









- 1  **California Dental Practice Act**
UOP AADSD Alumni Meeting
- 2  **Arthur W. Curley J.D.**
 - Bradley, Curley, Barrabee & Kowalski PC
- 3  **Health Care Law Firm**
 - Malpractice Claims
 - Litigation Defense
 - Preventative Office Audits
 - Licensure Accusations
 - Defense
 - Responses to Board
 - Practice Sale/Purchase
 - Contract Review
 - Dispute Management
 - Incorporation Protections
 - Employment Defense
 - Preventative Claims
 - Associate Agreements
 - Litigation Defense
- 4  **Wisdom Shared**
 - Having Good Judgment
 - Judgment by Experience
 - Experience from Bad Judgment
- 5  **How Not to Become a Target**
- 6  **California Dental Practice Act**
 - The Mandated Course
 - Category 1 (CCR §1016,1017)
 - Nature of the Statutes/Codes
 - Standards of Care
 - Confidentiality – CC §56 & HIPAA
 - <http://www.dbc.ca.gov/laws.html>
- 7  **When does the DBC Investigate?**
 - Patient Complaint in Writing – *Most Cases
 - Report from Insurance Co. Post-Settlement
 - Report from PD of Arrest, Criminal Conviction
 - Report of Patient's Insurance Provider (Audit)
 - Report of Staff or Former Staff Person
 - Report of Clinic or Practice Owner - *Rare
- 8  **When the Dental Board Comes *Calling***
When You Get the Notice
Time is Critical – Typically < than 2 Weeks
Call Your Carrier

*Before Call – Check for Administrative Insurance
 Don't Respond without Advice
 Don't Contact the Patient(s)
 Rarely Surprise Office Visit – Usually Very Bad
 Entitled to have Attorney Present for Interview

9  **Sanction Affect**

IF PLACED ON PROBATION

- Some Insurance Plans - Exclusion
- Medical/Medicaid/ACA – Always Exclusion
- Internet Listing on DBC Web Page
 - Posting of accusation and settlement - Forever
- Public Perception – Google, Yelp, etc.
- If Revocation – Wait 3 years to Reapply

10  **Essential Topics**

- Licensure: Renewal, Suspension & Revocation
- Scope of Practice
- Use of Dental Auxiliaries
- Prescription of Drugs
- Special Provisions of the Dental Practice Act
- Mandatory Reporter Obligations
- CE Terms and Restrictions

11  **Source of an Accusation(s)**

Violation(s) of a Statute
 Substandard Care Act(s)
 Fraudulent Act(s)
 Not Necessarily to one that Started the Complaint
 Failure of Evidence of Standard of Care

12  **Common Violations Seen by DBC**

DA doing Coronal Polishing
 DA or RDA doing Prophylaxis
 DDS doing non-dental Cosmetic Treatment
 Violation of OSHA or Infection Control Mandate
 Permanent Cementation of Crown by DA
 Unlicensed DDS doing RDA or RDA treatments
 Refusing to refer to Specialist upon Request
 ** DBC Starting to Focus on Staff Scope Issues

13  **Other Violations**

- Failure to Refer to Specialist
- Refusing to Refer to a Specialist upon Request
- Inadequate RCT Fillings
 - Short, Long, Under Condensed, No Dam
- Open Restoration Margins
- Inadequate Records – Not Legible

- Billing not Matching Records or Imaging
- Chemical Dependency Issues

14  **Basic Dental Board Law**

- Negligence >
- Causing >
- Any Injury - NOT for DBC
- Damages \$\$\$ - Not Needed
- Safety = Could Have Caused

15  **Standards of Care: Opinion**

- Expert Witnesses Primary Source
- Licensed to Do the Treatment in Question
- In California, Expert Does Not have to be the Same Type of Specialist
 - Sedation Cases - Common MD Anesthesiologist
 - Some States, Must be the Same type of Dentist

16  **Standards of Care: Written**

- Any Statute that Mandates Specific Care
 - FDA
 - DPA Statutes
 - Example, IV General Anesthesia Rules
- Society Guidelines (ASA, AAOMS, ADA)
 - ALJ Can Accept
- Introduced by Experts if;
 - Peer Reviewed Article
 - Recognized Authoritative Text

17  **Complication: Evidence of Risk or Substandard Care?**

- Risk = a Complication that Can Occur Despite Use of:
 - Skill;
 - Care; and/or
 - Technology

18  **Skill and Care Examples**

- Wrong Tooth Removed
 - Team Protocol Failure of Care
- Extractions:
 - Lingual Paresthesia Cases: Experts say Skill Issue
- Open Permanent Crown Margins
 - Lack of Care and Skill
- Implant into the IAN Canal
 - Failure to Use Technology – Experts say CBCT?

19  **Risk of RCT Overfill?**


20  **Duty to Refer Law**

- Basic Law: *What a Reasonable Dentist Should Do Under the Same or Similar Circumstances?*
 - 1) Predict & Prepare for Complication

- 2) Timely Recognize Complication
- 3) Timely Treat Complication, OR Timely Refer Complication

21  **Standards of Care: *Informed Consent***

- Warn of Known Risk, Serious Injury or Death
- Discuss Alternative Treatments
- Statutes; Must be Written For GA or Conscious Sedation (B&P §1682)
- Reasonable Person Standard as to What to Tell
- DDS must Explain at Some Point.
- Document, Document, Document

22  **New Law – Consent Content**

- Mandatory Consent Law 1/1/17 B&P 1682e2
- (2) The written informed consent, in the case of a minor, shall include, but not be limited to, the following information:
- *"The administration and monitoring of general anesthesia may vary depending on the type of procedure, the type of practitioner, the age and health of the patient, and the setting in which anesthesia is provided. Risks may vary with each specific situation. You are encouraged to explore all the options available for your child's anesthesia for his or her dental treatment, and consult with your dentist or pediatrician as needed."*

23  **Individual Patient Consent Issues**

- Ethnicity
- Culture
- Religion
- Financial

24  ***Informed Refusal***

- HCP Must Make Sure Patient Aware of Significant Risks of Refusing Recommendations.
- *Truman v. Thomas 27 C3d 285 (1980)*

25  ***Informed Refusal***

- Traditional
 - Risks of Having Treatment
- NEW
 - Risks of Not Having Treatment
 - Risks of Having Lesser Treatment
- Alternatives
 - Offered
 - Accepted or,
 - Declined
 - Document Choice

26  **Real Case Example**

- Recent Claim
 - Ortho vs. Veneer Restoration
 - Ortho vs. Restoration Risks
 - Time to Complete

- Long Term Effects
- Result
- Claim
- Suit
- Verdict
- \$80,000

27  **Sample Documentation**

- Patient advised to _____
- _____
- Patient declines/refuses
- Risk, Benefits & Alternatives Reviewed
- Including _[Worst Risk]_____
- Patient declines/refuses
- _____
- [date]_____ [patient signature]_____

28  **Records**

29  **Records**

- Statutory Requirements
- Defined; Hx, Cx, Dx, Tx
- Preservation
- Recommendation: At Least 10 Years
- Implants: 20-30 Years
- Tip: Go Digital, Keep Forever or Until Sale

30  **Electronic Records**

- Regular Back-up, Off Site Storage,
 - 4th Quarter or Once a Year include Software
 - Provide to Board Upon Request
- No Alteration
- Printable
- Electronic Signature
- Confidential; Protected

31  **Patient Privacy Issues**

- Legal Mandates
- Federal HIPAA Laws
- State Laws
- Digital Risks
 - e-mail Security
 - Record Security
 - Communication Security

32  **Consequences**

- Records Breach:
 - Report to Police
 - Report to Justice Department

- Notify All Patients
- Communications Breach
 - Document Event
 - Document Correction
 - Advise Patient(s)
- Civil Suits, Criminal Charges

33 **Photos**

- Charting Without Notes
- Easy to Do
- Easy Storage
- Powerful Tool
- Your Side of the Story
- Hard to Dispute

34 **Photos as Records**

- Patient
- Models
- Preps
- Shade
- Approval

35 **Statutory Obligations**

36 **Reporter Mandates**

- Mandatory Reporter Obligations Set Forth in the Child Abuse and Neglect Reporting Act
- (Penal Code §11166 et seq.)
- Elder Abuse and Dependent Adult Civil Protection Act
- (Welfare and Institutions Code §15600 et seq.)
- Assumed Know Clinical Signs In Identifying Abuse
 - Neglect, Physical, Sexual, Mental (*Not Simple Dental Neglect*)
 - Knows or Reasonably Suspects
- Report Immediately

37 **Abuse Reporting**

- *Suspicion* of Child Abuse – PC §11165.7
- *Suspicion* of Abuse of The Disabled
- *Suspicion* of Elder Abuse
-
- Reporting Methods – PC §11166
 - OK 1st by phone, writing w/in 36 hrs.
 - PC 11166.05 Emotional Damage
 - CPS, PD, Adult Protective Service
 - PC §11165.9

38 **Mouth: What is Suspicion?**

- Non-accidental injuries most often include burns in the mouth caused by scalding liquids;

- Fractured or avulse teeth;
- Bruises to the palate and inner cheeks;
- Muscle under the tongue torn or the area under the lip damaged from food or utensils being shoved in the child's mouth.
- Sexual abuse, signs of certain sexually transmitted diseases in the mouth.

39 **Reporting Protections**

- OK X-rays w/o Consent to Prove Abuse
 - PC §11171.2
- Immunities if Wrong PC §11172
 - So long as Good Faith Report
 - And Confidential Communication

40 **Failure To Report Abuse**

- Unprofessional Conduct
- Civil Suits
- Criminal Penalties
- Codes:
 - W&I §15601a Seniors
 - W&I §15616b1 Disabled
 - CPC §11165 Children

41 **Neglect and Disease**

- OK to be uneducated
- Sugar is a food, not a Drug
- Sugar is in everything
- OK to give Child lots of Sugar
- Home Care is: Confusing? Difficult? Optional?
- Rampant Decay and Tooth Loss Not Abuse

42 **New Incident Laws** **Reporting Requirements**

43 **DBC Reporting Requirement**

- 1680 (z) (1) The failure to report to the board in writing within seven days any of the following: (A) the death of his or her patient during the performance of any dental or dental hygiene procedure; (B) the discovery of the death of a patient whose death is related to a dental or dental hygiene procedure performed by him or her; or (C) except for a scheduled hospitalization, the removal to a hospital or emergency center for medical treatment of any patient to whom oral conscious sedation, conscious sedation, or general anesthesia was administered, or any patient as a result of dental or dental hygiene treatment. With the exception of patients to whom oral conscious sedation, conscious sedation, or general anesthesia was administered, removal to a hospital or emergency center that is the normal or expected treatment for the underlying dental condition is not required to be reported. Upon receipt of a report pursuant to this subdivision the board may conduct an inspection of the dental office if the board finds that it is necessary.

44

- (2) The report required : the date of the procedure; the patient's age in years and

months, weight, and sex; the patient's American Society of Anesthesiologists (ASA) physical status; the patient's primary diagnosis; the patient's coexisting diagnoses; the procedures performed; the sedation setting; the medications used; the monitoring equipment used; the category of the provider responsible for sedation oversight; the category of the provider delivering sedation; the category of the provider monitoring the patient during sedation; whether the person supervising the sedation performed one or more of the procedures; the planned airway management; the planned depth of sedation; the complications that occurred; a description of what was unexpected about the airway management; whether there was transportation of the patient during sedation; the category of the provider conducting resuscitation measures; and the resuscitation equipment utilized. A report required by this subdivision shall not be admissible in any action brought by a patient of the licensee providing the report.

45 

- (3) For the purposes of paragraph (2), categories of provider are: General Dentist, Pediatric Dentist, Oral Surgeon, Dentist Anesthesiologist, Physician Anesthesiologist, Dental Assistant, Registered Dental Assistant, Dental Sedation Assistant, Registered Nurse, Certified Registered Nurse Anesthetist, or Other.
- (4) The form shall state that this information shall not be considered an admission of guilt, but is for educational, data, or investigative purposes.
- (5) The board may assess a penalty on any licensee who fails to report an instance of an adverse event as required by this subdivision. The licensee may dispute the failure to file within 10 days of receiving notice that the board had assessed a penalty against the licensee.

46 

Criminal History

- CCR: §1007, Must Respond to BD request for Criminal History w/n 30 days. Provide Docs
- At Renewal : Must Disclose
 - Any Conviction, no-contest plea or expungement, of any Violation of Law
 - Anywhere
 - Except Traffic Less than \$1,000
 - Include Traffic Involving ETOH, Dangerous Drug, or Controlled Rx
 - Any Disciplinary Action Against Any License
 - Any Investigation of any License
 - Another State? *Maybe*

47 

Failure To Pay Taxes

- Effective July 1, 2012, the Dental Board of California is required to deny an application for licensure or suspend a license, certificate, or registration if a licensee or applicant has *outstanding tax* obligations due to the Franchise Tax Board (FTB) or the State Board of Equalization (BOE) and appears on either the FTB or BOE's certified lists of top 500 tax delinquencies over \$100,000. (*AB 1424, Perea, Chapter 455, Statutes of 2011*)

48 

Licensure

License Display – the name and license status of each licensee must be on a name tag in at least 18-point type or the person's License can be prominently displayed

49 

Exemptions B&P §1626

- Oral Surgery By Permitted MD
- Students In School
- Instructors – Licensed Elsewhere
- Demo Lecture If Approved By DBC
- During License Exam
- Military – Only Need License in Any State

50  **Renewal Of License**

- CE Every Two Years (CCR §1015-17)
- DDS, 50 Units
- RDA, 25 Units
- Sedation DA, 25 Units
- ORTHO DA, 25 Units
- RDH, 25 Units
- RDEF, 25 Units
- RDHAP, 35 Units
- Instructor
 - Credit For
 - Teaching

51  **DA B&P §1750(c) 1/1/2010**

- Supervising DDS must assure all DA
- Hired After 1/1/10
- Continuous Employ for +120 Days
- Completed with a year:
 - BLS/CPR
 - Infection Control Course (New 1X 8 hour course)
 - Dental Practice Act Course (1X)
 - *** One time requirement, not every 2 years
 - But must remain BLS training continuously

52  **Basic Life Support**

- (a) An American Heart Association (AHA) or American Red Cross (ARC) course in Basic Life Support (BLS) or,
- (b) A BLS course taught by a provider approved by the American Dental Association's Continuing Education Recognition Program (CERP) or the Academy of General Dentistry's Program Approval for Continuing Education (PACE).
- Airway Protocols, Adult and Pedo -Deaths

53  **CE Specifics (CCR §1016, §1017)**

- Primarily for Patient Benefit – 80% OF ALL CE
 - Mandated Courses
 - Infection Control – 2 Units
 - Dental Practice Act – 2 Units
 - Basic Life Support
- Units of Instruction
 - I Unit = I Hour, Max 8 Units/Day, By DBC Approved Providers
- Delivery

- Traditional Lecture, Live By Phone/Video
- Approved by DBC, ADA, CERP and AGD PACE
- Not Live = Tape Recording, Home Study, Video, Computer
 - Must Be Pre-approved By CDB
 - Max 50% Of Credits
- Records – 6 (3X Renewals) YRS CCR §1017(n) – Ideal 7 Years IRS

54  **Dental Board and C.E. Audits**

- The Dental Board of California is currently in the process of auditing random dental practices to ensure that licensees are meeting the continuing education (C.E.) requirements necessary for license renewal.
- Over the last year, the dental board has been auditing approximately 60 dentists per month. Two issues identified during these audits are that licensees are unable to produce the appropriate certificate of completion for C.E. courses, and licensees are taking classes that are not dental related.

55  **Courses In The Actual Delivery Of Dental Services To The Patient Or The Community**

56  **Other Non-Mandated for Patient**

- (A) Courses in *preventive services, diagnostic* protocols and procedures (including physical evaluation, radiography, dental photography) comprehensive treatment planning, charting of the oral conditions, informed consent protocols and recordkeeping.
- (B) Courses dealing primarily with *nutrition* and nutrition counseling of the patient.
- (C) Courses in *esthetic*, corrective and restorative oral health diagnosis and treatment.
- (D) Courses in dentistry's role in individual and community health *emergencies*, disasters, and disaster recovery.

57  **Other Non-Mandated**

- (E) Courses that pertain to the legal requirement governing the licensee in the areas of auxiliary employment and delegation of responsibilities; the Health Insurance Portability and Accountability Act (*HIPAA*) and actual delivery of care.
- (F) Courses pertaining to federal, state and local regulations, guidelines or statutes regarding *workplace safety*, fire and emergency, environmental safety, waste disposal and management, general office safety, and all training requirements set forth by the *California Division of Occupational Safety and Health (Cal-DOSH)* including the Bloodborne Pathogens Standard.
- (G) Courses pertaining to the administration of general *anesthesia*, conscious sedation, oral conscious sedation or medical emergencies.

58  **Other Non-Mandated**

- (H) Courses pertaining to the evaluation, selection, use and care of dental instruments, sterilization *equipment*, operatory equipment, and personal protective attire.
- (I) Courses in dependency issues and *substance abuse* such as alcohol and drug use as it relates to patient safety, professional misconduct, ethical considerations or malpractice.
- (J) Courses in behavioral sciences, behavior guidance, and patient management in the delivery of care to all populations including *special needs, pediatric and sedation*

patients when oriented specifically to the clinical care of the patient.

- (K) Courses in the selection, incorporation, and use of current and *emerging technologies*.

59  **Other Non-Mandated**

- (L) Courses in cultural competencies such as *bilingual dental* terminology, cross-cultural communication, provision of public health dentistry, and the dental professional's role in provision of care in non-traditional settings when oriented specifically to the needs of the dental patient and will serve to enhance the patient experience.
- (M) Courses in dentistry's role in individual and *community health* programs.
- (N) Courses pertaining to the legal and ethical aspects of the *insurance industry*, to include management of third party payer issues, dental billing practices, patient and provider appeals of payment disputes and patient management of billing matters.

60  **No More than 20% of Courses**

61  **Primarily for Benefit of the Licensee**

Courses Directly Related To The Practice of Dentistry vs. Patient Care

62  **Examples:**

- (A) Courses to improve *recall and scheduling* systems, production flow, communication systems and data management.
- (B) Courses in *organization and management* of the dental practice including office computerization and design, *ergonomics*, and the improvement of practice administration and office operations.
- (C) Courses in *leadership development* and team development.

63  **Examples:**

- (D) Coursework in *teaching* methodology and curricula development.
- (E) Coursework in *peer evaluation* and case studies that include reviewing clinical evaluation procedures, reviewing diagnostic methods, studying radiographic data, study models and treatment planning procedures.
- (F) Courses in *human resource management* and employee benefits.

64  **Additional CE Requirements**

- Conscious Sedation; 15 Units/2yrs
 - General Anesthesia; ACLS Course
 - Oral Conscious Sedation 7 Hours/2yrs
 - *Permit Holders Can Apply For Credit*
 - Full Time Course May Get Credit
 - N/A for 2 years After 1st get License
- Fees (B&P §1725)
- 30 Grace Period (B&P §1718)
 - Re-exam At 5 Years, but 1 Yr for Disabled

65  **Infection Control RDA & RDAEF**

- 8 Hour Infection Control Course
- 1 Time
- With in 1 year of Employment
- Only Approved Course

- Effective 1/1/10

66  **Outside The Scope of CE Credit**

- (A) Courses in *money management*; the licensee's personal finances or personal business matters such as financial planning, estate planning, and personal investments.
- (B) Courses in general *physical fitness*, weight management or the licensee's personal health.
- (C) Presentations by *political or public figures* or other persons that do not deal primarily with dental practice or issues impacting the dental profession.
- (D) Courses designed to make the licensee a *better business* person or designed to improve licensee personal profitability, including motivation and marketing.

67  **Outside The Scope of CE Credit**

- (E) Courses pertaining to the *purchase or sale* of a dental practice, business or office; courses in transfer of practice ownership, acquisition of partners and associates, practice valuation, practice transitions, or retirement.
- (F) Courses pertaining to the provision of elective *facial cosmetic surgery as defined by the Dental Practice Act in Section 1638.1*, unless the licensee has a special permit obtained from the Board to perform such procedures pursuant to Section 1638.1 of the Code.

**Completion of a course does *not constitute authorization* for the attendee to perform any services that he or she is not legally authorized to perform based on his or her license or permit type.

68  **Required Permits**

Additional Office
 Conscious Sedation
 Extramural Dental Facility – Schools
 Elective Facial Cosmetic Surgery
 Fictitious Name*
 General Anesthesia
 Mobile Dental Clinic
 Oral Conscious Sedation – Adult and Minors
 Oral & Maxillofacial Surgery
 Referral Services – B&P 650
 Special Permit - Teaching

69  **Revocation (B&P §1670)**

- Unprofessional Conduct (B&P §1680-5)
- Repeated Acts of Negligence
- Gross Negligence
- Incompetence
- Conviction of A Crime (B&P §1670.1)
 - Felony, Misdemeanor (Moral Turpitude)
 - Mandatory Reporting at Renewal

70  **Discipline**

- Sentencing Guidelines CCR §1018

- Admissions
- Revocation - Stayed
- Probation 3-7 yrs
- Suspension 1-4 wks
- Fines/Cost \$500 - \$35,000 – Not Insurable
- CE on Subject – Not Count Toward 25/50 Units

71  **Substance Abuse/Sales**

- Abuse of Controlled Substance
- Forging Rx
- Criminal Conviction Regard Drugs
 - Selling
 - Distribution
 - DUI with Injury

72  **[DBC Diversion]**

73  **Rehabilitation-Diversion (B&P §1695-9)**

- Reporting Immunity
- Registration – License Status
- Confidential Mandate
- Completion: Records Destroyed; Can't Subpoena
 - (B&P §1698)
- Termination Due To Failure To Comply
 - (B&P §1697)

74  **Notice To Board Of Incident (B&P §800-809)**

- Conviction Of A Crime - Unprofessional Conduct By PD/DA/AG
- Payment In Excess Of \$10,000 By Carrier (§801)
- Payment In Excess Of \$3,000 By Doctor (§802)
- Payment In Excess Of \$10,000 By Clinic
- Judgments In Excess Of \$30,000 By Court (§803)
- Report By Carrier or Plaintiff /Attorney (§801f)
- Written Consent of Dentist for Settlement (§801)

75  **Unlicensed DDS as RDA or RDH**

- Suspended License (B&P§1680 b)
- Foreign License (B&P§1680 c)
- Absolutely Prohibited
- Strict Liability
- Defense: Documentation Mandate
 - Diploma, Certificate, License, CE

76  **Practical Effect**

- License Sanction – Can't get one Later
- Potential for forced Refund of Fees
- Can't Get Licensed While Case Still Pending
- Presumption of Malpractice for Complication
- Criminal Penalties

77  **Laboratories**

- B&P §1626 Exemption
 - Verification of Shade Guide, Pros Fabrication
 - With Written Authorization from DDS
 - Can work as would a DA in the office of the DDS

78  **Scope of Practice**

- DENTIST DEFINED (B&P §1625)
- The diagnosis or treatment, by surgery or other method, of diseases and lesions and the correction of mal-positions of the human teeth, alveolar process, gums, jaws, or associated structures; and such diagnosis or treatment may include all necessary related procedures as well as the use of drugs, anesthetic agents, and physical evaluation.

79  **Scope of Practice**

- Dental Manager acting as DDS
 - Controls DDS, RDH
 - 1st Presents Diagnosis to Patient, before DDS
- Staff Doing DDS Work
- Medications (B&P §1681)
 - Non-Dental
 - Self Rx (Schedule 2,3)

80  **Boctox Policy – ~~Former~~ Policy**








- *“Botox or any related agents can only be used for the diagnosis and treatment of TMD/myofacial conditions as part of a comprehensive treatment plan. Use for isolated cosmetic purposes is illegal, unless privileged under the Facial Cosmetic Surgery Permit. For further information, please contact our Sacramento Enforcement Unit at 916-274-6326 or our Southern California Enforcement Field Office at 714-247-2100(please see Business and Professions Code, Sections §1625 and §1638.1).”*
- ****Removed.**

81  **Current Notice**

- “A dentist may, therefore, use any legally prescribed drugs to treat patients as long as the treatment is within the aforementioned *scope of practice*. ”
- “A licensed California dentist who has been granted a permit to perform elective facial cosmetic surgery may utilize Botox and similar drugs purely for cosmetic purposes *as long as it is legally prescribed and within the scope of practice for their permit (see Business and Professions Code section §1638.1)*. Please note that some permit holders may not be authorized to perform all cosmetic surgery procedures within the scope of the elective facial cosmetic surgery permit.”

82  **Oral Meds (B&P §1647.10-15)**

- Law as of 1/6/00 [B&P §1647.7]
- Certification Required For Use Of Oral MEDS – Minors – Under Age 13
N/A If Already Have GA/CS Permit
- Document 10 Cases Over 3 Years
Take 25 Hour Approved Course
7 Hours CE Oral SED/2YRS

- 83  **Oral Meds (B&P §1647.18-25)**
- New Adult Rules For O.C.S. as of 10/05
 - Not Home, Only for Office Use
 - Must Register With DBC
 - Prove Training + 7 HRS
 - 10 Cases - Grandfathered
- 84  **Evolving Standard of Care?**
- BP and Pulse
 - Any Staff can take and Record
 - At 1st Examination as a Baseline
 - All Patients for Treatment
 - Local
 - Operative
 - Surgery
 - Not Consults, x-rays.
- 85  **Place of Practice (B&P 1650)**
- Multiple Offices OK - B&P §1658.1
 - Registration of Each with DBC (1650)
 - Owner Must Accept Legal Responsibility for Each Office.
 - Posting Names of All DDS At Office (§1700d)
 - Must Post Name of Owner
- 86  **Reporting e-mail B&P 1650.1**
- (a) Every applicant and licensee who has an electronic mail address shall report to the board that electronic mail address no later than July 1, 2016. The electronic mail address shall be considered confidential and not subject to public disclosure.
 - (b) The board shall annually send an electronic notice to each applicant and licensee that requests confirmation from the applicant or licensee that his or her electronic mail address is current.
- 87  **Corporations**
- Nature of The Entity – Must Document
 - Protection For The Conduct of Others
 - Claim/Incident May Not be Insurable
 - Annual Report (B&P §1803)
 - Name = DDS (B&P §1804)
 - Violation of Regulations = Unprofessional Conduct
 - (B&P §1807) Revocation Risk
- 88  **Dental Auxiliaries**
- Selection
 - Management
 - B&P §1740-1777
- 89  **New Rules**
- Gone: COMDA; Effective July 1, 2009
 - The Dental Board of California is the regulatory board for licensed Dentists,

Registered Dental Assistants and Registered Dental Assistants in Extended Functions health care professionals.

- Now: DHCC Regulates RDH, RDHEF, RDHAP
- 1st of It's Kind - 2008
- Since 7/1/09
- Next Sunset 2018

90  **Dental Auxiliary (B&P §1741e)**

- *Perform dental supportive procedures*

91  **Law – Direct Supervision Change**

- Not Required to See Patient
 - B&P §1088 Repealed
- Now B&P §1067, §1741
- Controversy: Quality of Care? Few Claims
- Exceptions: Procedure Specific Statutes

92  **General Supervision (B&P §1741d)**

- Instructions by DDS not requiring presence

93  **Supervision Limits (5)**

- An individual DDS May not Concurrently Supervise more than 5 RDH, RDAEF, or RDHAP except for Examinations Temporary Events such as School and Health Fairs. B&P 1684.5 (2014)

94  **Exam Before RDH Treatment**

- No Treatment By Anyone B4 Patient is of Record.
- Defined: Medical/Dental Hx, Examined by DDS, and Diagnosed and Written Treatment Plan. B&P §1684.5
- Exceptions: Only After Preliminary Exam by DDS
 - Emergency X-Rays Ordered by DDS
 - Extra Oral Duties Ordered by DDS
 - Mouth Mirror Inspection, Charting Obvious Lesions, Malocclusions, Existing Restorations, and Missing Teeth

95  **Not Applicable**

- Exams on Temporary Basis
 - Outside of Office
 - Health Fairs
 - School Screenings
 - Supplemental Programs Administered in a School or Pre-School Setting
 - Fluoride Mouth Rinse Programs

96  **Special RDH Duties (B&P 1910.5)**

- After Appropriate Course Completion;
- May Determine X-Rays Needed for DDS to Make Diagnosis and Treatment Plan based upon Protocols from DDS (Need Written Policy)
- Place Protective (Interim Therapeutic) Direct Provisional Restorations after removal of soft material by hand.
- No Drills, No Local

- In Office of Public Health Setting

97  **Posting Requirement - Duties (CCR §1068)**

- Posters
- Must Post Dental Auxiliaries
- OSHA - Fines
- Worker's Comp
- *Posting of Dental Auxiliary Duties* – all dentists utilizing the services of dental auxiliaries shall post a notice in a common area of the office which delineates duties and functions deemed by the board as delegable within stipulated settings and/or circumstances. Such notice shall be readily accessible to all individuals under supervision of the dentist.

98  **New DDS/RDA Poster/Notice Law**

- Section CCR §1065. Notice to Consumers of Licensure by the Dental Board.
(a) A licensed dentist engaged in the practice of dentistry shall provide notice to each patient of the fact that the dentist is licensed and regulated by the Board. The notice shall include the following statement and information:

99  **New RDH Poster/Notice Law**

- B&P Section §138. Notice to Consumers of Licensure by Dental Hygiene Committee of California
- Licensees must provide notification to their patients that they are licensed by the DHCC
 - Post sign – 48 Arial point type, or
 - Signed letter in file that patient was informed, or
 - On letter head 14 point type

100  **Poster/Notices Rules**

- Post in Waiting Room
- Only Has to be in English (For Now)
- OK other Languages Also
- Applies to Hospitals and Clinics
- Just as the Sign Says, Nothing More
- Still Post Names of DDS, RDA, RDH
- Only in California

101  **Required Employee Posters**

- Anti-Harassment
- EEOC
- Min Wage
- Pay Day
- Polygraph
- Pregnancy Disability Leave
- Time off to Vote
- Radiation Protection
- Unemployment
- Whistleblowers

102  **Table of Permitted Duties**

http://www.dbc.ca.gov/formspubs/pub_permitted_duties.pdf

103  **Table of Permitted Duties (Rev. 3/4/10)**

– Following is a table of duties which Dental Assistants (DA), Registered Dental Assistants (RDA), Registered Dental Assistants in Extended Functions (RDAEF), Orthodontic Assistants (OA) and Dental Sedation Assistants (DSA) are allowed to perform in California. This table is intended to provide summary information to interested parties. It is not intended to cover all aspects of applicable laws or provide a substitute for reviewing the laws that are cross-referenced below. It is highly recommended that applicants and licensees review the actual text of the laws cited at the link provided below. If a duty is not listed in the sections of law cited below, assistants are NOT allowed to perform the duty. Under each category of assistant is one of the following notations: "N", "D", "C" or "G".

104  **Table of Permitted Duties (Rev. 3/4/10)**

– "N" = means that the assistant is NOT permitted to perform the duty.
 – "D" = means that the assistant may perform the duty under the Direct supervision of a dentist, which means supervision of dental procedures based on instructions given by a licensed dentist who must be physically present in the treatment facility during the performance of those procedures. The duty must be performed pursuant to the order, control and full professional responsibility of the supervising dentist. Such procedures must be checked and approved by the supervising dentist prior to dismissal of the patient from the office of said dentist.

- Note: Dental Sedation Assistant permit holders may also perform the listed duty under a licensed health care professional authorized to administer conscious sedation or general anesthesia in the dental office.

105  **Table of Permitted Duties (Rev. 3/4/10)**

- "C" = means that the assistant may perform the duty in the specified setting under the supervision of a dentist, Registered Dental Hygienist, or Registered Dental Hygienist in Alternative Practice .
- "G" = means that the assistant can perform the duty under the General supervision of a dentist, which means based on instructions given by a licensed dentist, but not requiring the physical presence of the supervising dentist during the performance of those procedures.
- "DD" = The supervising licensed dentist shall be responsible for determining whether each authorized procedure performed by a registered dental assistant should be performed under general or direct supervision, except as provided in Section 1777.

106  **Treatments Defined (CCR §1067)**

- ORAL PROPHYLAXIS:
 - "... complete removal of explorer-detectable calculus, soft deposits, plaque, stains and smoothing..."
- CORONAL POLISHING:
 - "... removal of plaque and stain from exposed tooth surfaces, utilizing....rubber cup or brush..."

107  **Treatments Continued**

- ROOT PLANING:
 - "... unattached surface of the root ... made smooth ... no flap unless RDHEF..."
- PERIODONTAL SOFT TISSUE CURETTAGE:

– "... closed removal of tissue ... without flap ..."

108  **Dental Assistant - DA**

- DEFINED: Basic supportive dental procedures - *reversible and non-hazardous* (B&P §1067m)

109  **DA Duties: (CCR §1085)**

- GENERAL SUPERVISION; Extra oral duties, x-rays
- DIRECT SUPERVISION;
 - Model impressions, topical, remove dressings, elastic separators, remove sutures, oral measurements for ortho, check loose bands, remove arch and ligature wires, limited N2O with DDS present, matrices, rubber dams

110  **DA Can Not**

- Diagnose, cut, fit or adjust prosthetics; prescribe; restorations/models; irrigate/medicate canals; injections; oral prophylaxis

111  **Registered Dental Assistant - RDA**

- DEFINED: All duties of DA, plus education and training

112  **Duties (CCR §1086)**

- GENERAL SUPERVISION;
 - mirror exploration, temporary sedative dressings
- DIRECT SUPERVISION
 - endo cultures, dry canals, pulp test, place bases/liners, removed excess cement, size and cement temporary crowns, remove ortho bands, ortho separators, arch wires
 - Coronal polishing (special training B&P 1069), remove excess cement with sonic scaler
 - *Such procedures shall be checked and approved by the supervising dentist prior to dismissal of the patient from the office of said dentist.*

113  **Required RDA instruction in pit and fissure sealants effective January 1, 2010**

- A registered dental assistant licensed on and after January 1, 2010, shall provide evidence of successful completion of a board-approved course in the application of pit and fissure sealants prior to the first expiration of his or her license that requires the completion of continuing education as a condition of renewal. The license of a registered dental assistant who does not provide evidence of successful completion of that course shall not be renewed until evidence of course completion is provided.

114  **RDA Duties beginning January 1, 2010 A registered dental assistant may perform all of the following duties:**

- (1) All duties of DA.
- (2) Mouth-mirror inspections of the oral cavity, to include charting of obvious lesions, existing restorations, and missing teeth.
- (3) Apply and activate bleaching agents using a nonlaser light-curing device.
- (4) Use of automated caries detection devices and materials to gather information for diagnosis by the dentist.
- (5) Obtain intraoral images for computer-aided design (CAD), milled restorations.

115  **RDA**


- (6) Pulp vitality testing and recording of findings.
- (7) Place bases, liners, and bonding agents.
- (8) Chemically prepare teeth for bonding.
- (9) Place, adjust, and finish direct provisional restorations.
- (10) Fabricate, adjust, cement, and remove indirect provisional restorations, including stainless steel crowns when used as a provisional restoration.

116  **RDA**

- (11) Place post-extraction dressings after inspection of the surgical site by DDS.
- (12) Place periodontal dressings.
- (13) Dry endodontically treated canals using absorbent paper points.
- (14) Adjust dentures extra-orally.

117  **Registered Dental Assistant, *Extended Functions* - RDAEF**

- Defined: All duties of DA & RDA, plus education and training ...

118  **Duties: (CCR 1087) LIMIT 2 (B&P §1763) **Before 1/1/10**


- GENERAL SUPERVISION; N/A
- DIRECT SUPERVISION
- Cord retraction, impression for casts restorations, orthodontic and guards, etching enamel, endodontic post patterns, trial fit filling points, apply sealants
- *Such procedures shall be checked and approved by the supervising dentist prior to dismissal of the patient from the office of said dentist.*

119  **New Requirements for New Duties**









- Hold a current license as an RDAEF or complete the requirements for licensure as an RDAEF.
- Successfully complete a board-approved course in the application of pit and fissure sealants.
- Successfully complete the following:
 - A board-approved RDAEF course or courses in all of the existing and new procedures. A course approved by the Dental Board must be at least 380 hours long.
 - Pass a written examination given by the Dental Board.
 - Pass a clinical or practical examination given by the Dental Board.

120  **RDAEF Duties After 1/1/10 (§1753.5)**

- (1) Conduct preliminary evaluation of the patient's oral health, including, but not limited to, charting, intraoral and extra-oral evaluation of soft tissue, classifying occlusion, and myofunctional evaluation.
- (2) Perform oral health assessments in school-based, community health project settings under the direction of a dentist, registered dental hygienist, or registered dental hygienist in alternative practice.

121  **RDAEF 1/1/10 – Limit 3**

- All duties and procedures that a RDA is allowed to perform.
- Cord retraction of gingiva for impression procedures.
- Size and fit endodontic master points and accessory points.
- *Cement.*
- Take final impressions for permanent indirect restorations.

- *Take final impressions for tooth-borne removable prosthesis.*
 - *Polish and contour existing amalgam restorations.*
 - *Place, contour, finish, and adjust all direct restorations.*
 - *Adjust and cement permanent indirect restorations.*
- 122  **Registered Dental Hygienist – RDH B&P 1907**
- DEFINED: All duties DA and RDA under direct supervision, plus education and training, grandfathered before 2006. Now have to be RDA to do RDA.
- 123  **Duties: (CCR §1088)**
- GENERAL SUPERVISION
 - Root planing, polish and contour, oral exfoliative, sealants, pre-exam for perio charting, soft tissue, lesions, occlusion class, myofunctional evaluation
 - DIRECT SUPERVISION
 - periodontal curettage, local anesthesia, N2O (all with approved training)
- 124  **Registered Dental Hygienist, *Extended Functions* (RDHEF)**
- Defined: All duties, DA, RDA & RDH, plus education and training.
- 125  **Duties: (CCR §1089) LIMIT 2 (B&P §1770)**
- General Supervision; N/A
 - Direct Supervision ;
 - cord retraction, impressions for casts, orthodontic and guards, etch enamel, patterns for endodontic posts, fit endodontic filling points
 - *Such procedures shall be checked and approved by the supervising dentist prior to dismissal of the patient from the office of said dentist.*
- 126  **RDHAP B&P §1929**
- Special Registration
 - Can Employ Other RDHAP and a DA
 - May Have Rx Signed By DDS or MD For Prophy at 18 months
- 127  **Sedation Assistant 1/1/10**
- Dental Sedation Permit (DSAP) B&P §1752.6
 - Allows a DA, RDA, RDAEF to assist a dentist in the administration of sedation to a patient and the monitoring of patient under sedation
 - Eligibility Requirements
 - 12 Months experience as DA
 - Attend, DPA, IC and BLS Courses
 - 110 hr. Approved Course
 - Written Examination by State
- 128  **DSAP Training**
- 40 Hrs Didactic
 - 32 Hrs “hands on” Training (simulation)
 - 38 Hrs Clinical with Patient
 - Education Sunset: 1/1/11 – Now By Code
- 129  **DSAP Duties**
- All that DA Can Do

- Monitor Patients before, during and after using non-invasive instruments
- Rx ID, Draw, Ampule and Vial Prep., withdrawing Rx – verified by DDS
- Add Drugs, Meds and Fluids to IV verified by DDS chair side
- IV : Verify Patent line, injection port, insert syringe, occlusion of IV line and blood aspiration, line release and injection – appropriate time interval
- Removal of IVs

130  **Orthodontic Assistant Permits**

- On and after January 1, 2010:
- (1) Completion of at least 12 months as DA
- (2) Successful completion of a DPA & OSHA Courses
- (3) Successful completion of CPR course
- (4) Successful completion of a board-approved orthodontic assistant course, after the completion of six months of work as DA.

131  **Duties**

- (a) All duties of DA
- (b) Prepare teeth for bonding, and select, preposition, and cure orthodontic brackets after their position, approved by DDS.
- (c) Remove only orthodontic brackets and attachments with removal of the bonding material by DDS.
- (d) Size, fit, and cement orthodontic bands.
- (e) Remove orthodontic bands and remove excess cement from supragingival surfaces of teeth with a hand instrument.
- (f) Place and ligate arch wires.
- (g) Remove excess cement with an ultrasonic scalar from supragingival surfaces of teeth undergoing orthodontic treatment.

132  **Misc. Dental Practice Acts**

133  **Insurance Issues**

- Excessive Treatment (Not Documented)
- Discouraging Treatment (B&P §1685)
- *Wickline* Case: Recommend Regardless of Insurance
- Advise of Appeal Process

134  **Abandonment Without Notice (B&P §1680u)**

- Financial Limitations
 - No Threat, No Withhold Work
- 30 Days Written Notice
 - Letter, or
 - Fax – Home Not Work
- See only for Emergency for 30 Days
- Advise of Need for Care Elsewhere
- Managed Care Agreements - Exceptions

135  **Records**

- Statutory Requirements
- Defined; Hx, Cx, Dx, Tx (H&S §123105)

- Signature (B&P 1683)
- Preservation
- Medications, 3 Years (H&S §11191)
- Medi-Cal, 3 Years (W&I §14124.1)
- Recommendation: At Least 10 Years from Last Tx
- Exception: Implants, Last 30yrs?

136  **Non-Use of SS Number**

- Medi-Cal Submissions
- No Social Security Number
- If Beneficiary Has ID Card
 - Number
 - Date Issued
- W&I CODE: §14045

137  **Confidentiality (CC 56) H&S §123135 & HIPAA**

- Telephone
- Reception
- Placement
- Office Systems
- FAX Placement
- Self Audit

138  **Social Media**

- Not Private
- Not Secure
- Never Assume Otherwise
- Violation of Duty of Confidentiality CC §56
- Facebook, My Space, Twitter, etc.
 - Avoid "Friending" patients.
 - Bright Line Between Personal and Professional

139  **Records**

- B&P §1683
- Sign Name In Chart or;
- ID # and Initials
- Next to Service Performed
- Dated
- Owner Must Assure Complianc

140  **Denture ID (B&P §1706)**

- (a) Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, shall be marked with the patient's name, unless the patient objects. The initials of the patient may be shown alone, if use of the name of the patient is not practical. The markings shall be done during fabrication and shall be permanent, legible, and cosmetically acceptable. The exact location of the markings and the methods used to implant or apply them shall be determined by the dentist or dental laboratory fabricating the denture. (b) The dentist shall inform the patient that the markings are to be used for identification only and

that the patient shall have the option to decide whether or not the dentures shall be marked. (c) The dentist shall retain the records of those marked dentures and shall not release the records to any person except to enforcement officers, in the event of an emergency requiring personal identification by means of dental records, or to anyone authorized by the patient.

141  **Records: Copies To Patient (H&S §123105-110)**

- Summary if Voluminous (H&S §123130)
- Minors Confidentiality From Parents (H&S §123115)
- Patient ETOH Abuse Confidential (H&S §123125)
- Electronic Records (H&S §123149)
- Can't Limit Due To \$ Owed
- Can Charge for Copies, \$0.10 Not Professional Fee

142  **Failure To Produce Records**

- Mandate §1684.1(a) W/N 15 Days Of DBC Request
- \$250/Day Fine, Max \$5,000
- Same For Clinic
- \$1,000/Day If Court Ordered
- Also Misdemeanor \$5,000 Fine

143  **Electronic Records (H&S §123149)**

- Back-up, Off Site Storage
- No Alteration
- Electronic Signature
- Confidential; Internet

144  **Digital Privacy Laws**

- EMR Must be encrypted
- If Not, and Lost, Must advise and all Patients
- CC §1789.82, §1789.84 and HIPAA HITECH Law
- Data Breach: Name + DL, SS, or Ins. ID

145  **Ownership**

- Business Records
- Data To Patient
- X-Rays
- Computer Analogy

146  **Medications**

- Schedule 2; Name, Address, Date
- Character, Quantity, Pathology and Purpose (H&S §11190)
- Note: 11/1/14 Hydrocodone – Schedule II
No Call In
No Refill

147  **CURES 2.0 Law**

- Controlled Substance Utilization Review and Evaluation System
- 1) Requires all California licensed prescribers authorized to prescribe scheduled drugs to register for access to CURES 2.0 by July 1, 2016 or upon issuance of a DEA

Controlled Substance Registration Certificate, whichever occurs later. California licensed pharmacists must register for access to CURES 2.0 by July 1, 2016, or upon issuance of a Board of Pharmacy Pharmacist License, whichever occurs later.

- Prescriber will be Required to Consult CURES 2.0
- Exception: In office Rx, <5day supply, no refill.
- Must Check CURES 2.0 Every 4 months During Continuous Treatment
- Pull Data within 24 hours of Rx
- Data Confidential

148  **Practical Requirements**

- Standards of Care
- Style: S. O. A. P.
- Content
- Legibility
- Forms
- Educational Material
- Electronic Future

149  **Unprofessional Conduct (B&P §1680-5)**

- Gross Immorality (§1680e)
- Using Solicitors (§1680J)
 - Receiving a Commission (§1680G)
- Deceptive Advertising (§1680h)
 - Advertising Guarantee Result or (§1680I)
 - Advertising Painless

150  **Groupon OK 1/1/17**

- B&P 650(g)
- the payment or receipt of consideration for advertising, wherein a licensee offers or sells services through a third-party advertiser, shall not constitute a referral of patients when the third-party advertiser does not itself recommend, endorse, or otherwise select a licensee.

151  **Unprofessional Conduct**

- X-Rays w/o License
- Excessive Medication
- Excessive Diagnosis Procedures
- Threat Against Complaining Patient to BDE
- No N20 Fail Safe Device

152  **Failure To Use Infection Control CCR §1005**

- OSHA Sets Standard of Care
- Workers Compensation
- Fear of Disease
- For Everyone!

153  **Billing**

- Inappropriate for Evidence Based Treatment
- Bill Not Same as Chart Issues

- False Claims For Payment (B&P §810)
- Federal Compliance Law - Revenue Issues

154  **"Care Credit Rules"**

New Rule on Open Ended Credit Accounts

1/1/10 B&P §654.3 and H&S §1395.7

- 1) Written Treatment Plan
- 2) Written Estimate of Costs
- 3) Timely Refund Payment
- 4) Notice of Patient's Legal Rights

155  **Mandated Agreement**

- (d) A licensee, or an employee or agent of that licensee, shall not arrange for or establish credit or a loan extended by a third party for a patient without first providing the following written or electronic notice, on one page or screen, respectively, in at least 14-point type, and obtaining a signature from the patient:

156  **Rules**

- The treatment plan shall include each anticipated service to be provided and the estimated cost of each service.
- communicates primarily in a language other than English that is one of the Medi-Cal threshold languages, unless the written notice information required by subdivision (d) is also provided in that language.

157  **Rules**

- (g) A licensee, or an employee or agent of that licensee, shall not arrange for or establish credit or a loan that is extended by a third party for a patient who has been administered or is under the influence of general anesthesia, conscious sedation, or nitrous oxide.

158  **Overpayments**

- Refund: 30 Days For Patient Request (B&P §732)
- Refund: Knew or Should Have;
 - 90 Days Notify; Refund In 30 Days

159  **Dental Materials; Fact Sheet (B&P §1648.10)**

- Information
- Posting
- Acknowledgement - Ideal
- 3 Languages
 - English
 - Spanish
 - Mandarin

160  **Mercury Notice – Prop 65**

- Nature Of The Requirement
- Posting – 10 or More Employees
- Liability Potential
 - Negligence
 - Evidence Code 669 Violation

161  **N2O Use Notice**

- Nitrous Oxide Added To Prop 65 List
- IF 10 or More Employees, Must So Post In Waiting Room
- As of 8-1-09
- H&S Code §25249.6
- 8 1/2 x 11 Size
- Only English for Now

162  **Prop 65 PBA Notice (New 2016)**

- PBA Added to Proposition 65 List
- If 10 or More Employees, Must so Post in Waiting Room
- As of 1-1-2016
- 8 1/2 x 11 Size
- Only English for Now
- Up to \$2,500/day for violation

163  **Intimacy**

- Prohibited Unless Married (B&P §726)
- OK Recognized or Domestic Relationship
- A Continuing Source of Claims
- Exam – Tray, Napkin?
- Alone with Patient
- Out of Office Contacts

164  **Sexual Misconduct CCR 1018**

- New Law: Conviction or Findings of Sexual Misconduct = Revocation, can't stay. License Sanction or Preclusion for Registered Sex Offenders

165  **Summary**

- DBC Sets Mandates
- Standard of Care by Experts and Guidelines
- No Need Causation or Injury- Just Unsafe
- 3 Levels: Negligence, Gross and Incompetent
- Punishment: Revocation, Probation, Letter of – Reprimand, and/or Fines
- Can Limit an Activity
- Can Prevent Medicare, Medi-Cal or Insurance – Eligibility.
- Public Listing, but hard to find.

166  **Summary**

- Expert - Standard of Care
- Statutes - Control
- Staff - Education And Communication
- Records - Quality, Content, Forms, Preservation
- Managed Care - Ethics And Obligations
- Entity Protection

- Success - No Attorneys