

# 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 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 fifteen members (including all the dental practitioners); the Senate Rules Committee and the Assembly Speaker each appoint one public member.

At its November 19, 2021 [meeting](#) (Agenda Item 30), the Board elected Dr. Alan Felsenfeld, MA, DDS as President; Dr. James Yu, DDS, MS, as Vice President; and Dr. Sonia Molina, DMD, MPH, as Board Secretary, effective January 1, 2022.

## HIGHLIGHTS

### **Dental Board Proposes Rulemaking that would Remove Clarity Issues in Compliance with SB 501**

On December 21, 2021, DBC published [notice](#) of its intent to adopt sections 1017, 1043.8.1, 1043.9, 1043.9.1, 1043.9.2, and Article 5.1, and amend sections 1021, 1043, 1043.1, 1043.2, 1043.3, 1043.4, 1043.5, 1043.6, 1043.7, 1043.8, 1044, 1044.1, 1044.2, 1044.3, 1044.4, 1044.5, and 1070.8 of Title 16 of the CCR to implement significant regulatory updates to the current anesthesia and sedation permit program regulations pursuant to [SB 501 \(Glazer\) \(Chapter 929, Statutes of 2018\)](#) as set forth in the [proposed language](#).

According to the [initial statement of reasons](#), SB 501 established a series of new provisions in the Dental Practice Act governing the use of deep sedation and general anesthesia such as, among other things, requiring dentists to possess either a current license in good standing and a general anesthesia permit, or other specified credentials in order to administer or order the administration of deep sedation or general anesthesia on an outpatient basis. The bill also requires dentists to possess a pediatric endorsement of their general anesthesia permit to administer or order the administration of deep sedation or general anesthesia to patients under seven years of age and will require dentists to be present in the dental office during the ordering and administration of general anesthesia or deep sedation. The bill requires the presence of the operating dentist and at least two additional personnel for patients under 13 years of age for procedures involving deep sedation or general anesthesia, and requires that certain personnel be present throughout the

procedure. It further requires a dentist who orders the administration of moderate sedation to be physically present in the treatment facility while the patient is sedated and would require the presence of additional specified personnel for sedation of patients 13 years of age or younger. It requires that specified permit holders establish continuing competency to administer general anesthesia, deep sedation or moderate sedation by completing 20 cases of anesthesia or sedation for specified pediatric populations within the 24-month period immediately preceding each permit renewal period.

The proposed rulemaking is intended to implement all the new provisions, ensure that minimum standards for the professions are met and ensure that there are no clarity issues in compliance with SB 501. On several previous occasions, DBC discussed proposed rulemaking at its meetings that would amend section 1017, Title 16 of the CCR. At its May 13, 2021 [meeting](#), the Board consolidated proposed amendments to sections 1016, 1016.2, and 1017 into a single rulemaking proposal. The Board decided to add the first rulemaking package into the SB 501 package to remove the clarity issue by having all new proposed sections that refer to one another in the same regulatory package. This rulemaking would also provide grammatical and other non-substantive changes to affected sections. This rulemaking would also establish permit application requirements for general anesthesia permits and moderate sedation permits and establish requirements to pay a fee to process those applications.

DBC anticipates the most fiscal impact will occur during the first two years of this proposed rulemaking implementation. The Board estimates that the expected permit application workload costs will roughly equal the expected permit application revenue. Following the public comment period, which expired on February 15, 2022, DBC published notice of modified text on March 18,

2022 for an additional 15-day comment period. The public comment period on the modified text expired on April 4, 2022. At this writing, the Board has not taken further action.

## **Board Grants Provisional Approval to California North State University College of Dental Medicine**

At its February 11, 2022, [meeting](#) [Agenda Item 24], DBC voted to grant provisional approval to California North State University College of Dental Medicine (CNSUCDM) to operate as a Board-approved dental school in California.

Pursuant to section 1614 of the Business and Professions Code, the Board is authorized to establish standards for the approval of dental colleges in California. Accordingly, the Board adopted section 1024, Title 16 of the CCR to set forth these standards, including its intent to only approve dental schools who continuously maintain high quality standards of instruction. Under this regulation, a new school for the study of dentistry in California must apply for provisional approval during its first academic year, and apply for final approval when the school is in full operation with classes studying in the curriculum in each of the following academic years. In lieu of its own investigation, the Board may accept the findings of any commission on accreditation agency approved by the Board, and accept those findings as its own.

During its May 14, 2021, [meeting](#) [Agenda Item 15], the Dean of CNSUCDM provided an update concerning the accreditation process. On August 31, 2021, the school received a call from the Commission on Dental Accreditation (CODA), informing them of their approved initial accreditation. On September 30, 2021, the school received a letter from the Bureau of Private Postsecondary Education approving the addition of the Doctor of Dental Medicine Program.

CNSUCDM is located in Elk Grove, within the Sacramento metropolitan area. According to Dr. Kevin Keating, DDS, MS, Dean and a Professor at CNSUCDM, this area is the twentieth

largest metropolitan area in the United States, and yet it lacks a dental school within 80-100 miles. Dr. Keating testified at the Board's February meeting, that the need for dental education in the area is what inspired CNSU to seek to establish an accredited dental institution.

CNSUCDM must apply for final approval once the school is in full operation in the following academic year. Upon achieving final accreditation, CNSUCDM will be California's seventh Dental School.

## RULEMAKING

The following is a status update on recent rulemaking proceedings that DBC has initiated:

- ***Anesthesia and Sedation:*** On March 18, 2022, DBC published [notice](#) of [modified text](#) of its rulemaking to proposed regulations, Title 16 of CCR, sections 1021, 1043, 1043.1, 1043.2, 1043.3, 1043.4, 1043.5, 1043.6, 1043.7, 1043.8, 1043.8.1, 1044, 1044.1, 1044.2, 1044.3, 1044.4 [not repealed], 1044.5, & 1070.8, adopt section 1017.1, and the adoption of a new Article 5.1 and regulations sections 1043.9, 1043.9.1 and 1043.9.2 related to [SB 501 \(Glazer\) \(Chapter 929, Statutes of 2018\)](#), regarding anesthesia and sedation. This modified text resulted from the hearing held on February 16, 2022. This rulemaking would implement significant regulatory updates to the current anesthesia and sedation permit program regulations (see HIGHLIGHTS).
- ***California Dentistry Law and Ethics Examination:*** On February 18, 2022, DBC published [notice](#) of [proposed modifications](#) to section 1031 Division 10 of Title 16 of CCR, regarding its passing score for the California Dentistry Law and Ethics Examination. These regulations were initially [noticed](#) on April 23, 2021 and approved as modified by the Board at its February 10, 2022 [meeting](#). The Board directed staff to take the necessary steps to complete the rulemaking process. An additional 15-day comment period expired on March 7, 2022. At this

writing, the Board has taken no further action.

- ***Consolidated Continuing Education, California Code of Regulations:*** On February 18, 2022, DBC [noticed](#) proposed [modifications](#) of its rulemaking sections 1016, 1016.2, and 1017, Title 16 of the CCR, regarding continuing education and professional ethics. The modifications were made to address public comments received during the public comment period. These regulations were initially [noticed](#) on November 12, 2021 and approved as modified by the Board at its February 10, 2022 [meeting](#). After notice, the required additional 15-day public comment period expired on March 7, 2022. At this writing, the Board has taken no further action.

## LEGISLATION

- [AB 646 \(Low\)](#), as amended January 24, 2022, would add section 493.5 to the Business and Professions Code to require DCA licensing boards, including DBC, to post information on their online license search systems about a revoked license due to a criminal conviction, and to update or remove information about the revoked license within 90 days should the Board receive an expungement order related to the conviction. According to the author, the bill is designed to reduce employment barriers for people with previous criminal records who have been rehabilitated and whose conviction has been dismissed or expunged through the judicial process. *[S. Rules]*

- [SB 889 \(Ochoa Bogh\)](#), as introduced January 31, 2022, would amend section 2827 of, and add section 1646.14 to, the Business and Professions Code to allow nurse anesthetists to administer general anesthesia or deep sedation to a dental patient if the nurse anesthetist receives a permit from DBC and meets specified educational requirements. *[S. BP&ED]*

# LITIGATION

- *Jeffrey Sulitzer, D.M.D, et al. v. Joseph Tippins et al.*, Case No. 2:19-CV-08902 GW (MAAX) (C.D. Cal.); Docket No. 20-55735 (9<sup>th</sup> Cir.): On March 17, 2022, the Ninth Circuit Court of Appeals [revived](#) part of SmileDirect's suit against DBC. The Ninth Circuit mostly affirmed the lower court's dismissal, including affirming the dismissal of SmileDirect's dormant Commerce Clause and Equal Protection claims. However, the Ninth Circuit did reverse part of the lower court's dismissal of SmileDirect's claim under the Sherman Act, and rejected the notion that regulatory board members cannot form an anticompetitive conspiracy when acting within their regulatory authority. Some defendants dismissals were affirmed because the Ninth Circuit did not find that SmileDirect plead facts to tie the defendants to an anticompetitive conspiracy. The other defendant's dismissals were remanded back to the lower court to revisit SmileDirect's claims under the Sherman Act. [[26:2 CRLR 13](#); [26:1 CRLR 5–6, 9](#); [25:2 CRLR 3–4](#)]