

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**

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**Introduced by Assembly Member Thurmond**

February 18, 2016

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An act to amend ~~Section 1682~~ *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 ~~March 31, 2017~~, *February 1, 2017*, to establish a committee to investigate whether the current laws, regulations, and policies of the state are sufficient to minimize the potential for injury or death in minors from the administration of general anesthesia or deep sedation for dental patients: *statutes and regulations for the administration and monitoring of oral conscious sedation, conscious sedation, and general anesthesia provide adequate protection for pediatric dental patients.* The bill would require the committee, on or before ~~September 1, 2017~~, *August 1, 2017*, to review all incident reports and relevant investigatory information related to pediatric anesthesia in dentistry in the state for the years ~~2011 through 2016~~, inclusive, and to review the policies and guidelines of other states and national dental associations *associations, as well as studies*, to ensure that ~~this state has regulation and policies in place to do everything feasible to protect young patients.~~ *the state's statutes and regulations adequately protect pediatric dental patients.* The bill would require the committee, on or before ~~January 1, 2018~~, *November 1, 2017*, to ~~recommend to the board any measures that would further reduce the potential for injury or death in minors from the administration of general anesthesia or deep sedation for dental patients.~~ *present its findings in a report to the board, including any recommendations necessary to improve safety.* The bill would require the board, on or before January 1, 2018, to ~~report~~ *provide to the Legislature* the committee's ~~recommendations to the Legislature~~ *recommendations, an evaluation of the committee's report, and the board's own recommendations* and 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 or deep sedation 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 ~~a form or forms approved by the board, containing specified information regarding the risks of sedation and anesthesia medications and that use of appropriate monitoring equipment is required:~~ *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*  
6 *pediatric sedation events to a pediatric sedation research database*  
7 *maintained by a nonprofit organization. It is the goal of the*  
8 *Legislature that the data submitted will be used to formulate a*  
9 *systems-based approach to improve the quality of services provided*  
10 *to pediatric dental anesthesia patients in outpatient settings.*

11 ~~SEC. 2.~~

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

14 1601.4. (a) The board, on or before ~~March 31, 2017,~~ *February*  
15 *1, 2017,* shall establish a committee to investigate whether ~~the~~  
16 ~~current laws, regulations, and policies of the state are sufficient to~~  
17 ~~minimize the potential for injury or death in minors from the~~  
18 ~~administration of general anesthesia or deep sedation for dental~~  
19 ~~patients.~~ *current statutes and regulations for the administration*  
20 *and monitoring of oral conscious sedation, conscious sedation,*  
21 *and general anesthesia provide adequate protection for pediatric*  
22 *dental patients. For the purpose of this section, a pediatric dental*  
23 *patient is a person under 21 years of age.*

24 (1) *The committee shall consist of the following:*

- 1 (A) A physician anesthesiologist who holds a general anesthesia
- 2 permit from the board chosen from a list provided by the California
- 3 Society of Anesthesiologists.
- 4 (B) A pediatrician chosen from a list provided by the American
- 5 Academy of Pediatrics, California.
- 6 (C) An oral surgeon chosen from a list provided by the Oral
- 7 and Facial Surgeons of California.
- 8 (D) A pediatric dentist chosen from a list provided by the
- 9 California Society of Pediatric Dentistry.
- 10 (E) A dentist who has completed a dental anesthesiology
- 11 residency chosen from a list provided by the American Society of
- 12 Dentist Anesthesiologists.
- 13 (F) A general dentist chosen from a list provided by the
- 14 California Dental Association.
- 15 (2) The board shall select at least one member of the committee,
- 16 proposed by the Oral and Facial Surgeons of California, California
- 17 Society of Pediatric Dentistry, or California Dental Association,
- 18 who is, at the time the lists are provided, employed at an accredited
- 19 dental school, provided that such a candidate is provided on the
- 20 lists of candidates submitted to the board.
- 21 (3) The board shall select a pediatric dentist and general dentist
- 22 who hold at least one sedation permit from the board, provided
- 23 that such a candidate is provided on the lists of candidates
- 24 submitted to the board.
- 25 (b) On or before ~~September 1, 2017~~, August 1, 2017, the
- 26 committee shall review all incident reports and relevant
- 27 investigatory information related to pediatric anesthesia in dentistry
- 28 in the state for the years ~~2011 through 2016~~, 2010 to 2016,
- 29 inclusive, and shall review the policies and guidelines of other
- 30 states and national dental associations as well as studies regarding
- 31 the use of pediatric anesthesia to ensure that ~~this state has~~
- 32 ~~regulation and policies in place to do everything feasible to protect~~
- 33 ~~young patients. the state's statutes and regulations adequately~~
- 34 ~~protect pediatric dental patients. The committee also shall review~~
- 35 ~~statutory and regulatory definitions relating to sedation and~~
- 36 ~~anesthesia and recommend any necessary revisions. The members~~
- 37 ~~of the committee shall agree not to disclose any confidential,~~
- 38 ~~privileged, or personally identifiable information contained in the~~
- 39 ~~dental board records, except as permitted by law.~~

1 (c) On or before ~~January 1, 2018,~~ *November 1, 2017*, the  
2 committee shall ~~recommend to the board any measures that would~~  
3 ~~further reduce the potential for injury or death in minors from the~~  
4 ~~administration of general anesthesia or deep sedation for dental~~  
5 ~~patients; present its findings to the board in a report which shall~~  
6 ~~include any recommendations necessary to improve safety during~~  
7 ~~the administration and monitoring of oral conscious sedation,~~  
8 ~~conscious sedation, and general anesthesia for pediatric dental~~  
9 ~~patients.~~

10 (d) On or before January 1, 2018, the board shall ~~report provide~~  
11 to the Legislature the recommendations of the committee pursuant  
12 to subdivision ~~(e)~~; *(c), an evaluation of the report, and the board's*  
13 *own recommendations.* The report shall be submitted in compliance  
14 with Section 9795 of the Government Code. The requirement for  
15 submitting a report imposed by this subdivision is inoperative on  
16 December 1, 2021, pursuant to Section 10231.5 of the Government  
17 Code. The board shall make the report publicly available on the  
18 board's Internet Web site, and shall include, but is not limited to,  
19 the following anonymized ~~demographic data of each patient~~  
20 ~~reviewed: his or her age, weight, and sex; his or her primary~~  
21 ~~diagnosis; data from each incident reviewed, if available from~~  
22 ~~records in the board's possession, custody, or control, including~~  
23 ~~investigatory reports: the age of the patient; the patient's primary~~  
24 ~~diagnosis; the procedures performed; the sedation setting; the~~  
25 ~~medications used; the monitoring equipment used; the category~~  
26 ~~of the provider responsible for sedation oversight; the category of~~  
27 ~~the provider delivering sedation; the category of the provider~~  
28 ~~monitoring the patient during sedation; and whether the sedation~~  
29 ~~supervision person supervising the sedation performed one or~~  
30 ~~more of the procedures; procedures; the category of the provider~~  
31 ~~conducting resuscitation measures; and the resuscitation equipment~~  
32 ~~utilized.~~

33 (e) *For the purposes of subdivision (d), categories of provider*  
34 *are: General Dentist, Pediatric Dentist, Oral Surgeon, Dentist*  
35 *Anesthesiologist, Physician Anesthesiologist, Dental Assistant,*  
36 *Registered Dental Assistant, Dental Sedation Assistant, Registered*  
37 *Nurse, Certified Registered Nurse Anesthetist, or Other.*

38 (e)

1 (f) The board shall provide a report on pediatric deaths related  
2 to general anesthesia or ~~deep sedation~~ in dentistry at the time of  
3 its sunset review pursuant to subdivision (d) of Section 1601.1.

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

6 1680. Unprofessional conduct by a person licensed under this  
7 chapter is defined as, but is not limited to, any one of the following:

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

9 (b) The employment directly or indirectly of any student or  
10 suspended or unlicensed dentist to practice dentistry as defined in  
11 this chapter.

12 (c) The aiding or abetting of any unlicensed person to practice  
13 dentistry.

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

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

19 (f) The use of any false, assumed, or fictitious name, either as  
20 an individual, firm, corporation, or otherwise, or any name other  
21 than the name under which he or she is licensed to practice, in  
22 advertising or in any other manner indicating that he or she is  
23 practicing or will practice dentistry, except that name as is specified  
24 in a valid permit issued pursuant to Section 1701.5.

25 (g) The practice of accepting or receiving any commission or  
26 the rebating in any form or manner of fees for professional services,  
27 radiograms, prescriptions, or other services or articles supplied to  
28 patients.

29 (h) The making use by the licensee or any agent of the licensee  
30 of any advertising statements of a character tending to deceive or  
31 mislead the public.

32 (i) The advertising of either professional superiority or the  
33 advertising of performance of professional services in a superior  
34 manner. This subdivision shall not prohibit advertising permitted  
35 by subdivision (h) of Section 651.

36 (j) The employing or the making use of solicitors.

37 (k) The advertising in violation of Section 651.

38 (l) The advertising to guarantee any dental service, or to perform  
39 any dental operation painlessly. This subdivision shall not prohibit  
40 advertising permitted by Section 651.

1 (m) The violation of any of the provisions of law regulating the  
2 procurement, dispensing, or administration of dangerous drugs,  
3 as defined in Chapter 9 (commencing with Section 4000) or  
4 controlled substances, as defined in Division 10 (commencing  
5 with Section 11000) of the Health and Safety Code.

6 (n) The violation of any of the provisions of this division.

7 (o) The permitting of any person to operate dental radiographic  
8 equipment who has not met the requirements of Section 1656.

9 (p) The clearly excessive prescribing or administering of drugs  
10 or treatment, or the clearly excessive use of diagnostic procedures,  
11 or the clearly excessive use of diagnostic or treatment facilities,  
12 as determined by the customary practice and standards of the dental  
13 profession.

14 Any person who violates this subdivision is guilty of a  
15 misdemeanor and shall be punished by a fine of not less than one  
16 hundred dollars (\$100) or more than six hundred dollars (\$600),  
17 or by imprisonment for a term of not less than 60 days or more  
18 than 180 days, or by both a fine and imprisonment.

19 (q) The use of threats or harassment against any patient or  
20 licensee for providing evidence in any possible or actual  
21 disciplinary action, or other legal action; or the discharge of an  
22 employee primarily based on the employee's attempt to comply  
23 with the provisions of this chapter or to aid in the compliance.

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

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

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

30 (u) The abandonment of the patient by the licensee, without  
31 written notice to the patient that treatment is to be discontinued  
32 and before the patient has ample opportunity to secure the services  
33 of another dentist, registered dental hygienist, registered dental  
34 hygienist in alternative practice, or registered dental hygienist in  
35 extended functions and provided the health of the patient is not  
36 jeopardized.

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

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

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

3 (y) The aiding or abetting of a licensed dentist, dental assistant,  
4 registered dental assistant, registered dental assistant in extended  
5 functions, dental sedation assistant permitholder, orthodontic  
6 assistant permitholder, registered dental hygienist, registered dental  
7 hygienist in alternative practice, or registered dental hygienist in  
8 extended functions to practice dentistry in a negligent or  
9 incompetent manner.

10 (z) (1) The failure to report to the board in writing within seven  
11 days any of the following: ~~(1)~~ (A) the death of his or her patient  
12 during the performance of any dental or dental hygiene procedure;  
13 ~~(2)~~ (B) the discovery of the death of a patient whose death is related  
14 to a dental or dental hygiene procedure performed by him or her;  
15 or ~~(3)~~ (C) except for a scheduled hospitalization, the removal to a  
16 hospital or emergency center for medical treatment ~~for a period~~  
17 ~~exceeding 24 hours~~ of any patient to whom oral conscious sedation,  
18 conscious sedation, or general anesthesia was administered, or any  
19 patient as a result of dental or dental hygiene treatment. With the  
20 exception of patients to whom oral conscious sedation, conscious  
21 sedation, or general anesthesia was administered, removal to a  
22 hospital or emergency center that is the normal or expected  
23 treatment for the underlying dental condition is not required to be  
24 reported. Upon receipt of a report pursuant to this subdivision the  
25 board may conduct an inspection of the dental office if the board  
26 finds that it is necessary. A dentist shall report to the board all  
27 deaths occurring in his or her practice with a copy sent to the  
28 Dental Hygiene Committee of California if the death was the result  
29 of treatment by a registered dental hygienist, registered dental  
30 hygienist in alternative practice, or registered dental hygienist in  
31 extended functions. A registered dental hygienist, registered dental  
32 hygienist in alternative practice, or registered dental hygienist in  
33 extended functions shall report to the Dental Hygiene Committee  
34 of California all deaths occurring as the result of dental hygiene  
35 treatment, and a copy of the notification shall be sent to the board.

36 (2) *The report required by this subdivision shall be on a form*  
37 *or forms approved by the board. The form or forms approved by*  
38 *the board shall require the licensee to include, but not be limited*  
39 *to, the following information for cases in which patients received*  
40 *anesthesia: the date of the procedure; the patient's age in years*

1 *and months, weight, and sex; the patient's American Society of*  
2 *Anesthesiologists (ASA) physical status; the patient's primary*  
3 *diagnosis; the patient's coexisting diagnoses; the procedures*  
4 *performed; the sedation setting; the medications used; the*  
5 *monitoring equipment used; the category of the provider*  
6 *responsible for sedation oversight; the category of the provider*  
7 *delivering sedation; the category of the provider monitoring the*  
8 *patient during sedation; whether the person supervising the*  
9 *sedation performed one or more of the procedures; the planned*  
10 *airway management; the planned depth of sedation; the*  
11 *complications that occurred; a description of what was unexpected*  
12 *about the airway management; whether there was transportation*  
13 *of the patient during sedation; the category of the provider*  
14 *conducting resuscitation measures; and the resuscitation equipment*  
15 *utilized. Disclosure of individually identifiable patient information*  
16 *shall be consistent with applicable law. A report required by this*  
17 *subdivision shall not be admissible in any action brought by a*  
18 *patient of the licensee providing the report.*

19 (3) *For the purposes of paragraph (2), categories of provider*  
20 *are: General Dentist, Pediatric Dentist, Oral Surgeon, Dentist*  
21 *Anesthesiologist, Physician Anesthesiologist, Dental Assistant,*  
22 *Registered Dental Assistant, Dental Sedation Assistant, Registered*  
23 *Nurse, Certified Registered Nurse Anesthetist, or Other.*

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

27 (5) *The board may assess a penalty on any licensee who fails*  
28 *to report an instance of an adverse event as required by this*  
29 *subdivision. The penalty is a maximum fine of one hundred dollars*  
30 *(\$100) per day not reported after the initial seven-day reporting*  
31 *period. The licensee may dispute the failure to file within 10 days*  
32 *of receiving notice that the board had assessed a penalty against*  
33 *the licensee.*

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

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

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

1 (ad) Except for good cause, the knowing failure to protect  
2 patients by failing to follow infection control guidelines of the  
3 board, thereby risking transmission of bloodborne infectious  
4 diseases from dentist, dental assistant, registered dental assistant,  
5 registered dental assistant in extended functions, dental sedation  
6 assistant permitholder, orthodontic assistant permitholder,  
7 registered dental hygienist, registered dental hygienist in alternative  
8 practice, or registered dental hygienist in extended functions to  
9 patient, from patient to patient, and from patient to dentist, dental  
10 assistant, registered dental assistant, registered dental assistant in  
11 extended functions, dental sedation assistant permitholder,  
12 orthodontic assistant permitholder, registered dental hygienist,  
13 registered dental hygienist in alternative practice, or registered  
14 dental hygienist in extended functions. In administering this  
15 subdivision, the board shall consider referencing the standards,  
16 regulations, and guidelines of the State Department of Public  
17 Health developed pursuant to Section 1250.11 of the Health and  
18 Safety Code and the standards, guidelines, and regulations pursuant  
19 to the California Occupational Safety and Health Act of 1973 (Part  
20 1 (commencing with Section 6300) of Division 5 of the Labor  
21 Code) for preventing the transmission of HIV, hepatitis B, and  
22 other blood-borne pathogens in health care settings. The board  
23 shall review infection control guidelines, if necessary, on an annual  
24 basis and proposed changes shall be reviewed by the Dental  
25 Hygiene Committee of California to establish a consensus. The  
26 committee shall submit any recommended changes to the infection  
27 control guidelines for review to establish a consensus. As  
28 necessary, the board shall consult with the Medical Board of  
29 California, the California Board of Podiatric Medicine, the Board  
30 of Registered Nursing, and the Board of Vocational Nursing and  
31 Psychiatric Technicians, to encourage appropriate consistency in  
32 the implementation of this subdivision.

33 The board shall seek to ensure that all appropriate dental  
34 personnel are informed of the responsibility to follow infection  
35 control guidelines, and of the most recent scientifically recognized  
36 safeguards for minimizing the risk of transmission of bloodborne  
37 infectious diseases.

38 (ae) The utilization by a licensed dentist of any person to  
39 perform the functions of any registered dental assistant, registered  
40 dental assistant in extended functions, dental sedation assistant

1 permitholder, orthodontic assistant permitholder, registered dental  
2 hygienist, registered dental hygienist in alternative practice, or  
3 registered dental hygienist in extended functions who, at the time  
4 of initial employment, does not possess a current, valid license or  
5 permit to perform those functions.

6 (af) The prescribing, dispensing, or furnishing of dangerous  
7 drugs or devices, as defined in Section 4022, in violation of Section  
8 2242.1.

9 ~~SEC. 3.~~

10 *SEC. 5.* Section 1682 of the Business and Professions Code is  
11 amended to read:

12 1682. In addition to other acts constituting unprofessional  
13 conduct under this chapter, it is unprofessional conduct for:

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

20 (b) Any dentist with patients recovering from conscious sedation  
21 or general anesthesia to fail to have the patients closely monitored  
22 by licensed health professionals experienced in the care and  
23 resuscitation of patients recovering from conscious sedation or  
24 general anesthesia. If one licensed professional is responsible for  
25 the recovery care of more than one patient at a time, all of the  
26 patients shall be physically in the same room to allow continuous  
27 visual contact with all patients and the patient to recovery staff  
28 ratio should not exceed three to one.

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

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

37 (e) (1) Any dentist to fail to obtain the written informed consent  
38 of a patient prior to administering general anesthesia or conscious  
39 sedation. In the case of a minor, ~~the written informed consent shall~~  
40 ~~include a form or forms approved by the board, which shall contain~~

1 ~~the following information: consent shall be obtained from the~~  
2 ~~child's parent or guardian.~~

3 ~~“All sedation and anesthesia medications involve risks of~~  
4 ~~complications and serious possible damage to vital organs such as~~  
5 ~~the brain, heart, lung, liver, and kidney, and in some cases use of~~  
6 ~~these medications may result in paralysis, cardiac arrest, or death~~  
7 ~~from both known and unknown causes. Therefore, use of~~  
8 ~~appropriate monitoring equipment, as described in subdivision (e)~~  
9 ~~of Section 1682, is required.”~~

10 ~~(2) For the purpose of this subdivision, administering general~~  
11 ~~anesthesia or deep sedation shall include, but is not limited to,~~  
12 ~~directing the administration of general anesthesia or deep sedation.~~

13 ~~Nothing~~

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

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

23 ~~(3) Nothing in this subdivision shall be construed to establish~~  
24 ~~the reasonable standard of care for administering general anesthesia~~  
25 ~~or deep sedation, or monitoring oral conscious sedation, conscious~~  
26 ~~sedation, or general anesthesia.~~