

AMENDED IN SENATE AUGUST 16, 2016
AMENDED IN SENATE JUNE 29, 2016
AMENDED IN SENATE JUNE 20, 2016
AMENDED IN SENATE JUNE 9, 2016
AMENDED IN ASSEMBLY APRIL 11, 2016
AMENDED IN ASSEMBLY MARCH 31, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2235

Introduced by Assembly Member Thurmond
(Coauthor: Senator Hill)

February 18, 2016

An act to amend Sections 1680 and 1682 of, and to add Section 1601.4 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2235, as amended, Thurmond. Board of Dentistry: pediatric anesthesia: committee.

The Dental Practice Act provides for the licensure and regulation of dentists by the Dental Board of California. That act authorizes a committee of the board to evaluate all suggestions or requests for regulatory changes related to the committee and to hold informational hearings in order to report and make appropriate recommendations to the board, after consultation with departmental legal counsel and the board's chief executive officer. The act requires a committee to include in any report regarding a proposed regulatory change, at a minimum,

the specific language or the proposed change or changes and the reasons therefor, and any facts supporting the need for the change.

The act governs the use of general anesthesia, conscious sedation, and oral conscious sedation for pediatric and adult patients. The act makes it unprofessional conduct for a licensee to fail to report the death of a patient, or removal of a patient to a hospital or emergency center for medical treatment, that is related to a dental procedure, as specified. The act also makes it unprofessional conduct for any dentist to fail to obtain the written informed consent of a patient prior to administering general anesthesia or conscious sedation. In the case of a minor, the act requires that the consent be obtained from the child’s parent or guardian.

This bill, which would be known as “Caleb’s Law,” would require the board, on or before January 1, 2017, to provide to the Legislature a report on whether current statutes and regulations for the administration and monitoring of pediatric anesthesia in dentistry provide adequate protection for pediatric dental patients and would require the board to make the report publicly available on the board’s Internet Web site. The bill also would require the board to provide a report on pediatric deaths related to general anesthesia in dentistry at the time of its sunset review by the appropriate policy committees of the Legislature.

This bill would require that the report of the death of a patient, or removal of a patient to a hospital or emergency center for medical treatment, be on a form or forms approved by the board and that the report include specified information. The bill authorizes the board to assess a penalty on any licensee who fails to make the required report.

This bill, with regard to obtaining written informed consent for general anesthesia or conscious sedation in the case of a minor, would require that the written informed consent include specified information regarding anesthesia, as provided.

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. This act shall be known, and may be cited, as
- 2 “Caleb’s Law.”
- 3 SEC. 2. It is the Legislature’s intent, to the extent that funds
- 4 are appropriated for this purpose, that the board encourage all
- 5 dental sedation providers in California to submit data regarding

1 pediatric sedation events to a pediatric sedation research database
2 maintained by a nonprofit organization. It is the goal of the
3 Legislature that the data submitted will be used to formulate a
4 systems-based approach to improve the quality of services provided
5 to pediatric dental anesthesia patients in outpatient settings.

6 SEC. 3. Section 1601.4 is added to the Business and Professions
7 Code, to read:

8 1601.4. (a) On or before January 1, 2017, the board shall
9 provide to the Legislature a report on whether current statutes and
10 regulations for the administration and monitoring of pediatric
11 anesthesia in dentistry provide adequate protection for pediatric
12 dental patients. The report shall be submitted in compliance with
13 Section 9795 of the Government Code. The requirement for
14 submitting a report imposed by this subdivision is inoperative on
15 December 1, 2021, pursuant to Section 10231.5 of the Government
16 Code. The board shall make the report publicly available on the
17 board's Internet Web site.

18 (b) The board shall provide a report on pediatric deaths related
19 to general anesthesia in dentistry at the time of its sunset review
20 pursuant to subdivision (d) of Section 1601.1.

21 SEC. 4. Section 1680 of the Business and Professions Code is
22 amended to read:

23 1680. Unprofessional conduct by a person licensed under this
24 chapter is defined as, but is not limited to, any one of the following:

25 (a) The obtaining of any fee by fraud or misrepresentation.

26 (b) The employment directly or indirectly of any student or
27 suspended or unlicensed dentist to practice dentistry as defined in
28 this chapter.

29 (c) The aiding or abetting of any unlicensed person to practice
30 dentistry.

31 (d) The aiding or abetting of a licensed person to practice
32 dentistry unlawfully.

33 (e) The committing of any act or acts of sexual abuse,
34 misconduct, or relations with a patient that are substantially related
35 to the practice of dentistry.

36 (f) The use of any false, assumed, or fictitious name, either as
37 an individual, firm, corporation, or otherwise, or any name other
38 than the name under which he or she is licensed to practice, in
39 advertising or in any other manner indicating that he or she is

- 1 practicing or will practice dentistry, except that name as is specified
2 in a valid permit issued pursuant to Section 1701.5.
- 3 (g) The practice of accepting or receiving any commission or
4 the rebating in any form or manner of fees for professional services,
5 radiograms, prescriptions, or other services or articles supplied to
6 patients.
- 7 (h) The making use by the licensee or any agent of the licensee
8 of any advertising statements of a character tending to deceive or
9 mislead the public.
- 10 (i) The advertising of either professional superiority or the
11 advertising of performance of professional services in a superior
12 manner. This subdivision shall not prohibit advertising permitted
13 by subdivision (h) of Section 651.
- 14 (j) The employing or the making use of solicitors.
- 15 (k) The advertising in violation of Section 651.
- 16 (l) The advertising to guarantee any dental service, or to perform
17 any dental operation painlessly. This subdivision shall not prohibit
18 advertising permitted by Section 651.
- 19 (m) The violation of any of the provisions of law regulating the
20 procurement, dispensing, or administration of dangerous drugs,
21 as defined in Chapter 9 (commencing with Section 4000) or
22 controlled substances, as defined in Division 10 (commencing
23 with Section 11000) of the Health and Safety Code.
- 24 (n) The violation of any of the provisions of this division.
- 25 (o) The permitting of any person to operate dental radiographic
26 equipment who has not met the requirements of Section 1656.
- 27 (p) The clearly excessive prescribing or administering of drugs
28 or treatment, or the clearly excessive use of diagnostic procedures,
29 or the clearly excessive use of diagnostic or treatment facilities,
30 as determined by the customary practice and standards of the dental
31 profession.
- 32 Any person who violates this subdivision is guilty of a
33 misdemeanor and shall be punished by a fine of not less than one
34 hundred dollars (\$100) or more than six hundred dollars (\$600),
35 or by imprisonment for a term of not less than 60 days or more
36 than 180 days, or by both a fine and imprisonment.
- 37 (q) The use of threats or harassment against any patient or
38 licensee for providing evidence in any possible or actual
39 disciplinary action, or other legal action; or the discharge of an

1 employee primarily based on the employee's attempt to comply
2 with the provisions of this chapter or to aid in the compliance.

3 (r) Suspension or revocation of a license issued, or discipline
4 imposed, by another state or territory on grounds that would be
5 the basis of discipline in this state.

6 (s) The alteration of a patient's record with intent to deceive.

7 (t) Unsanitary or unsafe office conditions, as determined by the
8 customary practice and standards of the dental profession.

9 (u) The abandonment of the patient by the licensee, without
10 written notice to the patient that treatment is to be discontinued
11 and before the patient has ample opportunity to secure the services
12 of another dentist, registered dental hygienist, registered dental
13 hygienist in alternative practice, or registered dental hygienist in
14 extended functions and provided the health of the patient is not
15 jeopardized.

16 (v) The willful misrepresentation of facts relating to a
17 disciplinary action to the patients of a disciplined licensee.

18 (w) Use of fraud in the procurement of any license issued
19 pursuant to this chapter.

20 (x) Any action or conduct that would have warranted the denial
21 of the license.

22 (y) The aiding or abetting of a licensed dentist, dental assistant,
23 registered dental assistant, registered dental assistant in extended
24 functions, dental sedation assistant permitholder, orthodontic
25 assistant permitholder, registered dental hygienist, registered dental
26 hygienist in alternative practice, or registered dental hygienist in
27 extended functions to practice dentistry in a negligent or
28 incompetent manner.

29 (z) (1) The failure to report to the board in writing within seven
30 days any of the following: (A) the death of his or her patient during
31 the performance of any dental or dental hygiene procedure; (B)
32 the discovery of the death of a patient whose death is related to a
33 dental or dental hygiene procedure performed by him or her; or
34 (C) except for a scheduled hospitalization, the removal to a hospital
35 or emergency center for medical treatment of any patient to whom
36 oral conscious sedation, conscious sedation, or general anesthesia
37 was administered, or any patient as a result of dental or dental
38 hygiene treatment. With the exception of patients to whom oral
39 conscious sedation, conscious sedation, or general anesthesia was
40 administered, removal to a hospital or emergency center that is

1 the normal or expected treatment for the underlying dental
2 condition is not required to be reported. Upon receipt of a report
3 pursuant to this subdivision the board may conduct an inspection
4 of the dental office if the board finds that it is necessary. A dentist
5 shall report to the board all deaths occurring in his or her practice
6 with a copy sent to the Dental Hygiene Committee of California
7 if the death was the result of treatment by a registered dental
8 hygienist, registered dental hygienist in alternative practice, or
9 registered dental hygienist in extended functions. A registered
10 dental hygienist, registered dental hygienist in alternative practice,
11 or registered dental hygienist in extended functions shall report to
12 the Dental Hygiene Committee of California all deaths occurring
13 as the result of dental hygiene treatment, and a copy of the
14 notification shall be sent to the board.

15 (2) The report required by this subdivision shall be on a form
16 or forms approved by the board. The form or forms approved by
17 the board shall require the licensee to include, but not be limited
18 to, the following information for cases in which patients received
19 anesthesia: the date of the procedure; the patient's age in years
20 and months, weight, and sex; the patient's American Society of
21 Anesthesiologists (ASA) physical status; the patient's primary
22 diagnosis; the patient's coexisting diagnoses; the procedures
23 performed; the sedation setting; the medications used; the
24 monitoring equipment used; the category of the provider
25 responsible for sedation oversight; the category of the provider
26 delivering sedation; the category of the provider monitoring the
27 patient during sedation; whether the person supervising the sedation
28 performed one or more of the procedures; the planned airway
29 management; the planned depth of sedation; the complications
30 that occurred; a description of what was unexpected about the
31 airway management; whether there was transportation of the patient
32 during sedation; the category of the provider conducting
33 resuscitation measures; and the resuscitation equipment utilized.
34 Disclosure of individually identifiable patient information shall
35 be consistent with applicable law. A report required by this
36 subdivision shall not be admissible in any action brought by a
37 patient of the licensee providing the report.

38 (3) For the purposes of paragraph (2), categories of provider
39 are: General Dentist, Pediatric Dentist, Oral Surgeon, Dentist
40 Anesthesiologist, Physician Anesthesiologist, Dental Assistant,

1 Registered Dental Assistant, Dental Sedation Assistant, Registered
2 Nurse, Certified Registered Nurse Anesthetist, or Other.

3 (4) The form shall state that this information shall not be
4 considered an admission of guilt, but is for educational, data, or
5 investigative purposes.

6 (5) The board may assess a penalty on any licensee who fails
7 to report an instance of an adverse event as required by this
8 subdivision. ~~The penalty is a maximum fine of one hundred dollars~~
9 ~~(\$100) per day not reported after the initial seven-day reporting~~
10 ~~period.~~ The licensee may dispute the failure to file within 10 days
11 of receiving notice that the board had assessed a penalty against
12 the licensee.

13 (aa) Participating in or operating any group advertising and
14 referral services that are in violation of Section 650.2.

15 (ab) The failure to use a fail-safe machine with an appropriate
16 exhaust system in the administration of nitrous oxide. The board
17 shall, by regulation, define what constitutes a fail-safe machine.

18 (ac) Engaging in the practice of dentistry with an expired license.

19 (ad) Except for good cause, the knowing failure to protect
20 patients by failing to follow infection control guidelines of the
21 board, thereby risking transmission of bloodborne infectious
22 diseases from dentist, dental assistant, registered dental assistant,
23 registered dental assistant in extended functions, dental sedation
24 assistant permitholder, orthodontic assistant permitholder,
25 registered dental hygienist, registered dental hygienist in alternative
26 practice, or registered dental hygienist in extended functions to
27 patient, from patient to patient, and from patient to dentist, dental
28 assistant, registered dental assistant, registered dental assistant in
29 extended functions, dental sedation assistant permitholder,
30 orthodontic assistant permitholder, registered dental hygienist,
31 registered dental hygienist in alternative practice, or registered
32 dental hygienist in extended functions. In administering this
33 subdivision, the board shall consider referencing the standards,
34 regulations, and guidelines of the State Department of Public
35 Health developed pursuant to Section 1250.11 of the Health and
36 Safety Code and the standards, guidelines, and regulations pursuant
37 to the California Occupational Safety and Health Act of 1973 (Part
38 1 (commencing with Section 6300) of Division 5 of the Labor
39 Code) for preventing the transmission of HIV, hepatitis B, and
40 other blood-borne pathogens in health care settings. The board

1 shall review infection control guidelines, if necessary, on an annual
2 basis and proposed changes shall be reviewed by the Dental
3 Hygiene Committee of California to establish a consensus. The
4 committee shall submit any recommended changes to the infection
5 control guidelines for review to establish a consensus. As
6 necessary, the board shall consult with the Medical Board of
7 California, the California Board of Podiatric Medicine, the Board
8 of Registered Nursing, and the Board of Vocational Nursing and
9 Psychiatric Technicians, to encourage appropriate consistency in
10 the implementation of this subdivision.

11 The board shall seek to ensure that all appropriate dental
12 personnel are informed of the responsibility to follow infection
13 control guidelines, and of the most recent scientifically recognized
14 safeguards for minimizing the risk of transmission of bloodborne
15 infectious diseases.

16 (ae) The utilization by a licensed dentist of any person to
17 perform the functions of any registered dental assistant, registered
18 dental assistant in extended functions, dental sedation assistant
19 permitholder, orthodontic assistant permitholder, registered dental
20 hygienist, registered dental hygienist in alternative practice, or
21 registered dental hygienist in extended functions who, at the time
22 of initial employment, does not possess a current, valid license or
23 permit to perform those functions.

24 (af) The prescribing, dispensing, or furnishing of dangerous
25 drugs or devices, as defined in Section 4022, in violation of Section
26 2242.1.

27 SEC. 5. Section 1682 of the Business and Professions Code is
28 amended to read:

29 1682. In addition to other acts constituting unprofessional
30 conduct under this chapter, it is unprofessional conduct for:

31 (a) Any dentist performing dental procedures to have more than
32 one patient undergoing conscious sedation or general anesthesia
33 on an outpatient basis at any given time unless each patient is being
34 continuously monitored on a one-to-one ratio while sedated by
35 either the dentist or another licensed health professional authorized
36 by law to administer conscious sedation or general anesthesia.

37 (b) Any dentist with patients recovering from conscious sedation
38 or general anesthesia to fail to have the patients closely monitored
39 by licensed health professionals experienced in the care and
40 resuscitation of patients recovering from conscious sedation or

1 general anesthesia. If one licensed professional is responsible for
2 the recovery care of more than one patient at a time, all of the
3 patients shall be physically in the same room to allow continuous
4 visual contact with all patients and the patient to recovery staff
5 ratio should not exceed three to one.

6 (c) Any dentist with patients who are undergoing conscious
7 sedation to fail to have these patients continuously monitored
8 during the dental procedure with a pulse oximeter or similar or
9 superior monitoring equipment required by the board.

10 (d) Any dentist with patients who are undergoing conscious
11 sedation to have dental office personnel directly involved with the
12 care of those patients who are not certified in basic cardiac life
13 support (CPR) and recertified biennially.

14 (e) (1) Any dentist to fail to obtain the written informed consent
15 of a patient prior to administering general anesthesia or conscious
16 sedation. In the case of a minor, the consent shall be obtained from
17 the child's parent or guardian.

18 (2) The written informed consent, in the case of a minor, shall
19 include, but not be limited to, the following information:

20 "The administration and monitoring of general anesthesia may
21 vary depending on the type of procedure, the type of practitioner,
22 the age and health of the patient, and the setting in which anesthesia
23 is provided. Risks may vary with each specific situation. You are
24 encouraged to explore all the options available for your child's
25 anesthesia for his or her dental treatment, and consult with your
26 dentist or pediatrician as needed."

27 (3) Nothing in this subdivision shall be construed to establish
28 the reasonable standard of care for administering or monitoring
29 oral conscious sedation, conscious sedation, or general anesthesia.

O