

# 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, oral conscious sedation for adult patients, and oral conscious sedation for minor patients. Under Business and Professions Code section 1638, DBC also 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 also licenses registered dental assistants (RDA) and registered dental assistants in extended functions (RDAEF); additionally it issues permits to unlicensed individuals who qualify as orthodontic assistants and dental sedation assistants. Although DBC previously regulated registered dental hygienists (RDH), registered dental hygienists in extended functions

(RDHEF), and registered dental hygienists in alternative practice (RDHAP), much of that regulatory authority was removed from DBC and transferred to the Dental Hygiene Committee of California (DHCC), effective July 1, 2009.

DBC is authorized to establish standards for its approval of dental schools and dental assistant training programs; prescribe the subjects in which its licensees should be examined; license applicants who successfully pass the examinations required by the Board; set standards for dental practice; and enforce those standards by taking disciplinary action against licensees as appropriate. 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 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.

To assist DBC 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 appointed by the Board, including the RDA member of the Board, one other Board member, and five RDAs representing 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 in this state, on its own initiative or upon the request of the 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.

On April 19, 2017, the Senate Rules Committee reappointed public member Fran Burton to another term on DBC. Now retired from state service, she previously served as Deputy Director of Legislative and Governmental Affairs for the California Department of Health Services.

At this writing, there are three vacant Board positions, including one registered dental hygienist and two licensees.

## MAJOR PROJECTS

### OAL Approves Board’s Second Attempt at Fee Increase Regulations after Initial Rejection

On June 1, 2017, the Office of Administrative Law (OAL) rejected the Board’s proposed amendments to sections 1021 and 1022, Title 16 of the CCR, to increase licensing fees for dentists and RDAs, repeal some fees, and add new fees. OAL primarily found that DBC’s rulemaking failed to meet the “necessity” standard in Government Code section 11349.1. Specifically, OAL noted that DBC originally proposed to raise the fee for an oral conscious sedation renewal fee in section 1021(r) from \$75 to \$500; subsequently, the

Board decided to lower that fee to \$136 but, according to OAL, did not explain or justify the lower fee in its final statement of reasons. In fact, OAL noted that the minutes of DBC's August 2016 meeting provided justification for a \$168 oral conscious sedation renewal fee, but not \$136. Similarly, DBC proposed to add a new \$50 fee for "license certification" in section 1021(ab) in its original notice of rulemaking, and documented the necessity of that fee; OAL found that the Board subsequently deleted that fee without justification or explanation.

Having been notified in advance of OAL's pending disapproval decision, DBC released a second modified text to address OAL's concerns on May 15, 2017. Specifically, the Board changed the section 1021(r) oral conscious sedation renewal fee to \$168, and reinstated the section 1021(ab) license certification fee at \$50. DBC resubmitted the modified proposal on August 16, and OAL approved it on August 24, 2017, effective immediately. The Board expects the new fees to become effective on October 19, 2017.

## Substance Use Awareness Committee

During DBC's May and August 2017 meetings, DBC's Substance Use Awareness Committee reported to the Board its recent observations and took suggestions on how to raise awareness of the opioid usage crisis. At its [August meeting](#), the Board voted to approve the committee's mission statement:

The Dental Board of California (Board) recognizes that the widespread use and abuse of opioids in the country has risen to an epidemic level. The Board believes that educating both licensees and consumers on this important issue coincides with our mission of public protection. The Board therefore encourages its licensees to learn more, about this epidemic and its tragic effects on individuals and their families; and to understand best prescribing practices and patient education methods that can be used when prescribing opioids.

This statement will appear on a “Prescription Drug Abuse” link on DBC’s website, and below it will follow several links to educational resources to assist both consumers and licensees. DBC also discussed working with staff to create a survey to be sent to licensees so the Board can establish pain management guidelines and identify helpful tips and information.

Also at the Board’s August 2017 meeting, Board President Bruce Whitcher, DDS, noted that on July 31, the White House Commission on Combating Drug Addiction and the Opioid Crisis released its [interim report](#). With 142 Americans dying every day from an opioid overdose, the Commission called on the President to declare a state of national emergency, and described nine recommendations that the President can take to combat possible solutions to the crisis of opioid abuse and overdose. According to Dr. Whitcher, the release of this report shows that the opioid epidemic is part of the national agenda and calls on the dental profession to become part of the solution.

## Changes to Licensing Exams on the Horizon

At its [May 11, 2017](#) meeting, DBC held a joint meeting with the Dental Assisting Council. As a follow-up to its vote on [April 6, 2017](#) to suspend the RDA practical examination per the [recommendation](#) of DCA’s Office of Professional Examination Services (OPES) because the examination does not accurately measure the competency of RDAs, the Board voted at the May meeting to direct staff to contract with OPES to initiate a process to thoroughly evaluate options other than a practical examination for ensuring the competency of RDAs in performing the clinical procedures identified as a necessary component of RDA licensure, and to develop alternative options to assess RDA competency for DBC to consider at a meeting in the future. Ultimately, AB 1707 (Low)

extended the period during which the RDA practical examination is suspended until January 1, 2020, on an urgency basis (see LEGISLATION).

Also at the May meeting, Board staff reported that it had been working with OPES on the implementation of OPES's [2016 RDA Occupational Analysis](#) recommendation that the RDA law and ethics exam and the general written examination be combined into one exam in order to remove barriers to licensure for RDA candidates. Staff reported that it expects the combined exam to be administered in May 2018.

At the July meeting, several Board members expressed concern regarding anticipated format changes to the Western Regional Examination Board's dental exam in 2018. Executive Director Fischer responded that DBC would need to obtain OPES's and legal counsel's opinion on the acceptance of the modified examination.

## LEGISLATION

[AB 1277 \(Daly\)](#), as amended August 31, 2017, adds section 1601.6 to require DBC, consistent with and in addition to the federal Centers for Disease Control and Prevention recommendations for water quality, to amend section 1004, Title 16 of the CCR, its regulation on the minimum standards for infection control, to require water or other methods used for irrigation to be sterile or contain recognized disinfecting or antibacterial properties when performing dental procedures that expose dental pulp. This bill was inspired by a mycobacterium outbreak at the Children's Dental Group of Anaheim in 2016, which resulted in 71 infections, nearly all of which required hospitalization. The victims ranged in age from 2 to 11 years, and all received a pulpotomy, a dental procedure during which the infected pulp tissue of a tooth is treated or removed. These children face loss of

permanent teeth, bone loss, and disfigurement, and serious and invasive treatment lasting for months. Governor Brown signed AB 1277 on October 2, 2017 (Chapter 413, Statutes of 2017).

[AB 1707 \(Low\)](#), as amended July 22, 2017, is an urgency bill that amends section 1752.1 of the Business and Professions Code, to extend the period during which the RDA practical examination is suspended until January 1, 2020. The bill extends the deadline to give DBC adequate time to identify reasonable alternatives to measure competency to protect the public without creating an unreasonable barrier to RDA licensure in California. DBC suspended the examination on April 6, 2017 following an OPES report finding that the examination did not accurately measure the competency of RDAs (see MAJOR PROJECTS). DBC now has until January 1, 2020 to assess and potentially change the RDA practical examination. Governor Brown signed AB 1707 on August 7, 2017 (Chapter 174, Statutes of 2017).

[AB 224 \(Thurmond\)](#), as amended May 30, 2017, and [SB 501 \(Glazer\)](#), as amended, May 1, 2017, are competing bills that would broadly enact the recommendations of DBC's Pediatric Subcommittee (Subcommittee), which authored DBC's [2016 Pediatric Anesthesia Study](#). This study was undertaken in response to a tragedy in which an otherwise healthy child died while under sedation for a dental procedure. Following the study, at least one other child died while under sedation. The bills are substantially identical in that they establish new definitions and a revised permitting structure for the administration of deep sedation, general anesthesia (GA), moderate sedation, and minimal sedation for patients under 13 years of age.

The bills differ in that AB 224 would also require additional qualified persons, including a “dedicated monitor,” to be present during the administration of GA or deep sedation for a patient under seven years of age while SB 501 would not. The dedicated monitor would be required to be trained in Pediatric Advance Life Support and airway management, equivalent to the American Academy of Pediatrics and the American Academy of Pediatric Dentistry Guidelines or as determined by the Board.

The California Dental Association (CDA) and the California Association of Oral Maxillofacial Surgeons (CAOMS) strongly oppose the “dedicated monitor” provision in AB 224, claiming it fails to address the complexities involved—particularly because most dental plans do not cover anesthesia, and the cost of the additional monitor would be borne out of pocket by the patient’s family. In light of the heavy opposition, both bills have become two-year bills. *[AB 224: S. BP&ED; SB 501: A. B&P]*

[SB 392 \(Bates\)](#), as amended May 26, 2017, is another two-year bill addressing pediatric dental anesthesia. This bill, sponsored by CDA and CAOMS, would add section 1601.7 to the Business and Professions Code to require DBC to provide a report and analysis to the legislature of the effects on access to care for pediatric dental patients specifically as it relates to requiring the addition of a second GA permitholder to be present during the administration of GA on a patient seven years of age or younger by January 1, 2019. The report is to include information on the cost of sedation and anesthesia, restraints of the health care system, and feasibility issues (including time, skills, staff availability, and equipment availability). The bill faces strong opposition from the American Academy of Pediatrics, which claims that children continue to be at risk pending completion of yet another lengthy study. *[A. B&P]*

# RECENT MEETINGS

At its May 11, 2017 meeting, DBC elected public member Yvette Chappel-Ingram as Board Secretary. Also at the May 2017 meeting, Executive Officer Fischer announced that Carlos Alvarez has accepted the position of Enforcement Chief at DBC.

During its May and August meetings, DBC discussed and voted to move forward with three potential rulemaking actions. Due to new DCA policy, each potential rulemaking initiative must first be vetted through DCA before being published for a public comment period. The Board voted to move forward on the following potential rulemaking proceedings: (1) amend sections 1023.2 and 1023.7, Title 16 of the CCR, relating to citations and fines; (2) adopt section 1049, Title 16 of the CCR, relating to mobile and portable dental units; and (3) adopt section 1071.1, Title 16 of the CCR, relating to the implementation of additional duties of RDAEFs as specified in Business and Professions Code section 1753.55 (determination of radiographs and placement of interim therapeutic restorations).