

# DENTAL BOARD OF CALIFORNIA

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*Executive Officer: Karen Fischer ♦ (916) 263–2300 ♦ Toll-Free (877) 729–7789 ♦*  
[www.dbc.ca.gov](http://www.dbc.ca.gov)

*Protection of the public shall be the highest priority for the Dental Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

— Business and Professions Code § 1601.2

The Dental Board of California (DBC) is a consumer protection agency within the state Department of Consumer Affairs (DCA). DBC is charged with enforcing the Dental Practice Act, Business and Professions Code section 1600 *et seq.* The Board’s regulations are located in Division 10, Title 16 of the California Code of Regulations (CCR).

DBC licenses and regulates dentists (DDS/DMD), and issues specialty permits for a variety of functions to licensed dentists who qualify for them, including permits to administer general anesthesia, conscious sedation, and oral conscious sedation for adult and minor patients. Under Business and Professions Code section 1638, DBC issues oral and maxillofacial surgery (OMS) permits to qualified dentists and physicians. OMS dentists may seek an additional permit and be authorized to perform elective facial cosmetic surgery under section 1638.1. DBC issues permits to unlicensed individuals who qualify as orthodontic assistants and dental sedation assistants.

DBC also licenses (1) registered dental assistants (RDA); and (2) registered dental assistants in extended functions (RDAEF). To assist the Dental Board in regulating RDAs and RDAEFs, the legislature has created the Dental Assisting Council (DAC) in Business and Professions Code section 1742. The DAC consists of seven members: the RDA member of the

Dental Board plus one other Dental Board member, and five RDAs. These members are appointed by the Dental Board and represent a broad range of dental assisting experience and education (including at least one RDAEF). The DAC is authorized to consider all matters relating to dental assistants on its own initiative, or upon the request of the Dental Board, and make appropriate recommendations in the following areas: requirements for dental assistant examination, licensure, permitting, and renewal; standards and criteria for approval of dental assisting educational programs, courses, and continuing education; allowable dental assistant duties, settings, and supervision levels; appropriate standards of conduct and enforcement for dental assistants; and requirements regarding infection control.

Although DBC previously regulated registered dental hygienists (RDH), registered dental hygienists in extended functions (RDHEF), and registered dental hygienists in alternative practice (RDHAP), the licensing, regulatory and disciplinary functions transferred from DBC to the Dental Hygiene Committee of California (DHCC), effective July 1, 2009. Effective January 1, 2019, DHCC is renamed the Dental Hygiene Board of California (DHBC) and is its own board pursuant to [SB 1482 \(Hill\) \(Chapter 858, Statutes of 2018\)](#).

DBC sets standards for approval of dental schools and dental assistant training programs and determines subject matter for license examinations. It licenses applicants who pass the exam and meet Board requirements for licensure, sets standards for dental practice, and disciplines licensees who do not meet those standards. DBC is also responsible for registering dental practices (including mobile dental clinics) and corporations; establishing guidelines for continuing education requirements for dentists and dental assistants; approving radiation safety courses; and administering the Diversion Program for substance-abusing dentists and dental assistants.

DBC consists of fifteen members: eight practicing dentists, one RDH, one RDA, and five public members. Business and Professions Code section 1602 requires all of the professional members of the Board to have been actively practicing for at least five years prior to their appointment. The Governor appoints thirteen of the Board's fifteen members (including all of the dental practitioners); the Senate Rules Committee and the Assembly Speaker each appoint one public member.

At this writing, there is a public member vacancy on the Board.

## **MAJOR PROJECTS**

### **Sunset Review**

On December 1, 2018, DBC submitted its final Sunset Review Report ([Volume 1](#), [Volume 2](#), [Volume 3](#), [Volume 4](#)) to the legislature. The Sunset Report updates the legislature on past sunset issues, and outlines current issues facing the Board. On March 5, 2019, Board members and Executive Officer, Karen Fisher, represented DBC at the [Joint Oversight Committee Sunset Review Hearing](#). During the hearing, Board representatives addressed questions from legislative members and outlined key issues (addressed below). On April 3, 2019, DBC submitted [written responses](#) to issues raised in the [Background Paper](#) prepared by the legislature.

At the March 5, 2019 hearing, DBC recommended that the current suspension of the RDA practical examination be made permanent. On April 6, 2017, DBC voted to suspend the RDA practical examination as a result a review conducted by DCA's Office of Professional Examination Services (OPES), which concluded that the practical examination did not accurately measure the competency of RDAs. [[23:1 CRLR 5-6](#)] Ultimately, DBC voted to adopt an alternative to a practical exam that requires the completion of the current application requirements and passing of

the RDA written examination and the RDA law and ethics written examination. The Board reported to the legislature that since the suspension of the practical examination in April 2017, DBC has issued approximately 4,500 RDA licenses and has not received any complaints about these licensees.

Also at the March 5 hearing, DBC Executive Officer Karen Fisher reported on the Board's Portfolio Pathway to Licensure for dentists, an alternative examination that a dental school may elect to implement at any time and uses both clinical experience and clinical competency examinations to assess a candidate. [\[23:2 CRLR 5-6\]](#) They further reported that participation has dropped, and relayed the Board's suspicion that students are worried about reciprocity with other states because California is one of the first states in the nation to adopt this type of licensure pathway. Board representatives reported that DBC has made the materials and roadmaps available to other states with the intent of other states adopting a similar approach. In the Board's [written responses](#) to the legislature, it reported that "[a] national movement has begun to consider using California's hybrid portfolio examination as the clinical examination throughout the country," and expressed DBC's support for this effort.

Additionally, the Board reported to the Joint Committee that it does not believe it has the resources or expertise to sufficiently evaluate foreign dental schools. Over the last twenty years, since a 1998 statute allowed DBC to start approving foreign dental schools, there have been only two foreign dental schools approved by DBC: the University De La Salle School of Dentistry, in Leon, Guanajuato, Mexico, and the State of Medicine and Pharmacy "Nicolae Testemintanu" of the Republic of Moldova. The Moldova dental school received a two-year provisional approval in December 2016 and full approval in May 2018. Subsequently, however, DBC grew concerned that the Moldova school did not disclose recruitment program and admission standards in the

application or to the DBC site evaluation team during the review. Representatives of the Moldova school have not thoroughly responded to the DBC's questions and concerns but the Board reports that representatives of the school will attend the May 2019 meeting. DBC recommended that the California standards should be updated to reflect the Commission on Dental Accreditation (CODA) standards.

In its Sunset Review Report submitted to the legislature on December 1, 2018, DBC addressed the U.S. Supreme Court's decision in *North Carolina State Board of Dental Examiners v. FTC*, which held that a state board may not be controlled by "active market participants" in the profession regulated by that board unless some other unbiased entity "actively supervises" board acts and decisions for anticompetitive effect. *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (2015). This case applies to any state regulatory board that is controlled by active market participants in the profession regulated by the board. Despite the Board's composition with a majority of practicing dentists, DBC asserted in its written responses to the legislature that it is distinguished from *North Carolina State Board of Dental Examiners v. FTC* because (1) all eight members of the Dental Board are appointed by the governor or legislative leadership, not elected by practicing licensees within the profession; (2) oversight by DCA confirms the presence of active state supervision; and (3) DBC is considered only semi-autonomous because of DCA oversight. The Board's [written responses](#) also outline specific training elements provided at Board member orientations that emphasize DBC's mission of consumer protection and ensure that written documentation of meetings and decisions around those principles occurs. The responses further state that the Board will continue to support legislative attempts to provide clarification that the DBC's actions are covered by immunity from antitrust allegations.

Also in its Sunset Review Report, DBC discussed the impact of [SB 1448 \(Hill\) \(Chapter 570, Statutes of 2018\)](#), which requires 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. The bill, however, does not include dentists. In its written responses to the legislature, DBC outlined its current regulatory notice requirements for licensed dentists, which includes posting information about licensure and the complaint process through DBC in a conspicuous place for patients to view, as well as its practice to post all disciplinary actions taken against licensees on its website. DBC clarified that it pursues *revocation* of a license for violations relating to sexual abuse or misconduct, drug or alcohol abuse, criminal convictions directly involving harm to patient health, and inappropriate prescribing, thus, there would likely be no probationary status to report.

DBC also addressed its efforts to implement [SB 501 \(Glazer\) \(Chapter 929, Statutes of 2018\)](#). SB 501 amended and added various provisions to the Dental Practice Act to revise DBC's requirements for the administration of various levels of outpatient sedation during dental procedures beginning in 2022. [\[24:1 CRLR 7\]](#) In response to the legislature's concern about the volume of regulatory and technical work to be completed in time for the January 1, 2022 implementation date, Board staff outlined the various steps to implementation for four revised and new categories of pediatric anesthesia and sedation. All of these categories will require regulatory changes, new internal DBC processes, and modifications to technology for patient/data tracking. The Board reported that current staff have begun work on technology modifications and new program requirements, but the regulatory changes will happen after the new budget year (July 1, 2019). DBC requested additional staff in the new budget to work on SB 501 implementation.

Finally, DBC addressed the status of the Board’s implementation of the Consumer Protection Enforcement Initiative regulations to measure performance around expediency of resolving complaints and disciplinary enforcement timelines. Meeting these targets is important to both protect consumers and release good actors from an allegation of misconduct. The legislature raised concerns that DBC is meeting some, but not all of its goals, and provided statistics indicating that delays persist in the investigative phase, which could be due to factors such as vacancy rates within the DBC’s Enforcement Division or the relative challenges of investigating complex cases. DBC reported that it made some significant internal changes in late 2018 in an attempt to bring their overall case handling timeline down to the target of 540 days. This includes new management processes to manage staff workloads, quarterly meetings by DCA to bring boards and teams together to resolve cases more quickly, and quarterly case audits and desk reviews with staff. DBC has also increased its issuance of citations to address a wider range of lesser violations.

[AB 1519 \(Committee on Business & Professions\)](#) is the Board’s “sunset bill,” which currently proposes to extend the Board’s sunset date to January 2024. [see LEGISLATION]

## **Dental Hygiene Board of California**

Effective January 1, 2019 the Dental Hygiene Board of California (DHBC), formerly known as the Dental Hygiene Committee of California, became its own independent board pursuant to [SB 1482 \(Hill\) \(Chapter 858, Statutes of 2018\)](#). [24:1 CRLR 6] The bill amended sections 1900–1967 of the Business and Professions Code to establish DHBC as an independent board within DCA and continues its operations until January 1, 2023. This bill and subsequent establishment of DHBC as its own board have not been controversial, as DHCC has been regulating RDHs, RDHAPs, and RDHEFs under the jurisdiction of DBC since 2009.

# LEGISLATION

[AB 1519 \(Committee on Business & Professions\)](#), as amended February 22, 2019, is the Dental Board of California's sunset review bill and would amend sections 1601.1 and 1616.5 of the Business and Professions Code to extend the sunset date to January 1, 2024. This bill would also extend provisions relating to DBC and its executive officer to January 1, 2024. At this writing, there are no other substantive changes to the Dental Practice Act in this legislation. *[A. B&P]*

[AB 544 \(Brough\)](#), as amended March 21, 2019, would amend sections 1718, 1718.3, and 1936 of the Business and Professions Code to limit the maximum fee for the renewal of an inactive license to no more than 50% of the renewal fee for an active license. The bill would also prohibit DBC from requiring payment of unpaid renewal fees as a condition of reinstating an expired license. According to the author, the bill is necessary because often the fee paid for the renewal of an inactive license is the same as the full fee paid for renewal by active license holders. Also, for certain licenses that have expired, all accrued fees must be paid as a condition of reinstatement of the license, which can be a barrier to re-entry to the profession. *[A. B&P]*

[AB 1622 \(Carrillo\)](#), as amended April 4, 2019, would amend section 1682 of the Business and Professions Code that requires dentists to include a statement that encourages the patient to explore all options available for a child's anesthesia for dental treatment, and consult with the child's dentist or pediatrician, as part of informed consent for conscious sedation. This bill would add family physicians to the informed consent statement for general anesthesia provided by dentists. According to the bill's sponsors the California Academy of Family Physicians, despite their training there were legal restrictions to their practice. This bill allows them to practice to their full capacity. *[A. Appr]*



[SB 653 \(Chang\)](#), as amended March 27, 2019, would amend sections 1907, 1911, 1926, and 1926.05 of, and would add sections 1911.5 and 1926.5 to, the Business and Professions Code, relating to dental hygienists. Of note, this bill would authorize a registered dental hygienist to perform the functions of a registered dental assistant in a dental or medical setting, and would specifically authorize a registered dental hygienist to provide fluoride varnish to a patient without supervision. This bill would allow a registered dental hygienist to provide preventive services and oral screenings in public or community-based outreach programs. Additionally, it would authorize a registered dental hygienist in alternative practice to perform specified functions and duties, similar to a registered dental hygienist in dental or medical settings. According to the bill's sponsor, the California Dental Hygienists' Association, this bill would provide patients the same type of professional preventive care they would receive in a dental office, and would increase access to dental care by allowing patients to receive this care in community settings such as schools, skilled nursing facilities, hospitals, and private homes. *[S. BP&ED]*

[SB 786 \(Business, Professions & Economic Development\)](#), as amended April 11, 2019, would amend sections 1902–1966.6 of the Business and Professions Code, relating to the Dental Hygiene Board. This bill would make non-controversial, minor, non-substantive, and technical changes. Of note for the Dental Hygiene Board, this bill adds “dental” before “hygiene board” throughout the Dental Practice Act and clarifies that restoration materials used in interim therapeutic restorations are “interim.” *[S. BP&ED]*

## **RECENT MEETINGS**

At the November 29, 2018 [meeting](#), DBC staff discussed the status of several ongoing regulatory packages which have not been formally noticed. Board staff reported they have

finalized language for several initial rulemaking proposals related to continuing education requirements and basic life support equivalency standards (sections 1016 and 1017, CRR, Title 16) and elective facial cosmetic surgery permit application and renewal requirements (sections 1044.6, 1044.7, and 1044.8, CRR, Title 16). These drafts are being reviewed by legal staff at DCA. Board staff also reported that they are preparing rulemaking language for the following issues: minimum standards for infection control (section 1005, CRR, Title 16); comprehensive standards for dental assisting (Division 10, Chapter 3, CRR, Title 16); determination of radiographs and placement of interim therapeutic restorations (new regulation), licensure by credential application requirements, mobile dental clinic and portable dental unit registration requirements (section 1028.6, CRR, Title 16); and citations and fines (sections 1023.2 and 1023.7, CRR, Title 16).

At its November 30, 2019 [meeting](#), the Board elected Ms. Fran Burton as President, Dr. Steven Morrow as Vice President, and Dr. Steven Chan as Secretary.

At its February 7–8, 2019 [meeting](#), DBC gave additional updates on its ongoing regulatory packages. Specifically, the Board voted to approve proposed rulemaking to amend sections 1016 and 1017, Title 16 of the CRR to include “the risks of addiction associated with the use of Schedule II drugs” as a continuing education course required for license renewal pursuant to [SB 1109 \(Bates\) \(Chapter 693, Statutes of 2018\)](#). *[24:1 CRLR 11]* The Board discussed the need for future regulations with its ongoing implementation of SB 501 (Glazer), but at this writing has not presented language to the Board.