

# 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 July 29, 2022, Governor Newsom [appointed](#) Joni A. Forge, DDS, to the Board. Forge has been a Dentist at the CDI Dental Group since 2018 and has been an Adjunct Clinical Instructor at the USC Herman Ostrow School of Dentistry since 2022. She was Owner and a Dentist at

Overhill Dental from 1995 to 2021. She is a member of the American Dental Association, California Dental Association, and National Dental Association. Forge earned a Doctor of Dentistry degree from the University of California, San Francisco School of Dentistry.

On August 18, 2022, Governor Newsom [appointed](#) Yogita Thakur, DDS, MS, to the Board. Thakur has been Chief Dental Officer at the Ravenswood Family Health Network since 2016, where she was Dental Director from 2010 to 2016. She was a Pediatric Dentistry Resident at the University of California, San Francisco, from 2007 to 2010. Thakur is a member of the American Dental Association, California Dental Association, and the American Academy of Pediatric Dentistry. She earned a Bachelor of Dental Surgery degree from the Vidarbha Youth Welfare Society's Dental College and a Master of Science degree in Dental Public Health from the University of Iowa.

There are currently three vacancies on the Board.

## **HIGHLIGHTS**

### **Dental Board Postpones Consideration of Action Regarding New Pathway to Dental Licensure**

During its August 25, 2022, [meeting](#) [Agenda [Item 9\(c\)](#)], DBC heard a presentation from a representative of Central Regional Dental Testing Service, Inc. (CRDTS). CRDTS asked DBC to consider the CRDTS Dental Examination as a pathway to dental licensure in the state of California.

Currently, a California dental license may be obtained by successfully completing one of the following:

- 1) Application for licensure after successful completion of the Western Regional Examining Board (WREB) examination;
- 2) Application for licensure after successful completion of the American Board of Dental Examiners (ADEX) examination;
- 3) Application for licensure by Credential – for dentists with a current and valid dental license in another state;
- 4) Application for licensure by Residency; or
- 5) Application for licensure by Portfolio.

CRDTS explained to the Board that CRDTS is a nationally recognized licensure examination agency and has been developing and administering fair and reliable examinations for candidates wishing to practice in the dental field for more than 50 years. CRDTS presented that its national examinations are recognized and accepted in over 40 states nationwide including California's bordering states of Oregon and Arizona. CRDTS noted that the ADEX and CRDTS examinations are very similar in content and scoring, were developed by the same group of professionals, and cover the components required by state dental boards across the nation. CRDTS detailed the structure of the examination. Citing a [letter](#) sent by CRDTS to DBC before the meeting, CRDTS warns DBC that with the merger of three testing agencies (CDCA, WREB and CITA), there is a dangerous trend toward a monopoly in the dental testing industry.

DBC motioned to postpone consideration of possible action regarding the CRDTS Dental Examination as a pathway to licensure in California. Board members expressed concern that current testing for licensure is going well, and this new pathway is not a priority for DBC's resources. Further, members expressed that DBC can use more time to do research and consider this new pathway if they deem it necessary. DBC voted to consider this at a future date.

## **SmileDirect Opposes Dental Board's Attempt to Delay Trial**

On October 21, 2022, SmileDirect argued that the court should not delay its litigation with DBC in the case of *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 (9th Cir.). On March 17, 2022, the Ninth Circuit [revived](#) part of SmileDirect's suit against DBC, mostly affirming the lower court's dismissal, including affirming the dismissal of SmileDirect's dormant Commerce Clause and Equal Protection claims. [[27:2 CRLR 8](#)] However, the Ninth Circuit reversed part of the lower court's dismissal of SmileDirect's claim under the Sherman Act. It 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 defendants' dismissals were remanded back to the lower court to revisit SmileDirect's claims under the Sherman Act.

In response to continued litigation, the defendants (DBC and its members) hired new attorneys to join their team from Shartsis Friese, LLP. The Board asked the court to delay the trial, contending that their attorneys have four weeks of trial scheduled before the end of the year and a two-week jury trial slated to start May 1, 2023, a day before the trial scheduled in the SmileDirect case. Without a continuance of the current deadlines, the defendants claimed, they would not have enough time to conduct discovery, file motions, and prepare for trial.

SmileDirect responded by saying that the trial schedule was posted long before the attorneys took the case, so if there was a conflicting schedule, they should not have taken the case.

The Court ultimately decided to delay litigation. The trial was originally set for May 2, 2023, but is now delayed until August 21, 2023.

## **RULEMAKING**

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

- ***Certificate of Compliance - Dentists Initiating and Administering Vaccines***: On August 25, 2022, the Board published [notice](#) of its intent to amend section 1066 of Division 10 of Title 16 of the CCR regarding dentists initiating and administering vaccines as set forth in the [proposed language](#). According to the [initial statement of reasons](#), having dentists be able to administer vaccines would make vaccines more accessible. This regulation would, among other things, make specific requirements a dentist must complete when initiating and administering influenza and COVID-19 vaccines to patients. These regulations address the length and frequency of required training, the records that must be kept by the dentist concerning their training and the vaccines they administer, as well as the information they must provide to patients. The public comment period on the proposed amendment expired on October 18, 2022.

- ***Anesthesia and Sedation***: On June 29, 2022, DBC published a [second notice of modified text](#) of its rulemaking to proposed regulations, Title 16 of CCR, to amend various sections, and adopt sections 1017.1, 1043.8.1, 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 comments at the DBC meeting held on March 14, 2022. OAL [approved](#) this rulemaking on August 16, 2022. [\[27:2 CRLR 3–6\]](#)

- ***Consolidated Continuing Education***: On September 7, 2022, OAL [approved](#) DBC’s request to modify sections 1016, 1016.2, and 1017, Title 16 of the CCR, regarding

continuing education and professional ethics. DBC published its [Final Statement of Reasons](#) on July 7, 2022. These regulations were initially [noticed](#) on November 12, 2021 and approved as modified by the Board at its February 10, 2022 [meeting](#). This regulation goes into effect on January 1, 2023. [[27:2 CRLR 3–5, 7](#)]

## LEGISLATION

- [SB 1443 \(Roth\)](#), as amended August 25, 2022, and as it applies to DBC, amends section 1601.1 of the Business and Professions Code and extends the Board’s operations until January 1, 2025. Governor Newsom signed SB 1443 into law on September 27, 2022 (Chapter 625, Statutes of 2022).

- [SB 1495 \(Roth\)](#), as amended August 29, 2022, and as it applies to DBC, amends section 1936.1 of the Business Profession Code, the Dental Practice Act, to change the assurances made concerning continuing education of dental hygienists from “prospective,” that when they renew, they are required to state they will fulfill certain continuing education requirements, to a “retrospective” assertion that they have completed certain continuing education requirements. Governor Newsom signed SB 1443 into law on September 23, 2022 (Chapter 511, Statutes of 2022).

- The following bills as reported in Volume 27, Issue 2 (Spring 2022), died in committee or otherwise failed to be enacted: [AB 626 \(Low\)](#), DCA boards required to post expunged convictions within 90 days; [SB 889 \(Ochoa Bogh\)](#), allow a nurse anesthetist to administer general anesthesia or deep sedation to dental patients, if permitted by DBC.