative proposal submitted includes clarified requirements in statute and removal of the requirement for a committee to review applications. Similarly, EFCS permitholders should be treated in the manner that anesthesia/sedation permitholders are treated. The EFCS permit is like an anesthesia/sedation permit in that the EFCS permit allows additional duties outside of the normal scope of practice of the dentist license. The requirements for the EFCS permit include American Board of Oral and Maxillofacial Surgery (ABOMS) certification along with post-graduate education in an extensive 3–4-year OMS residency program. As members of the oral surgeon profession, EFCS permitholders should continue to advise DBC when clarification is needed about applications or when subject matter expertise is needed during case investigations.

Regarding the Council, DBC voted to repeal the Council at its May 2023 Board meeting. However, in response to stakeholder concerns, DBC rescinded the decision at its August 2023 Board meeting. DBC clarified that the Council and its stakeholders must be active participants in dental assisting issues and not rely solely on DBC staff. Since then, the Council, Board staff, and stakeholders have been working together to address multiple items such as the dental assisting regulations that were tabled years ago. Further, DBC is expected to revisit RDA membership on the Board at its May 14-15, 2024 Board meeting, provided that public membership is not reduced.

**ISSUE #2: (BOARD MEETINGS.) The Act specifies timeframes and locations for DBC meetings. Is the Act too prescriptive and are updates necessary?**

**Background:** Unless otherwise provided by statute, existing law requires DCA boards to meet at least two times each calendar year, at least once in northern California and once in southern California. (BPC § 101.7 (a)). The Act, however, requires DBC to meet regularly once each year in the San Francisco Bay area and once each year in southern California (BPC § 1607). There are concerns that specific statutory references may be limiting and should be updated so that DBC instead only must conform to BPC § 101.7 (a).

**Staff Recommendation:** DBC should provide the Committees information about the practical impacts of this proposal. The Committees may wish to amend the Act to ensure greater DBC meeting flexibility.

**DBC Response:** BPC section 1607 requires DBC to hold meetings regularly once each year in the San Francisco Bay area and once each year in southern California, and at such other times and places as DBC may designate, for the purpose of transacting its business. BPC section 1607 recently was amended by Assembly Bill (AB) 1519 (Low, Chapter 685, Statutes of 2019) to change the previous requirement to hold meetings in the Los Angeles area to now require meetings to be held in southern California.

Given the circumstances of the COVID-19 pandemic, DBC has not been able to meet in the locations as directed in BPC section 1607. As state agencies are returning to pre-pandemic meeting practices, DBC staff examined the statutory meeting requirements and concluded that the current language could be more flexible concerning the location and scheduling of DBC board meetings.

As stated above, BPC section 101.7 also applies to meetings of DBC as it requires DCA boards to meet at least two times each calendar year, once in northern California and once in southern California. In addition, BPC section 101.7 authorizes the DCA Director to exempt any board from these meeting requirements upon a showing of good cause (e.g., such as a global pandemic restricting travel) that the board is not able to meet at least two times in a calendar year. Staff also notes that the DBC's Board, Council, and Committee Administrative Policy and Procedure Manual cites to the meeting requirements in BPC section 101.7.

To resolve the meeting location restrictions in BPC section 1607, DBC approved a legislative proposal to repeal BPC section 1607, maintaining and referencing BPC section 101.7 at its February 2023 Board meeting.

**ISSUE #3: (FOREIGN DENTAL SCHOOL APPROVAL.) DBC relies on accreditation of dental schools to ensure program standards and quality. Accrediting bodies have expertise in educational program oversight that a state regulatory program like DBC does not. DBC appears to be effectively recognizing graduates of foreign dental schools who are eligible for licensure.**

**Background:** Applicants for licensure as dentists in California are required to submit proof to DBC that they have met certain education requirements, including a requirement that they have "completed at dental school or schools the full number of academic years of undergraduate courses required for graduation." For schools located within the United States and Canada, DBC

accepts the findings of Commission on Dental Accreditation (CODA) when they approve or reapprove a dental school located within the United States.

Prior to 2015, CODA did not offer an accreditation process for foreign dental schools located outside the United States and Canada, and therefore education programs offered outside those countries could not become approved through the same CODA process. As a result, foreign-trained dental students could not present their degrees to DBC for purposes of licensure as dentists.

Attempts to solve this issue began in the 1970s, when California allowed international graduates who could pass a restorative technique exam performed to qualify to take the state's licensure exam, without additional education at a CODA-accredited school. However, concerns grew that this process risked licenses being granted to underqualified foreign-trained dentists, and stakeholders engaged in extensive discussions and negotiations to determine what type of alternative accreditation process could be established for purposes of international schools not eligible for accreditation by CODA.

In 1997, AB 1116 (Keeley, Chapter 792, Statutes of 1997) was signed into law, creating a new process through which DBC itself would approve international dental schools not accredited by CODA. Between 1996 and 2019, only two foreign dental schools were approved by DBC. The first, La Universidad De La Salle Bajío ("De La Salle") was first approved in 2004 and is in Leon, Guanajuato, Mexico. The second, the State of Medicine and Pharmacy "Nicolae Testemintanu" of the Republic of Moldova, received a two-year provisional approval in December 2016 and full approval in May 2018.

While DBC has conducted site visits for one other applicant, no other schools were approved over the approximately 23 years. Over several years, policymakers questioned whether continuing to charge DBC with responsibility for approving foreign dental schools continued to make sense.

In the sunset review background paper during DBC's 2015 sunset review oversight, Issue #6 posed the question, "Is the process for approving foreign dental school sufficient? Should the Board consider heavier reliance on accrediting organizations for foreign school approvals if those options become available?" At that time, only De La Salle had ever been approved by DBC, and the Moldova dental school was struggling to complete its application.

In November 2015, the American Dental Association House of Delegates officially established the CODA Standing Committee on International Accreditation, announcing that a review and approval process for foreign dental schools was now available from the same accrediting entity that had

long approved schools located within the United States and Canada. Following the establishment of the CODA accreditation program for international dental schools, the issue of whether authority should be retained by DBC was raised once again during the DBC's sunset review oversight in 2019. In a joint background paper published in February 2019, the Committees asked again: "Should the current process by which the DBC approves foreign dental schools continue?" In its formal response to the background paper, DBC made the following statement: "The DBC believes that the best way to meet the legislature's need to ensure that graduates of foreign dental schools have received an education that is equivalent to that of accredited institutions in the United States is to require foreign dental schools to successfully complete the CODA international consultation and accreditation process that is currently available to all foreign dental schools."

Another driver behind the Legislature's reconsideration of whether DBC should continue to approve foreign dental schools came from growing concerns about whether the State of Medicine and Pharmacy "Nicolae Testemitanu" of the Republic of Moldova should have been granted approval by DBC. Shortly following the school's full approval, members of DBC grew concerned that additional details of the Moldova school's recruitment program and admission standards were not disclosed in the application or to DBC site evaluation team during the review.

Ultimately, DBC's 2019 sunset bill finally transitioned the responsibility for approving foreign dental schools from DBC to CODA. These provisions were strongly supported by DBC itself, which stated openly that it did not feel it had the resources or expertise to effectively review and approve foreign schools, as evidenced by its approval of the dental school in Moldova. While representatives of the University of Moldova USA Inc. opposed the bill, it was not opposed by De La Salle, which was actively going through the CODA accreditation process.

Both foreign dental schools approved by BC remained approved by DBC until January 1, 2024, by which time they are required to have received CODA accreditation. The transition to CODA accreditation only included specific language to ensure graduates of a foreign dental school whose programs were approved at the time of graduation remain eligible for licensure by DBC.

In 2021, the Legislature was again asked to weigh in on this issue to ensure students currently enrolled at DBC-approved schools were not disqualified from seeking licensure upon graduation. It is unclear why the Moldova school enrolled students in 2019 given that it was made aware, in May 2018, pursuant to the terms of approval, that its DBC-approval would expire December 31, 2023,

however representatives indicated that statutory updates were necessary to accommodate students whose graduation would not occur until June 2024. To ensure students remained eligible for licensure, SB 607 (Min, Chapter 367, Statutes of 2021) specified that a foreign dental school whose program was approved prior to January 1, 2020, through any date between January 1, 2024, and December 31, 2026, can remain approved through that date, so that those schools may maintain their approval without it being prematurely terminated before they can obtain CODA approval. Further, the bill would allow for students who enrolled in a foreign dental school under those circumstances prior to January 1, 2020 to be eligible for licensure.

The Legislature has addressed student eligibility issues, timeframes for schools to achieve CODA accreditation, and it does not appear that any outstanding issues remain.

**Staff Recommendation:** The Act should not be amended to grant DBC any new role over foreign dental schools. The Act should not be amended to extend the timeframe for DBC program approval. The Act should not be amended to allow graduates to remain eligible for licensure in California if they enrolled in a foreign dental school after January 1, 2020 that is not CODA approved.

**DBC Response:** AB 1519 (Low, Chapter 865, Statutes of 2019) revised requirements for DBC's approval of foreign dental schools. Beginning January 1, 2020, DBC required applicant dental schools to successfully complete the international consultative and accreditation process with CODA, which is recognized by the U.S. Department of Education as the accreditation body for postsecondary dental education programs.

As stated, prior to this action, two foreign dental schools were approved by DBC: La Universidad De La Salle Bajío ("De La Salle") and the Faculty (School) of Dentistry at State University of Medicine and Pharmacy "Nicolae Testemintanu" of the Republic of Moldova. At the time, CODA did not have a mechanism for international accreditation. The approval process for each of these schools involved a visit to the program by three or four individuals sent by DBC to apply accreditation standards.

DBC recognized that it did not have the expertise to accredit foreign dental schools. This accreditation is a rigorous process requiring review of much supporting documentation and a site visit by a large group of trained educators with expertise in multiple areas of clinical dentistry and educational processes.

CODA has since developed accreditation standards and processes for international schools. To date, CODA has accredited two foreign dental schools: King Abdulaziz University Dental School in Saudi Arabia and Yeditepe University



Faculty of Dentistry in Turkey. Others are in the pipeline. If the graduates of these institutions want to practice in California, they are eligible to apply for licensure using one of the several available pathways. That is, there are alternate means for internationally educated dentists to become licensed in California if they wish to do so.

It is unreasonable that international programs should have a less rigorous pathway for approval than the 66 U.S. dental schools, potentially placing consumers of dental services at risk. DBC backs the process as it exists, took an Oppose position on AB 1552 (Garcia), and supports the Staff's recommendation.

### **DBC BUDGET ISSUES**

**ISSUE # 4: (COST RECOVERY STAFF.) DBC has important work to do and may not have appropriate staffing to carry out its cost recovery work.**

**Background:** DBC continues to request full cost recovery for enforcement cases that result in administrative discipline. Due to staffing vacancies and what DBC calls "higher priority Board activities," DBC notes that it has been challenging to do this specific cost recovery work. DBC believes it would benefit from the authority to hire one dedicated staff tasked with cost recovery work to ensure DBC recoups costly enforcement expenditures.

**Staff Recommendation:** DBC should advise the Committees on this effort and what staffing challenges exist that may impose barriers on DBC's ability to carry out its functions.

**DBC Response:** DBC enforcement staff are responsible for the collection of cost recovery and fines imposed by citations and disciplinary orders. The number of complaints received has increased from 3,566 in Fiscal Year (FY) 2018-2019 to 4,401 in FY 2022-2023. This proliferation of complaints has caused a surge in the workload for complaint analysts, special investigators (non-sworn), and investigators (sworn).

In FY 2019-2020, DBC's Budget Change Proposal for a staff services analyst was approved to conduct continuing education audits of licensees. This position issues citations when licensees fail these audits. In FY 2022-2023, 370 citations were issued. While not all these citations are due to continuing education audits, the workload of the position has been more than anticipated. Of those citations issued, 68 did not pay the fine as required. The additional workload to collect the fines from citations takes time away from completing continuing education audits.

In general, collection of cost recovery and fines is a process that takes time away from DBC's efforts to protect the public by investigating complaints and completing continuing education audits. Currently staff make every attempt to collect the cost recovery and fines through interviews and letters informing the debtor that payment is due and the date it must be paid by. If no payment is received by the due date, staff must mail notices to the debtor and maintain the records. A letter must be sent every thirty days, three separate times with the appropriate language included. If the letters are returned, then staff must complete additional searches for a current address. These steps all must be documented and then referred to the Franchise Offset Program and/or a collection agency. If money is collected in one of these ways, DBC must maintain the documentation and update the file with this information. Therefore, DBC is requesting an additional analytical position to focus primarily on cost recovery efforts across DBC operations.

### **DBC LICENSING ISSUES**

**ISSUE #5: (DENTAL ASSISTANTS.) DBC regulates registered dental assistants (RDAs), registered dental assistants in extended functions (RDAEFs), is responsible for setting the duties and functions of unlicensed dental assistants, and issues permits to other specified assistants. Are updates to the Act necessary?**

**Background:** Three categories of dental assistants (DAs) are regulated by the DBC, distinguished by what duties they may perform based on their training. This includes unlicensed DAs, authorized to perform "basic supportive dental procedures"; RDAs, authorized to perform more complex duties; and RDAEFs, authorized to perform additional restorative procedures following diagnosis and intervention by a dentist. DAs are unlicensed, thus not registered with DBC or directly regulated by DBC.

In response to concerns about dental workforce shortages, AB 481 (Carrillo) was introduced in 2023 to create new licensure pathways and expand the duties of DAs. Proponents cited data from DBC showing that half of the state's 58 counties are experiencing a shortage of dental assistants and noted a 2021 survey that found 44% of providers indicated that trouble filling vacant staff positions had limited their practice's ability to treat more patients. The bill made several changes intended to decrease barriers to licensure and expand safe opportunities for the dental workforce.

**Staff Recommendation:** The Committees may wish to ensure that appropriate updates and modernization are made to the Act to support patient-centric opportunities within the dental industry by amending the Act to incorporate provisions of AB 481 pursuant to ongoing stakeholder discussions and to reflect changes that DBC can effectively implement.

**DBC Response:** DBC has been in collaboration with various associations and stakeholder groups to develop a comprehensive rulemaking proposal for dental assisting that incorporates provisions of AB 2242 (formerly AB 481), into the Act that are responsive to both DBC staff issues and stakeholder concerns.

The first rulemaking package associated with these regulations, addressing dental assisting examinations (Article 4. "Examinations," California Code of Regulations (CCR), title 16, §§ 1080 et seq.), was approved for initiation of the rulemaking process by DBC at the November 2023 Board meeting.

Additionally, a proposed Section 100 filing to address CCR 16 sections 1069, 1076 and 1086, Article 1-1069, Article 3-1076, Article 5-1086 will be presented at the May 2024 Board meeting.

According to the author, AB 2242, is intended to make the dental assisting career pipeline attractive, bringing in new entrants to the unlicensed dental assistant line of work and provide a greater incentive for those entrants to train to become RDAs, RDAEFs, and RDHs. The bill introduces new pathways to licensure, to include a 'preceptorship' which combines work experience and coursework to be supervised by an employer-dentist designated as 'preceptor' who would evaluate competency, teach critical reasoning, ensure the coursework is from a DBC approved provider and document progress. It also adds a pathway that allows applicants holding a current Certified Dental Assistant certificate from the Dental Assisting National Board and completing a course in pit and fissure sealants to apply for licensure in California, which can potentially increase portability to this population of workers. It is DBC's intent to support incorporating provisions of the bill into the Act, as allowable. DBC continues to work with stakeholders to amend the language to ensure success with implementation and avoid unintended consequences or barriers to licensure.

**ISSUE #6: (LICENSURE BY PORTFOLIO.) The prior sunset review oversight for DBC asked DBC to characterize the success of this licensure pathway and the impact it has on students seeking to practice dentistry within and outside California. Is this pathway still feasible?**

**Background:** Licensure by Portfolio is a relatively recently enacted alternative pathway to licensure as a dentist in California, available to applicants since November 2014. Under portfolio licensure requirements, instead of taking a single examination, students build a portfolio of completed clinical experiences and clinical competency examinations in six subject areas over the normal course of their clinical training during dental school. The portfolio option gives students in California an alternative to being tested on a live patient over the course of one weekend. The applicant's portfolio is assessed for demonstration

of experiences and competencies, following a letter of good standing signed by the dean of the applicant's dental school. The applicant must also pass Parts I and II of the National Board Written Examinations.

The portfolio option gives students an alternative to being tested on a live patient over the course of one weekend, which is the method of assessing competency used in the Western Regional Examining Board (WREB) exam process, as well as other examinations throughout the country.

Concerns have been raised that because California has the distinction of being one of the first states to pursue this method of qualifying for licensure, dentists who have obtained their license through the portfolio pathway may face difficulties when seeking reciprocal acknowledgment of qualification by other states. DBC was tasked during the prior sunset review oversight in 2019 with answering whether the process is an effective alternative to conventional examinations. Following the sunset review oversight discussions, DBC requested that the DCA Office of Professional Examination Services (OPES) review the Portfolio Examination for continued use for California licensure of dentists. OPES completed its final confidential report on the Portfolio Examination in June 2023, and a summary was presented at the August 2023 Board meeting. OPES raised several psychometric issues of concern, which were discussed by DBC. OPES recommended that DBC initiate a process to eliminate the Portfolio Examination as a pathway to licensure, a proposal that DBC ultimately approved, suggesting amending BPC sections 1632, 1632.5, and 1632.55, and repeal BPC section 1632.1.

DBC notes in its sunset report that this pathway has been utilized by a small number of applicants since it was originally established but requires a significant amount of time and effort to maintain, including updating the necessary examination for licensure through this pathway.

**Staff Recommendation:** DBC should provide the Committees information about the practical impacts of this proposal. DBC should provide the Committees with an update on any evaluations of a potential substitute pathway to facilitate dental student opportunities. The Committees may wish to amend the Act to ensure enhanced licensure portability.

**DBC Response:** Licensing boards and bureaus within DCA are required to ensure that examination programs used in California licensure comply with psychometric and legal standards (BPC § 139). To become a licensed dentist in California, a candidate must have the requisite education and experience, pass the Integrated National Board Dental Examination and the California Dental Law and Ethics Examination, and complete one of the following four pathways:

1. Pass the Dental Board of California Dental Portfolio Examination
2. Pass the CDCA-WREB-CITA Dental ADEX Examination (ADEX)
3. Obtain Licensure by Credential
4. Obtain Licensure by Residency

As stated, DBC requested that DCA's OPES review the Dental Board of California Dental Portfolio Examination (Portfolio) for continued use in California licensure of dentists. OPES reviewed information provided by DBC, which included documents regarding practices and procedures used to develop and validate the Portfolio. OPES conducted a comprehensive evaluation of these documents to determine whether the following Portfolio components met professional guidelines and technical standards: (a) occupational analysis (OA), (b) examination development and scoring, (c) passing scores and passing rates, (d) test administration, and (e) test security procedures.

Although the Portfolio appears to meet professional guidelines and technical standards, and links to the California dentist description of practice, OPES has concerns about its continued use for California licensure of dentists. OPES recognizes that the Portfolio was an innovative and novel concept at the time of its development and implementation in 2014. The original objectives of the Portfolio were 1) to offer candidates an alternative pathway to a standalone examination and 2) to eliminate the need for candidates to obtain patients for an examination. However, most candidates opt to take a standalone examination rather than the Portfolio, possibly due to scheduling logistics and the lack of reciprocity with other states. Additionally, because standalone examinations have incorporated innovations and have now moved to manikin-based examinations, candidates are no longer required to obtain patients. As a result, the Portfolio does not appear to serve its intended purpose, and it does not provide the level of standardization and reciprocity provided by ADEX.

A more significant concern, however, is the lack of examination development, psychometric evaluation, and examiner audits that have not occurred since the Portfolio launched in 2014. If DBC continues offering the Portfolio, additional development work is required. Updating the Portfolio will require an extensive investment of time, staffing, and fiscal resources from DBC and the industry. Even if DBC is willing to invest the necessary resources to perform the required development work, there is no assurance that candidates will choose this pathway to licensure given the other alternatives available.

For these reasons, continuing to offer the Portfolio in its current form is inadvisable. Only 79 applicants have used this pathway since began on November 14, 2015. Therefore, DBC does not believe the investment in the portfolio pathway is justified. Rather, the existing pathways (i.e., License by WREB/ADEX, Licensure by Credential, Licensure by Residency) are sufficient to

facilitate timely licensing. DBC recommends amendments to BPC sections 1632, 1632.5, and 1632.55 and repeal of BPC section 1632.1 to eliminate the License by Portfolio pathway to licensure for dentists. This proposal was approved at the August 2023 Board meeting.

**ISSUE #7: (LICENSURE BY CREDENTIAL.) Applicants through this licensure pathway have expressed the need for clarification in the Act. What changes are necessary?**

**Background:** According to DBC, current requirements in BPC section 1635.5 for the License By Credential (LBC) pathway have prompted many questions and complaints from applicants seeking clarification on several aspects of the requirements: what qualifies as “otherwise restricted” under the law; minimal practice requirements for licensure; residency credit towards licensure; changes in clinical practice contracts; and what constitutes failure to comply or complete those contracts and the consequences to the underlying license.

DBC recommends amending BPC section 1635.5 to clarify clinical practice work requirements and how much credit residency programs will count towards the total hours required for licensure. DBC would also like to add a requirement for those seeking work credit through a contractual agreement to teach and/or practice dentistry to submit written documentation verifying compliance with the requirement. This would further specify how many hours per week an applicant must work and/or teach under such a contractual agreement. DBC would be authorized authority to cancel the restricted license granted under this statute if it finds that the licensee has not met the terms of the contractual agreement, as applicable. It would be helpful for the Committees to understand if this proposal should also include nonclinical settings and the potential use of a license beyond clinical practice, which could have the unintended consequence of impacting dentists in the field of dental public health.

**Staff Recommendation:** DBC should provide the Committees information about the practical impacts of this proposal. The Committees may wish to amend the Act to ensure greater applicant clarity while balancing existing opportunities for licensees.

**DBC Response:** The LBC pathway is unique in that the license applicant may qualify for licensure based on out-of-state licensure and clinical practice experience. LBC is the only pathway that does not require a Doctor of Dental Surgery (DDS) or Doctor of Medicine in Dentistry (DMD) degree from a dental school approved by DBC or American Dental Association Commission on Dental Accreditation (CODA). Additionally, the LBC pathway does not require completion of examinations as a condition of licensure. The LBC pathway is

designed to accommodate candidates with out-of-state clinical practice and/or a degree from a foreign dental school.

In 1996, the California State Legislature, Joint Legislative Sunset Review Committee recommended the LBC pathway to increase the number of dentists eligible to practice in California, especially in underserved areas. In 2002, AB 1428 (Aanestad, Chapter 507, Statutes of 2001) enacted BPC section 1635.5, which authorized DBC to grant a dentist license to an applicant who has not taken an examination before DBC if the applicant, among other things, provided proof of a current and active out-of-state dentist license and clinical practice experience. During this time, 34 states offered a credentialing option as an alternative to a licensure examination.

AB 1428 required the dentist license applicant be active in clinical practice for a minimum of 1,000 hours per year for at least five years. Applicants with at least two years of out-of-state clinical practice were able to fulfill the remainder of the five-year requirement with a pending contract to either 1) practice dentistry full time in an underserved clinic, or 2) teach or practice dentistry full time in an accredited dental education program.

In 2005, SB 928 (Aanestad, Chapter 464, Statutes of 2004), among other things, extended the requirement of completing active clinical practice to a total of at least 5,000 hours in five of the seven consecutive years immediately preceding the date of the application. The modification allowed for applicants with disruptive circumstances, such as disability or medical leave or military service obligations, to be eligible for licensure despite gaps in clinical practice. However, as the Board began accepting LBC applications, staff determined the application process and corresponding requirements warranted additional clarification. It was unclear whether the clinical practice requirement needed to be completed immediately preceding the date of the application. The amended statute also did not clearly indicate if gaps in clinical practice were permissible for the purpose of licensure.

In 2006, SB 299 (Chesbro, Chapter 4, Statutes of 2006) amended BPC section 1635.5 to allow an applicant to satisfy the entire clinical practice requirement with a pending contract to work in an underserved clinic or as faculty in an accredited dental education program but restricted the applicant to work in the specified setting.

To date, regulations have not been drafted to further define the eligibility requirements for LBC. As the LBC pathway is established solely in statute, DBC staff propose amending BPC section 1635.5 to address the questions and concerns regarding eligibility requirements. Therefore, DBC has recommended clean-up language of the LBC pathway language through the Sunset process

reduce barriers to licensure (e.g., how applicants can meet the requirement for 5,000 hours of clinical practice and will enable dentists out of state with clinical experience to be eligible for licensure sooner, are enabling people to join the workforce in CA). This proposal was approved at the February 2023 Board meeting.

**ISSUE #8: (FICTITIOUS NAME PERMITS.) Clarification may also be necessary on certain aspects of Fictitious Name Permit applications.**

**Background:** BPC section 1701.5, states, "...Any association or partnership or corporation or group of three or more dentists, engaging in practice under any name that would otherwise be in violation of Section 1701 may practice under this name if, and only if, the association, partnership, corporation or group holds an outstanding, unexpired, unsuspended, and unrevoked permit issued by the board under this section." BPC section further 1804 specifies that a DBC-issued Fictitious Name Permit is not required by a corporation if it is practicing under a corporate name according to certain requirements and is not required for an individual practicing under them with a practice area, for example, Dr. Terry Jones, General Dentistry, or Dr. Pat Smith, practice limited to orthodontics. DBC requires applicants to provide certain information, including articles of incorporation, accompanied by a fee. DBC reports that it has received questions about aspects of the application process related to the application process; the allowable family name, specifically relating to past or prospective associates, partners, shareholders, or members of the group; the permit fees and term; and reporting changes in the practicing dentists at the location. DBC recommends amendments to BPC sections 1701.5 and 1804 to expand and clarify the information that applicants must provide in support of their permit application, eliminate the family name requirement, and establish reporting procedures for when a named dentist has left the business.

**Staff Recommendation:** DBC should provide the Committees information about the practical impacts of this proposal. The Committees may wish to amend the Act to ensure greater applicant clarity.

**DBC Response:** Pursuant to BPC section 1701.5, DBC issues FNPs to dentists who wish to engage in dental practice under a fictitious name at a specified location. DBC receives an average of 800 FNP applications per year. DBC staff review and process the applications for FNPs for dental offices that are owned by a sole proprietor, two dentists, or three or more dentists as an association, partnership, corporation, or group. The sole purpose of an FNP is to inform the public which individual(s) or business entity is conducting business under the assumed or fictitious name. The FNP does not reserve the name, provide rights to the use of the name, or prevent another party from using the name.



The Board will grant an FNP to an applicant if the Board finds to its satisfaction that:

- (a) The applicant or applicants are duly licensed dentists.
- (b) The place or establishment, or the portion thereof, where the applicant or applicants practice, is owned or leased by the applicant or applicants, and the practice conducted at the place or establishment, or portion thereof, is wholly owned and entirely controlled by the applicant or applicants.
- (c) The name that the applicant or applicants propose to operate contains at least one of the following designations: "dental group," "dental practice," or "dental office" and contains the family name of one or more of the past, present, or prospective associates, partners, shareholders, or members of the group, and is in conformity with Section 651 and subdivisions (i) and (l) of Section 1680.
- (d) All licensed persons practicing at the location designated in the application hold valid and outstanding licenses and no charges of unprofessional conduct are pending against any persons practicing at that location (BPC, § 1701.5.).

In August 2022, amended language was presented and approved by DBC. Further review of the approved amendments to BPC section 1701.5 highlighted additional potential problems with the FNP application process that could be clarified with additional amendments to the statute.

Previously, DBC staff proposed applicants should specify the names, license numbers, and contact information for each dentist engaging in practice under the fictitious name, rather than merely requiring DBC to find to its satisfaction that the applicant(s) are duly licensed dentists (Prop. BPC, § 1701.5, subd. (b)(1).). After further consideration, DBC staff proposed that only names, license numbers, and contact information for each applicant engaging in practice under the fictitious name be required. The previous amendment would have required all dentists engaging in practice under the fictitious name, including contracted dentists, to be included in the application.

Additional clarifying amendments to the statute were requested to resolve confusion over the active, unrestricted license status of individuals practicing at the location who are not FNP applicants (Prop. BPC, § 1701.5, subd. (c).). BPC section 1701.5, subdivision (d), authorizes the Board to issue an FNP if the Board finds that all licensed persons practicing in the location designated in the application hold valid and outstanding licenses and that no charges of unprofessional conduct are pending against any persons practicing at the location. However, an issue has been raised whether dentists, especially contracting dentists, who join the practice after issuance of the FNP, must be added to the FNP.

To resolve numerous issues, the newly proposed amendments maintain the same reporting requirement for departing dentists (Prop. BPC, § 1701.5, subd. (i).). However, any additions would now require a new application for FNP (Prop. BPC, § 1701.5, subd. (j).). This option would allow DBC staff to evaluate the additional dentists who wish to engage in practice under the fictitious name for compliance with the FNP application requirements.

Like some of DBC's other legislative proposals, this proposal seeks to respond to feedback from those directly impacted by the legislation, in this case, permit applicants. Technical clarification should be made to address persistent applicant questions and improve the permitting process. This proposal was approved at the August 2022 Board meeting and revised at the February 2023 Board meeting.

**ISSUE #9: (SB 501 IMPLEMENTATION.) DBC has been working to implement important statutory updates related to pediatric sedation and anesthesia. Further amendments to the Act may still be necessary to ensure it is effectively implemented. The Legislature has also been tasked with determining whether SB 501 provisions for pediatric patients should be extended to all patients.**

**Background:** In February 2016, the Senate Committee on Business, Professions and Economic Development sent a letter to DBC requesting that a subcommittee be formed to investigate pediatric anesthesia in dentistry and requested that information from that investigation be reported back to the Legislature no later than January 1, 2017. DBC concluded that existing California law was sufficient to provide protection for pediatric patients during dental sedation; however, it made several recommendations to enhance statute and regulations to provide a greater level of public protection.

Senate Bill 501 (Glazer, Chapter 929, Statutes of 2018) was the culmination of years of policy discussion that followed the tragic death of young boy while undergoing dental work under anesthesia and established a series of new requirements and minimal standards for the use of sedation and anesthesia in pediatric dental procedures. Specifically, the bill created a new process for DBC to issue general anesthesia permit (that may include a pediatric endorsement) as well as moderate and pediatric minimal sedation permits to applicants based on their level of experience and training; and established new requirements for general anesthesia or sedation administered to patients under thirteen years of age. The bill also required DBC to review data on adverse events related to general anesthesia and sedation and all relevant professional guidelines for purposes of reporting to the Legislature on any relevant findings.

DBC has been working to fully implement the provisions of SB 501 and has continued to identify areas in the Act where technical cleanup and clarification may be necessary, including to address the following topics:

- Implementation of the new general anesthesia and sedation permits.
- Fees for general anesthesia and sedation permits.
- Ambiguities in the general anesthesia and sedation permits for physicians and surgeons.
- Outdated language for Oral Conscious Sedation for Adults certificates.
- CE requirements and expiration dates for Pediatric Minimal Sedation Permits.
- Physical presence requirements when administering or ordering the administration of general anesthesia or sedation.
- Confidentiality concerns over submission of patient case information.
- Pediatric Minimal Sedation Permit requirements for physical evaluation and medical history.
- The definition of “good standing” and moving the good standing requirement to the sections on permit applications.
- Which kind of permit (and endorsement, if applicable) a permit holder should have, if not already specified.
- Medical recordkeeping requirement consistency.
- Ensuring patient safety and compliance with minimal sedation administration requirements by requiring that all minimal sedation procedures, including those performed to obtain a minimal sedation permit, in a private dental office meet established requirements for minimal sedation permit holders.

In addition to DBC's continued work to implement these important provisions, legislation in 2021 sponsored by The California Association of Oral and Maxillofacial Surgeons would have extended current requirements for patients under 13 to all patients, regardless of age. It would be helpful for the Committees to understand the patient and public benefit of this proposal as well as the impacts and feasibility of this update.

**Staff Recommendation:** DBC should provide an update on its implementation of SB 501. DBC should advise the Committees of the appropriateness of extending SB 501 provisions to all patients, when implementation is underway. DBC should advise the Committees on any access to care issues that could arise from related changes. The Committees may wish to amend the Act to further the notable patient safety goals of SB 501 pursuant to DBC's clarifying and technical requests.

**DBC Response:** SB 501 significantly changed how anesthesia and sedation permits are issued by DBC. It specified that general anesthesia deep sedation permit holders must hold a pediatric endorsement to administer general

anesthesia or deep sedation to patients under 7. It also specified that moderate sedation permit holders must hold a pediatric endorsement to administer moderate sedation to patients under 13 and added additional patient monitoring requirements for patients under the age of 13. The regulations to implement SB 501 took effect on August 16, 2022. They were promulgated with input from many communities of interest, and DBC's operations were updated to accommodate the implementation of the new permit requirements.

Prior to the approval of DBC's regulations, staff worked with the DCA, Office of Information Services (OIS) to reconfigure the BreEZe system to allow permit holders whose permits would expire in 2022 to renew and continue to practice under their existing permit until it expired. This allowed DBC to develop draft regulations while minimizing the impact to consumers seeking anesthesia and sedation. Some applicants for pediatric endorsements have expressed concerns about meeting the requirement to provide documentation of 20 cases of administration of sedation to pediatric patients within the 24 months directly preceding the application, but DBC believes this mandate is necessary for pediatric patient protection because DBC's subject matter experts review each patient record to ensure that the anesthesia or sedation was delivered in a competent and safe manner.

SB 501 also required that the Office of Oral Health (OOH), California Department of Public Health (CDPH) provide to the Legislature, by January 1, 2022, a report and analysis to address issues related to access to dental anesthesia care. The analysis shall include the costs of anesthesia and a discussion of payer sources for anesthesia services, including, but not limited to, an analysis of any difference in patient charges, patient payments, and public and private third-party reimbursement between dental anesthesia provided by a single dentist or anesthesia provider, or dental anesthesia provided by a dentist and a separate anesthesia provider.

DBC staff have been in contact with CDPH for updates and report that appropriation of funds was not provided to OOH. OOH is currently working on the report, which is now being funded by Proposition 56, the California Healthcare Research and Prevention Tobacco Tax Act of 2016. OOH contracted with the University of California Los Angeles, Center for Health Policy Research for the analysis and report. The report is currently being prepared for CDPH review and subsequent submission to the Legislature.

DBC is willing to consider the expansion of the pediatric staffing of anesthesia in dental office standards to the adult population. However, there does not appear to be an identifiable problem justifying the increased regulation. Since the last Sunset bill there have been no pediatric deaths related to general anesthesia and deep sedation in dentistry reported.

**ISSUE #10: (PROBATIONARY LICENSES.) Does DBC need additional flexibility to issue probationary licenses as the authority was originally intended?**

**Background:** According to DBC, when an applicant is denied a license for something such as a criminal conviction related to the practice of dentistry, the normal process is that the applicant will be advised of the license denial and informed of their ability to appeal the license denial. If the applicant submits a request to appeal the denial, a case is opened and transmitted to the Office of the Attorney General for preparation of a Statement of Issues (SOI) that describes the grounds for license denial. Once the SOI has been served on the license applicant, the Office of the Attorney General may enter discussions with the license applicant to potentially settle the matter through a stipulated settlement that would allow for issuance of the license with certain terms and conditions of probation. Once the terms and conditions of the stipulated settlement are finalized by DBC's Executive Officer, Office of the Attorney General, and license applicant, they are signed by the parties and submitted to DBC for consideration. DBC's options include adopting the stipulated settlement to issue the license on probation, denying the stipulated settlement, or denying the stipulated settlement and proposing a counteroffer, which may contain revised terms and conditions of probation.

If the matter is not settled by stipulation, the case will go before an administrative law judge (ALJ) to receive evidence and testimony regarding whether to issue the license. After a hearing on the matter, the ALJ will prepare a proposed decision which is submitted to DBC for consideration of whether to adopt the proposed decision, adopt the proposed decision with reduced penalties (lessen the terms and conditions of probation, if appropriate), or reject the proposed decision and decide the matter.

BPC section 1628.7, enacted in 1996 to authorize the issuance of a probationary license, was intended to provide an efficient and cost-effective path to allow DBC to review license applications and offer probationary licenses to applicants without a lengthy process pursuant to Administrative Procedure Act (APA) provisions. DBC notes in its sunset report that BPC section 1628.7 still requires the APA process before a probationary license can be issued. DBC believes that amendments to BPC section 1628.7 are necessary to be more consistent with the probationary license procedures of the Medical Board of California, which in turn will result in an easier process both for DBC and for applicants who may be issued probationary licenses.

DBC would like to amend the Act to:

- Clarify requirements for licensure and add a sentence identifying DBC's ability to deny licensure based on unprofessional conduct.

- Add language to advise that the decision shall be posted on the Board's website.
- Remove subdivision (c) which outlines the requirement to comply with APA to issue a probationary license.
- Add language to advise that a new application cannot be submitted until at least one year has passed from the denial of the application.
- Add language to clarify that an unrestricted license would be issued to the licensee once the probationary term is completed or upon termination of the probationary term.
- Remove subdivision (d), which requires the Board to adopt written guidance regarding probationary assignments. DBC notes that this is not relevant to the issuance of probationary licenses, as DBC's Disciplinary Guidelines with Model Language and Uniform Standards Related to Substance-Abusing Licensees, with Standard Language for Probationary Orders incorporated by reference in CCR, title 16, sections 1018 and 1018.01, respectively, provide appropriate guidance regarding probationary terms and conditions.
- Add language to ensure that the statute's intent is clear, and that issuance of a probationary license under this statute would not require adjudication under APA.
- Make other clarifying, non-substantive amendments, including renumbering the subdivisions and removing outdated language.

It would be helpful for the Committees to understand the cost savings and efficiencies these changes could bring about, as well as the impacts to applicant due process in the licensure process. It would be helpful for the Committees to understand how frequently DBC issues probationary licenses and the frequency that application denial occurs.

**Staff Recommendation:** DBC should inform the Committees about the challenges DBC has faced since the law was implemented and what updates have been made historically to ensure its intent is realized. DBC should inform the Committees about discussions it has engaged in with stakeholders and the public about this proposal and the impacts it may have.

**DBC Response:** DBC is currently unable to timely issue a probationary license for conduct that does not necessarily warrant a hearing. Amendments to this law would allow DBC to follow an efficient and cost-effective process, like the processes under the Medical Practice Act and Pharmacy Law, bypassing the lengthy process of the Administrative Procedure Act. As the law is written, DBC is required to file a pleading pursuant to Gov. Code section 11415.60, subdivision (b), under the APA. Due to this, DBC is required to deny the application, wait for the applicant to appeal the decision, and then stipulate to a probationary license after a Statement of Issues is filed with the Office of the Attorney

General. The changes proposed will allow DBC to issue probationary licenses without an appeal and filing of a Statement of Issues. This action would enable applicants to join the workforce and alleviate costs accrued after transmittal to the Office of the Attorney General. Historically, applications are denied at a higher rate for dental auxiliary licenses than dentist licenses. Over the past five years there have been a total of 24 license applications denied between dental auxiliary and dentist license applications. Once transmitted to the Office of the Attorney General, a case in which a Statement of Issues is filed, but DBC prefers to stipulate to a probationary license, the cost can range from \$200 to \$1000. The timeline for issuance of the license after the denial can take from three months to one year. This lag can be perceived as a barrier to the applicant joining the workforce. If the applicant chooses not to accept a probationary license offer from DBC, the applicant can proceed to a hearing, preserving applicant due process.

The average number of these types of disciplinary outcomes during the past five years is 34, and DBC expects this number to grow with increases in complaints and investigations. DBC presented this legislative proposal for discussion at its August 2023 Board meeting.

**ISSUE #11: (CE.) Should DBC accept CE credits in mental health and wellness toward a licensee's mandatory coursework completion necessary for licensure renewal?**

**Background:** Dentists are required to complete 50 units of continuing education to renew their license. If a dentist has certain permitting (dental sedation, etc.), they may have additional requirements.

Currently, CE credit is provided for courses in "the actual delivery of dental services to the patient or the community" (CCR, tit. 16, § 1016) like:

- Courses in preventive services, diagnostic protocols, and procedures (including physical evaluation, radiography, dental photography) comprehensive treatment planning, charting of the oral conditions, informed consent protocols and recordkeeping.
- Courses dealing primarily with nutrition and nutrition counseling of the patient.
- Courses in esthetic, corrective and restorative oral health diagnosis, and treatment.
- Courses in dentistry's role in individual and community health emergencies, disasters, and disaster recovery.
- Courses that pertain to the legal requirement governing the licensee in the areas of auxiliary employment and delegation of responsibilities; the Health Insurance Portability and Accountability Act (HIPAA); actual delivery of care.

- Courses pertaining to federal, state, and local regulations, guidelines or statutes regarding workplace safety, fire and emergency, environmental safety, waste disposal and management, general office safety, sexual harassment prevention, and all training requirements set forth by the California Division of Occupational Safety and Health (Cal-DOSH) including the Bloodborne Pathogens Standard.
- Courses pertaining to the administration of general anesthesia, moderate sedation, oral conscious sedation, or medical emergencies.
- Courses pertaining to the evaluation, selection, use and care of dental instruments, sterilization equipment, operatory equipment, and personal protective attire.
- Courses in dependency issues and substance abuse such as alcohol and drug use as it relates to patient safety, professional misconduct, ethical considerations, or malpractice.
- Courses in behavioral sciences, behavior guidance, and patient management in the delivery of care to all populations including special needs, pediatric and sedation patients when oriented specifically to the clinical care of the patient.
- Courses in the selection, incorporation, and use of current and emerging technologies.
- Courses in cultural competencies such as bilingual dental terminology, cross-cultural communication, provision of public health dentistry, and the dental professional's role in provision of care in non-traditional settings when oriented specifically to the needs of the dental patient and will serve to enhance the patient experience.
- Courses in dentistry's role in individual and community health programs.
- Courses pertaining to the legal and ethical aspects of the insurance industry, to include management of third-party payer issues, dental billing practices, patient and provider appeals of payment disputes and patient management of billing matters.

CE courses areas "considered to primarily benefit the licensee shall be limited to a maximum of 20% of a licensee's total required course unit credits for each license or permit renewal period":

- Courses to improve recall and scheduling systems, production flow, communication systems and data management.
- Courses in organization and management of the dental practice including business planning and operations, office computerization and design, ergonomics, and the improvement of practice administration and office operations.
- Courses in leadership development and team development.
- Coursework in teaching methodology and curricula development.



- Coursework in peer evaluation and case studies that include reviewing clinical evaluation procedures, reviewing diagnostic methods, studying radiographic data, study models and treatment planning procedures.
- Courses in human resource management and employee benefits.

Notably, CE courses “considered to be of direct benefit to the licensee or outside the scope of dental practice in California...shall not be recognized for continuing education credit”:

- Courses in money management, the licensee's personal finances or personal matters such as financial or estate planning, and personal investments.
- Courses in general physical fitness, weight management or the licensee's personal health.
- Presentations by political or public figures or other persons that do not deal primarily with dental practice or issues impacting the dental profession.
- Courses designed to make the licensee a better businessperson or designed to improve licensee personal profitability, including motivation and marketing.
- Courses pertaining to the purchase or sale of a dental practice, business, or office; courses in transfer of practice ownership, acquisition of partners and associates, practice valuation, practice transitions, or retirement.
- Courses pertaining to the provision of elective facial cosmetic surgery as defined by the Dental Practice Act in Section 1638.1, unless the licensee has a special permit obtained from the Board to perform such procedures pursuant to Section 1638.1 of the Code.

To expand recognition of the effect of personal mental health issues on the practice and delivery of care to patients, particularly as it relates to professional misconduct, malpractice, or ethical considerations, it would be helpful for the Committees to understand what steps are available through the Act and what additional efforts are necessary to promote licensee well-being while balancing patient welfare and safe practice.

**Staff Recommendation:** DBC should inform the Committees of efforts it has taken to support licensee mental health and wellness. The Committees may wish to update the Act to ensure that licensees can receive necessary support but still obtain CE credit.

**DBC Response:** DBC's Diversion Program provides assessment and intervention services for professionals who have substance use disorders. DBC is also aware of support services provided by professional associations. DBC, however, would like to add a proposed Section 1645.3 of the code to include personal mental

health and wellness courses as acceptable for continuing education credit. Staff will be submitting a legislative proposal to DBC at its May 14-15, 2024 Board meeting with a recommendation to include the language in the Sunset bill.

### **DBC ENFORCEMENT ISSUES**

**ISSUE # 12: (LICENSURE DISPLAY.) Licensees are required to display licenses in a conspicuous place. Clarification may be necessary as to what “conspicuous” means for purposes of complying with this important requirement.**

**Background:** Existing law, BPC section 1700 (c) provides that a person engaging in the practice of dentistry without causing to be displayed in a conspicuous place in the person's office the name of each and every person employed there in the practice of dentistry is guilty of a misdemeanor. Questions have been raised about what constitutes a “conspicuous location” and whether licenses must be displayed, in addition to the names of the licensees. DBC recommends an amendment to BPC section 1700 to specify the requirements for the display of a license, permit, or registration in terms of the location for display; the persons employed at the office who must display a license, permit, or registration; and what must be displayed.

**Staff Recommendation:** DBC should provide the Committees information about the practical impacts of this proposal. The Committees may wish to amend the Act to ensure greater applicant clarity.

**DBC Response:** BPC section 1700 outlines several actions that would constitute a misdemeanor, subjecting the person, company, or association to a fine and/or imprisonment if convicted. One of these provisions, subdivision (c), requires the person, company, or association that engages in the practice of dentistry to cause to be displayed in a conspicuous place in his or her office the name of each and every person employed there in the practice of dentistry.

Some licensees have questions about what constitutes a conspicuous place and whether licenses must be displayed in addition to the names of the licensees. DBC recommends that the language be clarified to ensure compliance with statute. Specifically, DBC proposes to amend BPC section 1700 as follows:

- Clarify the location of license display by using similar text found in BPC section 1658.1 that requires display of license information in an area that is likely to be seen by all patients who use the facility.
- Require the original or copy of the license, permit, or registration to be displayed.

This proposal was approved at the February 2023 Board meeting.

**ISSUE #13: (DENTAL ASSISTANT PROGRAMS.) Educational programs that advertise Board-approval without being approved harm students and the public who may undertake a program only to realize they are not eligible for licensure. DBC believes specific enforcement authority in the Act for this behavior is necessary.**

**Background:** DBC is concerned that some dental assisting educational programs or courses are advertising claims of “Board accreditation” or “Board approval” that are either untrue or misrepresent facts. Fraudulent advertising or other misrepresentations made to potential students can have a detrimental impact on their lives, particularly if they spend time and money to complete a specified training program they believe will lead to licensure, but they end up not actually being eligible since the program was not actually Board-approved. RDAs can qualify for licensure by graduating from a Board-approved educational program in registered dental assisting; RDAEFs must graduate from a Board-approved extended functions postsecondary educational program.

Some DA training programs are also approved by the Bureau for Private Postsecondary Education and subject to requirements outlined in the Private Postsecondary Act. Education Code section 94905 prohibits an institution from executing an enrollment agreement with a student that is known to be ineligible for licensure, unless the student’s stated objective is other than licensure. It would be helpful to understand if DBC has partnered with BPPE to jointly ensure students who believe they are participating in an approved training program that would lead to licensure.

To combat fraudulent statements and misrepresentations by dental assisting programs and courses, DBC requests additional authority to pursue administrative enforcement actions, beyond withdrawal or denial of program and/or course approval. DBC believes that a clear enforcement action statute, with prescribed DBC administrative enforcement actions, such as issuing a citation with an administrative penalty to an educational program or course in violation of false or misleading advertising, could assist in efforts to hold programs accountable.

**Staff Recommendation:** DBC should advise the Committees on its efforts to promote student protection, including collaboration with the Bureau for Private Postsecondary Education to determine where that program may be able to take action against an institution that offers a program that does not lead to licensure. DBC should update the Committees on steps, including amendments to the Act, that may lead to enhanced program quality and limitations on potentially fraudulent programs.

**DBC Response:** DBC can research this issue further and work with the Bureau for Private Postsecondary Education to assess program quality and limitations on potentially fraudulent programs. DBC, however, would like the Legislature to create a clear enforcement action statute that includes prescribed DBC administrative enforcement actions, such as issuing a citation to an educational program or course for false or misleading advertising. The citation would come with an administrative penalty.

**ISSUE #14: (UNLICENSED ACTIVITY.) Unlicensed activity can harm patients, the public, and licensees alike. While DBC has authority to post public enforcement actions against licensees, it may be limited in making this information available about unlicensed operators. Should the Act be updated?**

**Background:** DBC is authorized to issue an administrative citation for unlicensed practice pursuant to BPC section 148 and regulations (CCR tit. 16, § 1023.7). Pursuant to BPC section 27, DBC is authorized to post enforcement actions against licensees on its websites but given that the code is silent about the authority to do so for unlicensed activity, DBC believes an amendment to the Act is necessary. Specifically, DBC requests language to authorize DBC to post citations on the Board's website issued for unlicensed activity. The Board believes that providing online access to this enforcement action information will better protect consumers, reducing inequities often experienced by individuals from vulnerable communities.

**Staff Recommendation:** DBC should update the Committees on its unlicensed activity enforcement actions, including the frequency of citations and the recourse that exists to deter unlicensed activity. The Committees may wish to amend the Act to ensure patients and the public are aware of the action DBC takes against unlicensed actors.

**DBC Response:** DBC's complaint priorities are outlined in DCA's Complaint Prioritization and Referral Guidelines, updated in February 2024. DBC ensures that unlicensed activity is categorized as High priority. DBC actively investigates complaints of unlicensed activity. These investigations may start with an onsite inspection of the premises or move to a full investigation, depending on the complaint. The unlicensed practice of dentistry is investigated as a criminal offense (the first offense is a misdemeanor, and the second offense is a felony). DBC investigators work closely with prosecutorial authorities throughout the State of California to investigate and seek criminal charges for violations involving unlicensed practice of dentistry.

DBC averages about 50 complaints of unlicensed activity each year which can include working out of scope complaints. In 2021, DBC investigated 46 complaints of unlicensed activity as part of a targeted undercover operation. In

2023, 22 cases were investigated in a similar operation. Both operations occurred in southern California and resulted in misdemeanor and felony charges. DBC would like authority to post these types of charges on DBC's website once the cases are processed through the criminal system so consumers will be aware of the actions taken against unlicensed actors.

**ISSUE #15: (DIVERSION.) DBC manages a Diversion Program that provides for the confidential rehabilitation of licensed dental professionals whose competency may be impaired due to substance abuse issues. The program accepts licensed dentists, RDAs, and RDAEFs. Does the Diversion Program prevent licensee-related issues with substance abuse?**

**Background:** The Act establishes Legislative intent for DBC to “seek ways and means to identify and rehabilitate licentiates whose competency may be impaired due to abuse of dangerous drugs or alcohol, so that licentiates so afflicted may be treated and returned to the practice of dentistry in a manner that will not endanger the public health and safety.” According to DBC's website, DBC's Diversion Program services include:

- Confidential consultation with professionals in the field of substance use disorders
- Intervention services
- Assessment of treatment needs and referral to appropriate resources
- Assistance in the development of a recovery plan
- Monitoring of compliance
- Encouragement and peer support

DBC's website notes that, “Dental professionals are at risk of substance abuse disorders due to the availability of drugs in the workplace and to the work-related stresses that accompany a practice.” All requests for information and assistance from the Diversion Program are strictly confidential. After a dental professional contacts the program, arrangements are made for a confidential evaluation by a licensed professional. After the evaluation, the individual meets with the DBC's Diversion Evaluation Committee (DEC) for formal acceptance into the Diversion Program. The DEC members, who are appointed by the Board, are fellow dental professionals and experts in the field of substance use disorders.

Records maintained by the Diversion Program are confidential and not subject to discovery or subpoena. However, in compliance with BPC section 1695.5(f), program records may be provided to DBC's enforcement program or used in a disciplinary proceeding if the licensee fails to comply with the Diversion Program requirements or is determined to be a threat to the public or to their own health and safety. If the licensee tests positive for a banned substance, the positive test

result will be provided to DBC's enforcement program and may be used in a disciplinary proceeding.

The Diversion Program has long been a focus of Legislative attention and it would be helpful for the Committees to understand the status of the Diversion Program's efforts, the costs related to ongoing Diversion Program functions, whether DBC as a state licensing entity remains the most appropriate source for licensee substance abuse assistance and whether the Diversion Program is effective in preventing substance abuse-related practice issues that may harm patients.

**Staff Recommendation:** DBC should provide an update on the Diversion Program, DEC efforts, Diversion Program costs and expenditure trends, and whether the Diversion Program is successful. The Committees may wish to evaluate the Diversion Program, including necessary updates to this model within the functions of a licensing and regulatory program.

**DBC Response:** DBC believes that the Diversion Program is successful in meeting its mandate. DBC's Program Manager works with Maximus (DCA's contracted vendor) to implement the Diversion Program by selecting and training Diversion Evaluation Committee members, as well as by applying criteria for acceptance, denial, and termination of licensee participants.

Per DBC regulations (CCR, tit. 16, § 1020.4), the Diversion Committee shall consist of six members (three dentists, two public members and one physician or psychologist), each of whom shall have experience or knowledge in the evaluation or management of persons who are impaired due to alcohol or drug use.

Over the past few fiscal years, the annual cost of the Diversion Program has been between \$30,000 and \$40,000. The cost of the Diversion Program varies from year to year based on how many participants are enrolled in the program and how many in-person meetings are held. DBC pays Maximus per participant. The more participants, the greater the cost.

Diversion Program participants undergo drug testing and are actively monitored. Program violations are reported to DBC, and action is taken to prevent harm to consumers and patients. Maximus reports that treatment followed by supportive monitoring reduces the risk of relapse to less than 20%.

## **TECHNICAL CHANGES**

**ISSUE #16: (TECHNICAL CHANGES MAY IMPROVE EFFECTIVENESS OF THE ACT AND DBC OPERATIONS.) There are amendments to the Act that are technical in nature but may improve DBC operations and the enforcement of the Act.**

**Background:** There are instances in the Act where technical clarifications may improve DBC's operations and application of the statutes governing the DBC's work. For example, reference in the Act remains to a now obsolete RDA Practical Examination. Additionally, if changes outlined above go into effect related to the LBC pathway, additional clarity may need to be made related to LBR licensing to ensure that an applicant provides proof they have not failed a dental examination in the prior five years before. DBC may also benefit from updates to the timeframe within which a licensee may apply for a new license after not renewing a license, as well as updating related fees and examination requirements for these applicants.

**Staff Recommendation:** The Committees may wish to amend the Act to include technical clarifications.

**DBC Response:** DBC supports the Committees' recommendation and will work with legislative staff to enact the technical changes to the Act needed to clarify and remove unnecessary language. In addition, DBC submitted several legislative proposals that, among other things, would provide technical cleanup amendments.

## **CONTINUED REGULATION OF THE CURRENT DENTAL BOARD OF CALIFORNIA**

**ISSUE #17: (Continued Regulation of The Dental Board of California.) Should the licensing and regulation of dental health professionals be continued and regulated by DBC?**

**Background:** The health, safety, and welfare of consumers of dental services are protected by the presence of a strong licensing and regulatory board with oversight over dental professionals. DBC continues to make important operational and programmatic changes and updates aimed at serving the public and its licensees. DBC maintains several divisions and units within its larger organization and should continue working to engage its robust licensing and permitted population in a constructive way.

**Staff Recommendation:** DBC should be continued and reviewed again at a future date to be determined.

**DBC Response:** DBC supports the Committees' recommendation; DBC should be continued with at least a four-year extension of its sunset date.