

AMENDED IN ASSEMBLY SEPTEMBER 1, 2011

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JULY 12, 2011

AMENDED IN ASSEMBLY JUNE 27, 2011

AMENDED IN SENATE MAY 12, 2011

AMENDED IN SENATE MAY 9, 2011

AMENDED IN SENATE APRIL 25, 2011

**SENATE BILL**

**No. 540**

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**Introduced by Senator Price**

February 17, 2011

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An act to amend Sections 651, 1603, 1628.7, 1632, 1695.5, 1725, 1752.3, 1753.4, 1905.2, and 1973 of, *to amend and repeal Sections 1901 and 1903 of*, to add Section 1611.3 to, to repeal and amend Sections 1601.1 and 1616.5 of, and to repeal and add Section 1742 of, the Business and Professions Code, relating to dentistry.

LEGISLATIVE COUNSEL'S DIGEST

SB 540, as amended, Price. Dentistry.

**Existing**

(1) *Existing* law, until January 1, 2012, provides for the Dental Board of California within the Department of Consumer Affairs. Existing law requires the membership of the board to consist of 8 practicing dentists, a registered dental hygienist, a registered dental assistant, and 4 public members. Existing law requires the Governor to appoint all of the members of the board, except that the Senate Committee on Rules and the Speaker of the Assembly each appoint a public member. Existing

law, until January 1, 2012, allows the board, with the approval of the Director of Consumer Affairs, to appoint a person exempt from civil service as the executive officer of the board. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of those provisions until January 1, 2016, and instead specify that the board would be subject to review by the appropriate policy committees of the Legislature. The bill would change the membership of the board to include one additional public member, to be appointed by the Governor. The bill would also create a Dental Assisting Council of the board, to be appointed by the board, to consider matters relating to dental assistants and make recommendations to the board and standing committees of the board, as specified.

Existing law makes it unlawful for a healing arts practitioner to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. Existing law prohibits a dentist from making certain advertisements or holding himself or herself out as a specialist unless he or she meets specified criteria.

This bill would delete the advertising prohibitions described above that apply only to dentists.

Existing law requires every board in the Department of Consumer Affairs to initiate the process of adopting regulations on or before June 30, 1999, to require its licensees to provide notice to their clients or customers that the practitioner is licensed in this state, except as specified.

This bill would require the board to comply with that provision by January 1, 2013, and would set forth requirements for the notice to be adopted by the board.

Existing law authorizes the board to, upon an applicant's successful completion of the board examination, issue a probationary license to an applicant for licensure as a dentist or dental auxiliary. Existing law authorizes the board to require the applicant to comply with specified terms or conditions of a probationary license.

This bill would require the board to adopt written guidelines on how to make probation assignments and to ensure that probationary and evaluation reports are conducted consistently and regularly.

Existing law requires an applicant for licensure as a dentist to successfully complete an examination in California law and ethics developed and administered by the board.

This bill would require the board to ensure that the law and ethics examination reflects current law and regulations and that the examinations are randomized.

Existing law requires the board to establish criteria for the acceptance, denial, or termination of licentiates in a diversion program for the rehabilitation of licensees.

This bill would make changes to the provisions that apply to a licensee who withdraws or terminates from the diversion program. The bill would provide that all diversion records for that licensee shall be provided to the board's enforcement program and may be used in any disciplinary proceeding, including if the licensee tests positive for banned substances, as specified.

Existing law provides that the amount of the fees under the Dental Practice Act that relate to the licensing and permitting of dental assistants shall be established by resolution.

This bill would instead require those fees to be established by regulation.

Existing law requires the board to extend the California Dental Corps Loan Repayment Program of 2002 and distribute the money remaining in the account only until July 1, 2012.

This bill would instead require the moneys to be distributed until all of the moneys are expended.

*(2) Existing law creates the Dental Hygiene Committee of California within the Dental Board of California. The committee is responsible for the registration and regulation of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions. Under existing law, the committee consists of 9 members appointed by the Governor. Under existing law, members of the committee are appointed to a term of 4 years and the terms for the initial appointments expire on December 31, 2011. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.*

*This bill would provide for the repeal of the committee on January 1, 2015. The bill would provide for staggered terms for members of the*

*committee beginning January 1, 2012, as specified. The bill would require the committee to be subject to review by the appropriate policy committees of the Legislature.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 651 of the Business and Professions Code  
2 is amended to read:

3 651. (a) It is unlawful for any person licensed under this  
4 division or under any initiative act referred to in this division to  
5 disseminate or cause to be disseminated any form of public  
6 communication containing a false, fraudulent, misleading, or  
7 deceptive statement, claim, or image for the purpose of or likely  
8 to induce, directly or indirectly, the rendering of professional  
9 services or furnishing of products in connection with the  
10 professional practice or business for which he or she is licensed.  
11 A “public communication” as used in this section includes, but is  
12 not limited to, communication by means of mail, television, radio,  
13 motion picture, newspaper, book, list or directory of healing arts  
14 practitioners, Internet, or other electronic communication.

15 (b) A false, fraudulent, misleading, or deceptive statement,  
16 claim, or image includes a statement or claim that does any of the  
17 following:

18 (1) Contains a misrepresentation of fact.

19 (2) Is likely to mislead or deceive because of a failure to disclose  
20 material facts.

21 (3) (A) Is intended or is likely to create false or unjustified  
22 expectations of favorable results, including the use of any  
23 photograph or other image that does not accurately depict the  
24 results of the procedure being advertised or that has been altered  
25 in any manner from the image of the actual subject depicted in the  
26 photograph or image.

27 (B) Use of any photograph or other image of a model without  
28 clearly stating in a prominent location in easily readable type the  
29 fact that the photograph or image is of a model is a violation of  
30 subdivision (a). For purposes of this paragraph, a model is anyone  
31 other than an actual patient, who has undergone the procedure

1 being advertised, of the licensee who is advertising for his or her  
2 services.

3 (C) Use of any photograph or other image of an actual patient  
4 that depicts or purports to depict the results of any procedure, or  
5 presents “before” and “after” views of a patient, without specifying  
6 in a prominent location in easily readable type size what procedures  
7 were performed on that patient is a violation of subdivision (a).  
8 Any “before” and “after” views (i) shall be comparable in  
9 presentation so that the results are not distorted by favorable poses,  
10 lighting, or other features of presentation, and (ii) shall contain a  
11 statement that the same “before” and “after” results may not occur  
12 for all patients.

13 (4) Relates to fees, other than a standard consultation fee or a  
14 range of fees for specific types of services, without fully and  
15 specifically disclosing all variables and other material factors.

16 (5) Contains other representations or implications that in  
17 reasonable probability will cause an ordinarily prudent person to  
18 misunderstand or be deceived.

19 (6) Makes a claim either of professional superiority or of  
20 performing services in a superior manner, unless that claim is  
21 relevant to the service being performed and can be substantiated  
22 with objective scientific evidence.

23 (7) Makes a scientific claim that cannot be substantiated by  
24 reliable, peer reviewed, published scientific studies.

25 (8) Includes any statement, endorsement, or testimonial that is  
26 likely to mislead or deceive because of a failure to disclose material  
27 facts.

28 (c) Any price advertisement shall be exact, without the use of  
29 phrases, including, but not limited to, “as low as,” “and up,”  
30 “lowest prices,” or words or phrases of similar import. Any  
31 advertisement that refers to services, or costs for services, and that  
32 uses words of comparison shall be based on verifiable data  
33 substantiating the comparison. Any person so advertising shall be  
34 prepared to provide information sufficient to establish the accuracy  
35 of that comparison. Price advertising shall not be fraudulent,  
36 deceitful, or misleading, including statements or advertisements  
37 of bait, discount, premiums, gifts, or any statements of a similar  
38 nature. In connection with price advertising, the price for each  
39 product or service shall be clearly identifiable. The price advertised  
40 for products shall include charges for any related professional

1 services, including dispensing and fitting services, unless the  
2 advertisement specifically and clearly indicates otherwise.

3 (d) Any person so licensed shall not compensate or give anything  
4 of value to a representative of the press, radio, television, or other  
5 communication medium in anticipation of, or in return for,  
6 professional publicity unless the fact of compensation is made  
7 known in that publicity.

8 (e) Any person so licensed may not use any professional card,  
9 professional announcement card, office sign, letterhead, telephone  
10 directory listing, medical list, medical directory listing, or a similar  
11 professional notice or device if it includes a statement or claim  
12 that is false, fraudulent, misleading, or deceptive within the  
13 meaning of subdivision (b).

14 (f) Any person so licensed who violates this section is guilty of  
15 a misdemeanor. A bona fide mistake of fact shall be a defense to  
16 this subdivision, but only to this subdivision.

17 (g) Any violation of this section by a person so licensed shall  
18 constitute good cause for revocation or suspension of his or her  
19 license or other disciplinary action.

20 (h) Advertising by any person so licensed may include the  
21 following:

22 (1) A statement of the name of the practitioner.

23 (2) A statement of addresses and telephone numbers of the  
24 offices maintained by the practitioner.

25 (3) A statement of office hours regularly maintained by the  
26 practitioner.

27 (4) A statement of languages, other than English, fluently spoken  
28 by the practitioner or a person in the practitioner's office.

29 (5) (A) A statement that the practitioner is certified by a private  
30 or public board or agency or a statement that the practitioner limits  
31 his or her practice to specific fields.

32 (B) A statement of certification by a practitioner licensed under  
33 Chapter 7 (commencing with Section 3000) shall only include a  
34 statement that he or she is certified or eligible for certification by  
35 a private or public board or parent association recognized by that  
36 practitioner's licensing board.

37 (C) A physician and surgeon licensed under Chapter 5  
38 (commencing with Section 2000) by the Medical Board of  
39 California may include a statement that he or she limits his or her  
40 practice to specific fields, but shall not include a statement that he

1 or she is certified or eligible for certification by a private or public  
2 board or parent association, including, but not limited to, a  
3 multidisciplinary board or association, unless that board or  
4 association is (i) an American Board of Medical Specialties  
5 member board, (ii) a board or association with equivalent  
6 requirements approved by that physician and surgeon’s licensing  
7 board, or (iii) a board or association with an Accreditation Council  
8 for Graduate Medical Education approved postgraduate training  
9 program that provides complete training in that specialty or  
10 subspecialty. A physician and surgeon licensed under Chapter 5  
11 (commencing with Section 2000) by the Medical Board of  
12 California who is certified by an organization other than a board  
13 or association referred to in clause (i), (ii), or (iii) shall not use the  
14 term “board certified” in reference to that certification, unless the  
15 physician and surgeon is also licensed under Chapter 4  
16 (commencing with Section 1600) and the use of the term “board  
17 certified” in reference to that certification is in accordance with  
18 subparagraph (A). A physician and surgeon licensed under Chapter  
19 5 (commencing with Section 2000) by the Medical Board of  
20 California who is certified by a board or association referred to in  
21 clause (i), (ii), or (iii) shall not use the term “board certified” unless  
22 the full name of the certifying board is also used and given  
23 comparable prominence with the term “board certified” in the  
24 statement.

25 For purposes of this subparagraph, a “multidisciplinary board  
26 or association” means an educational certifying body that has a  
27 psychometrically valid testing process, as determined by the  
28 Medical Board of California, for certifying medical doctors and  
29 other health care professionals that is based on the applicant’s  
30 education, training, and experience.

31 For purposes of the term “board certified,” as used in this  
32 subparagraph, the terms “board” and “association” mean an  
33 organization that is an American Board of Medical Specialties  
34 member board, an organization with equivalent requirements  
35 approved by a physician and surgeon’s licensing board, or an  
36 organization with an Accreditation Council for Graduate Medical  
37 Education approved postgraduate training program that provides  
38 complete training in a specialty or subspecialty.

39 The Medical Board of California shall adopt regulations to  
40 establish and collect a reasonable fee from each board or

1 association applying for recognition pursuant to this subparagraph.  
2 The fee shall not exceed the cost of administering this  
3 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the  
4 Statutes of 1990, this subparagraph shall become operative July  
5 1, 1993. However, an administrative agency or accrediting  
6 organization may take any action contemplated by this  
7 subparagraph relating to the establishment or approval of specialist  
8 requirements on and after January 1, 1991.

9 (D) A doctor of podiatric medicine licensed under Chapter 5  
10 (commencing with Section 2000) by the Medical Board of  
11 California may include a statement that he or she is certified or  
12 eligible or qualified for certification by a private or public board  
13 or parent association, including, but not limited to, a  
14 multidisciplinary board or association, if that board or association  
15 meets one of the following requirements: (i) is approved by the  
16 Council on Podiatric Medical Education, (ii) is a board or  
17 association with equivalent requirements approved by the  
18 California Board of Podiatric Medicine, or (iii) is a board or  
19 association with the Council on Podiatric Medical Education  
20 approved postgraduate training programs that provide training in  
21 podiatric medicine and podiatric surgery. A doctor of podiatric  
22 medicine licensed under Chapter 5 (commencing with Section  
23 2000) by the Medical Board of California who is certified by a  
24 board or association referred to in clause (i), (ii), or (iii) shall not  
25 use the term “board certified” unless the full name of the certifying  
26 board is also used and given comparable prominence with the term  
27 “board certified” in the statement. A doctor of podiatric medicine  
28 licensed under Chapter 5 (commencing with Section 2000) by the  
29 Medical Board of California who is certified by an organization  
30 other than a board or association referred to in clause (i), (ii), or  
31 (iii) shall not use the term “board certified” in reference to that  
32 certification.

33 For purposes of this subparagraph, a “multidisciplinary board  
34 or association” means an educational certifying body that has a  
35 psychometrically valid testing process, as determined by the  
36 California Board of Podiatric Medicine, for certifying doctors of  
37 podiatric medicine that is based on the applicant’s education,  
38 training, and experience. For purposes of the term “board certified,”  
39 as used in this subparagraph, the terms “board” and “association”  
40 mean an organization that is a Council on Podiatric Medical

1 Education approved board, an organization with equivalent  
2 requirements approved by the California Board of Podiatric  
3 Medicine, or an organization with a Council on Podiatric Medical  
4 Education approved postgraduate training program that provides  
5 training in podiatric medicine and podiatric surgery.

6 The California Board of Podiatric Medicine shall adopt  
7 regulations to establish and collect a reasonable fee from each  
8 board or association applying for recognition pursuant to this  
9 subparagraph, to be deposited in the State Treasury in the Podiatry  
10 Fund, pursuant to Section 2499. The fee shall not exceed the cost  
11 of administering this subparagraph.

12 (6) A statement that the practitioner provides services under a  
13 specified private or public insurance plan or health care plan.

14 (7) A statement of names of schools and postgraduate clinical  
15 training programs from which the practitioner has graduated,  
16 together with the degrees received.

17 (8) A statement of publications authored by the practitioner.

18 (9) A statement of teaching positions currently or formerly held  
19 by the practitioner, together with pertinent dates.

20 (10) A statement of his or her affiliations with hospitals or  
21 clinics.

22 (11) A statement of the charges or fees for services or  
23 commodities offered by the practitioner.

24 (12) A statement that the practitioner regularly accepts  
25 installment payments of fees.

26 (13) Otherwise lawful images of a practitioner, his or her  
27 physical facilities, or of a commodity to be advertised.

28 (14) A statement of the manufacturer, designer, style, make,  
29 trade name, brand name, color, size, or type of commodities  
30 advertised.

31 (15) An advertisement of a registered dispensing optician may  
32 include statements in addition to those specified in paragraphs (1)  
33 to (14), inclusive, provided that any statement shall not violate  
34 subdivision (a), (b), (c), or (e) or any other section of this code.

35 (16) A statement, or statements, providing public health  
36 information encouraging preventative or corrective care.

37 (17) Any other item of factual information that is not false,  
38 fraudulent, misleading, or likely to deceive.

39 (i) Each of the healing arts boards and examining committees  
40 within Division 2 shall adopt appropriate regulations to enforce

1 this section in accordance with Chapter 3.5 (commencing with  
2 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
3 Code.

4 Each of the healing arts boards and committees and examining  
5 committees within Division 2 shall, by regulation, define those  
6 efficacious services to be advertised by businesses or professions  
7 under their jurisdiction for the purpose of determining whether  
8 advertisements are false or misleading. Until a definition for that  
9 service has been issued, no advertisement for that service shall be  
10 disseminated. However, if a definition of a service has not been  
11 issued by a board or committee within 120 days of receipt of a  
12 request from a licensee, all those holding the license may advertise  
13 the service. Those boards and committees shall adopt or modify  
14 regulations defining what services may be advertised, the manner  
15 in which defined services may be advertised, and restricting  
16 advertising that would promote the inappropriate or excessive use  
17 of health services or commodities. A board or committee shall not,  
18 by regulation, unreasonably prevent truthful, nondeceptive price  
19 or otherwise lawful forms of advertising of services or  
20 commodities, by either outright prohibition or imposition of  
21 onerous disclosure requirements. However, any member of a board  
22 or committee acting in good faith in the adoption or enforcement  
23 of any regulation shall be deemed to be acting as an agent of the  
24 state.

25 (j) The Attorney General shall commence legal proceedings in  
26 the appropriate forum to enjoin advertisements disseminated or  
27 about to be disseminated in violation of this section and seek other  
28 appropriate relief to enforce this section. Notwithstanding any  
29 other provision of law, the costs of enforcing this section to the  
30 respective licensing boards or committees may be awarded against  
31 any licensee found to be in violation of any provision of this  
32 section. This shall not diminish the power of district attorneys,  
33 county counsels, or city attorneys pursuant to existing law to seek  
34 appropriate relief.

35 (k) A physician and surgeon or doctor of podiatric medicine  
36 licensed pursuant to Chapter 5 (commencing with Section 2000)  
37 by the Medical Board of California who knowingly and  
38 intentionally violates this section may be cited and assessed an  
39 administrative fine not to exceed ten thousand dollars (\$10,000)  
40 per event. Section 125.9 shall govern the issuance of this citation

1 and fine except that the fine limitations prescribed in paragraph  
2 (3) of subdivision (b) of Section 125.9 shall not apply to a fine  
3 under this subdivision.

4 SEC. 2. Section 1601.1 of the Business and Professions Code,  
5 as added by Section 3 of Chapter 31 of the Statutes of 2008, is  
6 repealed.

7 SEC. 3. Section 1601.1 of the Business and Professions Code,  
8 as added by Section 1 of Chapter 35 of the Statutes of 2008, is  
9 amended to read:

10 1601.1. (a) There shall be in the Department of Consumer  
11 Affairs the Dental Board of California in which the administration  
12 of this chapter is vested. The board shall consist of eight practicing  
13 dentists, one registered dental hygienist, one registered dental  
14 assistant, and five public members. Of the eight practicing dentists,  
15 one shall be a member of a faculty of any California dental college,  
16 and one shall be a dentist practicing in a nonprofit community  
17 clinic. The appointing powers, described in Section 1603, may  
18 appoint to the board a person who was a member of the prior board.  
19 The board shall be organized into standing committees dealing  
20 with examinations, enforcement, and other subjects as the board  
21 deems appropriate.

22 (b) For purposes of this chapter, any reference in this chapter  
23 to the Board of Dental Examiners shall be deemed to refer to the  
24 Dental Board of California.

25 (c) The board shall have all authority previously vested in the  
26 existing board under this chapter. The board may enforce all  
27 disciplinary actions undertaken by the previous board.

28 (d) This section shall remain in effect only until January 1, 2016,  
29 and as of that date is repealed, unless a later enacted statute, that  
30 is enacted before January 1, 2016, deletes or extends that date.  
31 Notwithstanding any other provision of law, the repeal of this  
32 section renders the board subject to review by the appropriate  
33 policy committees of the Legislature.

34 SEC. 4. Section 1603 of the Business and Professions Code is  
35 amended to read:

36 1603. Except for the initial appointments, members of the board  
37 shall be appointed for a term of four years, and each member shall  
38 hold office until the appointment and qualification of his or her  
39 successor or until one year shall have elapsed since the expiration

1 of the term for which he or she was appointed, whichever first  
2 occurs.

3 A vacancy occurring during a term shall be filled by appointment  
4 for the unexpired term, within 30 days after it occurs.

5 No person shall serve as a member of the board for more than  
6 two terms.

7 The Governor shall appoint three of the public members, the  
8 dental hygienist member, the dental assistant member, and the  
9 eight licensed dentist members of the board. The Senate Committee  
10 on Rules and the Speaker of the Assembly shall each appoint a  
11 public member.

12 Of the initial appointments, one of the dentist members and one  
13 of the public members appointed by the Governor shall serve for  
14 a term of one year. Two of the dentist members appointed by the  
15 Governor shall each serve for a term of two years. One of the  
16 public members and two of the dentist members appointed by the  
17 Governor shall each serve a term of three years. The dental  
18 hygienist member, the dental assistant member, and the remaining  
19 three dentists members appointed by the Governor shall each serve  
20 for a term of four years. The public members appointed by the  
21 Senate Committee on Rules and the Speaker of the Assembly shall  
22 each serve for a term of four years.

23 SEC. 5. Section 1611.3 is added to the Business and Professions  
24 Code, to read:

25 1611.3. The board shall comply with the requirements of  
26 Section 138 by January 1, 2013. The board shall require that the  
27 notice under that section include a provision that the board is the  
28 entity that regulates dentists and provide the telephone number  
29 and Internet address of the board. The board shall require the notice  
30 to be posted in a conspicuous location accessible to public view.

31 SEC. 6. Section 1616.5 of the Business and Professions Code,  
32 as added by Section 5 of Chapter 31 of the Statutes of 2008, is  
33 repealed.

34 SEC. 7. Section 1616.5 of the Business and Professions Code,  
35 as amended by Section 3 of Chapter 33 of the Statutes of 2008, is  
36 repealed.

37 SEC. 8. Section 1616.5 of the Business and Professions Code,  
38 as added by Section 2 of Chapter 35 of the Statutes of 2008, is  
39 amended to read:

1 1616.5. (a) The board, by and with the approval of the director,  
2 may appoint a person exempt from civil service who shall be  
3 designated as an executive officer and who shall exercise the  
4 powers and perform the duties delegated by the board and vested  
5 in him or her by this chapter.

6 (b) This section shall remain in effect only until January 1, 2016,  
7 and as of that date is repealed, unless a later enacted statute, that  
8 is enacted before January 1, 2016, deletes or extends that date.

9 SEC. 9. Section 1628.7 of the Business and Professions Code  
10 is amended to read:

11 1628.7. (a) The board may, upon an applicant's successful  
12 completion of the board examination, in its sole discretion, issue  
13 a probationary license to an applicant for licensure as a dentist or  
14 dental auxiliary. The board may require, as a term or condition of  
15 issuing the probationary license, the applicant to do any of the  
16 following, including, but not limited to:

17 (1) Successfully complete a professional competency  
18 examination.

19 (2) Submit to a medical or psychological evaluation.

20 (3) Submit to continuing medical or psychological treatment.

21 (4) Abstain from the use of alcohol or drugs.

22 (5) Submit to random fluid testing for alcohol or controlled  
23 substance abuse.

24 (6) Submit to continuing participation in a board approved  
25 rehabilitation program.

26 (7) Restrict the type or circumstances of practice.

27 (8) Submit to continuing education and coursework.

28 (9) Comply with requirements regarding notification to employer  
29 and changes of employment.

30 (10) Comply with probation monitoring.

31 (11) Comply with all laws and regulations governing the practice  
32 of dentistry.

33 (12) Limit practice to a supervised structured environment in  
34 which the licensee's activities shall be supervised by another  
35 dentist.

36 (13) Submit to total or partial restrictions on drug prescribing  
37 privileges.

38 (b) The probation shall be for three years and the licensee may  
39 petition the board for early termination, or modification of a

1 condition of, the probation in accordance with subdivision (b) of  
2 Section 1686.

3 (c) The proceeding under this section shall be conducted in  
4 accordance with the provisions of Chapter 5 (commencing with  
5 Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
6 Code, and the board shall have all the powers granted therein.

7 (d) The board shall adopt written guidelines on how to make  
8 probation assignments for licensees and shall ensure that  
9 probationary and evaluation reports are conducted consistently  
10 and regularly.

11 SEC. 10. Section 1632 of the Business and Professions Code  
12 is amended to read:

13 1632. (a) The board shall require each applicant to successfully  
14 complete the Part I and Part II written examinations of the National  
15 Board Dental Examination of the Joint Commission on National  
16 Dental Examinations.

17 (b) The board shall require each applicant to successfully  
18 complete an examination in California law and ethics developed  
19 and administered by the board. The board shall provide a separate  
20 application for this examination. The board shall ensure that the  
21 law and ethics examination reflects current law and regulations,  
22 and ensure that the examinations are randomized. Applicants shall  
23 submit this application and required fee to the board in order to  
24 take this examination. In addition to the aforementioned  
25 application, the only other requirement for taking this examination  
26 shall be certification from the dean of the qualifying dental school  
27 attended by the applicant that the applicant has graduated, or will  
28 graduate, or is expected to graduate. Applicants who submit  
29 completed applications and certification from the dean at least 15  
30 days prior to a scheduled examination shall be scheduled to take  
31 the examination. Successful results of the examination shall, as  
32 established by board regulation, remain valid for two years from  
33 the date that the applicant is notified of having passed the  
34 examination.

35 (c) Except as otherwise provided in Section 1632.5, the board  
36 shall require each applicant to have taken and received a passing  
37 score on one of the following:

38 (1) A portfolio examination of the applicant's competence to  
39 enter the practice of dentistry. This examination shall be conducted  
40 while the applicant is enrolled in a dental school program at a

1 board-approved school located in California. This examination  
2 shall utilize uniform standards of clinical experiences and  
3 competencies, as approved by the board pursuant to Section 1632.1.  
4 The applicant shall pass a final assessment of the submitted  
5 portfolio at the end of his or her dental school program. Before  
6 any portfolio assessment may be submitted to the board, the  
7 applicant shall remit to the board a three hundred fifty dollar (\$350)  
8 fee, to be deposited into the State Dentistry Fund, and a letter of  
9 good standing signed by the dean of his or her dental school or his  
10 or her delegate stating that the applicant has graduated or will  
11 graduate with no pending ethical issues.

12 (A) The portfolio examination shall not be conducted until the  
13 board adopts regulations to carry out this paragraph. The board  
14 shall post notice on its Internet Web site when these regulations  
15 have been adopted.

16 (B) The board shall also provide written notice to the Legislature  
17 and the Legislative Counsel when these regulations have been  
18 adopted.

19 (2) A clinical and written examination administered by the  
20 Western Regional Examining Board, which board shall determine  
21 the passing score for that examination.

22 (d) Notwithstanding subdivision (b) of Section 1628, the board  
23 is authorized to do either of the following:

24 (1) Approve an application for examination from, and to  
25 examine an applicant who is enrolled in, but has not yet graduated  
26 from, a reputable dental school approved by the board.

27 (2) Accept the results of an examination described in paragraph  
28 (2) of subdivision (c) submitted by an applicant who was enrolled  
29 in, but had not graduated from, a reputable dental school approved  
30 by the board at the time the examination was administered.

31 In either case, the board shall require the dean of that school or  
32 his or her delegate to furnish satisfactory proof that the applicant  
33 will graduate within one year of the date the examination was  
34 administered or as provided in paragraph (1) of subdivision (c).

35 SEC. 11. Section 1695.5 of the Business and Professions Code  
36 is amended to read:

37 1695.5. (a) The board shall establish criteria for the acceptance,  
38 denial, or termination of licentiates in a diversion program. Unless  
39 ordered by the board as a condition of licentiate disciplinary  
40 probation, only those licentiates who have voluntarily requested

1 diversion treatment and supervision by a committee shall  
2 participate in a diversion program.

3 (b) A licentiate who is not the subject of a current investigation  
4 may self-refer to the diversion program on a confidential basis,  
5 except as provided in subdivision (f).

6 (c) A licentiate under current investigation by the board may  
7 also request entry into the diversion program by contacting the  
8 board's Diversion Program Manager. The Diversion Program  
9 Manager may refer the licentiate requesting participation in the  
10 program to a diversion evaluation committee for evaluation of  
11 eligibility. Prior to authorizing a licentiate to enter into the  
12 diversion program, the Diversion Program Manager may require  
13 the licentiate, while under current investigation for any violations  
14 of the Dental Practice Act or other violations, to execute a  
15 statement of understanding that states that the licentiate understands  
16 that his or her violations of the Dental Practice Act or other statutes  
17 that would otherwise be the basis for discipline, may still be  
18 investigated and the subject of disciplinary action.

19 (d) If the reasons for a current investigation of a licentiate are  
20 based primarily on the self-administration of any controlled  
21 substance or dangerous drugs or alcohol under Section 1681, or  
22 the illegal possession, prescription, or nonviolent procurement of  
23 any controlled substance or dangerous drugs for self-administration  
24 that does not involve actual, direct harm to the public, the board  
25 shall close the investigation without further action if the licentiate  
26 is accepted into the board's diversion program and successfully  
27 completes the requirements of the program. If the licentiate  
28 withdraws or is terminated from the program by a diversion  
29 evaluation committee, and the termination is approved by the  
30 program manager, the investigation shall be reopened and  
31 disciplinary action imposed, if warranted, as determined by the  
32 board.

33 (e) Neither acceptance nor participation in the diversion program  
34 shall preclude the board from investigating or continuing to  
35 investigate, or taking disciplinary action or continuing to take  
36 disciplinary action against, any licentiate for any unprofessional  
37 conduct committed before, during, or after participation in the  
38 diversion program.

39 (f) If a licentiate withdraws or is terminated from the diversion  
40 program for failure to comply or is determined to be a threat to

1 the public or his or her own health and safety, all diversion records  
2 for that licentiate shall be provided to the board's enforcement  
3 program and may be used in any disciplinary proceeding. If a  
4 licentiate in a diversion program tests positive for any banned  
5 substance, the board's diversion program manager shall  
6 immediately notify the board's enforcement program and provide  
7 the documentation evidencing the positive test result to the  
8 enforcement program. This documentation may be used in a  
9 disciplinary proceeding.

10 (g) Any licentiate terminated from the diversion program for  
11 failure to comply with program requirements is subject to  
12 disciplinary action by the board for acts committed before, during,  
13 and after participation in the diversion program. A licentiate who  
14 has been under investigation by the board and has been terminated  
15 from the diversion program by a diversion evaluation committee  
16 shall be reported by the diversion evaluation committee to the  
17 board.

18 SEC. 12. Section 1725 of the Business and Professions Code  
19 is amended to read:

20 1725. The amount of the fees prescribed by this chapter that  
21 relate to the licensing and permitting of dental assistants shall be  
22 established by regulation and subject to the following limitations:

23 (a) The application fee for an original license shall not exceed  
24 twenty dollars (\$20). On and after January 1, 2010, the application  
25 fee for an original license shall not exceed fifty dollars (\$50).

26 (b) The fee for examination for licensure as a registered dental  
27 assistant shall not exceed fifty dollars (\$50) for the written  
28 examination and shall not exceed sixty dollars (\$60) for the  
29 practical examination.

30 (c) The fee for application and for the issuance of an orthodontic  
31 assistant permit or a dental sedation assistant permit shall not  
32 exceed fifty dollars (\$50).

33 (d) The fee for the written examination for an orthodontic  
34 assistant permit or a dental sedation assistant permit shall not  
35 exceed the actual cost of the examination.

36 (e) The fee for the written examination in law and ethics for a  
37 registered dental assistant shall not exceed the actual cost of the  
38 examination.

1 (f) The fee for examination for licensure as a registered dental  
2 assistant in extended functions shall not exceed the actual cost of  
3 the examination.

4 (g) The fee for examination for licensure as a registered dental  
5 hygienist shall not exceed the actual cost of the examination.

6 (h) For third- and fourth-year dental students, the fee for  
7 examination for licensure as a registered dental hygienist shall not  
8 exceed the actual cost of the examination.

9 (i) The fee for examination for licensure as a registered dental  
10 hygienist in extended functions shall not exceed the actual cost of  
11 the examination.

12 (j) The board shall establish the fee at an amount not to exceed  
13 the actual cost for licensure as a registered dental hygienist in  
14 alternative practice.

15 (k) The biennial renewal fee for a registered dental assistant  
16 whose license expires on or after January 1, 1991, shall not exceed  
17 sixty dollars (\$60). On or after January 1, 1992, the board may set  
18 the renewal fee for a registered dental assistant license, registered  
19 dental assistant in extended functions license, dental sedation  
20 assistant permit, or orthodontic assistant permit in an amount not  
21 to exceed eighty dollars (\$80).

22 (l) The delinquency fee shall not exceed twenty-five dollars  
23 (\$25) or one-half of the renewal fee, whichever is greater. Any  
24 delinquent license or permit may be restored only upon payment  
25 of all fees, including the delinquency fee.

26 (m) The fee for issuance of a duplicate registration, license,  
27 permit, or certificate to replace one that is lost or destroyed, or in  
28 the event of a name change, shall not exceed twenty-five dollars  
29 (\$25).

30 (n) The fee for each curriculum review and site evaluation for  
31 educational programs for registered dental assistants that are not  
32 accredited by a board-approved agency, or the Chancellor's office  
33 of the California Community Colleges shall not exceed one  
34 thousand four hundred dollars (\$1,400).

35 (o) The fee for review of each approval application for a course  
36 that is not accredited by a board-approved agency, or the  
37 Chancellor's office of the California Community Colleges shall  
38 not exceed three hundred dollars (\$300).

39 (p) No fees or charges other than those listed in subdivisions  
40 (a) to (o), inclusive, above shall be levied by the board in

1 connection with the licensure or permitting of dental assistants,  
2 registered dental assistant educational program site evaluations  
3 and course evaluations pursuant to this chapter.

4 (q) Fees fixed by the board pursuant to this section shall not be  
5 subject to the approval of the Office of Administrative Law.

6 (r) Fees collected pursuant to this section shall be deposited in  
7 the State Dental Assistant Fund.

8 SEC. 13. Section 1742 of the Business and Professions Code  
9 is repealed.

10 SEC. 14. Section 1742 is added to the Business and Professions  
11 Code, to read:

12 1742. (a) There is hereby created a Dental Assisting Council  
13 of the Dental Board of California, which shall consider all matters  
14 relating to dental assistants in this state, on its own initiative or  
15 upon the request of the board, and make appropriate  
16 recommendations to the board and the standing committees of the  
17 board, including, but not limited to, the following areas:

18 (1) Requirements for dental assistant examination, licensure,  
19 permitting, and renewal.

20 (2) Standards and criteria for approval of dental assisting  
21 educational programs, courses, and continuing education.

22 (3) Allowable dental assistant duties, settings, and supervision  
23 levels.

24 (4) Appropriate standards of conduct and enforcement for dental  
25 assistants.

26 (5) Requirements regarding infection control.

27 (b) (1) The members of the council shall be appointed by the  
28 board and shall include the registered dental assistant member of  
29 the board, another member of the board, and five registered dental  
30 assistants, representing as broad a range of dental assisting  
31 experience and education as possible, who meet the requirements  
32 of paragraph (2).

33 (2) The board shall consider, in its appointments of the five  
34 registered dental assistant members, recommendations submitted  
35 by any incorporated, nonprofit professional society, association,  
36 or entity whose membership is comprised of registered dental  
37 assistants within the state. Two of those members shall be  
38 employed as faculty members of a registered dental assisting  
39 educational program approved by the board, and shall have been  
40 so employed for at least the prior five years. Three of those

1 members, which shall include one registered dental assistant in  
2 extended functions, shall be employed clinically in private dental  
3 practice or public safety net or dental health care clinics. All five  
4 of those members shall have possessed a current and active  
5 registered dental assistant or registered dental assistant in extended  
6 functions license for at least the prior five years, and shall not be  
7 employed by a current member of the board.

8 (c) No council appointee shall have served previously on the  
9 dental assisting forum or have any financial interest in any  
10 registered dental assistant school. All final candidate qualifications  
11 and applications for board-appointed council members shall be  
12 made available in the published board materials with final  
13 candidate selection conducted during the normal business of the  
14 board during public meetings.

15 (d) A vacancy occurring during a term shall be filled by  
16 appointment by the board for the unexpired term, according to the  
17 criteria applicable to the vacancy within 90 days after it occurs.

18 (e) Each member shall comply with conflict of interest  
19 requirements that apply to board members.

20 (f) The council shall meet in conjunction with other board  
21 committees, and at other times as deemed necessary.

22 (g) Each member shall serve for a term of four years, except  
23 that, of the initial appointments of the nonboard members, one of  
24 the members shall serve a term of one year, one member shall  
25 serve a term of two years, two members shall serve a term of three  
26 years, and one member shall serve a term of four years, as  
27 determined by the board.

28 (h) Recommendations by the council pursuant to this section  
29 shall be approved, modified, or rejected by the board within 120  
30 days of submission of the recommendation to the board. If the  
31 board rejects or significantly modifies the intent or scope of the  
32 recommendation, the council may request that the board provide  
33 its reasons in writing for rejecting or significantly modifying the  
34 recommendation, which shall be provided by the board within 30  
35 days of the request.

36 (i) The board shall make all the initial appointments by May 1,  
37 2012.

38 (j) The council shall select a chair who shall establish the  
39 agendas of the council and shall serve as the council's liaison to

1 the board, including the reporting of the council’s recommendations  
2 to the board.

3 SEC. 15. Section 1752.3 of the Business and Professions Code  
4 is amended to read:

5 1752.3. (a) On and after January 1, 2010, the written  
6 examination for registered dental assistant licensure required by  
7 Section 1752.1 shall comply with Section 139.

8 (b) On and after January 1, 2010, the practical examination for  
9 registered dental assistant licensure required by Section 1752.1  
10 shall consist of three of the procedures described in paragraphs  
11 (1) to (4), inclusive. The specific procedures shall be assigned by  
12 the board, after considering recommendations of its Dental  
13 Assisting Council, and shall be graded by examiners appointed by  
14 the board. The procedures shall be performed on a fully articulated  
15 maxillary and mandibular typodont secured with a bench clamp.  
16 Each applicant shall furnish the required materials necessary to  
17 complete the examination.

18 (1) Place a base or liner.

19 (2) Place, adjust, and finish a direct provisional restoration.

20 (3) Fabricate and adjust an indirect provisional restoration.

21 (4) Cement an indirect provisional restoration.

22 SEC. 16. Section 1753.4 of the Business and Professions Code  
23 is amended to read:

24 1753.4. On and after January 1, 2010, each applicant for  
25 licensure as a registered dental assistant in extended functions shall  
26 successfully complete an examination consisting of the procedures  
27 described in subdivisions (a) and (b). On and after January 1, 2010,  
28 each person who holds a current and active registered dental  
29 assistant in extended functions license issued prior to January 1,  
30 2010, who wishes to perform the duties specified in paragraphs  
31 (1), (2), (5), and (7) to (11), inclusive, of subdivision (b) of Section  
32 1753.5, shall successfully complete an examination consisting of  
33 the procedures described in subdivision (b). The specific procedures  
34 shall be assigned by the board, after considering recommendations  
35 of its Dental Assisting Council, and shall be graded by examiners  
36 appointed by the board. Each applicant shall furnish the required  
37 materials necessary to complete the examination.

38 (a) Successful completion of the following two procedures on  
39 a patient provided by the applicant. The prepared tooth, prior to  
40 preparation, shall have had mesial and distal contact. The

1 preparation performed shall have margins at or below the free  
2 gingival crest and shall be one of the following:  $\frac{7}{8}$  crown,  $\frac{3}{4}$   
3 crown, or full crown, including porcelain fused to metal. Alginate  
4 impression materials alone shall not be acceptable:

5 (1) Cord retraction of gingiva for impression procedures.

6 (2) Take a final impression for a permanent indirect restoration.

7 (b) Successful completion of two of the following procedures  
8 on a simulated patient head mounted in appropriate position and  
9 accommodating an articulated typodont in an enclosed intraoral  
10 environment, or mounted on a dental chair in a dental operatory:

11 (1) Place, condense, and carve an amalgam restoration.

12 (2) Place and contour a nonmetallic direct restoration.

13 (3) Polish and contour an existing amalgam restoration.

14 *SEC. 17. Section 1901 of the Business and Professions Code*  
15 *is amended to read:*

16 1901. (a) There is hereby created within the jurisdiction of  
17 the Dental Board of California a Dental Hygiene Committee of  
18 California in which the administration of this article is vested.

19 (b) *This section shall remain in effect only until January 1, 2015,*  
20 *and as of that date is repealed, unless a later enacted statute, that*  
21 *is enacted before January 1, 2015, deletes or extends that date.*  
22 *Notwithstanding any other provision of law, the repeal of this*  
23 *section renders the committee subject to review by the appropriate*  
24 *policy committees of the Legislature.*

25 *SEC. 18. Section 1903 of the Business and Professions Code*  
26 *is amended to read:*

27 1903. (a) (1) The committee shall consist of nine members  
28 appointed by the Governor. Four shall be public members, one  
29 member shall be a practicing general or public health dentist who  
30 holds a current license in California, and four members shall be  
31 registered dental hygienists who hold current licenses in California.  
32 Of the registered dental hygienists members, one shall be licensed  
33 either in alternative practice or in extended functions, one shall be  
34 a dental hygiene educator, and two shall be registered dental  
35 hygienists. No public member shall have been licensed under this  
36 chapter within five years of the date of his or her appointment or  
37 have any current financial interest in a dental-related business.

38 (2) For purposes of this subdivision, a public health dentist is  
39 a dentist whose primary employer or place of employment is in  
40 any of the following:

1 (A) A primary care clinic licensed under subdivision (a) of  
2 Section 1204 of the Health and Safety Code.

3 (B) A primary care clinic exempt from licensure pursuant to  
4 subdivision (c) of Section 1206 of the Health and Safety Code.

5 (C) A clinic owned or operated by a public hospital or health  
6 system.

7 (D) A clinic owned and operated by a hospital that maintains  
8 the primary contract with a county government to fill the county's  
9 role under Section 17000 of the Welfare and Institutions Code.

10 (b) ~~Except for the initial term, members~~ *(1) Except as specified*  
11 *in paragraph (2), members of the committee shall be appointed*  
12 *for a term of four years. All of the terms for the initial appointments*  
13 *shall expire on December 31, 2011. Each member shall hold office*  
14 *until the appointment and qualification of his or her successor or*  
15 *until one year shall have lapsed since the expiration of the term*  
16 *for which he or she was appointed, whichever comes first.*

17 *(2) For the term commencing on January 1, 2012, two of the*  
18 *public members, the general or public health dentist member, and*  
19 *two of the registered dental hygienist members, other than the*  
20 *dental hygiene educator member or the registered dental hygienist*  
21 *member licensed in alternative practice or in extended functions,*  
22 *shall each serve a term of two years, expiring January 1, 2014.*

23 *(c) Notwithstanding any other provision of law and subject to*  
24 *subdivision (e), the Governor may appoint to the committee a*  
25 *person who previously served as a member of the committee even*  
26 *if his or her previous term expired.*

27 ~~(e)~~

28 *(d) The committee shall elect a president, a vice president, and*  
29 *a secretary from its membership.*

30 ~~(d)~~

31 *(e) No person shall serve as a member of the committee for*  
32 *more than two consecutive terms.*

33 ~~(e)~~

34 *(f) A vacancy in the committee shall be filled by appointment*  
35 *to the unexpired term.*

36 ~~(f)~~

37 *(g) Each member of the committee shall receive a per diem and*  
38 *expenses as provided in Section 103.*

39 ~~(g)~~

1 (h) The Governor shall have the power to remove any member  
 2 from the committee for neglect of a duty required by law, for  
 3 incompetence, or for unprofessional or dishonorable conduct.

4 ~~(h)~~

5 (i) The committee, with the approval of the director, may appoint  
 6 a person exempt from civil service who shall be designated as an  
 7 executive officer and who shall exercise the powers and perform  
 8 the duties delegated by the committee and vested in him or her by  
 9 this article.

10 (j) *This section shall remain in effect only until January 1, 2015,*  
 11 *and as of that date is repealed, unless a later enacted statute, that*  
 12 *is enacted before January 1, 2015, deletes or extends that date.*

13 ~~SEC. 17.~~

14 *SEC. 19.* Section 1905.2 of the Business and Professions Code  
 15 is amended to read:

16 1905.2. Recommendations by the committee regarding scope  
 17 of practice issues, as specified in paragraph (8) of subdivision (a)  
 18 of Section 1905, shall be approved, modified, or rejected by the  
 19 board within 90 days of submission of the recommendation to the  
 20 board. If the board rejects or significantly modifies the intent or  
 21 scope of the recommendation, the committee may request that the  
 22 board provide its reasons in writing for rejecting or significantly  
 23 modifying the recommendation, which shall be provided by the  
 24 board within 30 days of the request.

25 ~~SEC. 18.~~

26 *SEC. 20.* Section 1973 of the Business and Professions Code  
 27 is amended to read:

28 1973. (a) The Dentally Underserved Account is hereby created  
 29 in the State Dentistry Fund.

30 (b) The sum of three million dollars (\$3,000,000) is hereby  
 31 authorized to be expended from the State Dentistry Fund on this  
 32 program. These moneys are appropriated as follows:

33 (1) One million dollars (\$1,000,000) shall be transferred from  
 34 the State Dentistry Fund to the Dentally Underserved Account on  
 35 July 1, 2003. Of this amount, sixty-five thousand dollars (\$65,000)  
 36 shall be used by the Dental Board of California in the 2003–04  
 37 fiscal year for operating expenses necessary to manage this  
 38 program.

39 (2) One million dollars (\$1,000,000) shall be transferred from  
 40 the State Dentistry Fund to the Dentally Underserved Account on

1 July 1, 2004. Of this amount, sixty-five thousand dollars (\$65,000)  
2 shall be used by the Dental Board of California in the 2004–05  
3 fiscal year for operating expenses necessary to manage this  
4 program.

5 (3) One million dollars (\$1,000,000) shall be transferred from  
6 the State Dentistry Fund to the Dentally Underserved Account on  
7 July 1, 2005. Of this amount, sixty-five thousand dollars (\$65,000)  
8 shall be used by the Dental Board of California in the 2005–06  
9 fiscal year for operating expenses necessary to manage this  
10 program.

11 (c) Funds placed into the Dentally Underserved Account shall  
12 be used by the board to repay the loans per agreements made with  
13 dentists.

14 (1) Funds paid out for loan repayment may have a funding match  
15 from foundation or other private sources.

16 (2) Loan repayments may not exceed one hundred five thousand  
17 dollars (\$105,000) per individual licensed dentist.

18 (3) Loan repayments may not exceed the amount of the  
19 educational loans incurred by the dentist applicant.

20 (d) Notwithstanding Section 11005 of the Government Code,  
21 the board may seek and receive matching funds from foundations  
22 and private sources to be placed into the Dentally Underserved  
23 Account. The board also may contract with an exempt foundation  
24 for the receipt of matching funds to be transferred to the Dentally  
25 Underserved Account for use by this program.

26 (e) Funds in the Dentally Underserved Account appropriated  
27 in subdivision (b) or received pursuant to subdivision (d) are  
28 continuously appropriated for the repayment of loans per  
29 agreements made between the board and the dentists.

30 (f) On or after July 1, 2010, the board shall extend the California  
31 Dental Corps Loan Repayment Program of 2002 and distribute  
32 the money remaining in the account until all the moneys in the  
33 account are expended. Regulations that were adopted by the board  
34 for the purposes of the program shall apply.

35 ~~SEC. 19.~~

36 *SEC. 21.* It is the intent of the Legislature that any fees  
37 established by the Dental Board of California under Section 1725  
38 of the Business and Professions Code that are in effect on  
39 December 31, 2011, continue to apply on and after January 1,

- 1 2012, until the board changes those fees by regulation, as set forth
- 2 in Section 12 of this act.

O