

# Summary of the Meeting of the Dental Board of California

February 25-26, 2010

## Prepared for the California Society of Pediatric Dentistry

*The Dental Board of California met February 25-26, 2010, in San Diego. The following summarizes actions and issues coming before the Board pertinent to pediatric oral health*

### **8-Hour Infection Control Course Requirement for Unlicensed Dental Assistants**

AB 2637 (2008), which became operational January 1, 2010, redefined the dental assisting regulatory structure. This bill created the Orthodontic Assistant Permit, the Dental Sedation Assistant Permit and modified the scope of practice of the Registered Dental Assistant, Registered Dental Assistant in Extended Functions, and unlicensed dental assistant. Included in the provisions of this legislation is the requirement that beginning in 2010, dentist employers will be responsible for ensuring that unlicensed dental assistants complete, within one year of employment, one time only, a 2-hour course on the California Dental Practice Act (CDPA) and an 8-hour infection control course. Dentists will also be responsible for ensuring that unlicensed dental assistants in their employ obtain and maintain certification in basic life support (BLS).

While the CDPA and BLS requirements can be met with existing courses, the 8-hour infection control course requires completion of a newly designed, Board-approved course specifically for unlicensed dental assistants. This course must contain a four-hour didactic component (which may be provided by electronic transmission) and a live, in-person two-hour pre-clinical and two-hour clinical component with no greater than six students per instructor which cannot be given by electronic transmission or distance learning.

The issue before the Board concerned whether this requirement was intended to apply to all unlicensed dental assistants or only those hired after January 1, 2010. The statute was ambiguous on this point. An opinion by the California Legislative Counsel, a nonpartisan public agency that drafts legislative proposals, prepares legal opinions, and provides other legal services to the Legislature, at the request of the bill's author, Mike Eng, concluded that the Dental Board could reasonably accept either interpretation. Further, it was the opinion of the Legislative Counsel that the courts would uphold either decision of the Board. With this information, the Board voted that the requirement that an unlicensed dental assistant must complete the 8-hour infection control course applies only to those individuals first hired by his or her current employer after January 1, 2010. The Board further decided that any unlicensed dental assistant who could produce evidence of satisfactorily completion of Board-approved Registered Dental Assistant training would be deemed to having met the requirement.

*Comment: The action of the Board removes a formidable obstacle to continued employment for many of the estimated 40,000 to 50,000 unlicensed dental assistants currently working in California. Two situations, however, should be noted:*

- If a dental assistant working for his or her current employer prior to January 1, 2010, leaves that employment, it becomes the responsibility the next employer to ensure that the requirement is met.*
- If an employer changes employment entity (e.g. a sole proprietor becomes a corporation or a partnership or the practice is sold to a new practice owner), then the unlicensed dental assistant working under the January 1, 2010 prior-employment exclusion must now meet the requirement.*

*Additionally, it should be noted that the decision of the Board relates only to the infection control and California Law courses. The employing dentist is still responsible for ensuring that all unlicensed dental assistants, regardless of their first date of employment, meet the requirement of obtaining and maintaining certification in Basic Life Support.*

### **Consumer Protection Enforcement Initiative (CPEI) of the Department of Consumer Affairs**

The Department of Consumer Affairs (DCA) has initiated a series of reforms, termed the *Consumer Protection Enforcement Initiative*, to reform and streamline the enforcement process of the 18 healing arts boards it oversees. The program is intended to enable healing arts boards to more efficiently investigate consumer complaints and prosecute licensees under their jurisdictions. The goal is to reduce by half (from an average of 36 months to between 12 and 18 months) the conclusion of time needed for investigation and prosecution of accused licensees. The CPEI targets three areas:

- **Administrative Reform:** New performance measures and revised internal operations of the healing arts boards' Enforcement Divisions will be designed to streamline procedures, target problem investigations, and improve probation monitoring.
- **Increase in Enforcement Resources:** The Dental Board of California's Enforcement Division will grow by approximately 20%. Reforms include the hiring on non-sworn investigators and increasing the number of dental consultants, especially dental specialists, to review cases.
- **Pursuit of Legislation:** The DCA is sponsoring legislation, SB 1111 (Negrette McLeod), that would expand the powers of the healing arts boards and provide increased regulatory tools and authorities to more efficiently investigate and prosecute suspected violations of law by healing arts practitioners.

*Comment: This bill represents a monumental change to the enforcement capabilities of the Dental Board of California and the 17 other Healing Arts Boards under the jurisdiction of the DCA. While the intent is in the public interest, there is concern, at the same time, to maintain fairness and due legal process for licensees accused of violations of the Dental Practice Act or other authority. The 37 separate provisions of the bill as introduced will need to undergo rigorous legal analysis and evaluation before CSPD can determine a position on this proposed legislation.*

### **DBC Complaint and Compliance Unit Cite and Fine Authority**

In an effort to streamline enforcement investigations, effective February 1, 2010, the Board's Complaint and Compliance Unit began citing and fining licensees who fail or refuse to comply with the Board's request for dental records. In the past, it was the Board's practice to send three letters, the last by certified mail, when records were requested. Beginning February 1, it is now the Board's practice to send a single certified letter to both subject dentists and to subsequent or previous providers. If, after 45, days the records are not received and the dentist has not been granted an extension or waiver from the Board, he or she will receive a second certified letter demanding the records accompanied by a citation and \$5,000 fine. The Board's website now contains the following policy announcement:

**Effective February 1, 2010, the Dental Board of California (Board) will be uniformly citing and fining licensees who fail or refuse to comply with the Board's request for dental records.**

Business and Professions Code Section 1684.1. (a) (1) states:

A licensee who fails or refuses to comply with a request for the dental records of a patient, that is accompanied by that patient's written authorization for release of record to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of two hundred fifty dollars (\$250) per day for each day that the documents have not been produced after the 15th day, up to a maximum of five thousand dollars (\$5,000) unless the licensee is unable to provide the documents within this time period for good cause.

*Comment: The Board will entertain an informal appeal process of the fine if the records are produced and an appeal requested within 30 days. The appeal will be heard by the Board's Executive Officer. Continued failure to produce the requested records without adequate explanation will result in initiation of disciplinary proceedings.*

**Retroactive Fingerprinting Regulations**

Currently the Dental Board of California along with other boards and bureaus of the Department of Consumer Affairs requires license applicants to provide electronic fingerprint records for a criminal background check prior to issuance of the license. Although required since 1986, this licensure prerequisite was not retroactive. Dental licensees, therefore, who obtained licenses prior to that date have no electronic fingerprint record. As a result the Board has no criminal history or subsequent arrest records for any dentist licensed prior to 1986 or for any Registered Dental Assistants prior to 1999.

To correct this situation, the Board approved regulatory language to amend the California Code of Regulations to require the submission of electronic fingerprint records to the Department of Justice as a condition of license renewal for any licensee without such records on file. The licensee will pay the costs of furnishing the fingerprints and the Department of Justice search, estimated at \$50 to \$60.

As another condition of license renewal, the licensee will be required to self-disclose whether, in the prior renewal cycle, he or she has been convicted of any violation of law in California or any other state or country, omitting traffic infractions under \$1,000.00 so long as the infraction does not involve alcohol, dangerous drugs, or controlled substances.

*Comment: The proposed regulatory language is still subject to a 15-day comment period and approval of what is known as the "rulemaking file" by the Office of Administrative Law before it becomes effective. It is anticipated that implementation will begin with December 2010 renewals.*

Respectfully Submitted,

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