

Dental Board of California

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Protection of the public shall be the highest priority for the Dental Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

— Business and Professions Code § 1601.2

The Dental Board of California (DBC) is a consumer protection agency within the state Department of Consumer Affairs (DCA). DBC is charged with enforcing the Dental Practice Act, Business and Professions Code section 1600 *et seq.* The Board's regulations are located in Division 10, Title 16 of the California Code of Regulations (CCR).

DBC licenses and regulates dentists (DDS/DMD), and issues specialty permits for a variety of functions to licensed dentists who qualify for them, including permits to administer general anesthesia, conscious sedation, and oral conscious sedation for adult and minor patients. Under Business and Professions Code section 1638, DBC issues oral and maxillofacial surgery (OMS) permits to qualified dentists and physicians. OMS dentists may seek an additional permit and be authorized to perform elective facial cosmetic surgery under section 1638.1. DBC issues permits to unlicensed individuals who qualify as orthodontic assistants and dental sedation assistants.

DBC also licenses (1) registered dental assistants (RDA); and (2) registered dental assistants in extended functions (RDAEF). To assist the Dental Board in regulating RDAs and RDAEFs, the legislature has created the Dental Assisting Council (DAC) in Business and Professions Code section 1742. The DAC consists of seven members: the RDA member of the Dental Board plus one other Dental Board member, and five RDAs. These members are appointed

by the Dental Board and represent a broad range of dental assisting experience and education (including at least one RDAEF). The DAC is authorized to consider all matters relating to dental assistants on its own initiative, or upon the request of the Dental Board, and make appropriate recommendations in the following areas: requirements for dental assistant examination, licensure, permitting, and renewal; standards and criteria for approval of dental assisting educational programs, courses, and continuing education; allowable dental assistant duties, settings, and supervision levels; appropriate standards of conduct and enforcement for dental assistants; and requirements regarding infection control.

DBC sets standards for approval of dental schools and dental assistant training programs and determines subject matter for license examinations. It licenses applicants who pass the exam and meet Board requirements for licensure, sets standards for dental practice, and disciplines licensees who do not meet those standards. DBC is also responsible for registering dental practices (including mobile dental clinics) and corporations; establishing guidelines for continuing education requirements for dentists and dental assistants; approving radiation safety courses; and administering the Diversion Program for substance-abusing dentists and dental assistants.

DBC consists of fifteen members: eight practicing dentists, one Registered Dental Hygienist (RDH), one RDA, and five public members. Business and Professions Code section 1602 requires all of the professional members of the Board to have been actively practicing for at least five years prior to their appointment. The Governor appoints thirteen of the Board's fifteen members (including all of the dental practitioners); the Senate Rules Committee and the Assembly Speaker each appoint one public member. At this writing, there is a public member vacancy on the Board, to be appointed by the Governor.

MAJOR PROJECTS

Board Survives Sunset Review

On October 13, 2019, Governor Newsom signed DBC's sunset extension bill, [AB 1519 \(Low\) \(Chapter 865, Statutes of 2019\)](#), which extends the Board's sunset date to January 2024 (see LEGISLATION). The Legislative Oversight Committee identified key issues relating to the sunset review that were discussed at the oversight hearing on March 5, 2019, and in subsequent [written responses](#) by DBC to issues raised in the [Background Paper](#) prepared by the legislature. [\[24:2 CRLR 3-7\]](#). At the August 15 [meeting](#), DBC's Executive Officer [reviewed](#) all twenty-five items in the July 2, 2019 version of the bill, as well as four proposed amendments to the bill that the Board voted on and approved. Key points of that discussion are highlighted as follows:

Teledentistry. AB 1519 amends section 2290.5 of the Business and Professions Code to make all laws and regulations governing professional responsibility, unprofessional conduct, and standards of practice applicable to practitioners who provide telehealth services. This bill provides that the failure by the treating dentist to review diagnostic digital or conventional radiographs for orthodontia prior to the initial diagnosis and correction of malpositions of human teeth or the initial use of orthodontic appliances is unprofessional conduct under the act. The bill requires an individual, partnership, corporation, or other entity providing dental services through telehealth to make available the name, telephone number, practice address, and California state license number of any dentist who will be involved in the provision of services to a patient, and would require a violation of that provision to constitute unprofessional conduct. The bill further prohibits a provider of dental services from requiring a patient to sign an agreement limiting the patient's ability to file a complaint with DBC.

At the August meeting, one Board member questioned the meaning of teledentistry, as it has been used as a diagnostic component, and does it now include delivery of services. DBC's Executive Officer responded that teledentistry will be a discussion for a future meeting as it has not been defined yet but emphasized that every California patient should only be treated by a California dentist.

Licensing of foreign dental schools. AB 1519 amends section 1636.4 of the Business and Professions Code so that beginning January 1, 2020, the Board will no longer accept new applications for approval of foreign dental schools, rather, foreign dental schools will be required to complete an 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. The bill also requires previously approved foreign dental schools to complete the CODA accreditation by January 1, 2024, to remain approved.

The Board discussed whether these changes would impact students who are currently enrolled in a foreign dental school when the bill takes effect. DBC's Executive Officer responded that students who are currently enrolled will graduate but that the school will be notified to stop accepting students into their program as soon as the bill is signed. During public comment, a representative of De La Salle University, one of only two foreign dental schools licensed by DBC, expressed disappointment that the school will no longer be approved by the Board and concern about the transition process.

Examination competencies. AB 1519 amends section 1630 of the Business and Professions Code with regard to the substance of the licensing examination to practice dentistry. The bill requires the examination to include assessment of competency in diagnosis, treatment planning, and restorative, endodontic, periodontic, and prosthetic dentistry. At the August 15

meeting, one Board member asked if an applicant will still be licensed in California if he or she opts out of certain components of the licensing exam. DBC's Executive Officer confirmed that if an applicant opts out, they will not be licensed in California.

OPES Report on Licensing

At its August 15, 2019 [meeting](#), the Board received a [report](#) from the Office of Professional Examination Services (OPES) regarding the American Board of Dental Examiners (ADEX) dental examination series to evaluate the suitability of ADEX for obtaining licensure in California. As background, licensing boards within DCA are required to ensure that examination programs used in the California licensure process comply with psychometric and legal standards. DBC requested that DCA's OPES complete a comprehensive review of the ADEX examination. OPES's evaluation covered (a) occupational analysis, (b) examination development, (c) passing scores, (d) test administration, (e) examination scoring and performance, and (f) test security procedures. In addition to reviewing documents, OPES also convened a panel of licensed dentists to serve as subject matter experts to review the content of the ADEX dental examination series.

DCA's OPES found that the procedures meet professional guidelines and standards and offered a few recommendations for ADEX to consider should the Board adopt the ADEX dental examination series for California licensure. The Board voted to accept the OPES report. Questions regarding implementation of the ADEX exam will be discussed at a future meeting.

RULEMAKING

AB 2138 Implementation

At the August 15, 2019 [meeting](#) [Agenda item 20(a)], the Board discussed rulemaking related to [AB 2138 \(Chiu\) \(Chapter 995, Statutes of 2018\)](#), which becomes effective in July of

2020. AB 2138 requires boards to amend their existing regulations regarding licensing of applicants who have committed crimes that are “substantially related” to the profession, and to consider whether a person has shown that they have been rehabilitated based on certain criteria. Board staff presented [proposed amendments](#) to sections 1019 and 1020, Title 16 of the CCR, for the Board to consider before formally commencing the rulemaking process to implement the bill.

Business and Professions Code section 480 permits a board to deny a license where an applicant has been convicted of a crime or committed an act “substantially related” to the licensed business or profession, and section 490 authorizes boards to suspend or revoke a license on the basis that the licensee was convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession. AB 2138 includes further criteria boards must consider when evaluating whether a crime is “substantially related” to the business or profession. The three criteria include: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed. AB 2138 also directs boards to consider whether an applicant has shown he has been rehabilitated and is eligible for licensure.

While the Board originally approved language for proposed amendments to section 1019 at its February 2019 [meeting](#), DBC staff reported that during DCA’s pre-notice review, the Department requested clarification as to whether the “rehabilitation” criteria for denials of initial applications would also apply to suspensions and revocations of existing licenses. After consideration at the August meeting, the Board voted to clarify that the “rehabilitation” criteria would apply to both applications for initial licensure as well as suspensions and revocations of existing licenses and directed staff to initiate the formal rulemaking process. At this writing, the

Board has not yet formally noticed the proposed regulations in the California Regulatory Notice Register.

LEGISLATION

[AB 1519 \(Low\)](#), as amended September 6, 2019, is the Dental Board's sunset review legislation. In addition to amending section 1601.1 of the Business and Profession Code to extend the Board's sunset date to January 1, 2024, the bill makes statutory improvements and imposes a series of reforms on the Board. Of note, the bill makes the following substantive modifications to the Dental Practice Act:

Merger of Special Funds: Currently, when the Board collects licensing fees, it deposits the funds into one of two special funds: the Dentistry Fund, which supports operating expenses and equipment and personnel services for DBC's regulation of dentists; and the Dental Assisting Fund, which supports the same services for RDAs and RDAEFs. During the sunset review process, the legislature considered whether it was necessary to maintain both funds separately and opted to merge them into one fund. Accordingly, AB 1519 adds section 205.2 to the Business and Professions Code, which effectively abolishes the State Dental Assistant Fund and requires that any remaining monies be transferred to the State Dentistry Fund before July 1, 2022.

Professional Conduct: AB 1519 amends section 2290.5 of the Business and Professions Code to make all laws and regulations governing professional responsibility, unprofessional conduct, and standards of practice applicable to practitioners who provide telehealth services. This bill provides that the failure by the treating dentist to review diagnostic digital or conventional radiographs for orthodontia prior to the initial diagnosis and correction of malpositions of human teeth or the initial use of orthodontic appliances is unprofessional conduct under the act. The bill requires an individual, partnership, corporation, or other entity providing dental services through

telehealth to make available the name, telephone number, practice address, and California state license number of any dentist who will be involved in the provision of services to a patient, and would require a violation of that provision to constitute unprofessional conduct. The bill further prohibits a provider of dental services from requiring a patient to sign an agreement limiting the patient's ability to file a complaint with DBC.

Background Checks: AB 1519 modifies section 1629 of the Business and Professions Code regarding background check requirements for applicants for licensure. AB 1519 requires applicants to submit fingerprints for a background check and permits applicants to submit a copy of a completed Live Scan form instead of fingerprint cards. Furthermore, this legislation requires applicants to sign a release of information from the National Practitioner Data Bank and provide verification of registration with the Federal Drug Enforcement Administration with the United States Department of Justice.

Licensing Examination: AB 1519 amends section 1630 of the Business and Professions Code with regard to the substance of the licensing examination to practice dentistry. AB 1519 requires the examination to include assessment of competency in diagnosis, treatment planning, and restorative, endodontic, periodontic, and prosthetic dentistry.

Foreign Dental Schools: AB 1519 amends section 1636.4 of the Business and Professions Code regarding foreign dental school education. Beginning in January of 2020, the Board will no longer accept new applications for approval of foreign dental schools, rather, foreign dental schools will be required to complete an international consultative and accreditation process with the CODA, or a comparable accrediting body approved by the Board. The bill also requires previously approved foreign dental schools to complete the CODA accreditation by January 1, 2024, to remain approved.

Licenses on Probation: AB 1519 adds new section 1673 to the Business and Professions Code, which requires a licensee who has been placed on probation on and after July 1, 2020, to disclose their probationary status, including length of probation, restrictions on the licensee, and where the patient can get further information regarding the licensee on the Board's website. This disclosure will be required prior to the patient's first visit following the probationary order.

Registered Dental Assistants: AB 1519 amends sections 1645.1(a), 1752.1, and 1742(h) of the Business and Professions Code with regard to registered dental assistants. Under this legislation, applicants will be required to perform satisfactorily on the Registered Dental Assistant Combined Written and Law and Ethics Examination (which replaces the practical examination previously used) administered by the Board. Also, applicants must provide evidence of having successfully completed board-approved courses in infection control, the Dental Practice Act, basic life support, radiation safety and coronal polishing. This bill also contains a new requirement that recommendations by the Dental Assisting Council (DAC) be approved, modified, or rejected by the Board within 120 days of submission, and that in the event the Board rejects, postpones, or refers the matter back to the DAC for any reason, or significantly modifies the intent or scope of the recommendation, the Board shall provide its reasons in writing within 30 days.

Applicants with a Medical Degree: AB 1519 modifies section 2096 of the Business and Professions Code regarding post-graduate training for applicants for licensure who have completed a medical degree from a combined dental and medical degree program. Section 2096 specifies that twenty-four months of postgraduate training program must be part of an oral and maxillofacial surgery postgraduate training program, and applicants are exempt from the requirement of completing four months of postgraduate training in general medicine.

On October 13, 2019, Governor Newsom signed AB 1519 (Chapter 865, Statutes of 2019). In doing so, however, he issued a [signing message](#) expressing concern about the inclusion of significant policy changes related to the regulation of self-applied orthodontic treatments administered via telehealth and other technological platforms. “While I am signing this legislation, sunset bills are not the appropriate vehicle for policy changes that lack broad stakeholder input. Such proposals should be considered in separate legislation and evaluated accordingly. I will not look favorably upon any future regulatory sunset bills that include those provisions.”

[AB 528 \(Low\)](#), as amended September 6, 2019, and as it relates to DBC, amends section 209 of the Business and Professions Code, and various sections of the Health and Safety Code, relating to controlled substances. Specifically, the bill amends section 11165(d) of the Health and Safety Code to require a dispensing pharmacy, clinic or other 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 and requires that Schedule V controlled substances also be reported using the CURES database beginning January 2021. Newly modified section 11165.4(a)(1)(A)(i) requires an authorized health care practitioner to consult the CURES database to review a patient’s controlled substance history at least once every six months after the first time the substance is prescribed and the prescriber renews the prescription, except as specified. The bill also amends section 209 of the Business and Professions Code to require that the Department of Justice (DOJ) identify procedures to enable licensed healthcare practitioners to delegate their authority to access reports from the CURES database, as this will assist prescribers who consult those reports.

Governor Newsom signed SB 528 on October 9, 2019 (Chapter 677, Statutes of 2019).

[AB 954 \(Wood\)](#), as amended July 1, 2019, adds section 1374.193 to the Health and Safety Code, and adds section 10120.4 to the Insurance Code, relating to notice of network leasing to dental providers. According to the Academy of General Dentistry,

network leasing refers to a mechanism by which a preferred provider organization (PPO) shares its network of dentists with other PPOs, such that the first PPO's in-network dentists must then accept patients as in-network providers of the other PPOs. General dentists may be participating with numerous PPOs without knowing it. In some cases, the dentist who has signed a contract with one PPO will discover that he or she is actually in-network with a different PPO only when he or she submits a claim for services and receives an explanation of benefits indicating reduction to a contracted fee and restriction against balance-billing the patient.

New section 1374.193 of the Health and Safety Code builds upon existing law and requires that PPOs/contracting entities identify in writing or in electronic form, all third parties as of the date the contract with the dental provider is entered into or renewed. The bill also requires that contracting entities/PPOs identify the third-party access provision in the provider network contract, and include an option for dental providers to opt out of the network lease.

Governor Newsom signed AB 954 on October 7, 2019 (Chapter 540, Statutes of 2019).

[AB 1622 \(Carrillo\)](#), as amended September 6, 2019 and as it relates to DBC, amends section 1682 of the Business and Professions Code to add family physicians to the list of practitioners that a parent or guardian of a minor may consult regarding options available for a minor's dental treatment, and associated risks, if any. This bill further defines family physician to mean a primary care physician and surgeon who renders continued comprehensive and preventative health care services to families, and who has received specialized training in an approved family medicine residency for three years after graduation from an accredited medical school. This bill requires permit holders to update their operating procedures and update their written informed consent information to comply with the language in the statute.

Governor Newsom signed AB 1622 on October 8, 2019 (Chapter 632, Statutes of 2019).

[SB 786 \(Business, Professions & Economic Development\)](#), as amended September 5, 2019, would amend sections 1902–1966.6 of the Business and Professions Code, relating to the Dental Hygiene Board. This bill makes non-controversial, minor, non-substantive, and technical changes. Of note, for the Dental Hygiene Board, this bill adds “dental” before “hygiene board” throughout the Dental Practice Act and clarifies that restoration materials used in interim therapeutic restorations are “interim.”

Governor Newsom signed SB 786 on October 2, 2019 (Chapter 456, Statutes of 2019).

Legislative Bills that Died

The following bills, reported in Volume 24, No. 2 (Spring 2019), died in committee or otherwise failed to be enacted during 2019: [AB 544 \(Brough\)](#), relating to fees for inactive licenses; [SB 653 \(Chang\)](#), relating to dental hygienists.

RECENT MEETINGS

At its May 15, 2019 [meeting](#), DBC staff discussed the status of several ongoing regulatory packages which have not been formally noticed. Board staff [reported](#) they have finalized language for several initial rulemaking proposals related to Basic Life Support Equivalency Standards (sections 1016 and 1016.2, Title 16 of the CCR); Elective Facial Cosmetic Surgery Permit Application Requirements and Renewal Requirements (sections 1044.6, 1044.7, and 1044.8, Title 16 of the CCR); Mobile Dental Clinic and Portable Dental Unit Registration Requirements (section 1049, Title 16 of the CCR); and Minimum Standards for Infection Control (section 1005, Title 16 of the CCR). Board staff has drafted the initial rulemaking documents for these regulatory packages and is reviewing with DBC legal counsel.

Board staff also reported they have drafted the initial rulemaking documents and DBC legal counsel has approved the following regulatory packages: Citation and Fine (sections 1023.2 and 1023.7, Title 16 of the CCR); Continuing Education Requirements (sections 1016 and 1017, Title 16 of the CCR); Diversion Committee Membership (section 1020.4, Title 16 of the CCR); and Law and Ethics Exam Score (section 1031, Title 16 of the CCR). DBC staff will submit these initial rulemaking documents to DCA to review as required prior to submitting the documents to the Office of Administrative Law for noticing.

At the May 15 [meeting](#), staff provided an update on the Board's efforts to implement [AB 149 \(Cooper\) \(Chapter 4, Statutes of 2019\)](#), relating to controlled substance security prescription forms. AB 149 is intended to resolve problems unintentionally created by [AB 1753 \(Low\) \(Chapter 479, Statutes of 2018\)](#), which heightened the security process for obtaining prescription forms. AB 149 delays the requirement for prescription forms with uniquely serialized numbers until no later than January 1, 2020, declares that any prescription written on a form that was otherwise valid before January 1, 2019, or was written on a form approved by DOJ as of January 1, 2019, is valid and may be filled, compounded, or dispensed until January 1, 2021.

Also, at the May 15 [meeting](#), the Board discussed Senator Pan's concerns regarding DBC's continuing education program, which he raised at the March 5, 2019 Sunset Review Oversight Hearing. Specifically, the Senator asked if there is an entity responsible for reviewing continuing education providers for conflict of interest, if there is a conflict of interest policy in place to ensure approved providers are offering relevant continuing education courses and not marketing sessions, and what percentage of providers the Board audits for conflicts of interest. The Board's April 30, 2019 written [response](#) outlines its current procedure to approve continuing education programs, and confirms that no complaints have been received regarding conflict of interest of continuing

education providers. However, Board staff recommend addressing the issue in the following ways: 1) providers must demonstrate that all educational activities offered are independent of commercial influence, either direct or indirect, and 2) providers must ensure that all financial relationships between the provider and commercial entities, as well as all financial relationships between course planners and faculty and commercial entities are fully disclosed to participants. This could be accomplished through the regulatory process, and the Board voted to bring the issue back for discussion at a future meeting.

At the May 15, 2019 [meeting](#), the Board discussed the impact of *Dynamex Operations West Inc. v. Superior Court*, 4 Cal. 5th 903, (2018) and voted to take no position on [AB 5 \(Gonzalez\) \(Chapter 296, Statutes of 2019\)](#), as these may apply to licensees working as independent contractors in the dental field. For example, Registered Dental Hygienists in Alternative Practice (RDHAPs), who often work as independent contractors, may be considered employees under the *Dynamex* “ABC test” because dentists would theoretically control when hygienists see their patients and office practices, and dental hygiene may not be “outside the usual course” of the dental business. Although DBC does not directly deal with employment status, this issue may impact DBC licensees and there is still uncertainty around the impact of the decision. The Board agreed there is a need for future discussion.

At both the [May 15](#) and [August 15](#) meetings, the Executive Director of the newly formed Dental Hygiene Board of California (DHBC) reported to DBC on its progress in holding its first Board meetings, hiring staff, promulgating regulations, educational program evaluations, and school site visits. DHBC has issued approximately 33,000 licenses and 24,000 active licenses. DHBC specifically sought approval from DBC on its proposed draft regulatory language related to radiographic decision making and interim therapeutic restoration courses for registered dental

hygienist categories of practice (section 1109, Title 16 of the CCR). After discussion, DBC Board members did not have the votes to approve the language, and instead voted to create a subcommittee with DBC's Executive Director and two additional DBC members to work on concerns raised at the meeting.