BACKGROUND PAPER FOR THE DENTAL BOARD OF CALIFORINIA

Joint Oversight Hearing, March 23, 2015

Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business and Professions

BRIEF OVERVIEW OF THE DENTAL BOARD OF CALIFORINA

History and Function of the Board

The Dental Board of California (DBC or Board) was created by the California Legislature in 1885, to regulate dentists. Today, the Board regulates the practice of approximately 86,000 licensed dental healthcare professionals in California, including 40,163 dentists; 44,230 registered dental assistants (RDAs); and 1,545 registered dental assistants in extended functions (RDAEFs). In addition, the Board is responsible for setting the duties and functions of approximately 50,000 unlicensed dental assistants. The Board's last sunset review was in 2011.

Dentists evaluate dental health, diagnose diseases or abnormalities, and plan and implement appropriate treatments, including writing prescriptions for antibiotics or other medications. RDAs perform a variety of patient care, office, and laboratory duties, including inspecting the oral cavity, using automated caries detection devices to gather information for diagnosis by the dentist, placing and finishing direct provisional restorations, and polishing coronal surfaces of the teeth, as specified. RDAEFs perform additional functions, including conducting preliminary evaluations of the patient's oral health, placing cord retractions of gingiva for impression procedures, taking final impressions for permanent indirect restorations and tooth-borne removable prosthesis, and adjusting and cementing permanent indirect restorations. Unlicensed dental assistants perform basic supportive dental procedures.

The Board meets at least four times throughout the year to address work completed by the various committees, and as noticed on the agenda, may meet in closed session as authorized by Government Code Section 11126 et. seq.

The current DBC mission statement, as stated in its 2013-2016 Strategic Plan, is as follows:

> ***"The Dental Board of California's mission is to protect and promote the oral health and safety of California consumers by ensuring the quality of dental health care within the State."***

To meet its priorities, the Board implements regulatory programs and performs a variety of functions. These programs and activities include setting licensure requirements for dentists and dental assistants, including examination requirements, and issuing and renewing licenses, including a variety of permits and certifications. The Board also has its own enforcement division, with sworn and non-sworn staff, which is tasked with investigating both criminal and administrative violations of the Dental Practice

Act (Act) and other laws. As part of the disciplinary function of the Board, it also monitors dentists and RDAs who may be on probation, and manages a Diversion Program for licensees whose practice may be impaired due to abuse of dangerous drugs or alcohol.

Board Membership and Committees

The Board is composed of 15 members: eight practicing dentists, one registered dental hygienist (RDH), one RDA, and five public members, which account for one-third of the membership. The Governor appoints the dentists, the RDH, the RDA, and three public members. The Speaker of the Assembly and the Senate Rules Committee each appoint one public member. Of the eight practicing dentists, one must be a member of the faculty of any California dental school, and one is required to be a dentist practicing in a nonprofit community clinic. There are currently no vacancies. Members of the Board are appointed for a term of four years, and each member may serve no more than two full terms. The two members whose terms have recently expired are both undergoing the process for reappointment. The following is a listing of the current Board members and their background:

Board Member	Appt. Date	Term Exp. Date	App'ting Authority	Prof'l or Public Member
Board President, Fran Burton, MSW, has served in a number of capacities in the State Senate and her efforts concluded as a health and human services policy consultant to Presidents pro Tempore Bill Lockyer and John Burton. In the Executive branch, Ms. Burton was Associate Secretary Programs and Legislation for the Health and Human Services Agency; Deputy Director Legislation and Public Affairs for the Department of Alcohol and Drug Programs; and, Deputy Director for Legislative and Governmental Affairs for the Department of Health Services. She holds a Master of Social Work degree from California State University, Sacramento.	6/09	1/17	Senate Rules Committee	Public
Board Vice President, Bruce L. Whitcher, DDS, is a 1981 graduate of UCSF School of Dentistry, and completed his residency in Oral and Maxillofacial Surgery at Harbor UCLA Medical Center in Torrance, California in 1985. Dr. Whitcher has maintained a private practice of Oral and Maxillofacial Surgery in San Luis Obispo since 1987. Dr. Whitcher is a member of the Central Coast Dental Society, the California Dental Association, the California Association of Oral and Maxillofacial Surgeons, and the American Association of Oral and Maxillofacial Surgeons.	4/09	1/15	Governor	Prof'l
Board Secretary, Judith Forsythe, RDA, has been a Registered Dental Assistant in the State of California since 1994. She currently holds the position of director of back office development for Pacific Dental Services, where she has worked since 1998. Previously, Forsythe was a Registered Dental Assistant for Dental Associates of Riverside from 1995 to 1998 and held the same position in the office of James W. Jacobson, D.D.S. from 1983 to 1994.	3/09	1/17	Governor	Prof'l
Steven Afriat, was formerly Chief of Staff to Los Angeles City Councilman (now Supervisor) Zev Yaroslavsky. Afriat was also a Chief Legislative Aide to the California Legislature and has vast experience in government and public affairs. Currently, he is President of the Los Angeles County Business License Commission. Afriat has served as President of the Los Angeles City Animal Services Commission, the LA City Council Redistricting Commission, and on the Boards of the Valley Community Clinic, Equality California, the West Hollywood Chamber of Commerce, and the Valley Industry and Commerce Association. Afriat owns his own Governmental Relations firm in Burbank.	7/10	1/17	Assembly Speaker	Public
Stephen Casagrande, DDS, has been a dentist in private practice since 1974. He was previously the director of the Sacramento District Dental Society, a past member of the peer review committee, an advisor to the Sacramento City College Dental Hygiene Program Advisory Board Member to Hi-Tech	3/09	7/16	Governor	Prof'l

Institute, a Proprietary School for Dental Assistants. Dr. Casagrande is a member of the American Dental Association, California Dental Association, and Sacramento District Dental Society.				
Yvette Chappell-Ingram has been president and chief executive officer at the African American Board Leadership Institute since 2010. She was president of the California Legislative Black Caucus Foundation from 2006 to 2010, principal at Ingram and Associates from 2004 to 2008 and vice president of development at College Bound from 2001 to 2004. Chappell-Ingram served as regional manager at the United Negro College Fund from 1997 to 2001, director of development for LA's BEST from 1995 to 1997 and a project manager at the United Negro College from 1992 to 1995. She served as a consultant in private practice from 1989 to 1992 and was a financial analyst at ARCO from 1978 to 1989. Chappell-Ingram earned a Master of Public Administration degree from the University of Southern California.	4/13	1/16	Governor	Public
Katie Dawson, BS, RDHAP, is a 1976 graduate of the UCSF Dental Hygiene program, and is 2010 graduate of the University of the Pacific's RDH Alternative Practice program. She is a past president of the American Dental Hygienists' Association, a past president of the California Dental Hygienists' Association, and a past president of the National Dental Hygienists' Association.	4/13	1/17	Governor	Prof'l
Luis Dominicis, DDS, is a general dentist in private practice in the City of Downey, California since 1993. He also serves as the Pro-bono Dental Director for the Firebaugh Children's Free Dental Clinic in the Southeast area of Los Angeles County. Dr. Dominicis is the President of Los Angeles Dental Society, Past President of the Latin American Dental Association; he has also served in various Councils in the California Dental Association. Dr. Dominicis is presently a member of the Dental Forum, which represents the ethnic dental societies in California.	3/09	1/16	Governor	Public
Kathleen King retired from Applied Materials, Inc. after twenty years and is currently the Executive Director of the Santa Clara Family Health Foundation, a non-profit foundation focused on the health needs of low income residents of Santa Clara County. She was elected to the Saratoga City Council in November of 2002 and served as Mayor of the city in 2005 and again in 2010. Ms. King is a native of California. She attended public schools in San Jose, graduated from West Valley College, and Santa Clara University.	2/13	1/18	Governor	Public
Ross Lai, DDS, has been the owner of Ross Carlton Lai DDS since 1985, director at Lai Enterprises Inc. since 2005 and founder at LAI Dental Group since 2011. He was a prosthetic assistant of implant dentistry at the Highland Hospital Alameda County Medical Center from 2006 to 2008. Lai earned a Doctor of Dental Surgery degree from the University of the Pacific School of Dentistry.	2/13	1/17	Governor	Prof'l
Huong Le, DDS, MA, graduated from Baylor University with a degree in Chemistry and obtained her Doctor of Dental Surgery from the University of Texas Dental Branch in Houston in 1984. In 1989, Dr. Le joined a community health center in northern California where she worked as a dental provider then later became their dental director. In 2003, she joined Asian Health Services as their first dental director to help them open their new dental program. Dr. Le serves as a member on Board of Directors of National Network for Oral Health Access and Secretary for Western Clinicians Network, a regional network of medical and dental directors in California, Arizona, Nevada and Hawaii. Additionally, she is President-Elect for Alameda County Dental Society. Dr. Le presently serves as Assistant Clinical Professor at UCSF School of Dentistry, A. T. Still School of Dental and Oral Health in Arizona and Dental Director of Lutheran Medical Center-affiliated AEGD program at Asian Health Services.	3/09	1/15	Governor	Prof'l
Meredith McKenzie, ESQ., has been vice president and deputy general counsel at Juniper Networks since 2012. She was senior director of intellectual	4/13	1/16	Governor	Public

property at Symantec Corporation from 2006 to 2012, director of litigation, licensing and IP for Cypress Semiconductor from 2001 to 2006 and corporate counsel and director of IP at Enuvis Inc. from 2000 to 2001. McKenzie was an associate for Howrey LLP from 1998 to 2000 and patent agent and design engineer at Intel Corporation from 1993 to 1998. McKenzie earned a Juris Doctorate degree from the Santa Clara University School of Law.				
Steven Morrow, DDS, graduated from Loma Linda University School of Dentistry in 1960. Dr. Morrow served two years as a commissioned officer in the United States Navy Dental Corps. Following military service, he established a private dental practice, limited to endodontics, in Sherman Oaks, California. After sixteen years of endodontic practice, he returned to the field of dental education, completed a Master of Science Degree in Microbiology and accepted a faculty appointment in the Department of Endodontics at Loma Linda University School of Dentistry. He is currently a Professor of Endodontics and Director of Patient Care Services and Clinical Quality Assurance at Loma Linda University School of Dentistry.	8/10	1/18	Governor	Prof'l
Thomas Stewart, DDS, of Bakersfield, has been a dentist in private practice since 1976. He was a member of the Dental Corps of the United States Navy from 1972 to 1976. Dr. Stewart earned a Doctor of Dental Surgery degree from Howard University College of Dentistry. He has been a volunteer with the California Dental Association (CDA) for 30 years where he served as Vice Chair of the CDA Holding Company Board of Directors, and Chair of the CDA delegation to the American Dental Association. He has also served as the Chair of the TDIC/TDIC Insurance Solutions Board of Directors, Chair of the CDA Council on Dental Health and Trustee of the Kern County Dental Society, President of KCDS in 1985 and past President of CDA in 2010. In addition, he is a fellow of the International College of Dentists, American College of Dentists and Pierre Fauchard Academy. Dr. Stewart is actively involved in the Westchester Kiwanis and is a member of the Teen Challenge of Kern County Advisory Board.	2/13	1/17	Governor	Prof'l
Debra Woo, DDS, is a 1986 graduate of the University of the Pacific, Arthur A. Dugoni School of Dentistry. She is in private practice at her office in Boulder Creek and is also an Assistant Professor at the dental school. She is a member of the American Dental Association, California Dental Association, Monterey Bay Dental Society and has served as a delegate to address political concerns within the dental profession. Furthermore, she was elected to serve on the California Dental Association Foundation Board of Directors. For all her contributions to her community and service to the profession of dentistry, she was honored with a Fellowship in the Academy of Dentistry International, the International College of Dentists and the American College of Dentists.	1/14	1/17	Governor	Prof'l

The Board has eight committees and one council. The Board meets as often as necessary to consider and act upon Board issues, always providing adequate time to allow public notice to any and all interested parties, as required by law. The Board's council and four of its committees are statutorily mandated.

- ***Dental Assisting Council (BPC § 1742):*** considers all matters relating to dental assistants, on its own initiative or at the request of the Board, and makes recommendations to the Board for consideration and possible further action.

- ***Diversion Evaluation Committee (BPC § 1695):*** seeks ways and means to identify and rehabilitate licensees whose competency may be impaired due to substance abuse.

- ***Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee (BPC § 1638.1)****:* reviews the qualifications of applicants for EFCS permits.

- ***Enforcement Committee (BPC § 1601.1):*** reviews complaint and compliance case aging statistics, citation and fine information, and investigation case aging statistics in order to identify trends that might require changes in policies, procedures, or regulations.

- ***Examination Committee (BPC § 1601.1):*** reviews clinical/practical and written examination statistics and receives reports on all examinations conducted by staff.

The Board also established four additional committees to meet specific needs:

- ***Access to Care Committee*****:** maintains awareness of the changes and challenges within the dental community.

- ***Legislative and Regulatory Committee*****:** monitors legislation relative to the field of dentistry that may impact the Board, consumers, and/or licensees.

- ***Licensing, Certification, and Permits Committee*****:** reviews licensing and permit statistics for dentists and auxiliaries.

- ***Prescription Drug Abuse Committee*****:** established in May 2014, examines the rise in prescription drug overdoses and develops strategies to address the issue within the practice of dentistry.

Fiscal and Fund Analysis

The Board is a self-supporting, special fund agency that obtains its revenues from licensing and permitting fees for dentists and RDAs. The revenues are deposited and maintained in two separate funds, which are not comingled. The Dentistry Fund supports operations for dentists and related ancillary services, and the Dental Assisting Fund supports operations for dental assistants and related ancillary services. Although there is no statutory requirement, the Board's objective is to maintain a three-month reserve of funds for economic uncertainties and to operate with a prudent reserve in each fund.

Dentistry Fund

The total revenues anticipated by the Board for the Dentistry Fund for FY 2014/15, is $16.2 million and for FY 2015/16, $14.5 million. The total expenditures anticipated for the Board is for FY 2014/15, is $12.5 million, and for FY 2015/16, $12.7 million. The Board anticipates it would have approximately 3.6 months in reserve for FY 2014/15. As indicated in the following table, the Board's projected reserve is 1.7 months at the end of FY 2015/16, which would typically prompt initiating a fee increase. Currently, licensure fees for an initial dentist license and renewal are $525. The budget projection takes into account the current license fees, which increased from $365 to $450 on July 1, 2014, via regulation, and from $450 to $525 on January 1, 2015, via SB 1416 (Block, Chapter 73, Statutes of 2014). The Board is currently undergoing a fee rate audit to determine the appropriate fee amounts to assess and will be providing that information as part of the oversight hearings process in 2015 in order to increase statutory fee caps. This issue is further discussed under "Current Sunset Review Issues."

Fund Condition – Dentistry Fund						
(Dollars in Thousands)	**FY 10/11**	**FY 11/12**	**FY 12/13**	**FY 13/14**	**FY 14/15**	**FY 15/16**
Beginning Balance	7,885	6,160	6,313	4,963	6,086	3,766
Revenues and Transfers	7,955	8,226	8,121	8,597	10,134	10,771
Total Revenue	15,840	16,086	14,434	16,260	16,220	14,537
Budget Authority	11,159	11,383	1,547	12,403	12,155	TBD
Expenditures	9,753	9,906	9,662	10,174	12,454	12,703
Loans Repaid From General Fund	0	1,700	0	2,700	0	0
Fund Balance	6,087	6,180	4,772	6,086	3,766	1,834
Months in Reserve	7.4	7.7	4.7	5.9	3.6	1.7

In FY 2002/03 and FY 2003/04 loans of $5 million in each of those periods were made to the State General Fund (GF) from the Dentistry Fund, for a total of $10 million. The loan was repaid incrementally, and paid in full in FY 2013/14.

Dental Assisting Fund

The Dental Assisting Fund is solvent with a healthy annual reserve. The fund maintains a good balance between revenues and expenditures. The total revenues anticipated by the Board for the Dental Assisting Fund for FY 2014/15, is $4.6 million and for FY 2015/16, $4.4 million. The total expenditures anticipated for FY 2014/15, is $1.9 million, and for FY 2015/2016, $1.9 million. The Board anticipates it would have approximately 16.7 months in reserve for FY 2014/15. As indicated in the following table, the Board's projected reserve is 15.2 months at the end of FY 2015/16. Currently, license renewal fees for both RDAs and RDAEFs are $70. There is no initial license fee; applicants instead pay an initial application fee and examination fees.

Fund Condition – Dental Assisting Fund (3142)						
(Dollars in Thousands)	**FY 10/11**	**FY 11/12**	**FY 12/13**	**FY 13/14**	**FY 14/15**	**FY 15/16**
Beginning Balance	1,931	2,312	2,434	2,759	2,826	2,674
Revenues and Transfers	1,641	1,634	1,758	1,703	1,735	1,771
Total Revenue	3,554	3,946	4,192	4,462	4,561	4,409
Budget Authority	1,715	1,688	1,744	1,851	1,885	TBD
Expenditures	1,291	1,501	1,468	1,636	1,887	1,923
Fund Balance	2,263	2 ,445	2,724	2,826	2,674	2,486
Months in Reserve	18.1	20.0	20.0	18.0	16.7	15.2

The expenditures for the Board's Dental Assisting Program are listed in the chart below. The costs associated with the Fund's Enforcement, Administration, and Diversion Program are expended from the State Dentistry Fund; therefore they are not included as part of the expenditure-by-program-component break down.

Expenditures by Program Component (list dollars in thousands)									
	FY 10/11		**FY 11/12**		**FY 12/13**		**FY 13/14**		**Avg. % spent over last 4 FYs**
DENTAL ASSISTING	**Personnel Services**	**OE&E**	**Personnel Services**	**OE&E**	**Personnel Services**	**OE&E**	**Personnel Services**	**OE&E**	
Examination	224	344	213	508	236	457	256	470	46%
Licensing	278	199	265	261	294	233	321	235	36%
DCA Pro Rata	n/a	245	n/a	253	n/a	241	n/a	348	18%
TOTALS	502	788	478	1,022	530	931	577	1,053	100%

Licensing

Protection of the public shall be the highest priority for the Board in exercising its licensing and regulatory functions. The Act, with related statutes and regulations, establishes the requirements for licensure within dentistry. It is the responsibility of the Board's Licensing Program to ensure licenses and permits are issued only to applicants who meet the minimum requirements, and have not done anything that would warrant denial. The Board licenses and/or issues permits in the following categories:

- Dentists (DDS)
- Registered Dental Assistant (RDA)
- Registered Dental Assistant in Extended Functions (RDAEF)
- Oral and Maxillofacial Surgery Permit (OMS)
- Elective Facial Cosmetic Surgery Permit (EFCS)
- Conscious Sedation Permit (CS)
- General Anesthesia Permit (GA)
- Medical (MD) General Anesthesia Permit (MGA)
- Mobile Dental Clinic Permit (MDC)
- Oral Conscious Sedation Certificate (OCS)
- Special Permit – Dental School Practice (SP)
- Orthodontic Assistant Permit (OA)
- Dental Sedation Assistant Permit (DSA)
- Fictitious Name Permit (FNP)
- Additional Office Permit (AO)
- Registered Provider (RP) – For Continuing Education

The Board regulates the practice of licensed dental health professionals, and sets the duties and functions of unlicensed dental assistants. Licensees renew licenses and permits/certificates every two years with the exception of a Special Permit, which is issued for limited practice in a dental school setting, and is renewed annually. There are approximately 36,225 active dentist licenses, of which 17,662 (48%) renewed during FY 2013/14. There are 34,464 active RDA licenses, of which 16,390 (47%) renewed during FY 2013/14. Of the 1,357 licensed RDAEFs, 654 (48%) renewed during FY 2013/14.

Licensing Timeframes

Section 1061 of Title 16 of the California Code of Regulations (CCR) provides for the maximum amount of time the Board has to notify an applicant that their application or permit is complete or

deficient, what information may be outstanding, and provides the maximum period of time from the filing of a completed application to a permit or licensing decision. Issuance of a dental license should be completed within 90 days of receipt of a completed application and renewal applications should be completed within 30 to 90 days. The Board is meeting and exceeding these expectations. The Board reported in 2014, initial licensure for dentists averaged 15 days, and renewals, 43 days.

The Dental Assisting Program has a similar regulation for processing times (16 CCR §1069), which provides that the Board should take no longer than 90 days to notify an applicant that their application is complete or deficient, with a licensing decision within 180 days. License renewal review should be completed within 30 days with issuance within 90 days maximum. Applications are processed, not in the order of receipt, but in the order of upcoming exam dates. The average time from receipt of a completed RDA application to approval is 50 days, and an incomplete application is processed in an average of 60 days.

The volume of incoming applications has grown for nearly every licensing category over the previous four-year period, with a growth rate ranging from 0.5% to over 2,000%. Since 2008, the number of active dental licenses has grown 4.2%, with a similar increase of 4.7% for active RDA licenses and 6% for RDAEF licenses. Despite these increases, the licensing units have not experienced backlogs or increases to processing times. It should be noted that the Board has not previously tracked pending applications due to the absence of an application backlog. By the time the dental license application is submitted, all dental licensing requirements have already been met. The only process remaining is the issuance of the actual license and documenting the place of business. Similarly, for RDA applicants, as soon as requirements are met and the successful examination scores have been submitted, the license is automatically issued.

Pathways to Dental Licensure

Licensure by Credential (LBC)

The Board licenses dentists currently practicing in other states who meet specific requirements by credential and without examination. In addition to other ancillary requirements, applicants must have a current, unrestricted license to practice dentistry in a U.S. State or territory, and have been in active clinical practice or have been a full-time faculty member in an accredited dental education program and in active clinical practice for a total of 5,000 hours in five of the seven consecutive years prior to his or her application. The clinical practice requirement shall be deemed met if documentation of any of the following is submitted:

1. The applicant may receive credit for two of the five years of clinical practice by demonstrating completion of an accredited residency, including, but not limited to, a general practice residency, an advanced education in general dentistry, or a recognized specialty.
2. The applicant agrees to practice dentistry full time for two years in at least one California licensed primary care clinic or other clinic setting specified in statute.
3. The applicant agrees to teach or practice dentistry full time for two years in at least one accredited dental education program approved by the Board.

Licensure by Residency (LBR)

The Board licenses dentists who complete at least one additional year of clinical training after graduating from an approved dental school, without taking a clinical examination. Applicants must complete a one year general practice residency (GPR) or advanced education in general residency program (AEGD) approved by the American Dental Association's (ADA's) Commission on Dental

Accreditation (CODA). Applicants must also pass the California Law and Ethics written examination and the National Board Dental Examinations (NBDE), and graduate from a Board- or CODA-approved dental school.

Licensure by Western Regional Examination Board (WREB) Examination
The Board licenses applicants who pass the WREB clinical examination on or after January 1, 2005. Applicants must also pass the California Law and Ethics written examination, the NBDE, and the Board's restorative technique exam (prior to December 31, 2008, if they are graduates of a foreign dental school, or have graduated from a Board- or CODA-approved dental school.

Licensure by Portfolio Examination
AB 1524 (Hayashi, Statutes of 2010, Chapter 446) enables candidates to assemble a portfolio of clinical experiences and competencies, as approved by the Board, while completing a dental school program at a Board-approved school located in California. After the applicant passes a final assessment of the submitted "portfolio" at the end of his or her dental school program, and submits a fee, the dental license is issued without additional examination. Portfolio regulations went into effect November 5, 2014, and two dental schools are implementing the portfolio pathway for a limited number of students. Both schools intend to have full participation July 1, 2015. The three remaining dentals schools intend to start the program July 1, 2015. Applicants must also complete the California Law and Ethics written examination and complete the NBDE.

Out of State Applicants
Graduates of a Board- or CODA-approved dental school qualify for licensure by passing the WREB examination, or by LBR. Applicants are also required to have the NBDE and the California Law and Ethics examination. Applicants may qualify for LBC, regardless of where they graduated, provided they meet those requirements.

Out of Country Applicants
Graduates of foreign dental schools are required to attend a two-year international dental studies program at a Board- or CODA-approved program to qualify for one of the licensure pathways. If an international applicant has a valid and unrestricted license from another state for five or more years, they may apply using the LBC pathway.

Pathways to RDA Licensure
Licensure as an RDA has three possible pathways: (1) graduation from an approved dental assisting program; (2) completion of 15 months of on the job training, certified by a licensed US dentist; and (3) work experience combined with education from a non-approved program totaling 15 months. All applicants must pass a written competency examination, the California Law and Ethics examination, and a practical examination consisting of three of four statutorily prescribed procedures prior to issuance of the license.

Licensure as an RDAEF requires: 1) graduation from an approved extended functions program; 2) passage of a written competency examination; and 3) passage of a clinical/practical examination. Applicants licensed prior to January 1, 2010 may qualify to expand their duties by completing additional education and passing a practical examination.

Background checks

Effective July 2011, the Board began the process of requiring all licensees to submit electronic fingerprints. In addition, affirmative responses (arrests or convictions) received from the Department of Justice (DOJ), or disclosures by the applicant may trigger the Board to require the applicant provide an explanation in writing describing the event. Similarly, if the applicant discloses any license denials, license surrenders, or prior discipline, the Board requires a full explanation in writing, pursuant to 16 CCR § 1028. In instances when an applicant has criminal history information, staff is responsible for requesting certified copies of the arrest and conviction records for consideration by the licensing managers. Certified records may also be introduced in a Statement of Issues hearing if necessary.

The Board is required to query the National Practitioners Data Bank (NPDB) as part of the application process for Licensure by Credential to determine whether they were subject to disciplinary action in another state. Although the Board does not access NPDB for other licensure pathways or renewals, all applicants certify their responses under penalty of perjury, and are required to disclose prior disciplinary action; whether the applicant is under any pending investigation by a government agency; information regarding any licensing denials or surrenders; and any criminal convictions.

Veterans

The Board is in compliance with BPC § 114.5, which requires boards to have a system in place to track veterans. The Board waives fees, in accordance with BPC § 114.3, when an applicant identifies himself or herself as a veteran. Staff estimates between 50 and 100 dental licensees have requested fee waivers, while no RDA applicants or licensees have requested similar consideration. Existing requirements do not hinder military personnel from having their application or license renewals processed promptly. To date, staff estimates approximately five dental licenses have been expedited since implementation of BPC § 115.5, which expedites the licensure process for spouses and domestic partners of an active member of the military. There have been no requests received to expedite a RDA license. At present, the U.S. military requires dentists to already have been licensed before they can report for duty in the armed services. For LBC, the Board accepts military clinical practice hours toward satisfying the 5000-hour clinical practice requirement. The Dental Assisting Unit will consider military education, training and experience if the applicant lists this under the general work experience or education requirements.

School Approval

The Board is authorized to accept CODA's findings when they approve or re-approve a dental school located within the United States. The Board is also authorized to approve international dental schools that meet the requirements of BPC § 1636.4. The California dental schools are accredited and re-evaluated by CODA every seven years. 6 CCR §§ 1070 and 1070.1 regulate dental assisting educational programs and courses in California. There are also educational requirements for specialty permits.

There are six dental schools in California and one international school in Mexico approved by the Board. The following dental schools have been fully approved:

- University of California at San Francisco Dental School, San Francisco
- University of the Pacific Arthur A. Dugoni School of Dentistry, San Francisco
- University of California at Los Angeles School of Dentistry, Los Angeles
- Herman Ostrow School of Dentistry of USC, Los Angeles
- Loma Linda University School of Dentistry, Loma Linda
- Western University of Health Sciences College of Dental Medicine, Pomona, California

There are currently 100 approved dental assisting programs, five approved dental assistant in extended functions programs, 70 orthodontic assistant courses, 22 dental sedation assistant courses, and numerous providers of courses in infection control, coronal polish, pit and fissure sealants and use of an ultrasonic scaler.

All programs and courses are required to be re-evaluated approximately every seven years. The Board may withdraw approval of any program or course that does not meet the requirements of the DPA.

The Bureau for Private Postsecondary Education does not have a role in the approval of dental schools, but does provide oversight to some dental assisting programs (although unlicensed DAs are outside the scope of licensure by the Board).

Enforcement

The Board reports that it receives between 3,500 and 3,900 complaints per year. This volume has remained fairly constant over the past eight years. In FY 2013/14, the Board received 3,682 complaints. Nearly two-thirds of those complaints were from the public. The number of complaints originating from public sources (e.g. consumers, licensees, industry) has risen slightly (3%), and may be attributed to increased consumer awareness. In November 2012, the Board implemented 16 CCR § 1065, which required a notice be posted in dental offices to provide consumers with the Board's toll free telephone number and web address to file complaints or conduct license verification. The number of complaints opened in response to criminal arrests and convictions has risen substantially due to the Board's efforts to record and track more criminal events reported on its licensees, and the implementation of "retroactive fingerprinting" (16 CCR § 1008), which requires that a licensee must furnish a full set of fingerprints to the DOJ as a condition of renewal.

The number of license denials has remained constant (3-7 per year), although the number of probationary licenses has increased from a previous average of 7 per year to 15 issued annually. Using its authority under BPC §1628.7, the Board has issued probationary licenses to applicants with less egregious conviction records that may have previously been denied. This process ensures licensees are rehabilitated and thereby enhances consumer protection. Some applicants, following a Statement of Issues (SOI) hearing, and based upon the findings and recommendation of an administrative law judge (ALJ), have been issued full and unrestricted licenses. The number of cases referred for criminal prosecution has increased over 250% during the last four-year period, from 8 in FY 2010/11 to 28 in FY 2013/14. This can be partially attributed to an increase in both criminal fraud and unlicensed activity investigations.

The DCA has developed performance measures to ensure that the DCA and its stakeholders can review progress in meeting enforcement goals and targets. Performance measures are critical for demonstrating that the DCA and its regulatory entities are making and will continue to make, the most efficient and effective use possible of its resources, and are linked directly to an agency's mission and vision, strategic objectives, and strategic initiatives.

The average cycle time from complaint receipt to the date the complaint is acknowledged and assigned to an analyst in the Complaint and Compliance Unit (CCU) for processing is considered as intake. This 10-day time frame is mandated by BPC § 129(b). Between FY 2010/11 and FY 2013/14 the average intake time was nine days.

Between FY 2010/11 and FY 2013/14, the average time to complete all investigations was 174 days. This was the average time from complaint receipt to closure of the investigative process, and does not include cases referred to the Attorney General (AG) or other forms of formal discipline. Approximately 74% of complaints received are closed in the CCU, and the average time to close these complaints was 95 days. The remaining 26% of the Board's complaints are referred to either the non-sworn Investigative Analysis Unit (IAU) or to one of the Board's two field offices with sworn investigators. The IAU, established in 2011, has an average case closure rate of 374 days. These cases are considered more complex and may require subpoenas, field interviews, and document collection, at minimum. Investigations conducted by sworn staff have an average case closure rate of 442 days. In addition to those tasks discussed above, peace officers investigate criminal allegations, as well as the administrative components of their cases. These investigations may include coordination with allied law enforcement agencies, undercover operations, surveillance, search warrant service, pharmacy audits and evidence collection.

INVESTIGATION				
All Investigations	**FY 10/11**	**FY 11/12**	**FY 12/13**	**FY 13/14**
First Assigned	3640	3570	3973	3699
Closed	3981	3496	3691	3758
Average days to close	181	173	156	187
Pending (close of FY)	1517	1597	1878	1822
Desk Investigations				
Closed	2987	2404	2889	2855
Average days to close	106	72	87	118
Pending (close of FY)	492	738	1088	1022
Non-Sworn Investigation				
Closed	377	593	257	320
Average days to close	278	364	384	473
Sworn Investigation				
Closed	572	492	543	584
Average days to close	505	453	421	391
Pending (Combines Sworn and Non-Sworn)	1025	859	790	800

The Board's target for completing formal disciplinary actions is 540 days. The Board's average over the last four years is 1,083 days. This issue is further discussed in "Current Sunset Review Issues."

Enforcement Statistics				
	FY 10/11	FY 11/12	FY 12/13	FY 13/14
LICENSE DENIAL				
License Applications Denied	3	7	4	5
SOIs Filed*	23	41	14	18
SOIs Withdrawn	1	0	3	0
Average Days SOI (from comp. receipt to case outcome)	570	446	699	776
ACCUSATION				
Accusations Filed	89	103	75	73
Accusations Withdrawn	9	8	10	2
Accusations Dismissed	0	0	2	1
Accusations Declined	7	1	3	0
Average Days Accusations (from complaint receipt to case outcome)	1043	1087	934	1271

Pending (close of FY)	200	234	188	168

*Statement of Issues (SOI) – Upon denial of an application for licensure, an applicant may request an SOI for reconsideration

In FY 2010/11, the Board developed an internal performance target to reduce the number of cases in its oldest categories (2-3+ years). The Board reports that it has placed a high priority on case aging and has made great strides in reducing the number of cases in its oldest categories. Through focused case reviews and unlicensed activity efforts, the Enforcement Program has reduced cases in these oldest categories from over 147 cases in November 2010 (19% of overall caseload), to 64 (8% of overall caseload) at the end of July 2014.

In addition, the Board has identified "reducing cycle times for investigations by 10%" as an objective within its current Strategic Plan. By auditing each step of the investigative process, further efficiencies can be identified and implemented that will enable the Board to reach this goal by 2016.

Enforcement Statistics				
	FY 10/11	**FY 11/12**	**FY 12/13**	**FY 13/14**
COMPLIANCE ACTION				
ISO & TRO Issued	1	6	4	0
PC 23 Orders Requested	5	6	6	4
Other Suspension Orders	3	0	0	0
Public Letter of Reprimand	9	13	11	12
Cease & Desist/Warning	128	104	111	113
Referred for Diversion	1	0	3	8
Compel Examination	2	2	0	0
DISCIPLINE				
Disciplinary Actions				
Proposed/Default Decisions	38	43	38	29
Stipulations	68	68	58	63
Average Days to Complete	929	939	862	1185
AG Cases Initiated	148	174	85	91
AG Cases Pending (close of FY)	200	234	188	168
Disciplinary Outcomes				
Revocation	24	30	26	32
Voluntary Surrender	10	6	10	14
Probation with Suspension	6	6	0	1
Probation	59	57	51	53
Probationary License Issued	22	17	16	5

Consumer Protection Enforcement Initiative (CPEI) Regulations

In July 2009, the *Los Angeles Times* published an article indicating that the Board of Registered Nursing often takes years to take disciplinary action on complaints of egregious misconduct, while the licensees were still practicing. These articles exposed the need for healing arts boards within the DCA to improve the enforcement process to ensure patient safety. As a result of the article, the DCA held an informational hearing and investigated the problems that were addressed in the *Los Angeles Times* article. The DCA developed a report, *Department of Consumer Affairs, Consumer Protection Enforcement Initiative BCP Independent Verification & Validation Report, March 2010,* in response to the existing enforcement problems and made recommendations for improving the enforcement programs of the healing arts boards. The DCA also sponsored legislation, SB 1111 (Negrete McLeod,

2010) to codify many of the recommendations contained within the report. However, the bill failed to be enacted.

When the bill failed to be enacted into law, the DCA encouraged the healing arts boards to pursue regulatory action to assist the boards with investigating and prosecuting complaints in a timely manner, and to provide the healing arts boards with tools to improve the enforcement process and ensure patient safety. In response to this, the Board reviewed proposed regulatory amendments that would improve its enforcement process in an effort to address public concern and have promulgated three rulemaking proposals. The first rulemaking proposal became effective on March 9, 2012. Specifically, these regulations:

1. Specified that the following acts constitute unprofessional conduct:
    a. Failure to provide records requested by the Board within 15 days,
    b. Failure of a licensee to report an indictment within 30 days,
    c. Failure of a licensee to report a felony charge within 30 days,
    d. Failure of a licensee to report a conviction within 30 days, and
    e. Failure of a licensee to report disciplinary action taken by another professional licensing entity or other agency within 30 days; and

2. Authorized the Board to require an examination of an applicant who may be impaired by a physical or mental illness affecting competency.

The second rulemaking proposal became effective January 1, 2015. This proposal amends 16 CCR § 1018 to require an Administrative Law Judge (ALJ) to order revocation of a license when issuing a proposed decision that contains any findings of fact that: (1) a licensee engaged in any act of sexual contact with a patient, client, or customer; or, (2) the licensee has been convicted of or committed a sex offense. This proposal would prohibit the proposed decision issued by the ALJ under such circumstances from containing an order staying the revocation of the license or placing the licensee on probation. Furthermore, this proposal specifies that the terms "sexual contact" has the same meaning as defined in BPC § 729(c) and the term "sex offense" has the same meaning as defined in Education Code § 44010.

The third rulemaking proposal was promulgated in May 2014. The initial rulemaking documents were filed with OAL and published on February 20, 2015. This proposal amends 16 CCR § 1001 to authorize the Board's Executive Officer to approve settlement agreements for the revocation, surrender, or interim suspension of a license. The Board already has statutory or regulatory authority for the following provisions:

- BPC § 720.12 – Denial of application for registered sex offender: Requires the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender.
- BPC § 720.16(d) and (f) – Failure to provide documents and 718(d) – Failure to comply with court order:
- BPC § 726(a) & (b) – Sexual misconduct: Currently defined in BPC § 726.

In addition, as a result of AB 2570 (Hill, Chapter 561, Statutes of 2012), BPC § 143.5 specifically prohibits a licensee who is regulated by the DCA or various boards, bureaus, or programs, or an entity or person acting as an authorized agent of a licensee, from including or permitting to be included a provision in an agreement to settle a civil dispute that prohibits the other party in that dispute from

contacting, filing a complaint with, or cooperating with the DCA, board, bureau, or program, or that requires the other party to withdraw a complaint from the DCA, board, bureau, or program, except as specified.

Diversion Program

BPC § 1695 mandates that the Board seek ways and means to identify and rehabilitate licensees whose competency may be impaired due to their abuse of dangerous drugs and/or alcohol. The Board acknowledges and recognizes that a professional's abilities may be impaired by alcoholism and other drug dependencies. In an effort to deal with this problem in a rehabilitative manner, the Board developed the Diversion Program, a voluntary, confidential program that offers an alternative to traditional disciplinary actions for dental licensees whose practice may be impaired due to chemical dependency. The goal of the Diversion Program is to protect the public by early identification of impaired dentists and RDAs and by providing licensees access to appropriate intervention programs and treatment services. Public safety is protected by suspension of practice, when needed, and by careful monitoring of the participants. Any California licensed dental professional residing in the state and experiencing an alcohol and/or drug abuse problem is eligible for admission into the program.

The DCA contracts with a vendor to perform probation monitoring services for licensees with substance abuse problems. However, the Board uses a Diversion Evaluation Committee (DEC), whose members consist of fellow dental professionals and experts in the field of chemical dependency; both areas of expertise that cannot be replicated by board staff. Following the guidelines established by the Board, each DEC has the authority to evaluate program participant eligibility and monitor ongoing participation. All decisions regarding program participants are made by the DEC in consultation with the contractor (currently MAXIMUS, Inc.) and the Board's Diversion Program Manager.

A licensee may contact the Diversion Program as a self-referral, may be referred by enforcement staff as a result of an investigation, or may be ordered to be evaluated by the DEC as a probationary condition following a disciplinary order. In FY 2013/14, the program took in 12 new participants. DEC members are responsible for reviewing the history and profiles of applying licensees for consideration into the program and determining eligibility, or if they do not meet the criteria. Upon acceptance into the program, DEC members are responsible for developing an individual treatment plan (contract) that provides both structured support during a participant's recovery and strict monitoring to ensure California dental consumers are not at risk from impaired licensees. Termination may occur if a participant fails to comply with the treatment plan; fails to derive benefit from the treatment plan; or tests positive on more than one occasion and is deemed a public risk. If a participant is terminated, DEC refers the licensee back to the Board for formal discipline. The DEC is required to consider the uniform standards, discussed below, in creating treatment rehabilitation plans for licensees entering diversion. Successful completion of the program is granted by the DEC if the participant has demonstrated, among other things, the ability to refrain from the use of alcohol and drugs, an acceptable relapse prevention plan, and a transition period of at least one year.

DIVERSION STATISTICS	FY 10/11	FY 11/12	FY 12/13	FY 13/14
Participants (close of FY)	52	53	48	46
Program Intakes Total	9	13	11	12
Successful Completions	6	6	8	4
Terminations	FY 10/11	FY 11/12	FY 12/13	FY 13/14
Public Threat	1	4	1	1

Non-Compliance	2	0	1	0
Biological Fluid Testing	FY 10/11	FY 11/12	FY 12/13	FY 13/14
Drug Tests Ordered	1359	1320	1247	1097
Positive Drug Tests	12	39	27	14

The DCA Internal Audit Office (IAO) performed an audit of the DCA's contract with MAXIMUS, Inc. to fulfill the audit requirements outlined in SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008), to review MAXIMUS's effectiveness, efficiency, and overall performance in managing diversion programs for substance abusing licensees. The audit found that MAXIMUS has established and is maintaining an effective and efficient program, and recommended the program be continued. The audit noted that the Diversion Program is the only program designed to protect the consumer from self-referred substance-abusing licensees. In addition, the program is very economical for the Board because the participants pay most of the cost. The Board pays only a monthly administrative fee, which is partially deferred by program participants. Diversion Program expenses are established by the DCA-wide contract with MAXIMUS, Inc. In FY 2013/14, the total cost to the Board for the Diversion Program was roughly $125,000.

The Board's Diversion Program has shown a 24% decrease in participation from a high of 61 participants in FY 2008/09 to its current attendance of 49. The number of completions is lower, as the participation has also decreased. Completion times also vary depending on when participants enter the several yearlong program. Although the frequency of random drug tests per participant has remained constant, the lower number of participants being tested has resulted in an overall decrease in the number of tests ordered. The recidivism rate has remained substantially low throughout the last eight fiscal years, with the percentage of relapses ranging from 0%-8.7% of the roughly 53 participants per year that have been served over the last eight FYs.

Uniform Standards for Substance Abusing Licensees

Uniform Standards are used in any probationary order of the Board that affects a licensee determined to be a substance abuser after notice and hearing conducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with Sections 11500 et seq). Effective April 1, 2014, the Board implemented the provisions of SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) by adopting the *Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders, February 28, 2013*. These standards will be used by an ALJ in disciplinary proceedings after a licensee has been determined to be abusing substances. The standards relate to: 1) notification to employers; 2) supervised practice; 3) drug and alcohol testing; 4) abstention from the use of alcohol, controlled substances, and dangerous drugs; 5) facilitated group support meetings; 6) clinical diagnostic evaluations; and 7) drug or alcohol abuse treatment programs. To ensure successful implementation, the Board's enforcement staff has provided the AG liaison and the Office of Administrative Hearings with these standards, and identified statewide resource lists that meet some of these requirements. The Board has also written additional probation guidelines to address the seven new monitoring conditions, and provided staff training on these requirements and implementation.

Public Information Policies

The Board maintains an email list of all interested parties and notifies these individuals each time something new is posted on the Web site. All Board meeting materials are posted online at least one week prior to each meeting, along with draft minutes from the prior meeting. Meeting materials

remain online indefinitely; final meeting minutes are posted as soon as the Board approves them and remain online indefinitely. The Board has been webcasting all of the public Board and Committee meetings since 2012, and plans to continue webcasting all of its public Board and Committee meetings. Webcasts are archived online for three years. The Board establishes the following year's meeting dates at the August Board meeting and posts them on the Web site immediately. In addition, the Board provides on its Web site information on the current status of every license that has been issued, pursuant to BCP § 27. The public can view disciplinary history and can access disciplinary documents, including but not limited to accusations, suspensions, and revocations.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

In November of 2014, the Board submitted its required sunset report to the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions. In this report, the Board described actions it has taken since its prior review to address the recommendations of the Committees. According to the Board, the following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made:

Internal Changes:
Since the Board's last sunset review in 2011, the following internal changes have occurred:

- Established a new Investigative Analysis Unit (IAU) within the Board's Enforcement Program, using funding and positions from the DCA's CPEI. The IAU is focused on quality of care and criminal conviction cases and has streamlined investigative timelines. The CPEI also added two sworn investigators and two special investigators to the field offices, and one and a half AGPA positions to the Discipline Coordination Unit to handle the increase in investigations that have resulted in an increase in accusations filed.
- Implemented an automated Investigator Activity Reporting (IAR) system in the Enforcement Program to enhance management of cost recovery information and investigative casework.
- Implemented computer-based testing for the Board's California Law and Ethics examination to make it easier for dentist applicants to complete this requirement and qualify for licensure.
- Appointed the Council to consider all matters relating to dental assistants in California and to make recommendations to the Board and its committees.
- Revised the RDA written and California Law and Ethics examinations.
- Updated and adopted the goals and objectives of the Board's Strategic Plan which will cover the years 2013-2016. The Board, working with DCA's strategic plan facilitators, held an open meeting with staff managers, board members and stakeholders to develop a comprehensive and inclusive plan for the next four years. Staff developed tasks and measures to go with the new and expanded goals and objectives.
- Revised the Orthodontic Assistant Permit (OAP) examination.
- Revised the Dental Sedation Assistant Permit (DSAP) examination.
- Conducted the Examination Validation for the Western Regional Examination Board (WREB).
- Appointed a new EO.
- Recruited and hired a new Assistant Executive Officer (AEO) and Enforcement Chief.
- The Governor appointed seven new Board members and reappointed six.
- The Legislature reappointed two Board members.

Board Actions and Responses to Prior Sunset Issues:

The Senate Committee on Business, Professions and Economic Development last reviewed the Board in 2011. During the previous sunset review, the Senate Committee raised 28 issues. Below are actions that have been taken over the last four years to address a number of these. For those which were not addressed and which may still be of concern, they are addressed and more fully discussed under "Current Sunset Review Issues."

1. **Should the composition of the Board be changed to include more public member representation?** *The Board added one additional public member, appointed by the Governor, to the Board membership. (SB 540 (Price, Chapter 385, Statutes of 2011).*

2. **Should the Board's strategic plan include action items and realistic target dates for how its goals and objectives will be met?** *In fall of 2012, the Board updated its 2013-16 strategic plan to include eight goals and 36 objectives. Action items and deliverables were identified for each objective. The Board also receives strategic plan updates during its quarterly meetings in written report form and through the Executive Officer's report.*

3. **Should the Board implement annual personnel performance evaluations or appraisals?** *The Board completed written evaluations and discusses overall work performance, and strives to complete these activities in a timely manner and on an annual basis pursuant to Government Code Sections 19992-19992.4 and the Department of Personnel Administration Rule 599.798.*

4. **Is there some clarification needed regarding the authority which the Board has over the Dental Hygiene Committee (DHCC) and the Dental Assisting Forum?** *Since its formation, the DHCC continues to fall within the Board's jurisdiction on issues dealing with scope of practice, while all other aspects of the DHCC are independent of the Board. The Board and DHCC work to keep a line of communication open, and collaborate on issues of mutual concern. With regard to establishing a dental assisting forum, SB 540 (Price, Chapter 385, Statutes of 2011) created a Dental Assisting Council, which is comprised of seven members appointed by the Board, to consider all matters relating to dental assistants in the state.*

5. **Will California meet the increased demand for dental services with the enactment of the Federal Health Care Reform, and what can the Board do to assist in the implementation of the Federal Health Care Reform?** *The Board collects workforce data about dentists and dental assistants pursuant to AB 269 (Eng, Chapter 262, Statutes of 2007), and participates in the California Office of Statewide Health Planning and Development (OSHPD) project to create a health care workforce clearinghouse in accordance with SB 139 (Scott, Chapter 522, Statutes of 2007), to address the supply and demand for health care workers. The Board also updated its Strategic Plan to include the goal of serving as a resource to the dental workforce, and established the Access to Care Committee to monitor Federal Health Care Reform and to ensure that the goals and objectives outlined in its Strategic Plan are carried out.*

6. **Should the Board enhance its efforts to increase diversity in the dental profession?** *The Board accepts accreditation of California dental schools by CODA, which requires dental schools to have policies that promote diversity among its students, faculty, and staff.*

7. **Should the Board be responsible for determining and reviewing areas of specialty education and accreditation requirements for those specialized areas of Dentistry?** *SB 540 (Price,*

Chapter 385, Statutes of 2011), deleted certain BPC sections to prevent future lawsuits filed against the Board related to advertising of specialty credentials.

8. **Currently the Board is averaging up to five months to process examination applications.** *The Board utilizes an outside vendor to administer the California Law and Ethics examinations for dentists and RDAs, and the written examination for RDAs, and RDAEFs. The Board also eliminated backlogs and delays in processing examination applications for dental assisting and dental licensing units. Examination applications for dentists applying to take the WREB take approximately 48 hours to process, and applications for the RDA and RDAEF examinations are processed within ten days.*

9. **Is randomization of Dental and RDA Law and Ethics Examinations needed**? *The Board periodically reviews and updates the test questions for both California Law and Ethics examinations (dentists and RDAs) to reflect current laws and regulations through a contract with the Office of Professional Examinations. The examinations are computer based and administered by an outside vendor (PSI), and test questions are scrambled in order to avoid examination compromises. All applicants are required to certify that the contents of the examination will not be released.*

10. **Should the Board explore pathways to improve RDA written examination?** *When the Board assumed responsibility for the Dental Assisting Program on July 1, 2009, the pass rate was 53%. Since implementing the new examination on January 1, 2010, the pass rate fluctuates between 62% and 70% depending on the candidate pool.*

11. **The Board suspended audits of continuing education (CEs) prior to 2009, and does not audit RDAs.** *The random audit program for dentists resumed with the February 2011 license renewals, but audits for RDAs cannot take place until additional staff is hired to assume those duties.*

12. **Will the Board be able to meet its goal of reducing average disciplinary case timeframe from 2.5 years or more, to 12 to 18 months?** *The Board made improvements to processing times for enforcement cases, with the additional staffing provided by CPEI, and reduced the average number of days to close a complaint from 435 days to 100 days (a 77% decrease). The implementation of quarterly case reviews has focused on case closures and closing the oldest investigations.*

13. **Should the Board continue to monitor the quality of enforcement data and ensure that investigative activities are tracked? Additionally, should the Board adopt guidelines for the completion of specific investigative functions to establish objective expectations?** *The Board developed internal reports as well as reasonable time objectives to track administrative case referrals for timely handling at the AGO, and monitors those timeframes. Staff are also taking the initiative and contacting the AGO for follow-up and to ensure case handling is made a priority. These efforts have resulted in greater accountability and reductions to case aging.*

14. **The Board must go through a cumbersome process to suspend the license of a licensee who may pose an immediate threat to patients or who have committed a serious crime and may even be incarcerated.** *The Board utilizes a number of tools to suspend a practitioner's license when necessary, including PC § 23 motions to temporarily suspend practice on criminal allegations which have the potential for public harm. BPC § 1687 provides for the revocation on convicted sexual offenders, and BPC § 315.2 (effective January 1, 2011) authorizes the Board to*

order a licensee to cease practice if they test positive for any substance that is prohibited under the terms of the licensee's probation. In addition, in concert with SB 1111 (Negrete McLeod) of 2010, in May 2014, the Board approved proposed regulatory language to delegate to the Executive Officer the authority to adopt a stipulated settlement if an action to revoke a license has been filed and the licensee agrees to surrender the license without requiring the Board to vote to adopt the settlement.

15. **Should the Board contract with a collection agency to improve its cost recovery and cite and fine functions?** *The Board participates with the DCA's Franchise Tax Board Intercept Program, which allows the Board to collect outstanding cost recovery associated with enforcement actions. The process has been successful; however, staff resources have limited their referrals. The Board will consider submitting a BCP to add staff that can perform this function on an ongoing basis. The Board's cite and fine functions are discussed below under "Current Sunset Review Issues."*

16. **Should the Board adopt written guidelines on how to make probation assignments and ensure that probationary and evaluation reports are conducted consistently and regularly as recommended by the Enforcement Assessment?** *The Board updated and revised its written guidelines for probation monitoring, which also includes the language outlined in the uniform standards, and enforcement staff has been trained on the procedures so that there is statewide consistency in monitoring licensees on probation. In addition, modifications have been made to the IAR System to track the time spent on probation monitoring functions in addition to investigative tasks.*

17. **Should the Board annually report specific licensing and enforcement information to its licensees and the Legislature?** *The Board annually reports information collected pursuant to BPC § 805 relating to malpractice settlements and judgment information. The Board reports enforcement benchmark relating to information required under BPC § 2313 to the DCA and also reports quarterly on several performance measures, including on enforcement and licensure. The Board makes these reports available on the Board's website.*

18. **Should the Board implement the recommendations of a 2009 Enforcement Assessment of its Enforcement Program?** *The Board has implemented the recommendations of the enforcement assessment, with the exception of two recommendations relating to data integrity that are discussed in relation to the BreEZe program below.*

19. **The California Dental Corps Loan Repayment Program still has funds available to provide to dental students.** *SB 540 (Price, Chapter 385, Statutes of 2011) extended the program until all monies in the account are expended.*

20. **Effectiveness of Diversion Program and Implementation of SB 1441 Standards.** *The DCA Internal Audit Office performed an audit of the DCA's contract with MAXIMUS, Inc. to fulfill the audit requirements outlined in SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008), to review MAXIMUS's effectiveness, efficiency, and overall performance in managing diversion programs for substance abusing licensees. The audit found that MAXIMUS has established and is maintaining an effective and efficient program, and recommended the program be continued. With respect to the SB 1441 requirements, the Board's rulemaking relating to Uniform Standards for Substance Abusing Licensees was approved by the OAL and filed with the Secretary of State on January 7, 2014, and have been effective since April 1, 2014.*

21. **Should the Board be authorized to access diversion records for dentists who are terminated from the diversion program for noncompliance, which usually involves relapse?** *The Board is now authorized to access any diversion records of a licensee who participates in a diversion program and withdraws or is terminated for non-compliance, for purposes of investigation and possible imposition of a disciplinary action SB 540 (Price, Chapter 385, Statutes of 2011).*

22. **Should the Board promulgate regulations pursuant to a statute enacted in 1999 to require dentists to inform patients that they are licensed by the Board?** *The Board promulgated these regulations, which became effective on November 28, 2012.*

23. **Should the Board continue to explore ways to enhance its Internet Services and Web site to licensees and members of the public?** *The Board hired staff with strong IT skills to enhance the Board's internet services to licensees and members of the public, including posting meeting notices and materials, board policies, legislative and regulatory information, newsletters, and other information on our website. While the Board intends to webcast its meetings and has done so since 2011, it may not be possible to webcast the entire open meeting due to limitations on the DCA's resources.*

24. **Are recent licensing fees sufficient to cover the Board's costs?** *The Board estimates that the Dentistry Fund will be able to sustain expenditures into FY 2017/18 before facing a deficit. The Board is undergoing a fee audit to determine the appropriate fee amounts to assess.*

25. **Lack of staff continues to hamper the Board's enforcement process.** *The Board has filled the majority of its enforcement positions, and case closure rates climbed following the addition of CPEI positions averaging 968 cases per year, up from 651 four years ago. The Board recently submitted two BCPs for two full-time office technicians to support increased clerical support tasks based on growth in enforcement staff. Despite increased positions, the caseload per investigator is significantly higher than other programs within the DCA.*

26. **Will the unpaid GF loan have an impact on the ability of the Board to deal with its case aging and case processing?** *The Board has received full repayment of its $10M loan to the GF.*

27. **Consumer satisfaction with the Board is low**. *The Board continues to send out consumer satisfaction surveys and actively works with the DCA in a focus group to seek new methods to increase consumer participation.*

28. **Should the licensing and regulation of the dental profession be continued, and be regulated by the current board membership?** *SB 540 (Price, Chapter 385, Statutes of 2011) extended the Board's sunset date to January 1, 2016.*

For more detailed information regarding the responsibilities, operation and functions of the Board please refer to the Board's "Sunset Review Report 2014." This report is available on its Web site at http://www.dbc.ca.gov/formspubs/sunset2014.pdf.

CURRENT SUNSET REVIEW ISSUES FOR THE DENTAL BOARD OF CALIFORNIA

The following are unresolved issues pertaining to the Board, or those that were not previously addressed by the Committees, and other areas of concern for the Committees to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas that need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

ADMINISTRATIVE ISSUES

ISSUE #1: AUTHORITY TO COLLECT EMAIL ADDRESSES. ***Should the Board be authorized to collect and disseminate information through email addresses?***

Background: In order to improve the Board's ability to communicate with licensees, the Board will be pursuing statutory authority to allow it to require email addresses on its applications and renewal forms. Web-based communications will also reduce postage costs and provide a cost savings to the Board.

Staff Recommendation: ***The Board should advise the Committees of any statutory changes necessary to enable the Board to collect email addresses and to use email as a way to communicate with licensees and applicants.***

ISSUE #2: DENTAL ASSISTING COUNCIL (COUNCIL). ***Should the Board examine ways to increase the availability of examinations? What is the Board's relationship with the Council, and how can the Council become more effective?***

Background: SB 540 (Chapter 385, Statutes of 2011) created the Council to consider all matters relating to dental assistants. The Council is composed of seven members, including the RDA member of the Board, another member of the Board, and five RDAs who represent a broad range of dental assisting experience and education. Two of the five RDA members are required to be employed as faculty members of a registered Board-approved dental assisting educational program, one must be licensed as an RDAEF, and one must be employed clinically in private dental practice or public safety net or dental health care clinics, and must be actively licensed. The Board makes all council appointments. No council appointee shall have served previously on the dental assisting forum or have any financial interest in any registered dental assistant school. Council members serve for a term of four years, and there are no term limits. Any resulting recommendations regarding scope of practice, settings, and supervision levels are made to the Board for consideration and possible further action.

The California Association of Dental Assisting Teachers, the California Dental Assistants Association, and the Foundation for Allied Dental Education, CADAT's foundation, have raised issues relating to dental assistants, the Council, and the Board, and believe that the Council is not effectively representing the interests of the dental assisting community. Among other things, the associations assert there are not enough RDA examinations or examination sites available. According to the 2015 examination schedule, the practical examination will be offered nine times this year, with 18 possible testing dates, primarily alternating between testing sites in San Francisco and Pomona, and one scheduled test in Santa Maria. The associations also believe that the Board acted without sufficient public discussion when it recalibrated the practical examination and instituted changes relating to application processing criteria. While the Board has not changed examination criteria or any grading criteria, the Board recently instituted a new calibration process, and pass rates declined following the

change. The associations also believe the Board should exercise more regulatory oversight and prevent delays associated with program approvals and regulation development, and that the Board should rely more heavily on national dental assisting standards. Lastly, the associations assert that the Board does not adequately respond to stakeholder concerns, and that Council appointees do not accurately reflect or represent the dental assistants.

Staff Recommendation: ***The Board should explain to the Committees why it recalibrated the RDA examination, and the decline in pass rates after the practical examination was recalibrated. The Board should inform the Committees about whether it has addressed, or is in the process of addressing, any of these concerns or requests, and explain any delays relating to program approvals and regulation development. The Board should explore ways to improve its relationships with stakeholders, and to empower the Council to better serve its role in vetting and making recommendations on dental assisting issues. The Committees should consider whether it would be appropriate to transfer council appointment authority from the Board to the DCA or to the Governor's Office and the Legislature, and whether term limits should be instituted.***

ISSUE 3: DELAYED IMPLEMENTATION OF THE BREEZE CONTRACT. *How does this impact the Board?*

Background: The "BreEZe Project" was designed to provide the DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system. The updated BreEZe system was engineered to replace the existing outdated legacy systems and multiple "work around" systems with an integrated solution based on updated technology. According to the DCA, BreEZe is intended to provide applicant tracking, licensing, renewals, enforcement, monitoring, cashiering, and data management capabilities. In addition, BreEZe is web-enabled and designed to allow licensees to complete and submit applications, renewals, and the necessary fees through the internet when fully operational. The public also will be able to file complaints, access complaint status, and check licensee information, when the program is fully operational.

According to the original project plan, BreEZe was to be implemented in three releases. The budget change proposal that initially funded BreEZe indicated the first release was scheduled for FY 2012–13, and the final release was projected to be complete in FY 2013–14. In October 2013, after a one-year implementation delay, the first ten regulatory entities were transitioned to the BreEZe system. The Board is part of Release Two, which is scheduled to go live in March 2016, three years past the initial planned release date.

The total costs of the BreEZe project are funded by regulatory entities' special funds, and the amount each regulatory entity pays is based on the total number of licenses it processes in proportion to the total number of licenses that all regulatory entities process. To date, the Board has spent approximately $265,918 between FY 09/10 and 13/14 on pro rata and other costs to prepare for the BreEZe system transition, and is expected to spend $285,183 for FY 14/15, $541,457 for FY 15/16, and $573,193 for FY 16/17. The Dental Assisting Fund, which is also part of Release 2, has spent $199,697 on pro rata and other costs to prepare for BreEZe between FY 09/10 and FY 13/14, and is expected to spend $207,860 in FY 15/16, $401,161 in FY 215/16, and $425,365 in FY 16/17.

Some of these costs include staff costs. For example, the Board has assigned one staff services manager full time as the single point of contact for the Board's BreEZe business integration. In addition, staff has been designated as subject matter leads in different program areas, and several

retired annuitants have been maintained in anticipation of the forthcoming resource demands while the system is tested, data migration is validated, and training of full time staff is conducted.

According to the Board, there are several challenges it is anticipating before successful implementation. One challenge includes the ability to schedule practical examinations for RDAs at various times and locations, because the existing off-the-shelf product that BreEZe was developed from did not contain this functionality. Another challenge is the inspection module functionality, which will be used to track the Board's inspection cases separate from its enforcement cases. Release 1 Boards chose not to use this feature, so the Board will be one of the first boards to use this module. Lastly, the Board notes that Release 2 will have an activity tracking component to track investigator time (and costs) as originally intended. In addition to these BreEZe-specific concerns, the Board noted in its report that it had existing issues with its legacy system that BreEZe was intended to solve, such as the ability to generate reports and the ability for multiple staff to have access to enforcement screens. The Board also notes that while it is in compliance with BPC § 114.5, which requires Boards to track and identify veterans, it is currently tracking this data internally while the BreEZe computer system is being developed.

Another issue of concern based on BreEZe's delayed implementation is the Board's absence of an investigative activity reporting (IAR) system. After the Board's last sunset review, it utilized the IAR, which was owned and supported by the Medical Board of California (MBC), to track the Board's cases. However, the MBC has been integrated into BreEZe and they are no longer using the IAR. In addition, the Board notes that the IAR was discontinued last spring when the Board upgraded its computers because the new operating system would not support the IAR format. As a result, investigators at the Board are manually tracking casework and supervisors are conducting regular desk audits to ensure the timeliness of casework.

Staff Recommendation: ***The Board should update the Committees on whether any of the above-mentioned concerns have been or will be addressed in Release 2. The Board should inform the Committees of any difficulties in remaining on its legacy systems, and whether any additional stop-gap technological measures are needed until BreEZe is implemented, especially in light of the loss of the IAR system and its current practice of manually tracking casework. The Board should inform the Committees of how BreEZe expenditures have affected its funds, and whether the Board will need to generate additional revenue to support BreEZe expenditures going forward.***

ISSUE #4: PRO RATA. *What is the impact of pro rata on the Board's functioning?*

Background: Through its various divisions, DCA provides centralized administrative services to all boards and bureaus. Most of these services are funded through a pro rata calculation that is based on "position counts" and charged to each board or bureau for services provided by personnel, including budget, contract, legislative analysis, cashiering, training, legal, information technology, and complaint mediation. DCA reports that it calculates the pro rata share based on position allocation, licensing and enforcement record counts, call center volume, complaints and correspondence, interagency agreement, and other distributions. In 2014, DCA provided information to the Assembly Business, Professions and Consumer Protection Committee, in which the Director of DCA reported that "the majority of [DCA's] costs are paid for by the programs based upon their specific usage of these services." DCA does not break out the cost of their individual services (cashiering, facility management, call center volume, etc.).

Over the past four years, the Dental Fund has spent roughly an average of 11% of its expenditures on DCA pro rata, while the Dental Assisting Fund has spent roughly 18%. The Board receives the following services from DCA for its pro rata: accounting, budget, contracts, executive assistance, information technology, investigation, legal affairs, legislative and regulatory review, personnel, and public affairs. While it appears DCA provides assistance to the Board, it is unclear how the rates are charged and if any of those services could be handled by the Board instead of DCA for a cost savings.

Staff Recommendation: ***The Board should advise the Committees about the basis upon which pro rata is calculated, and the methodology for determining what services to utilize from DCA. In addition, the Board should discuss whether it could achieve cost savings by providing some of these services in-house. The Board should inform the Committees of why the Dental Assisting Fund's pro rata costs are higher than the Dentistry Fund's pro rata costs.***

BUDGET AND STAFFING ISSUES

ISSUE #5: DENTAL FUND CONDITION. ***Is the Board adequately funded to cover its administrative, licensing, and enforcement costs; to continue to improve its enforcement program; and to ensure it is fully staffed?***

Background: The Dentistry Fund is maintained by the Board and includes the revenues and expenditures related to licensing for dentists. For sixteen years, the license fee for dentists was set at $365. In 2013, for the first time in 16 years, the Board increased its license fee for dentists from $365 to its statutory cap at the time of $450. These regulations went into effect on July 1, 2014. During that time, the Board also pursued an increase in statute from $450 to $525. SB 1416 (Block, Chapter 73, Statutes of 2014) raised the Board's fee for initial and renewal licenses for dentists from $450 to $525, and set fees at that level. During that time, an analysis conducted by the DCA's Budget Office determined that the license fees should be raised to $525 to ensure solvency into the foreseeable future. While fees increased have generated additional revenue, the Board expenditures, projected to be over $12M per year, continue to outpace its revenue, projected to be less than $11M per year, thus perpetuating a structural imbalance.

Part of the reason for the increase in projected and actual expenditures in recent years has been due to funding 12.5 CPEI positions; funding the diversion program; increased expenses associated with BreEZe; unexpected litigation expenses; and the general increase in the cost of doing business over the past 16 years. While the Board has expended less than what it has been authorized by the budget due to some cost savings and reimbursements, the Board emphasizes that its fund should be able to sustain expenditures without relying on estimated savings or reimbursements.

Based on data from the past five fiscal years, the Board calculated that the Dentistry Fund will be able to sustain expenditures into FY 2017/18 before facing a deficit. According to budget information presented at its February 2015, Board meeting, the Board projects it will only have 0.5 months in reserve in FY 2016/17. The Board is currently undergoing a fee rate audit to determine the appropriate fee amounts to assess and to project fee levels into the future. The fee audit will also take into account the funds necessary to establish a reserve of four to six months for economic uncertainties and unanticipated expenses, such as legislative mandates and the DCA costs. In addition, while the Dental Assisting Program has its own staff for Licensing and Examination, paid for by its fund, the rest of the functions relating to dental assisting, such as administration and enforcement, are performed by Board staff and paid for by the Dentistry Fund. As a result, the fee audit will examine the appropriate fees

and costs for the Dental Assisting Fund, which currently does not pay the Dentistry Fund for any costs associated with administration or enforcement and has a very large reserve. After the results of the fee audit come out, the Board anticipates requesting an increase in the statutory fee caps, so that going forward, the Board may raise fees incrementally and within the cap, as necessary, to ensure a healthy budget. The fee audit will be available shortly.

Staff Recommendation: The Board should share the fee audit with the Committees as soon as that information is available to determine the appropriate fee caps for licensees. The Board should consider whether it is feasible or preferable to merge the Dentistry and Dental Assisting, and to share all staff and costs. If the Board determines that funds should remain separate, the Board should ensure that the Dental Assisting Fund reimburses the Dentistry Fund for any costs incurred.

LICENSING ISSUES

ISSUE #6: FOREIGN DENTAL SCHOOL APPROVAL. ***Is the process for approving foreign dental school sufficient? Should the Board consider heavier reliance on accrediting organizations for foreign school approvals if those options become available?***

Background: Since 1998, the Board has authority, under BPC § 1636.4, to conduct evaluations of foreign dental schools and to approve those who provide an education equivalent to that of accredited institutions in the United States and adequately prepare their students for the practice of dentistry. At present, the Dental Board has approved only one international dental school, De La Salle School of Dentistry, located in Leon, Guanajuato, Mexico.

In developing standards and procedures to be utilized in the evaluation and approval process of foreign dental schools, the Board has relied significantly on CODA standards. However, the Board has not updated its regulations to reflect changes that have been made to CODA standards over the years since the inception of this legislation. As a result, the Board may be assessing new programs using old standards. It is important to note the language under BPC § 1636.4 appears broad enough to reflect any updates, for example, by stating that foreign schools should be "equivalent to that of similar accredited institutions in the United States and adequately prepares its students for the practice of dentistry." To date, CODA has not approved any international dental schools, although it does recognize dental schools approved by the Commission on Dental Accreditation of Canada. However, CODA offers fee-based consultation and accreditation services to established international dental education programs. International programs seeking accreditation undergo a preliminary review and consultation process, after which they may be recommended to pursue accreditation through CODA. CODA has adopted the policy that international programs must be evaluated by, and comply with, the same standard as all US programs.

The Board is authorized to contract with outside consultants or a national professional organization to survey and evaluate foreign schools. The Board is required to establish a technical advisory group (TAG) to review and comment upon the survey and evaluation of the foreign dental school. The TAG is selected by the Board and consists of four dentists, two of whom shall be selected from a list of five recognized United States dental educators recommended by the foreign school seeking approval. None of the members of the TAG may be affiliated with the school seeking certification. After a complete application is sent, the Board has 60 days to approve or disapprove the application, and grants provisional approval if the school is substantially in compliance with dental school regulations. Unless otherwise agreed to, the Board appoints a site team to make a comprehensive, qualitative onsite review

of the institution within six months receipt of a complete application. The school is required to pay all reasonable costs incurred by the Board staff and the site team relating to site inspection. The site team prepares and submits a report to the TAG, which will review the report and make a recommendation to the Board.

In October of 2014, the *Public Institution State University of Medicine and Pharmacy, "Nicolae Testemitanu," of the Republic of Moldova*, represented by Senator (ret.) Richard Polanco, submitted an application and the required fee for approval. This school's dental program would only serve students from the United States. This school is not CODA-approved, and has not applied for accreditation from any other state. At its November Board meeting, the Board appointed a subcommittee to review the application, and has since determined the application was not complete and provided guidance on how to improve the application. At the Board's February Board meeting, it appointed two of the school's candidates and two of its Board Members to the TAG. The Board is continuing to follow the process outlined in the statute and regulations relating to this approval.

Staff Recommendation: ***The Board should keep the Committees informed of any concerns relating to foreign school approvals. The Board should update its school approval standards, which were based on CODA standards in effect at the time, to reflect current CODA standards. The Board should inform the Committees of any advancements made by CODA with regards to foreign school approvals. If CODA, which is the national and soon-to-be international accrediting body for dental schools, is stepping into the realm of foreign dental school approvals, the Board may consider whether it should be involved in approving foreign dental schools, or whether it could rely on accrediting bodies like CODA to approve such schools.***

EXAMINATION ISSUES

ISSUE #7: OCCUPATIONAL ANALYSIS (OA) FOR RDAs AND RDAEFs. ***Should the Board conduct an OA for RDAs and RDAEFs?***

Background: At the time of the Board's last sunset review, pass rates for the RDA written examination were 53%. Since then, the Board reports that it implemented a new RDA written examination, which resulted in a pass rate that fluctuates between 62-70% depending on the candidate pool. The average pass rate for all RDA written examinees was 66% in 2012, 62.7% in 2013, and 64% in 2014. The pass rates for the RDA Practical Exam averaged roughly 83% over the past four fiscal years. However, in 2014, pass rates dropped dramatically. In August of 2014, only 47% of 498 examinees in Northern California passed, while only 24% of 486 examinees in Southern California passed. In addition, the pass rate for the RDAEF Practical Exam has shown a major decrease from 83% in FY 10/11 to just over 56% in FY 13/14. The sharp declines in pass rates occurred after the practical examinations were recalibrated, as discussed in Issue #2 above.

In FY 10/11, there was only one approved program that administered the RDAEF Practical Exam. Since that time, three additional schools have been added. Historically, retake pass rates (0% - 52%) are lower than for first time candidates. All the RDA and RDAEF schools are required to maintain the same curriculum as provided in 16 CCR Sections 1070 to 1071. The Board is authorized to determine if and when a re-evaluation is needed. Currently, the Board is looking at the need for an occupational analysis (OA) of RDA and RDAEF programs in order to validate both practical exams. The last OA for both examinations was conducted in 2009.

BPC § 139 specifies that the Legislature finds and declares that OA and examination validation studies are fundamental components of licensure programs and the DCA is responsible for the development of a policy regarding examination development and validation, and occupational analysis. Licensure examinations with substantial validity evidence are essential in preventing unqualified individuals from obtaining a professional license. To that end, licensure examinations must be developed following an examination outline that is based on a current occupational analysis; regularly evaluated; updated when tasks performed or prerequisite knowledge in a profession or on a job change, or to prevent overexposure of test questions; and reported annually to the Legislature. According to the Department's policy, an occupational analysis and examination outline should be updated at least every five years to be considered current.

At the November 2014 Board meeting, staff reported during a joint meeting of the Council and the Board's Examination Committee (Committee) that an occupational analysis may be necessary in the near future. The Council and the Committee discussed concerns relating to the RDA practical examination and the fact that the pass rate has decreased over the last year, and staff recommended that an OA of the RDA and RDAEF professions may be appropriate, especially since the Board has not had an opportunity to conduct a complete OA for the RDA and RDAEF since their licensing programs were brought under the umbrella of the Board in 2009. Such an OA is projected to be $60,000 and could take up to a year to complete. Board staff notes that the cost would be absorbable by the Dental Assisting budget.

Staff Recommendation: ***The Board should undertake the OA for the RDA and RDAEF examinations, and consider whether a practical examination is the most effective way to demonstrate minimal competency for those licensees. The Board should continue to monitor examination passage rates, and pursue any legislative changes necessary to reflect current practices as determined by the OA.***

ISSUE #8: ACCEPTANCE OF ADDITIONAL REGIONAL EXAMINATIONS. ***Should the Board consider accepting the results of the American Board of Dental Examiners, Inc. (ADEX) examination?***

Background: In August of 2014, the Senate Business, Professions and Economic Development Committee (Committee) was contacted by Mercury, a company representing the North East Regional Board of Examiners (NERB), now known as the Commission on Dental Competency Assessments (CDCA). The CDCA inquired if the Committee would consider legislation to accept the ADEX results as a pathway to licensure in California, similar to WREB, the regional examination the Board currently accepts. On August 22, 2014, AB 2750 was amended to allow applicants to satisfy examination requirements by taking an examination administered by the former-NERB or an examination developed by the American Board of Dental Examiners, Inc. (ADEX). The Committee recommended Mercury contact the Board to discuss the request for future consideration. Additionally, the Committee suggested that the Board review the issue of accepting the NERB examination results and other regional board examinations as a pathway to licensure in California during the upcoming Sunset Review process. AB 2750 was held in the Senate Rules Committee.

ADEX is a non-profit corporation comprised of state boards of dentistry focused on the development of uniform national dental and dental hygiene clinical licensure examination for sole use by state boards to assess competency. ADEX does not administer any examinations. ADEX is administered by the regional testing agencies, including CDCA (formerly NERB), the Southern Regional Testing

Agency, and the Coalition of Independent Testing Agency. The content validity of the ADEX examination is based on a national independent occupational analysis (OA) completed in 2011. Currently the ADEX examination is accepted in 43 US states, 3 US territories, and Jamaica.

In accordance with BPC § 139, the Board would need to conduct examination validation studies and an occupational analysis to assess the feasibility of accepting the additional examination pathway. Any decision to accept an additional pathway will require legislative changes to the Dental Practice Act. At its November 2014 Board meeting, the Examination Committee discussed this issue, and the Board appointed a subcommittee of two Board Members~~,~~ to work with staff in researching the feasibility of accepting other regional examinations.

Staff Recommendation: ***The Board should keep the Legislature informed about the feasibility of accepting this examination, and the extent to which accepting the ADEX examination might affect licensure in the state. The Board should consult with other stakeholders, including professional associations and California-approved dental schools to understand and prepare for any consequences relating to a new examination. The Board should inform the Legislature of the cost to validate this examination, and whether accepting another examination as a path to licensure will incur any additional costs, for example, for requiring additional staff or modifying BreEZe to accommodate a new examination for licensure.***

PRACTICE ISSUES

ISSUE #9: PATIENT NOTIFICATION AND RECORD KEEPING. ***Should dentists be required to notify patients upon a change in ownership of a dental practice or upon retirement?***

Background: Consumer investigator Kurtis Ming, from "Call Kurtis," a consumer advocacy segment on Sacramento's local CBS news affiliate, reached out to the Senate Business, Professions and Economic Development Committee and the Board to determine if there were any complaints from patients about dentists selling their practice without notifying their patients, who subsequently end up harmed by the new dentists.

According to the Board, it was not aware of a trend in these cases. Although the Board noted there are no laws that require specific actions when someone is selling their dental practice, it is considered proper standard of care for dentists to notify patients when business practices change, such as bringing on an additional associate, retirement, or selling the practice. In addition, BPC § 1680(u) defines unprofessional conduct to include, "The abandonment of the patient by the licensee, without written notice to the patient that treatment is to be discontinued and before the patient has ample opportunity to secure the services of another dentist, registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions and provided the health of the patient is not jeopardized."

The Board reported that it has seen a rise in the number of cases when a licensee is no longer in possession of a patient's records. This may be related to the sale of a practice, or instances when the licensee has abandoned a practice. When a licensee fails to produce patient records within 15 days, he or she may be subject to an administrative citation. In addition, if the licensee has walked away from the practice without notifying the patients, he or she may be subject to discipline for patient abandonment. There is no general law requiring dentists to maintain records for a specific period of time. However, there may be situations when providers are required to maintain records for a certain

time period, for example, for reimbursement purposes. The MBC also does not have any requirements relating to patient notification when a licensee retires or sells his or her practice, or relating to retention of patient records.

Staff Recommendation: ***The Committees should determine whether it should require dentists to notify patients upon a change in ownership or when a licensee retires. The Board should explore exactly what type of notification should be required, when that notice should be given, and whether a licensee should be required to keep or transfer patient records under those circumstances. The Committees may also consider whether patient notification requirements should be required not only for dental professionals, but also for other healing arts professionals.***

ISSUE #10: BPC § 726: UNPROFESSIONAL CONDUCT. ***Should dental professionals be authorized to provide treatment to his or her spouse or person with whom he or she is in a domestic relationship?***

Background: BPC § 726 prohibits, "The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action" for any healing arts professional. BPC § 726 exempts sexual contact between a physician and surgeon and his or her spouse, or person in an equivalent domestic relationship, when providing non-psychotherapeutic medical treatment. SB 544 (Price, 2012) would have, among other things, amended BPC § 726 to provide an exemption for all licensees who provide non-psychotherapeutic medical treatment to spouses or persons in equivalent domestic relationships, instead of only exempting physicians and surgeons. This bill was held in the Senate Business, Professions and Economic Development Committee. The California Dental Association (CDA) and the California Academy of General Dentistry (CAGD) have both requested amending this section to also exempt dentists who are treating their spouses or person in an equivalent domestic relationship.

Staff Recommendation: ***The Committees should consider whether exempting dentists maintains the spirit of the law and determine whether additional conditions are necessary to ensure that spouses and domestic partners are protected .***

ISSUE #11: ENSURING AN ADEQUATE AND DIVERSE DENTAL WORKFORCE. ***Does California have the workforce capacity to meet dental care needs, especially in underserved areas? Should the Board enhance its efforts to increase diversity in the dental profession?***

Background: According to the Office of Statewide Health Planning and Development (OSHPD), Dental Health Professional Shortage Areas (DHPSA) are designated based on the availability of dentists and dental auxiliaries. To qualify for designation as a DHPSA, an area must be have a general dentist practice ratio of 5,000:1, or 4,000:1 plus population features demonstrating "unusually high need" and a lack of access to dental care in surrounding areas because of excessive distance, overutilization, or access barriers. According to OSHPD, over 50% of dentists (18,659) reported residing in five California counties, while the five counties with the fewest number of dentists combined had a total of 18 dentists. Approximately 5% of Californians (nearly 2 million individuals) live in a DHPSA. As a result, while California has a large number of dentists, they are not evenly distributed across the state.

In addition, due to recent changes in California law, insurance products sold under California's Health Benefit Exchange, Covered California, are required to offer pediatric dental benefits as part of their

benefits package. While the Affordable Care Act (ACA) required all insurance plans to include oral care for children, the dental benefit was an optional benefit until last year, which resulted in less than one-third of the children who bought medical coverage also purchasing the dental coverage. In addition, Covered California is also offering new family dental plans to consumers who enroll in health insurance coverage in 2015. As a result, the state can expect to see the need for dental services increase. According to a 2013 Children's Partnership report, *Fix Medi-Cal Dental Coverage: Half of California's Kids Depend on It*, an estimated 1.2 million children alone will have access to dental coverage, and child enrollment in Medi-Cal's dental program alone will total 5 million. That report also notes that according to a 2005 study, nearly a quarter of California's children between the ages of 0 and 11 have never been to the dentist.

The Board has had discussions relative to increasing workforce capacity in the light of the ACA, which always include the need to increase capacity in underserved and rural areas, and monitors OSHPD data relating to workforce capacity. Last year the Board revised its Strategic Plan to highlight access to quality care in its vision statement and include diversity in our values. One objective is to identify areas where the Board can assist with workforce development, including the dental loan repayment program, and publicize such programs to help underserved populations. The Board also established an Access to Care Committee to monitor the implementation of the Affordable Care Act and to ensure that the goals and objectives outlined in its Strategic Plan are carried out. The Committee will work with interested parties, including for-profit, non-profit and stakeholder organizations, to bring increased diversity in the dental profession.

In addition, according to a 2008 report from OSHPD's Healthcare Workforce Diversity Council, *Diversifying California's Healthcare Workforce, an Opportunity to Address California's Health Workforce Shortages*, the underrepresentation of racial and ethnic groups in California's health workforce is a major issue, as these communities are less likely to have enough health providers, resulting in less access to care and poorer health. Research shows that underrepresented health professionals are more likely to serve in underserved communities and serve disadvantaged patients, so diversifying California's health workforce can significantly reduce disparities in healthcare access and outcomes, as well as help address workforce needs.

The Board reported that CODA accreditation standards, which the Board relies upon, require dental schools to have policies and procedures that promote diversity among students, faculty, and staff, and places a high value on diversity, including ethnic, geographic, and socioeconomic diversity. The Board also accepts courses in cultural competencies towards its CE requirements. In addition, the Board participates in the OSHPD project to create a health care workforce clearinghouse in accordance with SB 139 (Scott, Chapter 522, Statutes of 2007), which will allow OSHPD to deliver a report to the Legislature that addresses employment trends, supply and demand for health care workers, including geographic and ethnic diversity, gaps in the educational pipeline, and recommendations for state policy needed producing workers in specific occupations and geographic areas to address issues of workforce shortage and distribution. Results may be found in OSHPD facts sheets on dentists and RDAs, which include information on supply, geographical distribution, age, and sex, but do not include information on ethnic or language diversity.

The Board has also been collecting workforce data pursuant to AB 269 (Eng, Chapter 262, Statutes of 2007) since January 1, 2009. It was the intent of the Legislature, at that time, to determine the number of dentists and licensed or registered dental auxiliaries with cultural and linguistic competency who are practicing dentistry in California. The Board developed a workforce survey, which licensees are

required to complete upon initial licensure and license renewal. Foreign language and ethnic background questions are both optional. The online results of the survey are manually input by staff into one data file, which is downloaded annually to the Board's Web site. The current report is approximately 299 pages and posts the raw data on its Web site, since AB 269 was not accompanied with funds for staff or a computer program to work on this project and manipulate this data. However, the Board has recently partnered with the Center for Oral Health, which will take that data and put it into a useable format, which will be presented at an Access to Care Committee meeting.

Staff Recommendation: ***The Board should continue to collaborate with interested stakeholders to assist in the implementation of the ACA and enhance efforts on diversity and workforce shortages, including targeting any outreach efforts to underserved areas or communities. The Board should continue to monitor information provided by OSHPD and the industry on possible workforce shortages, and advise the Committees on workforce issues as they arise. The Board should inform the Committees of the Center for Oral Health's findings based on AB 269 data, and whether there are ways to make this data more useful.***

ISSUE #12: DENTAL CORPS LOAN REPAYMENT PROGRAM. Over half of the money that has been available to this program for over a decade ago remains unused. How can the Board ensure greater participation in this program?

Background: AB 982 (Firebaugh, Chapter 1131, Statutes of 2002) established the California Dental Corps Loan Repayment Program. The dental corps program, which is administered by the DBC, assists dentists who practice in dentally underserved areas with repayment of their dental school loans. Under the program, participants may be eligible for a total loan repayment of up to $105,000. A total of three million dollars ($3,000,000) was authorized to expend from the State Dentistry Fund for this program. SB 540 (Price, Chapter 385, Statutes of 2011) extended the program until all monies in the account are expended. To date, the Board has awarded funds to 19 participants. The practice locations are throughout the state. The facilities are located in Bakersfield, Chico, Compton, Corcoran, Los Angeles, Petaluma, Redding, San Diego, San Francisco, San Ysidro, Smith River, Vallejo, Ventura, Vista, Wasco and West Covina. The first cycle of applicants was received in January 2004, and the Board approved nine of 24 applicants, paying a total of $739,381 was paid over a three-year period. A second cycle of applicants was received in July 2006, and the Board approved six of 21 applicants, paying a total of $643,928 over a three-year period. In September 2010, the Board opened a third cycle of applications and approved the only applicant. In October 2012, the Board opened a fourth cycle of applications and approved all three applicants. Approximately $1.63 million is left in the account.

The Board promotes this program on its website and includes this information in its presentation to senior students in California dental schools. In addition, the Board has worked with stakeholders and professional associations to distribute this information through their publications. Staff is continuing to research other loan repayment programs offered by the California Dental Association, the MBC, and the OSHPD, and the Access to Care Committee is currently examining the issue to determine how to increase participation in the program.

AB 982 also established a similar program for physicians and surgeons to be administered by the MBC, which was renamed the Steven M. Thompson Physician Corps Loan Repayment Program by AB 1403 (Nunez, Chapter 367, Statutes of 2004. However, in 2005, the MBC sponsored AB 920 (Aghazarian, Chapter 317, Statutes of 2005), which transferred this program to the Health Professions

Education Foundation (HPEF). At the time, the MBC noted that the transfer of the program would help both the program and the HPEF because the HPEF is better equipped to seek donations, write grants, and continuously operate the program. HPEF is the state's only non-profit foundation statutorily created to encourage persons from underrepresented communities to become health professionals and increase access to health providers in medically underserved areas. Supported by grants, donations, licensing fees, and special funds, HPEF provides scholarship, loan repayment and programs to students and graduates who agree to practice in California's medically underserved communities. Housed in OSHPD, HPEF's track record of delivering health providers to areas of need has resulted in approximately 8,776 awards totaling more than $92 million to allied health, nursing, mental health and medical students and recent graduates practicing in 57 of California's 58 counties.

Staff Recommendation: ***The Board should inform the Committees of whether it has sought matching funds from foundations and private sources as authorized under AB 982. The Board should continue to explore ways to increase participation in the program, including whether it should transfer administration of the program to the HPEF, which may be better equipped to generate and distribute funds under the program. The Board should advise the Committees on whether any statutory changes are necessary to fully utilize this program. The Committees should ensure this money, which has been available for use for over the last 10 years, is distributed and used to increase access to care in underserved areas.***

ISSUE #13: DIFFICULTY COLLECTING CITATIONS AND FINES AND COST RECOVERY. ***How can the Board enhance its efforts to collect fines and cost recovery?***

Background: BPC § 125.9 authorizes the Board to issue citations and fines for certain types of violations of the Act. Among other things, the Board is authorized to issue administrative citations to dentists who fail to produce requested patient records within the mandated 15-day time period (BPC §1684.1(a)(1)) or who fail to meet standards as evidenced through site inspections (BPC §1611.5)). The Board continues to hold licensees accountable to this timeframe and issues citations with a $250/day fine, up to $5,000 maximum. The Board also addresses a wider range of violations that can be more efficiently and effectively addressed through a cite-and-fine process with abatement or remedial education outcomes, for example, when patient harm is not found. The length of time before administrative discipline could result is also taken into consideration when determining whether a case is referred for an accusation or an administrative citation is more appropriate to send a swift message regarding unprofessional conduct or to achieve prompt abatement, and citations can address skills and training concerns promptly. The Board typically issues administrative fines up to a maximum of $2,500 per violation, with totals averaging $3,506 per citation.

When issuing citations, the Board's goal is not to be punitive; rather, the Board seeks to protect consumers by getting the dentist's attention, re-educating him or her as to the DPA, and emphasizing the importance of following dental practices that fall within the community's standard of care. When deciding whether to issue a citation and an appropriate corresponding fine, factors such as the nature and severity of the violation and the consequences of the violation (e.g., potential or actual patient harm) are taken into account. Examples of "lesser" violations of the DPA that may not warrant referral to the OAG, but where a citation and fine may be more appropriate, include documentation issues (e.g., deficient records/recordkeeping), advertising violations, failure to keep up with continuing education requirements, unprofessional conduct for the failure to disclose or report convictions (e.g., DUI), and disciplinary actions taken by another professional licensing entity. In addition to using citations as a tool to address less egregious violations that would not otherwise result in meaningful

discipline, the Board views citation as a means of establishing a public record of an event that might otherwise have been closed without action, and thereby remain undisclosed.

CITATION AND FINE	FY 10/11	FY 11/12	FY 12/13	FY 13/14
Citations Issued	42	15	28	82
Average Days to Complete	127	339	410	272
Amount of Fines Assessed	$135,900	$28,000	$55,200	$301,150
Reduced, Withdrawn, Dismissed	0	7	4	8
Amount Collected	$15,850	$10,469	$88,026	$28,782

*The increase in citations in FY 13/14 was due to one individual to whom the Board issued 48 citations to one individual who did not provide records based on 48 complaints received by the Board. The subject's license was revoked. Another reason for the increase in citations was based on the Board escalating the number of inspections for infection control standards.

The BPC § 125.9 authorizes the Board to add the amount of the assessed fine to the fee for license renewal. In the event that a licensee fails to pay their fine, a hold is placed on the license and it cannot be renewed without payment of the renewal fee and the fine amount. This statute also authorizes the Board to take disciplinary action for failure to pay a fine within 30 days from the date issued, unless the citation is appealed. When a license is revoked, the individual's ability to secure gainful employment and reimburse the Board is diminished significantly. Presently, the Board does not use the Franchise Tax Board (FTB) Intercept program to collect citation fines. While the amount in assessed fines has increased dramatically, the amount collected has fallen and reflects only a small portion of fines assessed.

The Board, however, emphasizes that when it issues citations, its goal is not to be punitive. Rather, the Board uses citations as a tool to protect the health and safety of California's consumers by gaining dentists' compliance and/or helping them become better dental care providers by re-educating them as to the Act. In addition, the Board believes that the ability to assess a larger fine will get individuals to take the Board's citations more seriously. The Board has identified increasing the maximum fine per violation from $2,500 to $5,000 per violation as one of the Board's regulatory priorities for FY 15/16.

BPC § 125.3 specifies that in any order issued in resolution of a disciplinary proceeding before any board, the Administrative Law Judge (ALJ) may direct the licensee at fault to pay for the reasonable costs of the investigation and enforcement of the case. The Board's request for recovery is made to the presiding ALJ who decides how much of the Board's expenditures will be remunerated. The ALJ may award the Board full or partial cost recovery, or may reject the Board's request. In addition to cost recovery in cases that go to hearing, the Board also seeks cost recovery for its settlement cases.

It continues to be the Board's policy and practice to request full cost recovery for all of its criminal cases as well as those that result in administrative discipline (BPC § 125.3). The Board also has authority to seek cost recovery as a term and condition of probation. In revocation cases, where cost recovery is ordered, but not collected, the Board will transmit the case to the FTB for collection. The Board may also pend ordered costs in the event the former licensee later returns and petitions for reinstatement. The Board also experiences difficulties in collecting cost recovery, as seen below.

Cost Recovery (dollars in thousands)				
	FY 10/11	FY 11/12	FY 12/13	FY 13/14
Total Enforcement Expenditures	6,975	6,792	6,588	7,037

Potential Cases for Recovery *	106	111	97	91
Cases Recovery Ordered	50	67	46	64
Amount of Cost Recovery Ordered	3,907	4,579	3,222	6,819
Amount Collected	1,816	2,201	2,711	3,427
* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation of the license practice act.				

The Board has had success utilizing the FTB Intercept Program to collect cost recovery. However, due to limited staff resources, only a few licensees have ever been referred. The Board is currently working towards increasing our participation in this program and is identifying appropriate cases that can be enrolled. Challenges will remain in instances when the license has been surrendered or revoked, and the former licensee has employment challenges resulting in their inability to generate a taxable income.

Staff Recommendation: ***The Board should inform the Committees of why it does not utilize the FTB Intercept program to collect citations. The Board should consider working with the FTB Intercept program and contracting with a collection agency for the purpose of collecting outstanding fines and to seek cost recovery. In light of the low collection rate under current fines, the Board should explain to the Committees why it believes the ability to assess larger fines will assist its enforcement efforts.***

ISSUE #14: CONTINUING EDUCATION. *Should the Board conduct CE audits for RDAs?*

Background: Dentists are required to complete not less than 50 hours of approved CE during the two-year period immediately preceding the expiration of their license. RDAs are required to take 25 hours of approved CE during the two-year period immediately preceding the expiration of their license. As part of the required CE, courses in basic life support, infection control, and California law and ethics are mandatory for each renewal period for all licensees. All unlicensed dental assistants in California must complete an approved 8-hour infection control course, an approved 2-hour course in CA law and ethics, and a course in basic life support. In addition, there are initial and ongoing competency requirements for specialty permit holders.

Licensees are required to maintain documentation of successful completion of their courses, for no fewer than four years and, if audited, are required to provide that documentation to the Board upon request. As part of the renewal process, licensees are also required to certify under penalty of perjury that they have completed the requisite number of continuing education hours, including any mandatory courses, since their last renewal. Starting with the February 2011 renewal cycle, random CE audits for dentists were resumed. Staff has been auditing 5% of the dental renewals received each month. In keeping with the Board's strategic plan and succession planning efforts, staff has developed a desk manual with written procedures for the auditing process. As of September 30, 2014, staff has conducted 521 CE audits. Seven licensees, or approximately 1% of those audited, failed the audit. Dentists who are not able to provide proof of CE units may be issued a citation and fine. Without additional resources, audits for registered dental assistants are only conducted in response to a complaint or other evidence of noncompliance. The Board also anticipates submitting a BCP for FY 2016/17 for one staff to initiate regular and ongoing audits for RDAs and RDAEFs.

Staff Recommendation: ***The Board should pursue a BCP for staff to conduct regular and ongoing audits for RDAs and RDAEFs to hold licensees accountable and promote proper standard of care.***

ISSUE #15: DISCIPLINARY CASE MANAGEMENT TIMEFRAMES ARE STILL EXCEEDING CPEI's PERFORMANCE MEASURE OF 540 DAYS. ***Will the Board be able to meet its goal of reducing the average disciplinary case timeframe from 36 months to 18 months?***

Background: The Board receives between 3,500 and 4,000 complaints per year, and refers almost all of those complaints to investigations. Over the last four fiscal years, the average time to close a desk investigation was 96 days. This timeframe represents a marked improvement from the Board's last sunset review, when the average number of days to close a complaint was 435 days. In addition, the average time to close a non-sworn investigation was 375 days, and to close a sworn investigation was 444 days. In recent years, the amount of time to close a sworn investigation has decreased and fell to 391 days in the last fiscal year. Based on these statistics, the Board completed 3,759 investigations in the last fiscal year, and average 190 days per investigation.

Enforcement Statistics				
	FY 10/11	**FY 11/12**	**FY 12/13**	**FY 13/14**
INVESTIGATION				
All Investigations				
First Assigned	3640	3570	3973	3699
Closed	3981	3496	3691	3758
Average days to close	181	173	156	187
Desk Investigations				
Closed	2987	2404	2889	2855
Average days to close	106	72	87	118
Non-Sworn Investigation				
Closed	377	593	257	320
Average days to close	278	364	384	473
Sworn Investigation				
Closed	572	492	543	584
Average days to close	505	453	421	391

The CPEI sets a target of completing formal disciplinary actions within 540. The Board is currently exceeding that target, averaging 1,084 days to complete a formal accusation over the last four fiscal years, and has increased this past fiscal year.

ACCUSATIONS				
	FY 10/11	FY 11/12	FY 12/13	FY 13/14
Accusations Filed	89	103	75	73
Accusations Withdrawn	9	8	10	2
Accusations Dismissed	0	0	2	1
Accusations Declined	7	1	3	0
Average Days Accusations (from complaint receipt to case outcome)	1043	1087	934	1271
Pending (close of FY)	200	234	188	168

The Board notes, however, that while the total time to complete a formal disciplinary case exceeds the target and has been increasing, the longest part of the delay occurs once the case is has been referred to the AG's office, as demonstrated in the chart below, which shows the number of days for the Board to complete investigations is well within the CPEI's goal of completing investigations within 270 days.

Case Aging (Days)	FY 10/11	FY 11/12	FY 12/13	FY 13/14
Statement of Issues Cases				
Referral to Statement of Issues Filing (Average Days)	**114**	**119**	**204**	**102**
Statement of Issues to Case Conclusion	267	264	273	357
Total Average from Referral to Case Conclusion	381	383	477	459
Licensing Accusations				
Referral to Accusation Filing (Average Days)	**157**	**153**	**170**	**231**
Accusation to Case Conclusion	440	429	408	528
Total Average from Referral to Case Conclusion	597	582	578	759

The Board notes that the increase in FY 13/14 for completing an accusation is outside of the Board's control. According to the Board, the number of accusations filed on behalf of the Board has remained relatively constant over the last eight years and has actually dropped in recent years due to the Board's utilization of the citation process as an alternative to formal discipline in the less egregious cases. However, the average number of days to complete a case that has been referred to the AG for disciplinary action has continued to increase from 929 days in FY 09/10 to over 1185 days in 2014, an increase of over 27%. In addition, while the Board, along with many other boards, received additional positions under CPEI, which has increased its enforcement capacity and ability to investigate and bring cases forward, the AG's office and the Office of Administrative Hearings, which hears the cases, did not receive additional staff. Additional reasons for the delays that are beyond the control of staff include delays caused by opposing counsel, suspensions while criminal matters are pending, and difficulty in scheduling amongst witnesses, patients, and other parties, as well as in scheduling hearing dates with the Office of Administrative Hearings (three months out for a one to two day hearing, eight months out for a hearing of four or more days).

Staff Recommendation: ***The Board should continue to focus on closing its oldest cases and reducing the amount of time it takes to close an investigation and to complete an accusation. The Board should continue to explore alternatives to formal discipline when appropriate, such as the use of citations, cease and desist letters, and working with licensees to agree to disciplinary terms. The Board should note whether any of these disciplinary timeframes include cases that have been adjudicated but are on appeal, which may skew the numbers. The Committees should work with the Board and other stakeholders to determine if it is feasible to increase the number of AGs and ALJ in response to the increase in enforcement staff under CPEI to truly address the ability to reduce enforcement times.***

ISSUE #16: ENFORCEMENT STAFFING ISSUES. ***Does the Board employ an adequate number of staff to perform enforcement functions in a timely manner?***

Background: In 2011, the Board began filling the 12.5 positions allocated under the DCA's CPEI budget change proposal, and sworn investigator positions were distributed between the two Northern and Southern California field offices, and the IAU was established in the Sacramento headquarters office. The Board's enforcement managers developed case assignment guidelines, conducted an extensive case review of all open, previously unassigned cases, and distributed them among new and existing staff, resulting in the elimination of a backlog of over 200 cases. However, the success of DBC's increased enforcement efforts has resulted in a strain on the existing administrative support staff. Because CPEI did not include technical staff to perform support administrative functions generated by the increase in completed investigations, investigative staff performs these functions to avoid delays, which reduces their efficiency in working investigations. The Board has recently

submitted a BCP to add two Office Technician positions to address this gap. This request was approved.

Since the 2011 sunset review of the Board, the Board has been fortunate to be able to fill the majority of its sworn and non-sworn enforcement positions. Case closure rates climbed following the addition of CPEI positions and remain steady, averaging 968 cases per year, up from 651 cases per year four years ago. Currently, the Board has 2.5 vacancies for sworn investigators and 2 vacancies for non-sworn investigators. The Board expects the candidates to be hired within the next three to four months. These hires will assist in lowering the investigative caseload and help lower case aging.

FISCAL YEAR	**10/11**		**11/12**		**12/13**		**13/14**	
Classification	Positions	Vacant	Positions	Vacant	Positions	Vacant	Positions	Vacant
Total Sworn Staff	20	4	20	3.5	20	3.5	20	2.5
Total Non-Sworn Staff	24	2	24	2	23	1.5	23	2
Total Enforcement APs	44	6	44	5.5	43	5	43	4.5

Despite an augmentation in enforcement staffing levels from CPEI, the Board notes that the caseload per investigator continues to remain significantly higher than other programs within the DCA, including the MBC and the DCA's Department of Investigation (DOI). In addition to an investigation caseload, Dental Board investigators also carry a probation-monitoring caseload averaging 10 per sworn investigator and up to 25 for Special Investigators. The Board reports that the number of licensees placed on probation has nearly doubled from 148 in FY 10/11 to 311 at the end of FY 13/14. The Board also reports that in general, the enforcement time commitment to manage a probationary licensee is four times greater than an investigation due to the number of meetings and quarterly reports that may be required.

High caseloads can adversely affect performance when staff is diverted from their work by competing demands. The Board will be studying options to determine if additional sworn or non-sworn staff will be sufficient to reduce investigative caseloads, or if the development of a probation unit will better support this challenge and adding staff dedicated strictly to probation monitoring will be necessary. Ideally, the Board would like to reduce its investigative caseloads similar to the MBC or DOI as the Board's cases are also very complex and technical in nature.

DCA – Enforcement Program	**Average Caseload per Investigator**
Division of Investigation	20-22 cases
Medical Board of California	20 cases
Dental Board of California	45-55 cases (plus 10 probationers)

In addition, the Enforcement Program has identified the need for an analyst dedicated to program reports, training contracts and budget support. Previously, the Enforcement Chief was responsible for many of these program-related tasks. However, with the increase in program size, more complex contract requirements for peace officer training and subject-matter experts (SMEs), and a need for greater accountability in enforcement, these tasks are better suited to an analyst position. The Board will be seeking a BCP to address this need in the next year.

Additionally, the Board notes that it is currently experiencing a shortage of available SMEs to provide case review of our completed investigations. SMEs conduct an in-depth review of the treatment provided to patients in cases alleging substandard care. Experts must be currently practicing, possess a minimum of five years' experience in their field, and cannot have had any discipline taken against their license in California or any other state where they have been licensed. The shortage of SMEs can be attributed to several factors, including the increase in the number of investigations being conducted and stagnant compensation rates. While the majority of SMEs recognize they are providing a service to consumers and their profession, the possibility of having to testify at hearing and close their practice for several days at a time can become a financial hardship to an individual licensee. The current compensation rate, which pays $100 for written review and $150 per hour for testimony, has not been increased since 2009. By comparison, physicians at the Medical Board are compensated at $150 per hour for written review and $200 per hour for testimony. The Board has been trying to recruit experts through its Web site and outreach to dental societies. An increase in the number of experts in the resource pool will allow staff to more quickly refer their cases for review.

Staff Recommendation: ***The Board should consider conducting a staff and workload analysis after it receives the results of its fee audit to determine the appropriate level of staffing to ensure that the Board is able to perform all of its functions in a timely manner. The Board should inform the Committees of how large its current SME pool is, and the ideal ratio of cases to SMEs. The Board should continue recruitment efforts to attract more SMEs, and consider raising the compensation rate to increase participation in the program.***

OTHER ISSUES

ISSUE #17: LOW RATE OF RESPONSE TO CONSUMER SATISFACTION SURVEYS AND LOW RATE OF CONSUMER SATISFACTION WITH DBC. ***During the past four years, the Board has received an average survey return rate of approximately 2.55%, below the minimum level of 5% needed to be considered statistically relevant. In addition, the 2013/2014 Consumer Satisfaction Survey of DBC shows over 60% of complainants were dissatisfied with the way the Board handled their complaints.***

Background: In 2010, DCA launched an online Consumer Satisfaction Survey. The Board continues to survey consumers to learn about their experience with the complaint and enforcement process. The Survey is included as a web address within each closure letter, which directs consumers to an online "survey monkey" with 19 questions. Overall participation has been low. Acting on the belief that consumers may be increasingly reluctant to participate in online surveys, staff have also provided self-addressed, postage paid survey cards in closure envelopes. This has not had any discernible effect to the participation rate. During the past four years, the Board has received an average survey return rate of approximately 2.55%, below the minimum level of 5% needed to be considered statistically relevant. By comparison, DCA has reported a 2.6% average participation rate from all boards and bureaus. It should be noted that in reviewing the individual responses, consumers chose to skip or not answer a number of the questions.

With regard to specific survey results, the Board has identified that the participating consumers expressed dissatisfaction surrounding the complaint intake process; initial response time; complaint resolution time; and explanation regarding the outcome of the complaint. The Board notes that the average initial response time is nine days, which is below the maximum time allowed by law. In

addition, with the exception of complaints resulting in discipline, the Board's average resolution time is 164 days, which is below the 270 day performance target. Regarding explanations regarding the outcomes of complaints, the Board notes that in 27% of complaints that were closed, dental consultants who reviewed dental issues determined that there was no violation of the Act, due to simple negligence, and 9% of those closed complaints were due to non-jurisdictional requests for refunds, and that both of those outcomes may have impacted a consumers satisfaction.

In October of 2014, Board staff has begun participating in a DCA focus group to draft new questions and consider alternative formats to increase consumer participation. In addition, Board staff is also reviewing the link on the current closure letter to determine if revisions may be necessary.

Staff Recommendation: ***The Board should continue to explore ways to increase responses to its consumer satisfaction surveys.***

CONTINUED REGULATION OF THE PROFESSION BY THE CURRENT PROFESSION BY THE NAME OF BOARD

ISSUE #18: CONTINUED REGULATION BY THE BOARD. ***Should the licensing and regulation of the dental profession be continued and be regulated by the current Board membership?***

Background: The health, safety and welfare of consumers are protected by the presence of a strong licensing and regulatory Board with oversight over the dental profession. The Board should be continued with a four-year extension of its sunset date so that the Legislature may once again review whether the issues and recommendations in this Background Paper have been addressed.

Staff Recommendation: ***Recommend that the licensing and regulation of the dental profession continue to be regulated by the current Board members in order to protect the interests of the public and be reviewed again in four years.***