







- 1  **California Dental Practice Act**
UOP Alumni 2015
- 2  **Arthur W. Curley J.D.**
 - Bradley, Curley, Asiano, Barrabee, Abel & Kowalski PC
 - San Francisco, Sacramento, Los Angeles, Larkspur
- 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  **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>
- 5  **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
- 6  **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

7  **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

8  **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

9  **Common Violations Seen by DBC**

Sub-Standard Care – Opinion by Board Hired Expert

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 RDH treatments

10  **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

11  **The Law, Protocols, Trends and Standards of Care**12  **Basic Personal Injury Law**

Negligence >

Causing >

Any Injury =

Damages \$\$\$

13  **Professional Negligence**

The Standard of Care is Defined as:

What a Reasonable Health Care Provider Would or Should Do or Avoid Under The Same or Similar Circumstances, Time, and Location.

(Records Essential to Show Circumstances)

Failure to Meet the Standard of Care = Malpractice (B&P §1685)

- 14 **Essential Dental Law**
- If there a Violation of the Standard of Care,
 - Patient Can also Recover for:
 - Any Injury From that Substandard Care
 - *But For* Rule
 - Liability for Negligence of Others
 - Joint Liability Rule
- 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 Dentist
 - Some States, Must be the Same type of Dentist
- 16 **Experts & Code of Ethics**
- CDA Code of Ethics §10
 - A dentist may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.
 - 10-A Conflict of Interest
 - It is unethical for a dentist to use information learned as expert witness for personal gain or advantage.
 - If a dentist [1st] accepts a request from an attorney to provide an expert opinion about a person who is not a patient of the dentist, the dentist [2nd] shall not accept that person as a patient into his or her practice until the litigation or other proceeding, if any, involving that person has concluded.
- 17 **Standards of Care: Written**
- Any Statute that Mandates Specific Care
 - FDA
 - DPA Statutes
 - Example, IV General Anesthesia Rules
 - Society Guidelines (ASA, AAOMS, ADA)
 - If Adopted by Courts
 - Can be Introduced by Experts if;
 - Peer Reviewed Article
 - Recognized Authoritative Text
- 18 **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
- 19 **Digital Systems Risks**
- One Form does NOT fit all

- Use Check Box Form
- Customize Form, Patient Initials
- Avoid Letting System Dictate Content
 - Programmers vs. DDS
- Mandate and Verify Form Signed, Dated – *Time Out*

20 **Individual Patient Consent Issues**

- Ethnicity
- Culture
- Religion
- Financial
- Gender

21 ***Informed Refusal***

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

22 ***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

23 **[INF REFUS – ELEMENTS]**

24 **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

25 **Sample Documentation**

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

- Patient declines/refuses
-
- [date]_____ [patient signature]_____

26 **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

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

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

28 **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?







29 **Statutory Obligations**

30 **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

31 **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

- 32  **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
- 33  **Failure To Report Abuse**
- Unprofessional Conduct
 - Civil Suits
 - Criminal Penalties
 - Codes:
 - W&I §15601a Seniors
 - W&I §15616b1 Disabled
 - CPC §11165 Children
- 34  **Finger Prints**
- CCR §1008, If 1st Licensed Before 1-1-99, to Renew after 7/1/11 Must Provide Full Set of Finger Prints to Dept. of Justice
 - - DDS Pays for Prints and Searches
 - Certify Prints have been Provided to DOJ
 - N/A if inactive or while in Military out of USA
 - 3 years: Keep Records of Sending Prints to DOJ
- 35  **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*
- 36  **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*)
- 37  **No Refunds**
- The law Prohibits the Dental Board of California from Refunding any Money Paid for the Issuance or Renewal of a License where the license is denied or suspended as required by AB 1424 for Failure to Pay Taxes.

38 **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

39 **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

40 **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

41 **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

42 **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

43 **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
- 44 **Courses In The Actual Delivery Of Dental Services To The Patient Or The Community**
- 45 **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.
- 46 **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.
- 47 **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*.
- 48 **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.

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

50 **Primarily for Benefit of the Licensee**

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

51 **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.

52 **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.

53 **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

54 **Infection Control RDA & RDAEF**

- 8 Hour Infection Control Course
- 1 Time
- With in 1 year of Employment
- Only Approved Course
- Effective 1/1/10

55 **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.

56 **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.

57 **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

58 **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

59 **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

60 **Substance Abuse/Sales**

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

61 **[DBC Diversion]**

62 **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)

63 **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)

64 **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

65 **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

66 **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

67 **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.

68 **Scope of Practice**

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

69 **Boxtox 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.**

70 **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."

71 **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

72 **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

- 73 **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.
- 74 **Place of Practice (B&P 1650)**
- Multiple Offices OK - B&P §1658.1
 - Registration of Each with DBC (1650)
 - Posting Names of All DDS At Office (§1700d)
 - Badges Don't Apply If Names Posted
- 75 **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
- 76 **Health History Standards**
- 77 **Documenting Medical Clearance**
- 78 **Documentation by Fax**
- 79 **[Fax Confirm]**
- 80 **Tip**
- Strict Informed History Protocols
 - Document without Exception
 - Time Out Before
 - Digital Requirement, Check List
 - Yet.... Still happening
 - Not Signed
 - Not Completed, Not Dated, Not Updated
 - Took Home, Didn't Bring Back
- 81 **Photos**
- Charting Without Notes
 - Easy to Do
 - Easy Storage
 - Powerful Tool
 - Your Side of the Story
 - Hard to Dispute

- 82 **Dental Auxiliaries**
- Selection
 - Management
 - B&P §1740-1777
- 83 **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
- 84 **Dental Auxiliary (B&P §1741e)**
- *Perform dental supportive procedures*
- 85 **Law – Direct Supervision Change**
- Not Required to See Patient
 - B&P §1088 Repealed
 - Now B&P §1067, §1741
 - Controversy: Quality of Care? Few Claim
 - Exceptions: Procedure Specific Statutes
- 86 **General Supervision (B&P §1741d)**
- Instructions by DDS not requiring presence
- 87 **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
- 88 **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
- 89 **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.

90 **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:

91 **NOTICE TO CONSUMERS**

-
- Dentists are licensed and regulated by the Dental Board of California
(877) 729-7789
www.dbc.ca.gov

92 **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

93 **NOTICE TO CONSUMERS**

-
- Dental Hygienists are licensed and regulated by the Dental Hygiene Committee of California
(916) 263-1978
www.dhcc.ca.gov

94 **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

95 **Required Employee Posters**

- Anti-Harassment
- EEOC
- Min Wage
- Pay Day
- Polygraph

- Pregnancy Disability Leave
- Time off to Vote
- Radiation Protection
- Unemployment
- Whistleblowers

96  **Table of Permitted Duties**

- http://www.dbc.ca.gov/formspubs/pub_permitted_duties.pdf
- Controversy as to Direct Supervision Definition

97  **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".

98  **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.

99  **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.

100  **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..."
- 101 **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 ..."
- 102 **Dental Assistant - DA**
 - DEFINED: Basic supportive dental procedures - *reversible and non-hazardous* (B&P §1067m)
- 103 **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
- 104 **DA Can Not**
 - Diagnose, cut, fit or adjust prosthetics; prescribe; restorations/models; irrigate/medicate canals; injections; oral prophylaxis
- 105 **Registered Dental Assistant - RDA**
 - DEFINED: All duties of DA, plus education and training
- 106 **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.*
- 107 **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.
- 108 **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.

109  **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.

110  **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.

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

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

112  **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.*

113  **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.

114  **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.

115  **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.*
- 116 **Registered Dental Hygienist - RDH**
- DEFINED: All duties DA and RDA under direct supervision, plus education and training.
- 117 **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)
- 118 **Registered Dental Hygienist, *Extended Functions* (RDHEF)**
- Defined: All duties, DA, RDA & RDH, plus education and training.
- 119 **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.*
- 120 **RDHAP B&P §1774**
- Special Registration
 - Can Employ Other RDH
 - May Have Rx Signed By DDS or MD For Prophy at 18 months
- 121 **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
- 122 **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.

123 **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 scaler from supragingival surfaces of teeth undergoing orthodontic treatment.

124 **Dental Practice Act**

125 **Insurance Issues**

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

126 **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

127 **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?

128 **Non-Use of SS Number**

- Medi-Cal Submissions
- No Social Security Number
- If Beneficiary Has ID Card
 - Number

- Date Issued
- W&I CODE: §14045

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

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

130 **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

131 **Records**

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

132 **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.

133 **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

- 134 **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
- 135 **Electronic Records (H&S §123149)**
- Back-up, Off Site Storage
 - No Alteration
 - Electronic Signature
 - Confidential; Internet
- 136 **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
- 137 **Ownership**
- Business Records
 - Data To Patient
 - X-Rays
 - Computer Analogy
- 138 **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
- 139 **Practical Requirements**
- Standards of Care
 - Style: S. O. A. P.
 - Content
 - Legibility
 - Forms
 - Educational Material
 - Electronic Future
- 140 **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

- 141 **Unprofessional Conduct**
- X-Rays w/o License
 - Excessive Medication
 - Excessive Diagnosis Procedures
 - Threat Against Complaining Patient to BDE
 - No N20 Fail Safe Device
- 142 **Unprofessional Conduct**
- Failure to Report in Writing (B&P §1680z)
 - Death of Patient During Dental Treatment
 - Copy All RDH to the DHC
 - Discovery of a Death Due to Dental Treatment
 - Removal of Patient to Hospital for Treatment Exceeding
 - 24 hours
 - Oral Conscious Sedation
 - Conscious Sedation
 - General Anesthesia
 - Result of Dental or Hygiene Treatment
 - Except Intended Hospital Admissions
 - Upon Report – Office May be Inspected
- 143 **Failure To Use Infection Control CCR §1005**
- OSHA Sets Standard of Care
 - Workers Compensation
 - Fear of Disease
 - For Everyone!
- 144 **Billing**
- Inappropriate for Evidence Based Treatment
 - Bill Not Same as Chart Issues
 - False Claims For Payment (B&P §810)
 - Federal Compliance Law - Revenue Issues
- 145 **"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
- 146 **Overpayments**
- Refund: 30 Days For Patient Request (B&P §732)
 - Refund: Knew or Should Have;
 - 90 Days Notify; Refund In 30 Days
- 147 **Dental Materials; Fact Sheet (B&P §1648.10)**
- Information
 - Posting

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

148  **Mercury Notice – Prop 65**

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

149  **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

150  **Intimacy**

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

151  **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

152  **Arthur Curley
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- Thank
- You!