

# 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 codified 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 to 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 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 theoretical fifteen members (including all of the dental practitioners. The Senate Rules Committee and the Assembly Speaker each appoint one public member.

On May 4, 2021, Governor Newsom [reappointed](#) Lilia Larin, DDS; Rosalinda Olague, RDA, B.A.; and Joanne Pacheco, RDH, MAOB, to the Board. All three appointees have served on the Board since 2018. At this writing, there is one public member vacancy on the Board, to be

appointed by the Governor.

## HIGHLIGHTS

### **AB 526 Authorizes Dentists with Necessary Training to Administer COVID-19 and Influenza Vaccines**

[AB 526 \(Wood\)](#), as amended September 1, 2021, amends section 1209 and adds sections 1625.6 and 1645.2 to the Business and Professions Code to allow dentists to independently prescribe and administer influenza and COVID-19 vaccines approved or authorized by the United States Food and Drug Administration (FDA) to persons three years of age or older. At its August 20, 2021 [meeting](#) [[Agenda Item 25\(b\)iv](#)], DBC voted to support AB 526.

Under former law, dentistry was defined as the diagnosis or treatment, by surgery or other methods, of diseases and lesions and the correction of malposition of the human teeth, alveolar process, gums, jaws, or associated structures, and provides that diagnosis or treatment may include all necessary related procedures as well as the use of drugs, anesthetic agents, and physical evaluation. In response to the COVID-19 pandemic, the Governor proclaimed a state of emergency and authorized executive order [N-39-20](#). This allowed the Director of DCA, to the extent necessary and only for the duration of the declared emergency, to waive the professional licensing requirements and amend scopes of practice in the Business and Professions Code.

On January 27, 2021, the Director of DCA [waived](#) Business and Professions Code section 1625 to the extent it prohibited licensed dentists from independently initiating and administering COVID-19 vaccines that were approved or authorized by the FDA to persons 16 years of age or older. This allowed dentists to temporarily support other healthcare officials in their pandemic mitigation efforts.

AB 526 authorizes dentists to maintain the emergency authority granted in the pandemic to administer COVID-19 and Influenza vaccines. To be eligible, a dentist needs to complete an immunization training program biennially that is either offered by the CDC or taken through a registered provider approved by DBC that, at a minimum, includes vaccine administration, prevention and management of adverse reactions, and maintenance of vaccine records. Dentists also must comply with all state and federal recordkeeping and reporting requirements, including providing documentation to the patient's primary care provider, if applicable, and entering the information in the appropriate immunization registry designated by the Immunization Branch of the State Department of Public Health.

Governor Newsom signed AB 526 into law on October 8, 2021 (Chapter 653, Statutes of 2021).

## **SB 607 Deletes Clinical and Practical Exam Requirements for Specific Registered Dental Assistants**

[SB 607 \(Min\)](#), as amended September 3, 2021, adds sections 1636.5 and 1636.6, amends sections 1724, 1753, 1753.55, 1753.6, and repeals section 1753.4 of the Business and Professions Code as it applies to DBC. This bill deleted the clinical and practical examination requirement for RDAEFs.

During its May 14, 2021, [meeting](#) [Agenda Item 22(b)xiii], the Board expressed its continued support for SB 607. The idea to delete the clinical and practical examination requirements for dental assistants began as a [legislative proposal](#) in December 2020 at the Board's meeting, but later became a bill by Senators Roth and Min, who added several amendments. These amendments, among other things, specified that the application fee for a pediatric minimal sedation

permit cannot exceed \$1,000, and the renewal fee cannot exceed \$600. The amendments also included that a foreign dental school renewed by the board prior to January 1, 2020, through a date between January 1, 2024, and June 30, 2026, maintains that approval through that specified date. The amendments further provided that, upon expiration of that board approval, the foreign dental school must comply with the specified accreditation processes. The Board voted to continue its support for SB 607.

As previously detailed, before this bill, the RDAEF examination was offered approximately eight times per year. [see [26:2 CRLR 7–9](#)] Because the examination consists of a clinical and practical examination, it must be held at a dental school with enough space to accommodate the approximately 25 to 30 candidates tested at each examination. The Board has already established that “due to ethical and practical considerations, dental licensure examinations are moving away from patient-based assessments and this trend has been accelerated by the COVID-19 pandemic.”

Prior to the passage of SB 607, the law provided that under the Dental Practice Act, licensure and regulation of dentists and dental auxiliaries (including registered dental assistants in extended functions) was to be performed by DBC within DCA. The law required anyone who applied for a license as a registered dental assistant in extended functions on and after January 1, 2010, to successfully complete a clinical or practical examination administered by the Board. The law authorized a registered dental assistant in extended functions who was licensed before January 1, 2010, to perform certain additional duties only if they passed the clinical or practical examination.

Governor Newsom signed SB 607 into law on September 28, 2021 (Chapter 367, Statutes of 2021).

## **Board Proposes Rulemaking that would Change Licensing Examination Criteria**

On April 23, 2021, DBC published [notice](#) of its intent to amend section 1031, Title 16 of the CCR, to establish the definition of successful results of the California Dentistry Law and Ethics Examination. The Board found this proposal is necessary to ensure the legal defensibility of the Board's California Dentistry Law and Ethics Examination.

According to the [initial statement of reasons](#), the proposed rulemaking intends to ensure that all applicants who pass the licensure examination have sufficient knowledge and experience to practice safely and competently. According to the Board's notice, the examination, as it currently exists, requires a score of 75% to pass. This proposed amendment clarifies that merely completing the administration of the examination does not constitute passing, and adopts a criterion-referenced passing score. Specifically, the [proposed language](#) changes the definition from "successfully complete" to "achieve a criterion-referenced passing score" in regards to the licensure examination. As used in this section, "criterion-referenced passing score" is a specified point in a distribution of scores at or above which candidates have achieved entry-level competence.

The Board further explains in the initial statement of reasons that because licensing examinations can vary in difficulty from one examination to the next, a fixed passing score or percentage such as 75% "does not represent the minimally acceptable competence for all administrations of an examination." By applying a criterion-referenced methodology, a passing score is lowered for an examination containing more difficult questions and raised for an examination containing fewer difficult items.

In 2018, DCAs' Office of Professional Examination Services (OPES) completed an occupational analysis of the dental profession in California. Based on those findings, the Board, during its February 7, 2019 [meeting](#), voted to ensure that its licensure examination was up to date by using a criterion-referenced passing score instead of a specified particular passing score. During the Board's [meeting](#) on August 14, 2020, it approved the revised regulatory language.

DBC anticipates a minimal fiscal impact because the Board already administers the test, so the cost necessary to amend section 1031 is expected to be absorbed within the existing cost resources. The public comment period on this issue ended June 7, 2021. At this writing, the rulemaking package is awaiting approval from the Office of Administrative Law (OAL).

## RULEMAKING

- ***California Dentistry Law and Ethics Examination:*** On April 23, 2021, the Board published [notice](#) of its intent to amend section 1031, Title 16 of the CCR regarding its passing score for the California Dentistry Law & Ethics Examination as set forth in the [proposed language](#). According to the [initial statement of reasons](#), OPES conducted an occupational analysis of the dental profession in 2018 and recommended that the Board amend its existing regulation, which sets the passing score for the Law and Ethics examination at 75%, and instead replace it with a criterion-referenced passing score in order to make it legally defensible. The public comment period on the proposed amendment expired June 7, 2021. A public hearing was never scheduled because DBC did not receive a written request 15 days prior to the expiration of the public comment period (see HIGHLIGHTS).

- ***Diversion Evaluation Committee Membership:*** On July 13, 2021, OAL [approved](#) this regulatory action, and the regulation took effect on October 1, 2021. On September 23, 2020,

DBC published [notice](#) of its intent to amend section 1020.4, Title 16 of the CCR to: 1) add a public member to the composition of Board diversion evaluation committees (DECs); 2) remove the requirement that a licensed dental auxiliary must serve on each committee; and 3) remove the term limits for committee members (see the [proposed language](#)). According to the [initial statement of reasons](#), it is becoming increasingly difficult for the Board to recruit qualified individuals to serve on DECs, and the proposed changes will enhance the Board's ability to fill the committees and will also allow current DEC members to continue serving.

- ***Consolidated Continuing Education, California Code of Regulations:*** On November 3, 2021, the Board published [notice](#) of its intent to amend sections 1016, 1016.2, and 1017, Title 16 of the CCR regarding continuing education and professional ethics as set forth in the [proposed language](#). According to the [initial statement of reasons](#), recent amendments to the Dental Practice Act necessitate regulation to add new requirements for continuing education related to the risks of addiction associated with the use of Schedule II drugs. This regulation would, among other things, ensure that licensees are educated about the risks and requirements of Schedule II opioids. The public comment period on the proposed amendment expires December 27, 2021. At this writing, the Board has not scheduled a public hearing with respect to this rulemaking proposal but will do so if it receives a written request 15 days prior to the expiration of the public comment period.

## LEGISLATION

[AB 107 \(Salas\)](#), as amended September 2, 2021, amends sections 115.6 and 5132 of the Business and Professions Code to require DBC, and other licensing boards under DCA, to grant temporary licenses to out-of-state licensed applicants who are married to an active-duty member



of the United States military. According to the author, military spouses are six times more likely to be unemployed; permitting them to seamlessly transition into a profession in California when they have already been licensed in another state will help them find well-paying jobs in their field more quickly. Governor Newsom signed AB 107 into law on October 8, 2021 (Chapter 693, Statutes of 2021).

[AB 526 \(Wood\)](#), as amended September 1, 2021, and as it applies to DBC, amends section 1209 and adds sections 1625.6 and 1645.2 to the Business and Professions Code to allow dentists to independently prescribe and administer influenza and COVID-19 vaccines approved or authorized by the FDA to persons three years of age or older. Governor Newsom signed AB 526 into law on October 8, 2021 (Chapter 653, Statutes of 2021) (see HIGHLIGHTS).

[SB 534 \(Jones\)](#), as amended August 30, 2021, amends sections 1902.3, 1917.1, 1926.1, 1926.3, 1941, 1950.5, and 1951 of the Business and Professions Code to, among other things, allow registered dental hygienists in alternate practice to operate a mobile dental hygiene clinic in specified settings, if they register the mobile dental hygiene clinic with the Board. It further authorizes the Board to conduct announced and unannounced reviews and inspections of a mobile dental hygiene clinic. The bill also expressly deems it “unprofessional conduct” for a licensee to knowingly make a statement or sign a certificate that falsely represents a fact related to the practice of dental hygiene. Governor Newsom signed SB 534 into law on October 4, 2021 (Chapter 491, Statutes of 2021).

[SB 607 \(Min\)](#), as amended September 3, 2021, and as it applies to DBC, adds sections 1636.5 and 1636.6, amends sections 1724, 1753, 1753.55, 1753.6, and repeals section 1753.4 of the Business and Professions Code to delete the clinical and practical examination requirement for RDAEFs. Governor Newsom signed SB 607 into law on September 28, 2021 (Chapter 367,

Statutes of 2021) (see HIGHLIGHTS).

The following bills, reported in [Volume 26, No. 2 \(Spring 2021\)](#), died in committee or otherwise failed to be enacted in 2021: [AB 29 \(Cooper\)](#), relating to expanding the Bagley-Keene Open Meeting Act; [AB 225 \(Gray\)](#), relating to veterans, or their spouses, who have a professional license from another state; [AB 646 \(Low\)](#), relating to the Boards posting on their websites concerning revoked licenses; [AB 1026 \(Smith\)](#), relating to a fee reduction for honorably discharged veterans; [AB 1236 \(Ting\)](#), relating to data collection; and [AB 1386 \(Cunningham\)](#), relating to initial licensing fees for veterans.