BACKGROUND PAPER FOR THE DENTAL BOARD OF CALIFORNIA

Joint Oversight Hearing, March 5, 2019

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

BRIEF OVERVIEW OF THE DENTAL BOARD OF CALIFORNIA

Brief Overview

The Dental Board of California (DBC) is responsible for licensing and regulating dental professionals in California. The DBC was originally created as the Board of Dental Examiners in 1885 during the twenty-sixth session of the California Legislature. Enacted "to insure the better education of practitioners of dental surgery, and to regulate the practice of dentistry in the State of California," the original Dental Practice Act required all persons engaged in the practice of dentistry to register with a board of appointed professionals, with a registration fee of one dollar. The Act further allowed for dentists to voluntarily appear before the board of examiners to demonstrate their "knowledge and skill in dental surgery" in exchange for state certification of their qualifications.[1]

Today, the DBC licenses an estimated 89,000 dental professionals, of which approximately 43,500 are fully licensed dentists; 44,500 are registered dental assistants (RDAs); and 1,700 are registered dental assistants in extended functions (RDAEFs). The DBC is also responsible for setting the duties and functions of an estimated 50,000 unlicensed dental assistants. Dental hygienists are licensed and regulated by a separate and distinct regulatory body, the Dental Hygiene Board of California.

Statute defines dentistry as "the diagnosis or treatment, by surgery or other method, of diseases and lesions and the correction of malpositions of the human teeth, alveolar process, gums, jaws, or associated structures; and such diagnosis or treatment may include all necessary related procedures as well as the use of drugs, anesthetic agents, and physical evaluation."[2] Dentists are health care practitioners authorized to write and issue prescriptions for controlled substances. Oral and maxillofacial surgeons are a surgically trained specialty of dentistry that have completed additional residency requirements.

The Dental Assisting Council within the DBC makes recommendations regarding the DBC's regulation of dental assistants. Three categories of dental assistants are regulated by the DBC, distinguished by what duties they may perform based on their training. This includes unlicensed dental assistants, authorized to perform "basic supportive dental procedures"; registered dental assistants, authorized to perform more complex duties; and registered dental assistants in extended functions, authorized to perform additional restorative procedures following diagnosis and intervention by a dentist.[3]

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[1] Stats. 1885, ch. 228
[2] Bus. & Prof. Code, § 1625
[3] Bus. & Prof. Code, §§ 1740 et al.

The DBC's regulation of dental professionals includes licensing, regulatory, and disciplinary responsibilities. The DBC reviews and approves applications for initial or renewed licensure, determining whether an applicant has sufficient education and training to possess a license, certification, or permit. The DBC also engages in disciplinary activities through its own enforcement division, investigating potential violations of the Dental Practice Act and taking action against professional misconduct. The DBC additionally monitors licensees who have been placed on probation and manages a diversion program for licensees whose practice may be impaired due to abuse of drugs or alcohol.

The current DBC mission statement, as stated in its 2017-2020 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."***

Board Membership and Committees

As established in statute, the DBC consists of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and five public members. Of the eight practicing dentists, one is required to be a member of a faculty of any California dental college, and one is required to be a dentist practicing in a nonprofit community clinic.[4] The professional members are required to have been in practice for a minimum of five years prior to their appointment. Each board member may serve a maximum of two full four-year terms. The Governor is responsible for appointing three of the public members, the registered dental hygienist member, the dental assistant member, and the eight licensed dentist members of the board; the Speaker of the Assembly and the Senate Committee on Rules are responsible for appointing one additional public member each.[5] There is currently one vacancy on the board. Members may continue to serve on the board for up to one year beyond the expiration of their term until a successor is appointed.

The current composition of the DBC is as follows:

Name and Bio	Original Appointment	Expiration of Current Term	Appointing Authority
Fran Burton, MSW *(President)* **Public Member** Fran Burton was appointed by the Senate Rules Committee to the Dental Board of California in June of 2009. She served twenty-one years in California in the Legislative and Executive branches of government. She served in a number of capacities in the State Senate and her efforts concluded as a health and human services policy consultant to President pro Tempores 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.	06/03/2009	01/01/2021	Senate Rules

[4] Bus. & Prof. Code, § 1601.1
[5] Bus. & Prof. Code, § 1603

Steven Morrow, DDS, MS *(Vice President)* **Professional Member** **Faculty Member** Steven G. Morrow, DDS, MS was appointed by Governor Schwarzenegger to the Dental Board in September 2010. He graduated from Loma Linda University School of Dentistry in 1960. Following graduation from dental school, 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 Associate Dean for Advanced Education.	08/17/2010	01/01/2022	Governor
Steven Chan, DDS *(Secretary)* **Professional Member** Steven Chan, DDS., graduated from Georgetown University School of Dentistry in 1978. He completed a general practice residency followed by a pediatric dental residency at Martin Luther King Jr/Los Angeles County Hospital. He has been in private practice limited to pediatric dentistry in Fremont, CA since 1981.	10/12/2016	01/01/2020	Governor
Yvette Chappell-Ingram, MPA **Professional Member** Yvette Chappell-Ingram of Altadena, 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.	04/17/2013	01/01/2020	Governor
Ross Lai, DDS **Professional Member** Ross Lai, DDS of San Francisco, 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.	02/26/2013	01/01/2021	Governor

Lilia Larin, DDS **Professional Member** Dr. Lilia Larin is a general dentist in San Diego and has been in private practice since 1992. She is a Past President of the national Hispanic Dental Association and the American Association of Women Dentists. She is a current board member of the AAWD's "Smiles for Success Foundation" and the San Diego County Dental Society where she works as Continuing Education Chair. She is a past president of the San Diego Academy of General Dentistry, the San Diego Association of Women Dentists and is founder and Past President of the San Diego Hispanic Dental Association Binational Chapter.	04/13/2018	01/01/2021	Governor
Huong Le, DDS, MA **Professional Member** **Non-Profit Community Clinic Member** Huong Le, DDS, 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. She did her General Practice-Hospital Dentistry residency program at Jerry L. Pettis Veterans Memorial Hospital. After completion of her residency, she joined a private practice in northern California where she provided hospital dentistry to primarily pediatric, medically compromised, physically and mentally challenged patients at Rideout Memorial Hospital in Marysville, CA. Dr. Le is currently Chief Dental Officer of Asian Health Services in Oakland, CA.	03/26/2009	01/01/2019	Governor
Meredith McKenzie, Esq. **Public Member** Meredith McKenzie of Los Gatos, has been vice president and deputy general counsel at Juniper Networks since 2012. She was senior director of intellectual 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.	04/15/2013	01/01/2020	Governor
Abigail Medina **Public Member** Abigail Medina is President of the San Bernardino City Unified School District Board. Prior to serving on the school board, Abigail worked with numerous community organizations including the Congregation Organized for Prophetic Engagement (COPE), Health Advocates, the California Association for the Gifted and the District African American Advisory Council.	03/20/2017	01/01/2021	Assembly Speaker

Rosalinda Olague, RDA, B.A. **Registered Dental Assistant Member** Rosalinda Olague, RDA, B.A. was appointed by Governor Brown to the Dental Board of California in April 2018. Rose has been a registered dental assistant with Pacific Dental Services (PDS) since 2008. She started her PDS career as a lead registered dental assistant at Monet Dental Group from 2008 to 2015. In 2015, Rose was promoted to regional back office manager for PDS' South Inland Empire and San Diego regions, and in 2016, she graduated from La Sierra University with a Bachelors of Arts in Psychology. In April 2018, Rose joined the Pacific Dental Services National Support team as Senior Specialist for Dental Assistant National Strategy and School Relations. PDS recognized Rose for her exceptional commitment and passion for creating Healthier, Happier Patients® by awarding her the company's 2017 XP (eXtraordinary Performance) Platinum Award. Rose is currently pursuing her master's degree at the University of Redlands and is a member of the American Dental Assistant Association.	04/13/2018	01/01/2021	Governor
Joanne Pacheco, RDH, MAOB **Registered Dental Hygienist Member** Joanne Pacheco of Fresno, was appointed to the Dental Board of California by Governor Brown in April 2018. Ms. Pacheco has been director of the Dental Hygiene Program at Fresno City College since 2017, where she has held several positions since 2000, including academic chair, full-time faculty and allied health chair. She has been a registered dental hygienist in private practice since 1985. Ms. Pacheco was a registered dental assistant in private dental practices from 1979 to 1985. She is a member of the American Dental Hygienists' Association, American Dental Educator's Association and the California Dental Hygienists' Association. Pacheco earned a Master of Arts degree in organizational behavior from Alliant International University.	04/13/2018	01/01/2021	Governor
Thomas H. Stewart, DDS **Professional Member** Thomas Stewart, DDS, of Bakersfield, has been a dentist in private practice since 1976. He served as a member of the United States Naval Reserve from 1978 to 1997 and as 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.	02/28/2013	01/01/2021	Governor

Bruce L. Whitcher, DDS **Professional Member** Bruce L. Whitcher, DDS was appointed by Governor Schwarzenegger to the Dental Board in April 2009. A 1981 graduate of UCSF School of Dentistry, Dr. Whitcher 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. He maintains hospital affiliations with French Hospital Medical Center, Sierra Vista Regional Medical Center, and Twin Cities Hospital Medical Center.	03/26/2009	01/01/2019	Governor
James Yu, DDS, MS **Professional Member** James Yu, DDS of Fremont was appointed to the Dental Board of California by Governor Brown in April 2018. Dr. Yu has been a dentist at James K. Yu DDS since 1984, where he has been an acupuncturist since 2008. He has been a radio talk show host at AM 1450 since 2000 and radio talk show president and owner at the Chinese Today Radio Station since 2015. Yu is Bay Area leader of Medical Services International and President of Northern California Chinese Media Association, and a member of the American Dental Association, California Acupuncture Association, San Francisco Dental Society, Application of Acupuncture in Dental Practices, San Francisco Chinatown Salvation Army, American Association of Chinese Medicine and Acupuncture and the American Society of Chinese Medicine. He earned a Doctor of Dental Surgery degree from the University of the Pacific School of Dentistry and a Master of Science degree in acupuncture from the University of East-West Medicine.	04/13/2018	01/01/2021	Governor
Vacant **Public Member**	--	--	Governor

The Dental Practice Act requires the DBC to be "organized into standing committees dealing with examinations, enforcement, and other subjects as the board deems appropriate."[6] Statute also mandated the establishment of the Diversion Evaluation Committee[7] and the Elective Facial Cosmetic Surgery Permit Credentialing Committee.[8] In addition to those required by law, the DBC has elected to establish several other committees to meet identified needs. The DBC President is also authorized to appoint two-member subcommittees to work on specific issues, which have historically included topics such as infection control and scope of practice.

[6] Bus. & Prof. Code, § 1601.1
[7] Bus. & Prof. Code, § 1695.2
[8] Bus. & Prof. Code, § 1638.1

Each of the committees typically meet during the first day of the DBC's two-day meeting schedule and subsequently provide a report to the full board on the second day. Discussions by the committee are eligible for research assistance from board staff and are open to public comment. Committees often bring recommendations to the full board for action on subjects within their jurisdiction. The current committees are as follows:

- **Access to Care Committee:** The Access to Care Committee is composed of six members consisting of four dentists and two public members. The Committee was established to maintain awareness of the changes and challenges within the dental community. An ongoing objective is to identify areas where the DBC can assist with workforce development, such as through the existing Dental Loan Repayment Program. A new focus on this program may help fulfill an intent of the Legislature to recruit dentists to practice in underserved areas and will assist with dental education loan repayment.

- **Anesthesia Committee:** The Anesthesia Committee is composed of five members consisting of four dentists and one public member. The Committee was established to consider issues concerning the administration of anesthesia to patients, review anesthesia evaluation statistics, and make recommendations to the DBC regarding policy issues relating to the administration of anesthesia during dental procedures.

- **Diversion Evaluation Committee:** The DBC has established two separate Diversion Evaluation Committees—one in Southern California and one in Northern California. Each committee is comprised of three licensed dentists, one licensed dental auxiliary, one public member, and one licensed physician or psychologist. Each member must have experience or knowledge in the evaluation or management of persons who are impaired due to alcohol or drug abuse. Committee members are not members of the DBC.

- **Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee:** Senate Bill 438 of 2006 authorized the DBC to issue EFCS permits to qualified licensed dentists and established the EFCS Permit Credentialing Committee to review the qualifications of each applicant for a permit. The Committee is comprised of five members: three oral and maxillofacial surgeons, two of whom are required to possess the EFCS permit, one physician and surgeon with a specialty in plastic and reconstructive surgery, and one physician and surgeon with a specialty in otolaryngology, all of whom must maintain an active status on the staff of a licensed general acute care hospital in California. Committee members are not members of the DBC. Committee members review the qualifications of an applicant for an EFCS permit in closed session at Committee meetings. Upon completion of the application review, the Committee makes a recommendation to the DBC on whether or not to issue a permit to the applicant.

- **Enforcement Committee:** The Enforcement Committee is composed of five members consisting of three public members and two dentists. The Committee 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, and/or regulations. The Committee also receives updates on the DBC's Diversion Program.

- **Examination Committee:** The Examination Committee is composed of five members consisting of four dentists and one public member. The Committee reviews examination statistics and receives reports on all examinations administered by the DBC. Any issues relating to examinations may be brought before the Committee by consumers, stakeholders, or board members.

- **Legislative and Regulatory Committee:** The Legislative and Regulatory Committee is composed of seven members consisting of four dentists, one registered dental hygienist, and two public members. The Committee monitors legislation relative to the field of dentistry that may impact the DBC, consumers, and/or licensees, and makes recommendations to the full board whether or not to support, oppose, or watch the legislation. The Chair attends Senate and Assembly Committee hearings and may meet with legislators if the DBC so directs. The Committee also discusses prospective legislative proposals and pending regulatory actions.

- **Licensing, Certification, and Permits Committee:** The Licensing, Certification, and Permits Committee is composed of six members consisting of three dentists, one RDA, and two public members. The Committee reviews licensing and permit statistics and looks for trends that might indicate efficiency and effectiveness or might identify areas in the licensing units that need modification. When necessary, the Committee meets in closed session to review applications for issuance of a new license to replace cancelled licenses and brings recommendations to re-issue or deny to the full board.

- **Substance Use Awareness Committee:** This committee was originally established as the Prescription Drug Abuse Committee in 2014 to examine the rise in prescription drug overdoses and to develop strategies to address the issue within the practice of dentistry. In May 2017, it was renamed to the Substance Use Awareness Committee to broaden the focus on all substance use disorders rather than only prescription drug overdoses. The Substance Use Awareness Committee is composed of five members consisting of three dentists and two public members.

Legislation enacted in 2011 created the Dental Assisting Council within the DBC.[9] The Dental Assisting Council is required to "consider all matters relating to dental assistants in this state, on its own initiative or upon the request of the board, and make appropriate recommendations to the board and the standing committees of the board." The DBC is required to approve, modify, or reject any recommendations made by the Dental Assisting Council within 120 days of submission of the recommendation to the board.

Members of the Dental Assisting Council are five RDAs appointed by the DBC, the board's RDA member, and another board member. Two of the five RDA members must be dental assisting educational program faculty members and three of the five RDA members—one of which must be licensed as an RDAEF—are required to be employed clinically in private dental practice or public safety net or dental health care clinics. Each Council member may serve no more than two full four-year terms.

The current composition of the Dental Assisting Council is as follows:

Name and Bio	Original Appointment	Expiration of Current Term
Anne Contreras **RDA Member**	03/26/2012	03/01/2022
Pamela Davis-Washington **RDA Member**	03/19/2012	03/01/2019

[9] Bus. & Prof. Code, § 1742

Cindy Ovard **RDA Educator Member**	05/30/2018	03/01/2019
Pamela Peacock **RDA Educator Member**	06/03/2009	03/01/2022
Jennifer Rodriguez **RDAEF Member**	12/23/2016	03/01/2020
Rosalinda Olague **DBC RDA Member**	04/13/2018	01/01/2021
Bruce Whitcher, DDS **DBC Professional Member**	03/26/2009	01/01/2019

Staff

As established in the Dental Practice Act, board staff for the DBC is led by an Executive Officer, who is exempt from civil service and appointed by the board with approval from the Director of Consumer Affairs.[10] Karen Fischer has been Executive Officer for the past six years. Statute also establishes an additional management level staff position, "whose sole responsibilities shall be the management of matters related to dental assisting, including, but not limited to, education, examination, licensure, and enforcement."[11]

The DBC has a total of 74.3 authorized positions, of which 70.5 are currently filled.[12] The DBC's organizational chart is divided into divisions on Administration, Licensing & Examination, and Enforcement. Statute states that the DBC "shall have full power to employ all necessary investigators, clerical and other assistants and appoint its own attorney."[13] The DBC has its own dedicated investigators, led by an Enforcement Chief. However, as of March 5, 2019, no individual has been appointed to the dedicated attorney position expressly authorized for the DBC in statute.

Fiscal and Fund Analysis

Like other regulatory boards and bureaus under the Department of Consumer Affairs, the DBC receives no General Fund support and is operated solely through revenue derived from fees. Currently, fee moneys collected by the DBC are deposited into one of two Special Funds: the Dentistry Fund, which supports operating expenses & equipment (OE&E) and personnel services for the DBC's regulation of dentists; and the Dental Assisting Fund, which supports OE&E and personnel services for RDAs and RDAEFs. These funds are not comingled and represent a distinguishing bifurcation of the DBC's licensing and regulation of dentists and dental assistants, respectively.

[10] Bus. & Prof. Code, § 1616.5
[11] Bus. & Prof. Code, § 1616.6
[12] *As of June 30, 2018.*
[13] Bus. & Prof. Code, § 1616

The DBC has set its own objective of maintaining a three-month reserve in both of its funds. Both funds are currently solvent with a strong level of reserve funding. All loans previously made to the General Fund have been fully repaid with interest. The DBC notes, however, that due to the impending fiscal impact of recently enacted legislation, a structural imbalance is anticipated beginning Fiscal Year 2022-23. The DBC is currently working with the Department of Consumer Affairs Budget Office to develop a plan for addressing this potential shortfall.

State Dentistry Fund (0741)						
(Dollars in Thousands)	**FY 2014/15**	**FY 2015/16**	**FY 2016/17**	**FY 2017/18**	**FY 2018/19**	**FY 2019/20**
Beginning Balance	$6,058	$5,566	$6,491	$6,389	$8,378	$8,562
Revenues and Transfers	$10,303	$11,444	$11,107	$13,445	$14,926	$14,927
Total Revenue	$16,361	$17,010	$17,598	$19,834	$23,304	$23,489
Budget Authority	$12,427	$13,016	$12,726	$13,703	$13,766	$14,041
Expenditures	$10,717	$10,660	$10,545	$10,652*	$13,766	$14,041
Fund Balance	$5,635	$6,327	$6,389	$8,378	$8,562	$8,472
Months in Reserve	6.3	6.8	6.7	6.8	6.8	6.6
**Projected expenditures for FY 2017-18.*						

State Dental Assisting Fund (3142)						
(Dollars in Thousands)	**FY 2014/15**	**FY 2015/16**	**FY 2016/17**	**FY 2017/18**	**FY 2018/19**	**FY 2019/20**
Beginning Balance	$2,859	$2,831	$2,656	$2,120	$1,941	$1,721
Revenues and Transfers	$1,662	$1,871	$1,661	$1,926	$2,495	$2,495
Total Revenue	$4,521	$4,702	$4,317	$4,046	$4,436	$4,216
Budget Authority	$1,917	$2,564	$2,577	$2,542	$2,496	$2,546
Expenditures	$1,679	$2,065	$2,097	$1,917*	$2,496	$2,546
Fund Balance	$2,840	$2,634	$2,120	$1,941	$1,721	$1,469
Months in Reserve	16.5	14.4	9.3	8.6	7.5	6.3
**Projected expenditures for FY 2017-18.*						

The current health of the DBC funds is attributable to the board's current fee structure. A fee increase for all licenses and permits was achieved in October 2017. For example, license renewal fees increased from $525 to $650; oral and maxillofacial surgery permit fees increased from $365 to $650; and initial application fees for RDA licensure increased from $20 to $120. Prior to that fee increase, the DBC had last adjusted its fee schedule with increases to the DDS renewal fee in 2014 and 2015, and most of the DBC's fees had not been increased in 15 years. The 2017 fee adjustment followed a fee audit conducted to address potential expenditure increases related to the Consumer Protection Enforcement Initiative and the roll-out of the new BreEZe licensing technology.

Licensing

Statute directs that "protection of the public shall be the highest priority for the Dental Board in exercising its licensing and regulatory functions."[14] The Dental Practice Act, both directly within statute and through regulations promulgated by the DBC, establishes the requirements for licensure within the dental profession. The DBC's Licensing Program is responsible for ensuring that licenses and permits are issued only to applicants who meet the minimum requirements and who have not done anything that would warrant denial.

The DBC licenses or issues permits for each of the following:

- 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 General Anesthesia Permit (MGA)
- Mobile Dental Clinic Permit (MDC)
- Oral Conscious Sedation Certificate (OCS)
- Special Permit (SP)
- Orthodontic Assistant Permit (OA)
- Dental Sedation Assistant Permit (DSA)
- Fictitious Name Permit (FNP)
- Additional Office Permit (AO)
- Registered Provider (RP) For Continuing Education

Performance targets for the DBC's licensure of dentistry are contained in regulations.[15] These regulations set forth a variety of timeline expectations for the DBC to process an application for a license or permit. For example, issuance of a dental license is expected to be completed by the DBC within 90 days of receipt of a completed application; renewal applications are expected to be completed within 30 to 90 days.

Currently, the DBC is meeting these expectations. In 2018, initial application processing for a dental license by each pathway for licensure was completed on average of 27 days. Once an applicant has met all the requirements for a dental license based on the pathway applied for, a separate application for the issuance of a license number is required. Approval of the application and issuance of the license number is completed within 10 days. The processing of renewals was completed on average within 6 days.

Similar regulations lay out timeline expectations for the DBC's Dental Assisting Program.[16] Regulations state that the DBC should take no longer than 90 days to notify an applicant that their application is complete or deficient, with a final licensing decision within 180 days. License renewals are expected to be completed within 30 days with issuance within a maximum of 90 days.

[14] Bus. & Prof. Code, § 1601.2
[15] 16 CCR § 1061
[16] 16 CCR § 1069

The current average time from receipt of a completed RDA, RDAEF, Orthodontic Assistant (OA), or Dental Sedation Assistant (DSA) application to approval is 42 days. Upon approval of the application a license is issued to the applicant. An incomplete application is processed in an average of 145 days; these delays are a result of the applicant not providing the necessary information to complete the application process. The processing of renewals is completed on average within 14 days. The DBC is therefore also meeting the performance expectations for licensing of RDAs, RDAEFs, OAs, and DSAs.

On average over the past four years, the DBC has issued approximately 1,119 dental licenses; 1,896 RDA licenses; and 72 RDAEF licenses each year. There are currently 34,172 actively licensed dentists, 29,664 actively licensed RDAs, and 1,447 licensed RDAEFs. The volume of incoming applications has remained steady for nearly every licensing category over the past four years, with the exception of a 33% growth in Orthodontic Assistant permit applications. There are no licensing backlogs.

The DBC fingerprints all applicants as part of the application process, and the National Practitioners Data Bank is reviewed for disciplinary actions taken against applicants by regulators in other states. Beginning July 1, 2020, the process through which boards under the Department of Consumer Affairs may deny an application for licensure due to prior misconduct will have substantively changed. Causes for denial will be limited to criminal convictions reported on an applicant's rap sheet, along with prior regulatory discipline. Nonviolent, nonsexual offenses will be washed out after seven years. In the past four years the DBC has denied one applicant for a dental license, one applicant for an oral conscious sedation permit, and 22 applicants for a registered dental assistant license.

The DBC currently inquires with applicants and licensees about whether the individual is serving in, or has previously served in, the military. The DBC has received approximately 319 responses to date. All renewal application fees charged by the DBC are waived for licensees who identify themselves as having active military status. In the prior fiscal year, the DBC has waived fees or requirements for 77 licensees. The DBC accepts military clinical practice hours toward satisfying clinical practice requirements, and the DBC will also accept military education, training and experience if the applicant lists this under the general work experience or education requirements for RDA, OA, and/or DSA licensing programs. Further, approximately 35 licenses were expedited in FY 2017/18 for licensed military spouses.

Education

Applicants for licensure are required to submit proof that they have met certain education requirements. For example, applicants for licensure as dentists must demonstrate that they have "completed at dental school or schools the full number of academic years of undergraduate courses required for graduation."[17] The DBC accepts the findings of the American Dental Association Commission on Dental Accreditation (CODA) when they approve or reapprove a dental school located within the United States. These schools are accredited and re-evaluated by CODA every seven years.

The DBC is responsible for the approval of all foreign dental schools eligible for fulfilling licensure requirements for dental professionals in California.[18] Two international dental schools have been approved by the DBC: the University De La Salle School of Dentistry, located in Leon, Guanajuato, Mexico, and the State of Medicine and Pharmacy "Nicolae Testemintanu" of the Republic of Moldova. Approved foreign dental schools must also undergo reevaluation every seven years, and the DBC may at any time withdraw its approval of an institution that no longer meets the requirements of the Act.

[17] Bus. & Prof. Code, § 1628
[18] Bus. & Prof. Code, § 1636.4

The DBC is also responsible for approving all Dental Assistant Educational Programs and Courses, including Registered Dental Assistant Educational Programs, RDAEF Educational Programs, Coronal Polishing Courses, Orthodontic Assistant Permit Courses, and other courses whose requirements are outlined in board regulations. The approval of several Dental Assisting programs is an administrative responsibility shared with the Bureau for Private Postsecondary Education, which generally regulates private for-profit colleges.

The DBC has approved 97 Registered Dental Assisting Programs, 11 Registered Dental Assistant in Extended Functions Programs, 147 Orthodontic Assistant Permit Courses, 26 Dental Sedation Assistant Permit Courses, and numerous courses for Infection Control, Coronal Polish, Pit and Fissure Sealants, Radiation Safety, Interim Therapeutic Restorations, and Ultrasonic Scaling.[19] These programs and courses are also reevaluated every seven years and may be disapproved if any program or course does not meet the requirements of the Dental Practice Act.

Continuing Education

Dental professionals licensed by the DBC are required to take continuing education as a condition of license renewal. Pursuant to regulations, the DBC has adopted standards for the continuing education of its licensees.[20] At the time of license renewal, the licensee must certify completion of mandatory coursework and the minimum number of units required for each license and/or permit held.

Dentist licensees are required to complete a minimum of 50 units of continuing education, including mandatory coursework, during the two-year period immediately preceding the expiration of their license. RDA, RDAEF, OA, and DSA licensees are required to complete a minimum of 25 units of continuing education, including mandatory coursework, during the two-year period immediately preceding the expiration of their license. Unlicensed dental assistants in California must complete a DBC-approved eight-hour Infection Control course, a DBC-approved two-hour Dental Practice Act course, and a course in Basic Life Support through the American Red Cross or the American Heart Association.

As part of the renewal process, licensees certify under penalty of perjury that they have completed mandatory coursework and the have taken minimum number of units required for the active license or permit. The DBC also conducts random CE audits of one-twelfth of one percent of the total active licensing population for each license type (approximately 30 DDS and 30 RDA licensees per month). Audited licensees are required to supply certificates of completion as proof of meeting the continuing education requirements. As of April 30, 2018, approximately 1,050 DDS licenses were audited for continuing education, of which 195 licensees, or 18.5%, failed the audit. During that same time, approximately 405 RDA licensees were audited for continuing education. 183 of these licensees, or 45%, failed the audit.

There have been no changes made to these requirements over the last four years. However, the DBC is currently anticipating the promulgation of additional regulations to establish Basic Life Support equivalency standards to update this section in the near future. The DBC is also considering requiring additional mandatory continuing education relating to the risks of addiction associated with the use of Schedule II drugs in response to the opioid crisis.

[19] *Full list of approved programs and courses available at: https://www.dbc.ca.gov/applicants/rda/courses.shtml*
[20] Bus. & Prof. Code, § 1645

The DBC is tasked with approving providers of continuing education for dental professionals. However, excluding mandatory courses, the DBC does not individually approve specific courses offered by that approved registered provider. Course outlines, brochures, and summaries are required as part of the application process. For mandated courses, the minimum requirements for course content must be adhered to, or the provider risks their registered status. Within the past four fiscal years, the DBC received approximately 523 registered education provider applications. Of these applications submitted, 413 providers were approved. Currently, the DBC does not audit CE providers.

Examination

In addition to the payment of fees and the completion of prelicensure education requirements, dentist applicants are required to make a final demonstration of their readiness to practice dentistry through one of several pathways.

- *WREB Examination.* Applicants may apply for licensure after passing the Western Regional Examining Board (WREB) examination. This examination tests clinical competence through the use of patients to evaluate candidates for licensure. The examination consists of Operative, Endodontics, and Comprehensive Treatment Planning sections, as well as an optional Periodontal section. The applicant must also pass Parts I and II of the National Board Written Examinations.

- *Licensure by Credential.* This pathway to licensure is available to dentists who are currently licensed to practice dentistry in another state. To be eligible for Licensure by Credential, the out-of-state dentist must prove that they have either 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 at least 5,000 hours in five of the seven consecutive years preceding the date application.

- *Licensure by Residency.* As of February 2008, applicants may apply for licensure on the basis of having completed of a minimum of 12 months of a general practice residency or advanced education in general dentistry program approved by CODA. The applicant must also pass Parts I and II of the National Board Written Examinations, and must have graduated from a CODA-approved dental school.

- *Licensure by Portfolio Examination.* The Licensure by Portfolio Examination process has been available to dental applicants since November 2014. Under portfolio licensure requirements, instead of taking a single examination, students build a portfolio of completed clinical experiences and clinical competency examinations in six subject areas over the normal course of their clinical training during dental school. The portfolio option gives students in California an alternative to being tested on a live patient over the course of one weekend. The applicant's portfolio is assessed for demonstration of experiences and competencies, following a letter of good standing signed by the dean of the applicant's dental school. The applicant must also pass Parts I and II of the National Board Written Examinations.

Under statute, RDA applicants must pass three examinations: a computerized written general knowledge examination; a computerized law and ethics written examination; and a hands-on practical examination performed on a typodont, (a model of the oral cavity). However, the RDA practical examination was suspended in April 2017 following a review by the Office of Professional Examination Services (OPES) of the Department of Consumer Affairs. This suspension was subsequently extended until January 1, 2020 through Assembly Bill 1707 (Low, Chapter 174, Statutes of 2017).

The OPES review had determined that inconsistencies in different test site conditions, deficiencies in scoring criteria, poor calibration of examiners, and the lack of a clear definition of minimum acceptable competence indicated that the RDA practical examination did not meet critical psychometric standards. The OPES believed the presence of other examination requirements prompted a low risk in the practical examination's suspension. To date, the DBC has not identified any resulting harm from the suspension.

Enforcement

The DBC investigates complaints against licensees through its Enforcement Division. Each year, the DBC receives an average of 3,568 complaints, which has remained consistent over the past four years. Once a complaint is investigated, the DBC decides whether to refer the case to the Attorney General to file an administrative accusation and seek disciplinary action. Filed cases are litigated and adjudicated by an Administrative Law Judge, with ultimate disciplinary action subject to a final vote by the board.

A series of Performance Measures have been put into place to evaluate the effectiveness of the DBC's enforcement program. In many categories, the DBC is meeting expectations. For example, the target average time for a complaint to be received, assigned to an analyst, and fully investigated is 270 days. For the last three years, the average intake and investigation cycle time was 265 days.

For the entire enforcement process for cases resulting in formal discipline, the target average time is 540 days. Over the past four years, the average has been 886 days. This average falls short of the DBC's performance measures, but represents an improvement over the 998-day average reported in the DBC's prior sunset review.

The DBC prioritizes potential disciplinary cases based on guidelines outlined in the Department of Consumer Affair's 2009 memorandum titled *Complaint Prioritization for Health Care Agencies*. These guidelines are integrated early in the process during complaint intake and followed throughout the investigation. The standard is for cases to be prioritized during complaint intake with prime consideration assigned to those cases where there has been or is likely to be imminent consumer harm.

Allegations involving patient death, sexual misconduct, pharmaceutical or substance abuse, or physical mental incapacity, as well as unlicensed activity, will receive an "urgent" priority, depending on the details of the allegation. These cases are immediately referred to a sworn investigator. Cases prioritized as "urgent" may reveal the need for immediate action—for example, obtaining an interim suspension order, a temporary restraining order, or compelling a licensee to undergo a mental or physical examination to determine their ability to practice.

Complaints and investigations evaluated as having a "high" priority level include allegations relating to actions that do not pose an immediate threat to the public's health, safety, or welfare. For example, cases alleging negligence or incompetence, physical or mental abuse (without injury), prescription-related allegations, unlicensed activity, aiding and abetting unlicensed activity, or multiple prior complaints. Depending on the facts behind the allegation, high priority cases may be assigned to a sworn Investigator, or to non-sworn staff. These cases are then also prioritized by investigators based on caseload.

Complaints deemed to be "routine" may include allegations relating to general quality of care, billing fraud, patient abandonment, documentation/records, conviction notifications, out-of-state discipline, and malpractice settlements and judgments. These "routine" investigations may be assigned to investigators or enforcement staff. After assignment, these too are prioritized within each investigator's caseload.

Many investigated cases do not go to administrative hearing, but are instead settled with the Respondent. Over the past four years, 136 pre-accusation cases were settled. This included 29 probationary licenses, 35 surrenders, 8 diversion referrals and 64 citations. The number of post-accusation cases settled was 201 and included 60 public reprimands, 97 probation orders, and 44 surrenders. 72 cases went to hearing. Overall, 26% of cases resulted in administrative hearing and 52% resulted in settlements.

In addition to full disciplinary action against licensees, the DBC has cite and fine authority. Citations may be used when patient harm is not found, but the quality of care provided to the consumer is substandard. When issuing citations, the DBC's goal is not to be punitive. Rather, the DBC seeks to protect consumers by getting the subject dentist's attention, re-educating them, and emphasizing the importance of following dental practices that fall within the community's standard of care. A variety of factors are considered when deciding whether to issue a citation. The issuance of citations has increased each year—there was a total of 47 citations in FY 2015/16; 56 citations in FY 2016/17; and 64 citations in FY 17/18. Citations are commonly issued to licensees for violations such as failure to produce patient records, failure to follow Infection Control guidelines, and unprofessional conduct.

In addition to using citations to address less egregious violations that would not result in meaningful discipline, the DBC views citation as a means of establishing a public record of an event that might otherwise have been closed without action, and thereby remain nondisclosable. Moreover, citations can address skills and training concerns promptly. 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. Statute also authorizes the DBC to take disciplinary action for failure to pay a fine within 30 days.

Diversion

Statute directs the DBC to "seek ways and means to identify and rehabilitate licentiates whose competency may be impaired due to abuse of dangerous drugs or alcohol, so that licentiates so afflicted may be treated and returned to the practice of dentistry in a manner that will not endanger the public health and safety."[21] The DBC has fulfilled this mandate through its Diversion Program. As previously discussed, the DBC has created two Diversion Evaluation Committees—one in Southern and one in Northern California—to manage the Diversion Program. Quarterly meetings are traditionally scheduled in Los Angeles and Sacramento, with four meetings per year for each committee.

The Diversion Program is 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 dental assistants 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 or drug abuse problem is eligible for admission into the program.

A licensee seeking help for substance abuse issues may self-refer themselves by proactively contacting the Diversion Program. Licensees may also be referred by enforcement staff as a result of an investigation, or as a probationary condition following a disciplinary order. Diversion Evaluation Committee members review the history and profiles of applying licensees for consideration into the program and determining eligibility, or if they do not meet the criteria.

[21] Bus. & Prof. Code, § 1695

Upon acceptance into the program, Diversion Evaluation Committee members are responsible for developing an individual treatment plan 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. Careful consideration is given in designing a plan that not only includes the appropriate means of rehabilitation, but also considers the participant's ability to pay for such treatment. In more egregious cases, participants may be suspended from work with outpatient treatment and other structured support, or suspension with more costly in-patient treatment.

Upon entering the program, participants are each assigned a Diversion Evaluation Committee member as their case consultant. The case consultant is responsible for closely following the recovery progress of each of their assigned participant. The consultant leads the interview when their assigned participant appears before the full committee. Each participant must attend scheduled Diversion Evaluation Committee meetings when face-to-face interviews allow the case consultant to monitor their appearance and conduct. During the meetings, Diversion Evaluation Committee members will also consider participant requests for contract changes. Some examples include requests to: reduce or exchange health support group/AA/NA meetings, schedule vacation trips, increase work hours, or change work site monitors.

Depending on the progress observed, Diversion Evaluation Committee members can increase or decrease biological fluid testing times, (including order back-to-back or additional weekend tests), temporarily suspend a participant from practice, or mandate inpatient treatment. In addition to the monthly fees, participants are required to pay the cost of all biological fluid tests ordered (approximately $62.50 per test), and the costs to attend any inpatient or outpatient treatment modalities ordered by the Diversion Evaluation Committee.

Decisions to terminate a participant from the Diversion Program are also made by the Diversion Evaluation Committee. The committee shall determine, based upon the recommendation of both the Diversion Program Manager and the assigned case consultant, whether to terminate participation in the program. Termination can be for failing to comply with the treatment program, failing to derive benefit from the treatment plan, or testing positive on more than one occasion and being deemed a public risk.

Successful completion of the program is granted by the Diversion Evaluation Committee if the participant has demonstrated all of the following:

- The ability to refrain from the use of alcohol and drugs;
- A sound understanding of addiction;
- A commitment to recovery;
- An acceptable relapse prevention plan; and
- A transition period of at least one year, during which time they demonstrate that they are in recovery.

Public Information Policies

The DBC maintains an email list of all interested parties and sends out emails to these individuals each time something new is posted on the website. 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 and approved final meeting minutes remain online indefinitely.

The DBC 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 DBC establishes the following year's meeting dates at the August Board meeting and posts them on the website immediately.

Online Practice Issues

The DBC actively investigates and prosecutes individuals who dispense or furnish any dangerous drug or device on the internet for delivery to any person in this state without a prescription, as prohibited by law. If an individual is not licensed in California, the additional charge practicing dentistry without a license is also sought. The DBC regularly investigates inappropriate or illegal drug prescribing, although most is unrelated to internet sales. More frequently, the DBC receives complaints regarding online advertising violations. This often includes licensees who are claiming superiority in their treatments and products. Such complaints are typically dealt with by the use of cease and desist letters, as well as citations.

In advertising cases involving the use of neurotoxins or injectable fillers, the DBC investigates whether the products are offered for treatment of a bona fide dental condition or are offered for strictly cosmetic purposes. These cases may facilitate an undercover operation to confirm the illegitimate use which may result in a citation, administrative action against the licensee or criminal charges filed for unlicensed practice of dentistry or medicine.

The DBC has also received complaints of unlicensed denturists advertising to create dentures for customers without a prescription from a licensed dentist. These types of complaints may result in an undercover visit to confirm whether dentistry is taking place, which could result in furtherance of a search warrant, arrest and conviction, or merely an investigator confirming that the location is a legitimate dental lab.

The DBC is currently looking closely at tele-dentistry statutes to determine if dental professional corporations are interpreting the law too broadly, or whether the DBC should seek statutory language to narrow the application of tele-dentistry in order to ensure public protection. Additionally, the DBC is in the process of gathering background information on the newly recognized specialty of dental radiology to determine whether utilizing dental radiologists, outside the state, would be unlicensed activity.

BreEZe

The BreEZe computer system was approved in 2009 and was intended to replace the DCA's outdated legacy systems. The transition to this new computer system was scheduled incrementally in three phases referred to as "Releases." Ten boards and bureaus were initially transitioned in Release I, and eight boards were placed in Release II. Release III has been suspended following cancellation of the vendor's contract as the Department of Consumer Affairs works with each entity to identify a more effective technology solution for their business needs.

The DBC has been on BreEZe since January 19, 2016 as a Release II entity. The DBC participated extensively in the development and implementation of the BreEZe computer system. Board staff has also participated in ongoing testing, updates, and training programs and exercises to identify programmatic issues. The DBC will continue to test, evaluate, and communicate any issues or problems that arise to the Department of Consumer Affairs Office of Information Systems on an ongoing and as needed basis.

To fund the DBC's transition to the BreEZe system, the Dentistry Fund has contributed approximately $1,758,598 and the Dental Assisting Fund has contributed approximately $1,251,522 from FY 2009-10 through FY 2016-17. This includes vendor costs, Department of Consumer Affairs staff, and other related costs. As the BreEZe program transitions from the project phase into the maintenance phase, the Department of Consumer Affairs anticipates the State Dentistry Fund will contribute approximately $1,404,000 from FY 2017-18 through FY 2019-20. The Dental Assisting Fund will contribute approximately $1,062,000 through the same period.

BreEZe Maintenance Phase			
Fund	**FY 2017/18**	**FY 2018/19**	**FY 2019/20**
State Dentistry Fund (0741)	$568,000	$470,000	$366,000
State Dental Assisting Fund (0342)	$410,533	$429,000	$277,000

Workforce Development and Job Creation

The DBC is currently participating in two legislatively mandated programs to gather work force data in order to address issues relating to access to care. The DBC developed a work force survey, which each licensee (dentist and registered dental assistant) is required to complete upon initial licensure and at the time of license renewal. The survey does not include questions related to earnings and benefits, job satisfaction, temporary departure from practice, or future plans of working licensees.

The DBC participates in the Office of Statewide Health Planning and Development (OSHPD)'s health care workforce Clearinghouse Database design phase of its data collection project. The results of this data collection can be found in the OSHPD Facts Sheets for Dentists, RDAs, and RDHs that are available at: http://www.oshpd.ca.gov/hwdd/hwc.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The DBC last underwent a sunset review by the Legislature in 2015. During the previous sunset review, Committee staff raised a number of issues provided recommendations. Below is a summary of actions which have been taken over the last four years to address these issues. Previous issues that were not completely addressed and may still be of concern they are further discussed under "Current Sunset Review Issues."

Prior Issue #1: Authority to Collect Email Addresses. The committees previously asked if the DBC should be authorized to collect and disseminate information through email addresses in order to improve the DBC's ability to communicate with licensees. The DBC had stated that it would pursue statutory authority to allow it to require email addresses on its applications and renewal forms. Subsequently, statutory language to enable the DBC to collect email addresses was submitted to the committees and was included in AB 179 (Chapter 510, Statutes of 2015). Business & Professions Code Section 1650.1 now authorizes the DBC to collect email addresses for applicants and licensees.

Prior Issue #2: Dental Assisting Council. The committees asked if the DBC should examine ways to increase the availability of examinations administered by the Dental Assisting Council. In response, the DBC explained that it was responsible for administration of the RDA written and practical examinations, and that prior to 2009, when the practical examination was administered by Committee on Dental Auxiliaries (COMDA), examiners were calibrated by a dentist. However, the DBC explained that when the program came under the DBC, the procedure changed and examiners, who themselves were RDAs, were calibrating themselves; as a result, the DBC observed anomalies within the grading procedure and the candidate pass rate declined. An occupational analysis conducted by the Office of Professional Examination Services recommended that the RDA practical examination be suspended, and the DBC voted to suspend the exam that same day. This suspension was subsequently extended until 2020.

Prior Issue #3: Delayed Implementation of BreEZe. The committees asked the DBC how the delayed implementation of the BreEZe contract impacted the DBC. The DBC had reported several challenges it was anticipating before successful implementation of the new BreEZe computer system. According to the DBC, the challenges identified in the background from the prior sunset report relating to BreEZe were addressed prior to implementation. Board staff worked closely with the vendor to design a module that gave the DBC the ability to schedule RDA practical examinations at various times and locations, as well as issue the results of the examination; to track inspections separate from enforcement cases; to track and identify veterans; to generate various reports; and to have the ability for multiple staff to have access to enforcement screens. The challenge remaining is the time tracking module that was not available in Release l. The module was intended to track investigator time and costs associated with an investigation. The module was not utilized by other boards until recently. The Dental Board staff is working with DCA to develop the module to be able to track board specific items such as travel time, report writing, interviews, etc. Currently board staff are manually tracking casework and supervisors are conducting regular desk audits to ensure the timeliness of casework.

Prior Issue #4: Pro Rata. Through its various divisions, the Department of Consumer Affairs (DCA) provides centralized administrative services to all of its boards and bureaus. The DCA does not break out the cost of the individual services it provides—e.g. cashiering, facility management, call center volume, etc.). The committees requested that the DBC provide information about the basis upon which pro rata is calculated, and the methodology for determining what services to utilize from DCA. The DBC was also asked whether it could achieve cost savings by providing some of these services in-house.

In response, the DBC explained that the DCA's pro rata costs are allocated to each board and bureau based on authorized position counts, licensing and enforcement transactions, various IT related cost centers, and prior year workload volumes; there are no pro rata costs that are allocated based on a board or bureau's budget. Differences between the dental fund and dental assisting fund pro rata can be attributed, in some part, to the services used by each entity. For example, the dental assisting fund has an interagency agreement with the Office of Professional Examination Services, which is included in its pro rata budget, but the Dental Board does not. Finally, the DBC stated that in terms of achieving savings by providing services in house, the DBC's management team had been participating in DCA pro rata workshops to determine what services, if any, could be eliminated.

Prior Issue #5: Dental Fund Condition. The committees asked if the DBC was adequately funded to cover its administrative, licensing, and enforcement costs; to continue to improve its enforcement program; and to ensure it is fully staffed. According to budget information presented at its February 2015, board meeting, the DBC projected it would only have 0.5 months in reserve in FY 2016/17. The DBC was undergoing a fee rate audit to determine the appropriate fee amounts to assess and to project fee levels into the future. The fee audit also took 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. Subsequently, the fee auditor made several recommendations which the DBC implemented, including updating fees regularly and incrementally, and conducting a fee analysis every four to five years. The DBC has also since voted to support the merging of the State Dentistry Fund and the State Dental Assisting Fund and directed staff to continue to research and identify the process by which the two funds may be merged; and to include a request to merge the funds as part of the DBC's Sunset Review Report.

Prior Issue #6: Foreign Dental School Approval. The committees asked the DBC if the process for approving foreign dental school was sufficient, or if the DBC consider heavier reliance on accrediting organizations for foreign school approvals if those options become available. This issue is discussed further under "Current Issues." The DBC explained that it is difficult to keep its foreign school standards aligned with evolving CODA standards, and that advancements have been made at CODA with regard to international dental school accreditation. Currently there are a number of international dental schools utilizing the CODA consultative services and are in various phases of the approval process. The DBC states that it believes that the best way to evaluate the equivalent education and training in dentistry between United States dental schools and foreign dental schools is to require foreign dental schools go through the CODA accreditation process.

Prior Issue #7: Occupational Analysis for RDAs and RDAEFs. The committees asked if the DBC should conduct an occupational analysis (OA) for RDAs and RDAEFs. During the time of the DBC's 2011 sunset review, pass rates for the RDA written examination were 53%. Subsequently, the DBC reported that it implemented a new RDA written examination, which resulted in a pass rate that fluctuates between 62-70% depending on the candidate pool. In 2014, pass rates dropped dramatically. The sharp declines in pass rates occurred after the practical examinations were recalibrated, as discussed in Issue #2 above. At the November 2014 Board meeting, staff reported during a joint meeting of the Council and the DBC's Examination Committee that an OA may be necessary in the near future. The Council and the Committee discussed various concerns relating to the RDA practical examination and recommended that conducting an OA of the RDA and RDAEF professions may be appropriate, especially since the DBC had not had an opportunity to conduct a complete OA for both the RDA and RDAEF license types.

The DBC determined that an OA of the RDA profession, including RDAEFs, must be conducted to determine how minimum competence may be best evaluated and to address concerns regarding the pass/fail rates of the currently administered RDA practical examination. An interagency agreement was made with the Department of Consumer Affairs' OPES to conduct the OA for both registered dental assistant and registered dental assistant in extended functions. The OA for the RDA was completed in April 2016. The OA for the RDAEF was completed in January 2018.

Upon completion of the OA for RDAs, OPES conducted a comprehensive review of the Practical Examination. The review was conducted with the following goals: (1) to evaluate the psychometric properties of the examination; (2) to determine the necessity and accuracy of the examination; and, (3) to evaluate the content validity of the RDA Practical Examination in relation to the 2016 RDA OA results. OPES subsequently recommended the DBC immediately suspend the administration of the practical examination. OPES believed there was a relatively low risk of harm to the public from the suspension of the examination because of the other measures in place, i.e., passing a written examination and the fact that RDAs are required to be under general or direct supervision by a licensed dentist. In April 2017, the DBC voted to suspend the RDA practical examination as a result of the findings of the review of the practical examination conducted by OPES.

At its August 2017 meeting, the DBC and the DAC considered a memorandum that was presented by the OPES relating to alternatives for assessing the competency of RDA candidates to perform the clinical procedures necessary for licensure. After the discussion, the DBC took action to appoint a subcommittee of the DBC to develop alternatives to RDA licensure, other than a practical exam, to bring back to the DBC and DAC for consideration at a future meeting. As a result of this workshop, the subcommittee recommended alternative methods to measure RDA competency for licensure in California. At the November 2017 meeting, the DBC and DAC voted to adopt the alternative which requires that eligibility for RDA licensure be based on completion of the current licensure requirements as established by current law and regulation and successful completion and passing of the RDA Written examination and the RDA Law & Ethics Written examination. The DBC and DAC believe that this option was the most reasonable and optimal and will not introduce additional barriers to RDA licensure.

Prior Issue #8: Acceptance of Additional Regional Examinations. At the request of the Commission on Dental Competency Assessments (CDCA), the committees inquired whether the DBC consider accepting the results of the American Board of Dental Examiners, Inc. (ADEX) examination. 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 DBC 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). ADEX subsequently sponsored legislation, AB 2331 (Dababneh, Chapter 572, Statutes of 2016) which authorizes the DBC to recognize the American Dental Examining Board's (ADEX) examination as an additional pathway to licensure. Prior to recognition or acceptance of the ADEX exam, the DBC must first conduct an occupational analysis of the dental profession. The DBC has an interagency agreement with OPES to conduct this analysis and the process is currently underway. After the OA is complete, OPES will conduct a psychometric evaluation of the ADEX examination to determine compliance with the requirements of BPC Section 139. Following this review, the DBC would promulgate regulations to implement this pathway to licensure. ADEX agreed to pay for the DBC's occupational analysis and the psychometric evaluation. AB 2331 authorized the Department of Finance to accept funds for the purposes of reviewing and analyzing the ADEX exam.

Prior Issue #9: Patient Notification and Record Keeping. The committees asked if dentists should be required to notify patients upon a change in ownership of a dental practice or upon retirement. The DBC was asked to 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. In response, the DBC explained that it had not received a significant number of complaints from patients about dentists selling their practice without notifying their patients, and who subsequently end up harmed by the new dentists. Since the last sunset review, no additional complaints have surfaced and the DBC is not aware of any trends in patient abandonment leading to patient harm but will continue to monitor the situation.

Prior Issue #10: Unprofessional Conduct. The committees raised the issue of whether dental professionals should be authorized to provide treatment to the person with whom the professional is in a marriage or domestic relationship. Statute at the time prohibited "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. The California Dental Association and the California Academy of General Dentistry both requested amending this section to also exempt dentists who are treating their spouses or person in an equivalent domestic relationship. Statute was subsequently amended and became effective January 1, 2016. The amendment included an exemption for all licensees who provide non-psychotherapeutic medical treatment to spouses or persons in equivalent domestic relationships.

Prior Issue #11: Ensuring an Adequate and Diverse Dental Workforce. The committees asked if the DBC believed California has the workforce capacity to meet dental care needs, especially in underserved areas. According to the Office of Statewide Health Planning and Development, Dental Health Professional Shortage Areas (DHPSA) are designated based upon the availability of dentists and dental auxiliaries. 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 response, the DBC collaborated with interested parties 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. At its February 2015 board meeting, representatives from the Center for Oral Health (COH) gave a presentation on dental workforce data and the opportunities and challenges associated with interpreting the data in a meaningful way to effect policy decisions. COH pointed out a number of challenges with the DBC's data that if addressed, could yield more useful information. COH recommended the DBC enhance overall data capacity over time by modifying the data that exists to make it accurate, useful, and available; collaborate with partners for action and analyses, develop a data enhancement strategy for future workforce analyses, and utilize improved data to strategically improve access to care in California. The DBC intends to implement these recommendations and will be working with the BreEZe team to accomplish this.

Prior Issue #12: Dental Corps Loan Repayment Program. At the time of the previous sunset, over half of the money that has been available to the Dental Corps Loan Repayment Program for over a decade ago remained unused; the committees asked how the DBC could ensure greater participation in this program. Under the Dental Corps Loan Repayment Program, participants may be eligible for a total loan repayment of up to $105,000. A total of three million dollars was authorized to expend from the State Dentistry Fund for this program. At the time of the DBC's last sunset review, the DBC had awarded funds to 19 participants. In October 2012, the DBC opened a fourth cycle of applications and approved all three applicants. Approximately $1.63 million was left in the account.

In response, statute was amended to allow the DBC to contact dental organizations and educational institutions for outreach to potentially eligible applicants. The DBC's website was also updated to reflect the changes made to the program. An overview of the program and minimum qualifications is clearly posted on the Loan Repayment webpage. The DBC included a link to the Health Professional Shortage Area (HPSA) search engine so applicants may locate qualified underserved clinics in California. In addition, links to the revised application and related code sections are provided on the webpage. Board staff is currently developing regulations to coincide with the modifications made to the program. The regulations must reflect the revised eligibility criteria and priority consideration factors. The rulemaking process will last 12-18 months. As such, the DBC anticipates the amended regulations will finally be effective in Spring 2020.

Prior Issue #13: Difficulty Collecting Citations and Fines and Cost Recovery. The committees asked how the DBC could enhance its efforts to collect fines and cost recovery. Statute authorizes the DBC to issue citations and fines for certain types of violations of the Dental Practice Act and authorizes the DBC to add the amount of the assessed fine to the fee for license renewal. During the DBC's last sunset review, it did 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 had fallen and reflects only a small portion of fines assessed. Additionally, statute specifies that in any order issued in resolution of a disciplinary proceeding before any board, the Administrative Law Judge may direct the licensee at fault to pay for the reasonable costs of the investigation and enforcement of the case. The judge may award the DBC full or partial cost recovery for the case, or they may reject the DBC's request. The DBC had success utilizing the FTB Intercept Program to collect cost recovery. However, due to limited staff resources, only a few licensees were ever referred. The committees asked the DBC to inform the committees of why it does not utilize the FTB Intercept program to collect citations and 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. Presently, the DBC still does not use the FTB program to collect citation fines. Instead, the DBC board uses existing administrative tools for collecting outstanding fines, such as placing a hold on license renewals until payment is made.

Prior Issue #14: Continuing Education. The committees recommended that the DBC 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. The DBC has since submitted a BCP for staff positions to initiate regular and ongoing continuing education audits for RDAs and RDAEFs in order to hold licensees accountable and promote proper standard of care.

Prior Issue #15: Disciplinary Case Management Timeframes Are Still Exceeding CPEI's Performance Measure of 540 Days. At the time of the DBC's last sunset review, the DBC was receiving between 3,500 and 4,000 complaints per year, and referred almost all of those complaints to investigations. Over the prior four fiscal years, the average time to close a desk investigation had been 96 days. This timeframe represented a marked improvement from the DBC's prior 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. However, the amount of time to close a sworn investigation had decreased and fell to 391 days in the fiscal year preceding the last sunset review. Based on these statistics, the DBC completed 3,759 investigations in the last fiscal year, and average 190 days per investigation. The Consumer Protection Enforcement Initiative (CPEI) sets a target of completing formal disciplinary actions within 540. The DBC was exceeding that target, averaging 1,084 days to complete a formal accusation over the last four fiscal years, and the average was beginning to increase. According to the DBC, some of the timeframes in completing an accusation are outside the DBC's control.

The number of accusations filed had remained relatively constant over the prior eight years; however the timeframes had actually dropped in recent years due to utilizing citations as an alternative to formal discipline in the less egregious cases. In addition, while the DBC, 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 Attorney General's office and the Office of Administrative Hearings (OAH) were only recently able to hire additional staff. Additional reasons for the delays that are beyond the control of staff include delays caused by opposing counsel, suspension of case activity while criminal matters are pending, and difficulty in scheduling interviews with witnesses, patients, and other parties, as well as in scheduling hearing dates with OAH. The DBC has stated that it is committed to focusing investigators' time on older cases, on exploring additional opportunities for the issuance of cease and desist orders, and has increased utilizing citations where appropriate.

Prior Issue #16: Enforcement Staffing Issues. The committees inquired as to whether the DBC employed an adequate number of staff to perform enforcement functions in a timely manner. Despite an augmentation in enforcement staffing levels from CPEI, the DBC noted during its last sunset review that the caseload per investigator continues to remain significantly higher than other programs within the DCA. The DBC studied options to determine if additional sworn or non-sworn staff would be sufficient to reduce investigative caseloads, or if the development of a probation unit will better support this challenge and if adding staff who would be dedicated strictly to probation monitoring will be necessary. Despite an augmentation in enforcement staff levels from CPEI, the DBC notes that the caseload per investigator continues to remain significantly higher than other regulatory entities. In addition to an investigation caseload, Board investigators also carry a probation-monitoring caseload. The DBC looked into the possibility of adding staff dedicated strictly to probation monitoring and creating a probation unit to better support this challenge. Additionally, the DBC noted that it was currently experiencing a shortage of available subject matter experts (SMEs), who conduct an in-depth review of the treatment provided to patients in cases alleging substandard care. The DBC currently has over 130 available SMEs to provide case reviews of completed investigations. The experts conduct an in-depth review of the treatment provided to patients in cases alleging substandard care and when necessary, testify at hearings. The current compensation rate pays $100 per hour for written review and $150 per hour for testimony, and has not been increased since 2009. The DBC is looking at compensation rates for SMEs used by other boards to see if increasing the compensation to experts might result in some continuity and a larger expert pool. The DBC has been recruiting experts through its website and outreach to dental societies. The DBC believes that its recent recruitment efforts have resolved the issue for now.

Prior Issue #17: Low Rate of Response to Consumer Satisfaction Surveys and Low Rate of Consumer Satisfaction with the DBC. During the prior four years, the DBC received an average Consumer Satisfaction 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 DBC handled their complaints. The DBC 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. Regarding explanations regarding the outcomes of complaints, the DBC noted 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. The DBC has been working with the DCA on increasing the response returns on its consumer satisfaction surveys. In an effort to solicit more responses from consumers, staff have placed a link on the final letters sent to the consumers/complainants, enclosed postage paid, post card survey forms and attached a link to their e-mail signature line to an on-line survey.

Prior Issue #18: Continued Regulation by the DBC. The committees asked if the licensing and regulation of the dental profession should be continued and be regulated by the current DBC membership. The committees ultimately recommended that the DBC be continued with a four-year extension, and the DBC supported that recommendation.

CURRENT SUNSET REVIEW ISSUES FOR THE DENTAL BOARD OF CALIFORNIA

This section covers new and unresolved issues relating to the DBC. It includes background information and committee staff recommendations for each issue. Committee staff has provided this paper to the DBC and other interested parties, including the professions, so that they may respond to the issues and recommendations.

FISCAL ISSUES

ISSUE #1: ***Merger of Special Funds. Should the State Dentistry Fund and the State Dental Assisting Fund be merged to simplify and streamline accounting and budgeting processes for the DBC?***

Background: Following discussions conducted during the DBC's last sunset review, board staff researched the feasibility of merging the State Dentistry Fund and the State Dental Assisting Funds, in consultation with the Department of Consumer Affairs' Budget Office. Staff determined that the merging of the two funds would streamline certain processes. Combining of the two separate funds and two separate appropriations into one would create efficiencies in budgeting and accounting processes in the long term and make budgeting issues simpler to understand.

It has been noted that there would be a significant amount of work involved in consolidating the two distinct funds, and statute would have to be amended to accommodate the transition. However, the Department of Consumer Affairs' Budget Office has stated its belief that the long-term benefits of merging the two funds outweigh the short-term concerns and increased workload. At the May 2017 meeting, the DBC voted to support the merging of the State Dentistry Fund and the State Dental Assisting Fund and directed staff to continue to research and identify the process by which the two funds may be merged; and to include a request to merge the funds as part of the DBC's Sunset Review Report.

Staff Recommendation: ***In light of the extensive research that was conducted into the feasibility and benefits of merging the Dentistry and Dental Assisting Funds in the long-term, statute should be amended to facilitate the process of combining the funds.***

ADMINISTRATIVE ISSUES

ISSUE #2: ***Dental Hygiene Board. What is the current state of the DBC's relationship with the Dental Hygiene Board of California, which also regulates licensees involved in the dental profession?***

Background: The Dental Hygiene Committee of California was established nearly a decade ago as the only standalone regulatory entity for dental hygienists in the nation. The committee was formally renamed the Dental Hygiene Board (DHBC) following its sunset review in 2018 in recognition of its functionality as an independent body with fully independent authority to regulate the practice of dental hygiene. The DHBC's sunset extension vehicle also struck language from statute misleadingly stating that the DHBC was an entity "within the jurisdiction of the Dental Board of California."

As the exclusive regulator of individuals licensed as registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions, the DHBC shares the responsibility for overseeing professionals working in dental offices along with the DBC.

Therefore, any discussions regarding potential scope changes or other changes to practice within the range of dental professionals licensed by each entity respectively must therefore be done with open communication and collaboration between the boards. A strong relationship between board staff for the DBC and the DHBC is necessary to promote an ongoing balance of professional practice within the team environment of a dental office.

Staff Recommendation: ***The DBC should provide the committees with an overview of how it operates collaboratively with the Dental Hygiene Board of California and describe whether any adjustments are being made in light of recent statutory changes made during the DHBC's latest sunset review.***

ISSUE #3: *Board Attorney. Does the DBC have sufficient legal counsel?*

Background: Business and Professions Code § 1616 expressly provides the DBC with "full power to … appoint its own attorney, prescribe his duties and fix his compensation."[22] However, the DBC does not currently have its own dedicated attorney. Legal representation in disciplinary prosecution is provided by the Attorney General's Licensing Section, and the Department of Consumer Affairs offers counsel as part of the centralized services it provides to boards, as needed to assist with rulemaking, address legal issues that arise, and support compliance with open meeting laws. Dedicated board counsel is, however, considered to provide substantial value when questions of law occur regularly enough to warrant the presence of attorney who specializes in a board's Practice Act and areas of jurisdiction. It is under this line of thinking that the Legislature has authorized the DBC to appoint its own lawyer, and any reasons for that position remaining unfilled should be discussed before the committees.

Staff Recommendation: ***The DBC should give an update on the current structure under which the board receives legal advice and representation; inform the committees of whether it believes the hiring of dedicated board counsel, as permitted in statute, would be of substantial benefit; and provide any background on why the board attorney position has not been filled.***

ISSUE #4: *NC Dental. Are there any outstanding concerns that the Supreme Court's decision in* North Carolina State Board of Dental Examiners v. FTC *could have implications for the DBC?*

Background: In 2015, the United States Supreme Court ruled in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* ("*NC Dental*") that when a state regulatory board features a majority share of active market participants, any allegedly anticompetitive decision-making may not be subject to Parker antitrust litigation immunity unless there is "active state supervision" to ensure that all delegated authority is being executed in the interest of the public and not the private commercial interests of the members.

This case has not yet resulted in any meaningful litigation against public bodies established under California law, and it remains to be seen whether any of the state's regulatory entities are vulnerable to antitrust claims. However, the *NC Dental* decision remains a persistent topic of discussion for each regulatory body that has since undergone review.

[22] *Pronouns quoted as currently written in statute.*

The DBC is a majority-professional member board overseeing the practice of dentistry. However, numerous distinctions between the DBC's regulatory activities and the facts of the *NC Dental* case make the likelihood of similarly successful antitrust litigation substantially improbable. For example, while the North Carolina State Board of Dental Examiners is considered an "agency of the State," its eight-member board featured six practicing dentists and one practicing dental hygienist, all of whom were elected by practicing licensees within the profession. A single public member was appointed by the Governor to the board. By contrast, the DBC has eight practicing dentists, one registered dental hygienist, one registered dental assistant, and five public members, all of whom are appointed by either the Governor or legislative leadership.

Further, the oversight provided by the Department of Consumer Affairs uniquely confirms the presence of "active state supervision" for purposes of *NC Dental*. The DBC is considered only semi-autonomous, with much of its rulemaking and disciplinary activity subject to involvement by multiple other governmental entities. The Department of Consumer Affairs has also worked to ensure that members are adequately trained in certain procedures to ensure an adequate record of deliberation for purposes of defense against any potential allegations of antitrust.

Staff Recommendation: ***The DBC should describe what efforts it has taken to ensure its decision-making is subject to sufficient state supervision so as to provide board members with confidence that their actions are covered by Parker immunity from antitrust allegations.***

EDUCATION AND EXAMINATION ISSUES

ISSUE #5: ***RDA Practical Examination. Should the practical examination requirement for registered dental assistants be permanently eliminated?***

Background: On April 6, 2017, the DBC voted to suspend the RDA practical examination as a result of the findings of a review conducted by the Office of Professional Examination Services (OPES) within the Department of Consumer Affairs. (As discussed under "Prior Sunset Issues.") This review was prompted by issues highlighted during the DBC's last sunset review in 2015, when it was revealed that the average passage rate for the RDA practical examination had dropped from roughly 83% in 2014 to between 19% and 38%. AB 179 (Bonilla) subsequently authorized the DBC to suspend the examination pending the results of the study. This suspension was then extended until January 1, 2020 by AB 1707 (Low).

The OPES report determined that the practical examination did not accurately measure the competency of RDAs, and recommended that the DBC immediately suspended the administration of the examination. OPES opined that correcting compliancy with technical and professional standards will require a great deal of time and resources from the DBC and industry, and recommended that the DBC initiate a process to evaluate options other than the examination to ensure the competency of a RDA. OPES evaluated the practical examination with regard to reliability of measurement, examiner training and scoring, test administration, test security, and fairness. Specifically, OPES identified that the inconsistencies in different test site conditions, deficiencies in scoring criteria, poor calibration of examiners, and the lack of a clear definition of minimum acceptable competence indicated that the practical examination does not meet critical psychometric standards.

At its August 2017 meeting, the DBC took action to appoint a subcommittee of the DBC to develop alternatives to RDA licensure, other than a practical exam, to bring back for consideration at a future meeting. This subcommittee integrated stakeholder feedback in a workshop. At its November 2017 meeting, the DBC voted to adopt the alternative which requires that eligibility for RDA licensure be based on completion of the current licensure requirements and passage of the RDA written examination and the RDA Law & Ethics written examination, without the practical examination. The DBC has stated its belief that this option was the most reasonable and optimal and will not introduce additional barriers to RDA licensure. The decision is supported by the fact that OPES indicated that the RDA written examinations, along with the fact that RDA duties are supervised by the dentist, places the public at little risk of harm. A practical examination, the DBC believes, would not provide additional public protection beyond that conferred by successful completion of an educational program or a written examination.

Staff Recommendation: ***The DBC should speak to whether it has received any complaints relating to RDAs that have not passed the suspended practical examination; whether it believes a practical examination is essential to measuring competency of RDAs; and whether it believes this examination should be revived effective January 1, 2020 or if its current suspension should be made permanent.***

ISSUE #6: ***Portfolio Examinations. Is the DBC's portfolio examination process adequately providing pathways to licensure for dental students as an effective alternative to conventional examinations?***

Background: Licensure by portfolio is a recently enacted alternative pathway to licensure as a dentist in California, available to applicants since November 2014. Under portfolio licensure requirements, instead of taking a single examination, students build a portfolio of completed clinical experiences and clinical competency examinations in six subject areas over the normal course of their clinical training during dental school. The portfolio option gives students in California an alternative to being tested on a live patient over the course of one weekend. The applicant's portfolio is assessed for demonstration of experiences and competencies, following a letter of good standing signed by the dean of the applicant's dental school. The applicant must also pass Parts I and II of the National Board Written Examinations.

The portfolio option gives students an alternative to being tested on a live patient over the course of one weekend, which is the method of assessing competency used in the Western Regional Examination Board (WREB) exam process, as well as other examinations throughout the country. The portfolio process offers multiple benefits to students and patients, including letting students extend treatment over multiple patient visits, which reduces the stress of a one-time testing event and more closely simulates real-world care. The pathway provides an opportunity for patients to receive follow-up treatment as needed; and provides a method by which students are ready for licensure upon graduation.

Concerns have been raised that because California has the distinction of being one of the first states to pursue this method of qualifying for licensure, dentists who have obtained their license through the portfolio pathway may face difficulties when seeking reciprocal acknowledgment of qualification by other states. The DBC's successful implementation of licensure by portfolio continues to be an important demonstration of the effectiveness of what could be considered regulatory innovation. However, if applicants are denied license portability as a result of the novel nature of this examination alternative, the DBC should consider whether additional steps should be taken to safeguard licensee mobility.

Staff Recommendation: ***The DBC should characterize the success of licensure by portfolio examination and inform the committees of any issues relating to how this pathway to the dental profession impacts students seeking to practice dentistry within and outside California.***

ISSUE #7: ***Foreign Dental Schools. Should the current process by which the DBC approves foreign dental schools continue?***

Background: Statute enacted in 1998 granted the DBC responsibility for approving foreign dental schools, recognizing that "graduates of foreign dental schools who have received an education that is equivalent to that of accredited institutions in the United States and that adequately prepares their students for the practice of dentistry shall be subject to the same licensure requirements as graduates of approved dental schools or colleges." Schools outside the United States and Canada seeking approval to graduate students eligible for licensure as dentists in California must apply to the DBC and undergo an evaluation process, with renewal applications required every seven years.

The DBC's investigative process for reviewing applications from foreign dental schools is outlined in regulations. Schools are required to meet basic curriculum requirements as well as administrative and programmatic standards to ensure a certain degree of equivalency with schools operating within the United States. An "onsite inspection and evaluation team" appointed by the board is then responsible for making "a comprehensive, qualitative onsite review of each institution that applies for approval." This review includes examining documents, inspecting facilities, auditing classes, and interviewing administrators, faculty, and students. Reviewed schools are required to reimburse the DBC for all reasonable costs incurred by staff and the site team relating to the inspection. The DBC must notify the school of whether it has been approved within 225 days of a completed application.

Two foreign dental schools are currently approved by the DBC: the University De La Salle School of Dentistry, located in Leon, Guanajuato, Mexico, and the State of Medicine and Pharmacy "Nicolae Testemintanu" of the Republic of Moldova. The Moldova dental school Moldova received a two-year provisional approval in December 2016 and full approval in May 2018. Subsequently, members of the DBC grew concerned that additional details of the Moldova school's recruitment program and admission standards were not disclosed in the application or to the DBC site evaluation team during the review.

In the DBC's November 2018 meeting, the board discussed a recently uncovered flyer advertising the Moldova school titled "Become a dentist… while living in Europe!" The flyer was widely distributed in California through "the University of Moldova USA Inc."—a separate entity operating an admissions office for the Moldova dental school based in Encino, CA. According to the DBC, the relationship between the dental school and the entity in Encino "was never divulged during the site evaluation conducted in October 2016." It is apparent that the Moldova dental school has actively recruited students in California, promising DBC-approved dental school education (taught entirely in English) without the need for a four-year college degree. Further, the tuition charged to students recruited in the United States appears to be four times that of Moldovan students.

To date, representatives of the Moldova school have not thoroughly responded to the DBC's questions and concerns. However, representatives of the school will attend the May 2019 meeting to address the DBC's concerns. As the DBC continues to debate what appropriate action should be taken concerning the Moldova school's approval status, the DBC has concluded that it does not have the resources or expertise to sufficiently evaluate foreign dental schools.

During the DBC's last sunset review, an issue was raised regarding whether the DBC should "consider heavier reliance on accrediting organizations for foreign school approvals if those options become available." Currently, dental schools established within the United States but outside California are approved by the Commission on Dental Accreditation (CODA), which further recognizes Canadian dental schools approved by the Commission on Dental Accreditation of Canada. CODA has established an International Accreditation process designed to assess and approve foreign dental schools through robust investigation and evaluation. To date, CODA has yet to approve any foreign dental schools through this lengthy process. However, CODA has begun to evaluate applications for approval, including one submitted by a school in Leon, Guanajuato, Mexico. If it is determined that the role of the DBC in approving foreign dental schools should be reduced, the CODA process may be a desirable alternative.

Staff Recommendation: ***The DBC should provide background on how foreign dental schools are currently approved and whether accrediting organizations such as CODA should play a larger role in the approval process.***

ENFORCEMENT ISSUES

ISSUE #8: ***Consumer Products. Does the DBC have sufficient oversight over consumer products advertising self-applied corrective treatments for structural or aesthetic oral health conditions?***

Background: Within the many professions and occupations regulated in California, the advent of new technologies has enhanced access and ease for service to consumers. Dentistry and oral health is no exception, and individuals seeking a "better smile" are able to participate in a growing marketplace for products enabling consumers to improve their oral health and appearance from the comfort of their homes. Like with all services contained within the scope of a profession licensed by the state, however, there is benefit to analyzing the balance of convenience and any potential risk of consumer harm.

One example of a self-applied dental treatment is teeth whitening, which is estimated to be a $15 billion industry. Numerous methods for whitening teeth are available, from pastes to strips to trays molded to fit a consumer's teeth. Whitening services are available through licensed dental professionals; however, many products can be ordered online or purchased off the shelf. Based on the method of the whitening product, it is likely that the majority of related consumer products pose little risk of patient harm, so while dentist consultation is valuable and recommended for more intensive treatment, the absence of a licensed professional's involvement in many teeth whitening products is unlikely to be problematic.

Another growing market for self-applied dental treatments is in the field of orthodontia. Several companies offer aligners that can be customized for the consumer at either a boutique storefront or through an at-home kit mailed to the customer. Through these products, an individual is able to realign the positioning of their teeth into what they believe will be a straighter smile. While companies offering such products describe the mailed aligners as being "reviewed" by a dental professional through the use of remote tele-dentistry, it is possible for a consumer to go through the realignment process without ever actually consulting with a licensed dentist. This may be cause for some concern in light of reported incidents where teeth have been misaligned when using at-home aligners. Dental boards in other states have begun to take action against the marketers of such products, and ongoing litigation has resulted.

Veneers are another product that can be purchased outside of a dental office. Companies offering clip-on veneers allow consumers to improve their oral aesthetics by masking their real teeth with a more attractive surface. These products can also be ordered online and created through at-home impression kits. While companies offering these kinds of veneers will not sell to consumers who self-report the presence of health issues affecting their teeth, there may still be questions of whether any potential harm could result for consumers who do not speak to a licensed dentist before applying such products.

The DBC has stated that it will be "looking closely at tele-dentistry statutes to determine if corporations are interpreting the law too broadly, or whether the DBC should seek statutory language to narrow the application of tele-dentistry in order to ensure public protection." The DBC has also stated that it will be "gathering background information on the newly recognized specialty of dental radiology to determine whether utilizing dental radiologists, outside the state, would be considered unlicensed activity." These inquiries by the DBC may ultimately resolve questions about self-applied treatments.

Staff Recommendation: ***The DBC should speak generally to its authority to oversee consumer products aimed at promoting oral health through self-applied corrective treatments and communicate any recommendations for statutory enhancements to the committees.***

ISSUE #9: ***Enforcement Targets. Does available data relating to enforcement timelines suggest any inefficiencies in discipline cases brought by the DBC in collaboration with the Attorney General?***

Background: Enforcement timelines and the DBC's expediency in resolving complaints against licensees have long been traditional topics in the oversight of the DBC, as it is with other regulatory entities in California. Under the Consumer Protection Enforcement Initiative (CPEI), a series of policies and regulations resulting from a 2010 report, various timeframe targets have been identified for the DBC to complete segments of the enforcement process for the approximately 3,750 complaints received each year. These targets are important for measuring performance, and resolving complaints quickly works to both protect consumers and release good actors from the cloud of an allegation.

Currently, the DBC is meeting many, but not all, of its goals. The target for intake of a complaint is mandated at ten days; the DBC is currently averaging seven days. The target for both intake and investigation of a complaint is 270 days; the DBC is currently averaging 265 days. The 65% of complaints that are ultimately closed without being referred to an investigator are closed within an average of 150 days. For the remaining 35% that are referred to an investigator, the average time to closure is 347 days for non-sworn staff and 449 days for sworn staff. These statistics indicate that delays persist in the investigative phase, which could potentially be due to factors such as vacancy rates within the DBC's Enforcement Division or the relative challenges of investigating more complex cases.

For complaints that are investigated and then taken through the entire enforcement process in cases seeking formal discipline, the target is 540 days. The current average for this complete process is currently 886 days—arguably a significant gap. It should be noted that for cases that go to hearing, the DBC is not entirely responsible for the timeline. The Attorney General's office is responsible for handling legal representation for each case, and the Office of Administrative Hearings is typically limited as to the availability of hearing dates and Administrative Law Judges. Factors such as continuances, witness scheduling, criminal trial conflicts, and others may also lead to delays during the enforcement process.

Beginning in 2017, the Attorney General's office is now annually reporting statistics relating to its role in the discipline process for the client boards and bureaus it represents in hearings. The Attorney General has reiterated the necessary context that not all complaints are equal, and a variety of factors may make the administrative adjudication process take much longer for one case than another. In Fiscal Year 2017-18, a total of 110 accusation matters were referred by the DBC to the Attorney General, with 76 matters ultimately adjudicated.

Reported timelines for the Attorney General's involvement in cases may be useful to identify where delays are occurring in the DBC's targets. In Fiscal Year 2017-18, the average number of dates for an accusation to be filed by the Attorney General following referral of a complaint was 131 days. This means that for complex cases investigated by sworn staff, the 540-day target for the DBC's enforcement process has already been exceeded by the time an accusation is actually filed. The average time from the filing of an accusation to a stipulated settlement is 300 days; the average time to a default decision is 149 days. Complaints that go to through the entire hearing process average 148 days from filing to the Attorney General requesting a hearing date, and from that point until the commencement of a hearing there is an average span of 134 days.

The above statistics from the DBC and the Attorney General supply a useful context to the 886-day average currently applicable to the DBC's enforcement process. However, it is unlikely that the overall failure to meet the 540-day target is attributable to any one deficiency in any one component of the current system, and it is likely that examination of averages, to some degree, obfuscates the nuances that arise from the unique nature of each individual case. As the Legislature continues its ongoing oversight efforts to improve case timelines for the DBC and other regulatory entities, it should continue to seek a deeper understanding of how case timelines develop and how statute can be improved to better support the board's enforcement efforts.

Staff Recommendation: ***The DBC should identify what it believes to be any deficiencies in the enforcement process, describe efforts to improve overall enforcement timelines, and offer any available suggestions to improve the current framework for discipline cases brought by the board.***

PRACTICE ISSUES

ISSUE #10: ***Opioid Crisis. What role do dentists play in the ongoing epidemic of opioid abuse and addiction, and how can the DBC support efforts to curb overprescribing within the dental profession?***

Background: In October 2017, the White House declared the opioid crisis a public health emergency, formally recognizing what had long been understood to be a growing epidemic responsible for devastation in communities across the country. According to the Centers for Disease Control and Prevention, as many as 50,000 Americans died of an opioid overdose in 2016, representing a 28 percent increase over the previous year. Additionally, the number of Americans who died of an overdose of fentanyl and other opioids more than doubled during that time with nearly 20,000 deaths. These death rates compare to, and potentially exceed, those at the height of the AIDS epidemic.

In September 2018, the California Dental Association (CDA) published a special edition of its *Update* newsletter entitled "The Opioid Issue." In it, CDA members contributed numerous entries discussing the status of the fight against the opioid crisis and the dental profession's involvement, including a piece entitled *Dentists play crucial role in fighting opioid epidemic*.

According to the article, a 2009 nationwide study "found that dentists were responsible for 8 percent of all opioid prescriptions in the U.S." and that dentists "were the major prescribers of opioids among the 10- to 19-year-old age group and frequent prescribers of immediate-release opioids, which tend to be more frequently abused than extended-release opioids." While dentists are less likely to be approached by opioid addicted patients who seek out multiple prescribers, they may be placed at the inception of addiction for many patients who receive their first prescription for legitimate pain management—a concept referred to as "first exposure." The role of dentists in preventing addiction and abuse of opioids has therefore risen to the heights of the dental profession's national dialogue.

As prescribers of controlled substances, dentists are required to register with the Department of Justice's Prescription Drug Monitoring Program, CURES, and as of October 2018 they are required to consult a patient's prescription history in CURES prior to writing a Schedule II-IV drug for the first time. According to data provided by the Attorney General, between October 2014 and October 2018, dentists prescribed an average of 700,000 controlled substances per month out of the approximate four million prescriptions that traditionally get entered into CURES each month. Meanwhile, dentists requested a total of 33,597 activity reports from CURES during that four-year time frame. This suggests that dentists were not regular users of CURES prior to the October 2018 mandate despite being significant prescribers of controlled substances.

Legislation chaptered last year authorized the DBC to include "the risks of addiction associated with the use of Schedule II drugs" as a continuing education course required for license renewal. This bill was supported by both the DBC and the CDA. Since its enactment, the DBC has discussed the possibility of promulgating regulations to achieve that purpose. DBC staff recently reported to the board that it had developed proposed language, and the DBC voted to move forward with the regulations at its February 2019 board meeting.

Staff Recommendation: ***The DBC should describe the efforts it has taken to participate in the state's fight against the opioid crisis, the status of its proposed continuing education mandate regarding Schedule II drugs, and whether the new requirement that dental professionals consult the CURES database prior to prescribing controlled substances has been successful.***

ISSUE #11: ***Probation Disclosure. Should dental professionals placed on probation by the DBC be required to disclose their probation status to patients in a manner similar to other healing arts licensees?***

Background: Last year, Senate Bill 1448 (Hill, Chapter 570, Statutes of 2018) enacted the Patient's Right to Know Act of 2018, requiring various healing arts licensees on probation for certain offenses to provide their patients with information about their probation status prior to the patient's first visit following the probationary order beginning July 1, 2019. Licensees covered by the bill include physicians and surgeons, podiatrists, chiropractors, acupuncturists, and naturopathic doctors. The bill did not, however, include dentists. If the ultimate objective of probation disclosure is protecting patients from being unknowingly placed in vulnerable contexts with licensees placed on probation for serious offenses, there is no clear reason as to why dentists should be treated differently and excluded from the patient notification requirement.

Staff Recommendation: ***The DBC should opine on whether probation status disclosure would be a valuable way to protect the public and provide transparency into discipline imposed by the board.***

ISSUE #12: *Dynamex. Does the new test for determining employment status, as prescribed in the court decision* Dynamex Operations West Inc. v. Superior Court, *have any potential implications for licensees working in the dental profession as independent contractors?*

Background: In the spring of 2018, the California Supreme Court issued a decision in *Dynamex Operations West, Inc. v. Superior Court* (4 Cal.5th 903) that significantly confounded prior assumptions about whether a worker is legally an employee or an independent contractor. In a case involving the classification of delivery drivers, the California Supreme Court adopted a new test for determining if a worker is an independent contractor, which is comprised of three necessary elements:

A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
B. That the worker performs work that is outside the usual course of the hiring entity's business; and
C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

Commonly referred to as the "ABC test," the implications of the *Dynamex* decision are potentially wide-reaching into numerous fields and industries utilizing workers previously believed to be independent contractors. Occupations regulated by entities under the Department of Consumer Affairs are no exception to this unresolved question of which workers should now be afforded employee status under the law. In the wake of *Dynamex*, the new ABC test must be applied and interpreted for licensed professionals and those they work with to determine whether the rights and obligations of employees must now be incorporated.

In the case of the dental profession, there are some scenarios in which workers who were previously believed to be independent contractors may in fact be classified as employees. For example, Registered Dental Hygienists in Alternative Practice (RDHAPs) work in a variety of settings, often dividing their time between multiple offices that may not employ a full-time hygienist. RDHAPs are authorized in statute to work as either independent contractors, sole proprietors, or employees.[23] While these hygienists may have believed themselves to be independent contractors, under the ABC test, this status may be in question. Dentists would theoretically exercise *some* exercise and control over when these hygienists see their patients, and these hygienists would likely comply with the practices of the office they work in. It is also arguable that dental hygiene is not "outside the usual course" of a dental office's business.

There is a strong potential that other examples of workers within the dental profession whose status may be impacted by the *Dynamex* decision. While the DBC's role as a regulator may not have many direct responsibilities relating to the employment status of those working within the profession, these issues nevertheless implicate the rights and responsibilities of licensees and there is a great deal of uncertainty around what dental professionals should expect as dust surrounding the *Dynamex* decision begins to settle. Whether the DBC has considered the impact of the ruling and if it has any sense as to what impact there may be on the licensed profession is therefore a worthwhile topic of discussion.

Staff Recommendation: ***The DBC should inform the committees of any discussions it has had about the* Dynamex *decision and whether the ruling has potential to impact the current landscape of the dental profession.***

[23] Bus. & Prof. Code, § 1925

IMPLEMENTATION ISSUES

ISSUE #13: ***Pediatric Anesthesia. Does the DBC anticipate a smooth implementation of Senate Bill 501 (Glazer), a recently enacted measure regarding pediatric dental anesthesia?***

Background: Senate Bill 501 (Glazer, Chapter 929, Statutes of 2018) was signed into law last year, serving as the culmination of years of policy discussion that followed the tragic death of young boy while undergoing dental work under anesthesia. In February 2016, the Senate Committee on Business, Professions and Economic Development sent a letter to the DBC requesting that a subcommittee be formed to investigate pediatric anesthesia in dentistry, and requested that information from that investigation be reported back to the Legislature no later than January 1, 2017. The DBC concluded that existing California law was sufficient to provide protection of pediatric patients during dental sedation; however, it made several recommendations to enhance statute and regulations to provide a greater level of public protection.

SB 501 established a series of new requirements and minimal standards for the use of sedation and anesthesia in pediatric dental procedures. Specifically, the bill created a new process for the DBC to issue general anesthesia permit (that may include a pediatric endorsement) as well as moderate and pediatric minimal sedation permits to applicants based on their level of experience and training; and established new requirements for general anesthesia or sedation administered to patients under thirteen years of age. The bill also required the DBC to review data on adverse events related to general anesthesia and sedation and all relevant professional guidelines for purposes of reporting to the Legislature on any relevant findings.

The bill's provisions governing the use of general anesthesia, deep sedation, moderate sedation, or minimal sedation go into effect beginning January 1, 2022, as well as the new reporting requirement. With the delayed effective date and a substantial amount of regulatory framework likely needed, it is anticipated that the DBC is currently only in the beginning stages of implementing SB 501. However, given the important subject matter of the bill and the significant work needed to put it into effect, it is important that the DBC demonstrate its commitment to a successful implementation that will meet the timelines included in the bill.

Staff Recommendation: ***The DBC should provide an overview of the actions it has taken to date to prepare for the effective date of SB 501 and discuss any potential obstacles to implementation that may be addressed administratively or by the Legislature.***

TECHNICAL CLEANUP

ISSUE #14: ***Technical Cleanup. Is there a need for technical cleanup?***

Background: As the dental profession continues to evolve and new laws are enacted, many provisions of the Business and Professions Code relating to dentistry become outmoded or superfluous. The DBC should recommend cleanup amendments for statute.

Staff Recommendation: ***The DBC should work with the committees to enact any technical changes to the Business and Professions Code needed to add clarity and remove unnecessary language.***

CONTINUED REGULATION OF THE DENTAL PROFESSION BY THE DENTAL BOARD OF CALIFORNIA

ISSUE #15: *Continued Regulation. Should the licensing of dental professionals be continued and be regulated by the Dental Board of California?*

Background: The health, safety, and welfare of patients are protected by the presence of a strong licensing and regulatory board with oversight over dental professions. Dentists offer important healing art services requiring substantial training, and they along with allied dental professionals are trusted by millions of Californians to competently provide oral health care advice and perform complex dental procedures. The DBC 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 sufficiently addressed.

Staff Recommendation: ***DBC's current regulation of the dental profession should be continued, to be reviewed once again in four years.***