

Senate Bill No. 540

CHAPTER 385

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.

[Approved by Governor September 30, 2011. Filed with
Secretary of State September 30, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 540, Price. Dentistry.

(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.

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

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

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division 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. A “public communication” as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

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

(1) Contains a misrepresentation of fact.

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

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

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents “before” and “after” views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a). Any “before” and “after” views (i) shall be comparable in presentation so that the results are not distorted by favorable poses, lighting, or other features of presentation, and (ii) shall contain a

statement that the same “before” and “after” results may not occur for all patients.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

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

For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is an American Board of Medical Specialties member board, an organization with equivalent requirements approved by a physician and surgeon's licensing board, or an organization with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in a specialty or subspecialty.

The Medical Board of California shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this subparagraph. The fee shall not exceed the cost of administering this subparagraph. Notwithstanding Section 2 of Chapter 1660 of the Statutes of 1990, this subparagraph shall become operative July 1, 1993. However, an administrative agency or accrediting organization may take any action contemplated by this subparagraph relating to the establishment or approval of specialist requirements on and after January 1, 1991.

(D) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term “board certified” unless the full name of the certifying board is also used and given comparable prominence with the term “board certified” in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term “board certified” in reference to that certification.

For purposes of this subparagraph, a “multidisciplinary board or association” means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant’s education, training, and experience. For purposes of the term “board certified,” as used in this subparagraph, the terms “board” and “association” mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

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

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

(k) A physician and surgeon or doctor of podiatric medicine licensed pursuant to Chapter 5 (commencing with Section 2000) by the Medical Board of California who knowingly and intentionally violates this section may be cited and assessed an administrative fine not to exceed ten thousand dollars (\$10,000) per event. Section 125.9 shall govern the issuance of this citation and fine except that the fine limitations prescribed in paragraph (3) of subdivision (b) of Section 125.9 shall not apply to a fine under this subdivision.

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

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

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

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

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

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

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

1603. Except for the initial appointments, members of the board shall be appointed for a term of four years, and each member shall hold office until the appointment and qualification of his or her successor or until one

year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

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

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

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

Of the initial appointments, one of the dentist members and one of the public members appointed by the Governor shall serve for a term of one year. Two of the dentist members appointed by the Governor shall each serve for a term of two years. One of the public members and two of the dentist members appointed by the Governor shall each serve a term of three years. The dental hygienist member, the dental assistant member, and the remaining three dentists members appointed by the Governor shall each serve for a term of four years. The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall each serve for a term of four years.

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

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

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

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

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

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

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

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

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

- (1) Successfully complete a professional competency examination.
- (2) Submit to a medical or psychological evaluation.
- (3) Submit to continuing medical or psychological treatment.
- (4) Abstain from the use of alcohol or drugs.
- (5) Submit to random fluid testing for alcohol or controlled substance abuse.
- (6) Submit to continuing participation in a board approved rehabilitation program.
- (7) Restrict the type or circumstances of practice.
- (8) Submit to continuing education and coursework.
- (9) Comply with requirements regarding notification to employer and changes of employment.
- (10) Comply with probation monitoring.
- (11) Comply with all laws and regulations governing the practice of dentistry.
- (12) Limit practice to a supervised structured environment in which the licensee's activities shall be supervised by another dentist.
- (13) Submit to total or partial restrictions on drug prescribing privileges.
 - (b) The probation shall be for three years and the licensee may petition the board for early termination, or modification of a condition of, the probation in accordance with subdivision (b) of Section 1686.
 - (c) The proceeding under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.
 - (d) The board shall adopt written guidelines on how to make probation assignments for licensees and shall ensure that probationary and evaluation reports are conducted consistently and regularly.

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

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

(b) The board shall require each applicant to successfully complete an examination in California law and ethics developed and administered by the board. The board shall provide a separate application for this examination. The board shall ensure that the law and ethics examination reflects current law and regulations, and ensure that the examinations are randomized. Applicants shall submit this application and required fee to the board in order to take this examination. In addition to the aforementioned application, the only other requirement for taking this examination shall be certification from the dean of the qualifying dental school attended by the applicant that the applicant has graduated, or will graduate, or is expected to graduate. Applicants who submit completed applications and certification from the dean at least 15 days prior to a scheduled examination shall be scheduled to take the examination. Successful results of the examination

shall, as established by board regulation, remain valid for two years from the date that the applicant is notified of having passed the examination.

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

(1) A portfolio examination of the applicant's competence to enter the practice of dentistry. This examination shall be conducted while the applicant is enrolled in a dental school program at a board-approved school located in California. This examination shall utilize uniform standards of clinical experiences and competencies, as approved by the board pursuant to Section 1632.1. The applicant shall pass a final assessment of the submitted portfolio at the end of his or her dental school program. Before any portfolio assessment may be submitted to the board, the applicant shall remit to the board a three hundred fifty dollar (\$350) fee, to be deposited into the State Dentistry Fund, and a letter of good standing signed by the dean of his or her dental school or his or her delegate stating that the applicant has graduated or will graduate with no pending ethical issues.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) If a licentiate withdraws or is terminated from the diversion program for failure to comply or is determined to be a threat to the public or his or her own health and safety, all diversion records for that licentiate shall be provided to the board's enforcement program and may be used in any disciplinary proceeding. If a licentiate in a diversion program tests positive for any banned substance, the board's diversion program manager shall immediately notify the board's enforcement program and provide the documentation evidencing the positive test result to the enforcement program. This documentation may be used in a disciplinary proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) The fee for each curriculum review and site evaluation for educational programs for registered dental assistants that are not accredited by a board-approved agency, or the Chancellor's office of the California

Community Colleges shall not exceed one thousand four hundred dollars (\$1,400).

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

(p) No fees or charges other than those listed in subdivisions (a) to (o), inclusive, above shall be levied by the board in connection with the licensure or permitting of dental assistants, registered dental assistant educational program site evaluations and course evaluations pursuant to this chapter.

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

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

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

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

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

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

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

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

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

(5) Requirements regarding infection control.

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

(2) The board shall consider, in its appointments of the five registered dental assistant members, recommendations submitted by any incorporated, nonprofit professional society, association, or entity whose membership is comprised of registered dental assistants within the state. Two of those members shall be employed as faculty members of a registered dental assisting educational program approved by the board, and shall have been so employed for at least the prior five years. Three of those members, which shall include one registered dental assistant in extended functions, shall be employed clinically in private dental practice or public safety net or dental health care clinics. All five of those members shall have possessed a current and active registered dental assistant or registered dental assistant in extended

functions license for at least the prior five years, and shall not be employed by a current member of the board.

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

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

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

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

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

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

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

(j) The council shall select a chair who shall establish the agendas of the council and shall serve as the council's liaison to the board, including the reporting of the council's recommendations to the board.

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

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

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

(1) Place a base or liner.

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

- (3) Fabricate and adjust an indirect provisional restoration.
- (4) Cement an indirect provisional restoration.

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

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

(a) Successful completion of the following two procedures on a patient provided by the applicant. The prepared tooth, prior to preparation, shall have had mesial and distal contact. The preparation performed shall have margins at or below the free gingival crest and shall be one of the following: $\frac{7}{8}$ crown, $\frac{3}{4}$ crown, or full crown, including porcelain fused to metal. Alginate impression materials alone shall not be acceptable:

- (1) Cord retraction of gingiva for impression procedures.
- (2) Take a final impression for a permanent indirect restoration.

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

- (1) Place, condense, and carve an amalgam restoration.
- (2) Place and contour a nonmetallic direct restoration.
- (3) Polish and contour an existing amalgam restoration.

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

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

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

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

1903. (a) (1) The committee shall consist of nine members appointed by the Governor. Four shall be public members, one member shall be a practicing general or public health dentist who holds a current license in California, and four members shall be registered dental hygienists who hold

current licenses in California. Of the registered dental hygienists members, one shall be licensed either in alternative practice or in extended functions, one shall be a dental hygiene educator, and two shall be registered dental hygienists. No public member shall have been licensed under this chapter within five years of the date of his or her appointment or have any current financial interest in a dental-related business.

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

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

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

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

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

(b) (1) Except as specified in paragraph (2), members of the committee shall be appointed for a term of four years. Each member shall hold office until the appointment and qualification of his or her successor or until one year shall have lapsed since the expiration of the term for which he or she was appointed, whichever comes first.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) One million dollars (\$1,000,000) shall be transferred from the State Dentistry Fund to the Dentally Underserved Account on July 1, 2004. Of this amount, sixty-five thousand dollars (\$65,000) shall be used by the Dental Board of California in the 2004–05 fiscal year for operating expenses necessary to manage this program.

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

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

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

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

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

(d) Notwithstanding Section 11005 of the Government Code, the board may seek and receive matching funds from foundations and private sources to be placed into the Dentally Underserved Account. The board also may

contract with an exempt foundation for the receipt of matching funds to be transferred to the Dentally Underserved Account for use by this program.

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

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

SEC. 21. It is the intent of the Legislature that any fees established by the Dental Board of California under Section 1725 of the Business and Professions Code that are in effect on December 31, 2011, continue to apply on and after January 1, 2012, until the board changes those fees by regulation, as set forth in Section 12 of this act.