THE COMMITTEE ON DENTAL AUXILIARIES

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE REPORT TO THE CALIFORNIA LEGISLATURE

Board Overview, Issues, Findings and Recommendations

Prepared by:
Joint Legislative Sunset Review Committee

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TABLE OF CONTENTS

1. Overview of the Current Regulatory Program 1

2. Issues and Final Recommendations 14

1.

OVERVIEW OF THE CURRENT REGULATORY PROGRAM

BACKGROUND AND DESCRIPTION OF THE COMMITTEE

The statutory laws governing dental auxiliaries are located in the Dental Practice Act (DPA) - B&P Code Sections 1600-1808, specifically B&PC 1740-1767. The related administrative regulations are located at 16 Code of California Regulations (CCR) - Sections 1000-1089, specifically 16 CCR 1067-1089.

The term "dental auxiliaries" includes unlicensed dental assistants (DAs), and the following licensed personnel: registered dental assistants (RDAs), registered dental hygienists (RDHs), registered dental assistants in extended functions (RDAEFs) and registered dental hygienists in extended functions (RDHEFs).

The Committee on Dental Auxiliaries (COMDA or Committee) is a statutorily created organization within the jurisdiction of the California Board of Dental Examiners (BDE or board). The legislation that created COMDA was enacted in 1974. The committee currently does not have any statutorily-granted regulatory powers but is advisory in nature, being authorized by statute to make recommendations to the BDE regarding dental auxiliaries. The Committee also performs various ministerial, regulatory functions related to the licensure and regulation of dental auxiliaries that have been delegated to it by the Board.

Composition of COMDA: Committee Members and Staff

The COMDA is presently composed of 9 members, all appointed by the Governor, comprised of:

1 RDAEH
2 RDHs
2 RDAs
1 RDHEF
1 Member of the Board (may be public or licensee member)
1 Dentist who is a member of the Board's examining committee
1 Dentist who is neither a member of the Board nor its examining committee

[In contrast, the Board of Dental Examiners has 14 members - 8 dentists, 4 public members, 1 RDH and 1 RDA -with two public members appointed by the Legislature and the remainder by the Governor.**]**

According to the COMDA, the current committee composition is necessary because of the COMDA's direct examination oversight responsibilities. However, the COMDA recommends in its sunset report that its Committee composition be altered to: (1) eliminate one EH position, and allow the remaining EH position to be either a RDAEH or RDHEH, and (2) require the "board member" position to be a public member of the board. The COMDA has 9 staff personnel, and 9.6 authorized personnel years (PYs) including an Executive Officer, Associate Program Analyst, 6 Office Technicians and 1 Office Assistant.

COMDA's Duties

The committee makes recommendations to the Board regarding auxiliary duties, settings, degree of supervision, career ladder, and also performs certain functions that have been delegated to it by the Board. Those delegated functions relate to dental auxiliaries and include: review of license applicant qualifications, processing of license applications, administration of the various written and practical auxiliary licensing examinations, inspection of auxiliary educational programs and review of coronal polishing and ultrasonic scaler courses and making recommendations regarding them to the Board for its approval, administration of the license and license renewal processes, maintenance of certification records for licensees authorized to perform some high risk procedures, and other duties related to the qualification and licensing of auxiliaries.

Legislative History

The Board of Dental Examiners was established by the Legislature in 1885 to ensure education of practitioners of dental surgery, and to regulate the practice of dentistry in California. In 1901, the BDE promulgated regulations making it unlawful to practice dentistry without a license, and in 1920 the Legislature enacted a law which made it illegal for a dental hygienist to practice without a license from the Board. Also, prior to 1974, dental employees exposing X-rays were required to take an examination.

The Committee on Dental Auxiliaries was created by the Legislature in 1974 (AB 1455, Duffy; Chapter 128 - Statutes of 1974) as an advisory body within the jurisdiction of the Board. (An early version of that legislation provided for the COMDA rather than the Board to have the regulatory powers regarding the licensure and regulation of dental auxiliaries, but was later changed prior to enactment).

That 1974 legislation also added requirements for the licensure of Registered Dental Assistants (RDAs), Registered Dental Assistants in Extended Functions (RDAEF), and Registered Dental Hygienists in Extended Functions (RDHEF), in addition to the Registered Dental Hygienist category that already existed.
Further, the 1974 legislation required the Board, with the advice and recommendation of the COMDA, to promulgate regulations to prescribe the specific duties that auxiliaries were to perform and the modalities for licensure of the auxiliaries. Finally, that legislation declared:

"It is the intention of the Legislature by enactment of this article to permit the full utilization of dental auxiliaries in order to meet the dental care needs of all the state's citizens.. The Legislature further intends that the classifications of dental auxiliaries established pursuant to this article constitute a career ladder, permitting the continual advancement of persons to successively higher levels of licensure with additional training, and without repeating training for skills already acquired."

The 1974 enactment resulted from earlier recommendations in 1973 by the Advisory Committee on the Utilization and Education of Dental Auxiliaries which had been created in 1972 by AB 1953 (Duffy - Chapter 645). In the 1972 enactment, the Legislature found and declared:

1. The improved utilization of dental auxiliaries would help in making high-quality dental services more readily available to the people of this state. [Emphasis added]

2. Career opportunities of dental auxiliaries are unduly limited. The educational backgrounds of persons in some categories of dental auxiliaries is in many cases not fully recognized by the tasks and functions they are allowed to perform. Furthermore, the vertical and lateral career mobility among categories of dental auxiliaries is limited because of the absence of a 'career ladder'. [Emphasis added]

3. Adequate legal standards should exist to protect the public from dental auxiliaries not fully competent to perform assigned tasks and functions. A variety of training programs with different lengths, in different settings, and teaching different subjects for preparing the same categories of dental auxiliaries currently exist, and some types of dental auxiliaries are not legally regulated by licensure or certification..

LICENSEE POPULATION

Currently there are about 38,400 licensed dental auxiliaries: 25,000 RDAs, 13,000 RDHs, and 400 RDAEHs or RDHEHs. (In contrast, there are about 29,000 licensed dentists.) It is not known how many unlicensed dental assistants are currently practicing in California. Auxiliaries are nearly all women, while dentists are predominantly men.

The following chart shows the volume of licensing activity related to dental auxiliaries:

License Administration Volume				
Activity	***FY92/93***	***FY93/94***	***FY94/95***	***FY95/96***
Licenses Issued	2,481	2,795	3,204	2,639
RDA	n/a	n/a	2,711	2,163
RDH	n/a	n/a	427	430
EF	n/a	n/a	66	44
Licenses Renewed	13,979	16,740	17,849	17,039
RDA	n/a	n/a	11,361	11,564
RDH	n/a	n/a	6,323	6,289
EF	n/a	n/a	165	186
Total Current Licenses	n/a	n/a	36,473	37,978
RDA	n/a	n/a	23,623	24,826
Active			17,331	18,246
Inactive			6.292	6,580
RDH	n/a	n/a	12,481	12,745
Active			9,635	9,853
Inactive			2,846	2,892
EF	n/a	n/a	369	407
Active			358	390
Inactive			11	17

BUDGET

All funds expended by the Committee are derived from auxiliary application, examination, renewal and delinquent license renewal fees. They are deposited into the State Dental Auxiliary Fund, a special fund separate from the State Dentistry Fund. The fees collected from candidates taking the examination appear to support the examination program for auxiliary licenses, while the fees for licensure and renewal of auxiliary licenses support the license, enforcement (carried out by the BDE rather than the Committee), and administration programs for auxiliaries. The Committee is currently reviewing its fees to determine that they are related to the corresponding function (e.g., exam fees and exam costs.)

Fees and Revenues

The licenses issued to the various dental auxiliaries are valid for two years. The current fee structure, statutorily specified in the Dental Practice Act, is as follows:

Fee Schedule		
TYPE OF FEE	***CURRENT FEE***	***STATUTORY MAXIMUM***
Application	20	20
Examination - RDA Written	35	50
Examination -RDA Practical	45	60
Examination - EF Clinical (RDAEF or RDHEF)	200	250
Examination -RDH Clinical	155	220
Biennial Renewal *	30	80
Duplicate License	25	25

* Effective 1/1/95, the biennial license renewal fee was reduced from $40 to $30.

In addition, the delinquency license fee is $25, the fee for RDA educational program curriculum and site evaluation is $1,400, and the fee for radiation safety course curriculum review and site evaluation is $300.

The majority of the Committee's annual revenue has come from license renewal fees. During the past three fiscal years, about 68% of the revenues have come from RDA applicants and licensees, 30% from RDHs, and 2% from EHs (RDAEHs & RDHEHs). The following chart reflects the various sources and amounts of COMDA's revenues:

Sources of Committee Revenue					
	FY92/93	*FY93/94*	*FY94/95*	*FY95/96*	Average
App/Exams	406,290	483,533	473,489	400,076	**440,847**
Renewals	842,386	640,448	662,952	556,687	**675,618**
Delinquencies	23,075	35,906	35,567	38,532	**33,270**
Other	11,575	10,825	7,590	6,020	**9,002**
TOTAL	1,283,326	1,170,712	1,179,598	1,001,315	**1,158,737**

Expenditures

The Committee's projected expenditures for fiscal year 1996/97 are about $1,343,000, minus $222,000 in reimbursements, for a net expenditure of $1,121,000. Anticipated revenues are about $1,130,149. The committee's current reserve is about $1,159,483 (12.4 months in reserve.) As of June 30, 1997, the Committee expects an increased reserve of about $1,168,632 (13.7 months in reserve). The license renewal fees were reduced by 25% beginning 1/1/95, and the Committee expects a further fee reduction to be implemented in 1997 due to operational efficiencies, and to reduce its reserve. (See page 29 of the COMDA sunset report for an analysis chart of its historical fund condition.)

The Committee's expenditures by program component over the past four fiscal years were as follows:

Committee Expenditures by Component				
Source	*FY92/93*	*FY93/94*	*FY94/95*	*FY95/96*
Licensing	234,228 (24%)	228,701 (23%)	227,822 (25%)	226,732 (23%)
Examinations	666,031 (67%)	644,029 (66%)	590,655 (64%)	627,012 (63%)
Enforcement	70,136 (7%)	79,974 (8%)	80,950 (9%)	124,255 (12%)
Administration	22,203 (2%)	22,498 (3%)	22,874 (2%)	22,692 (2%)
Total Net Expense (excluding fingerprint expense and reimbursement)	992,598	975,204	922,301	1,000,691

(For a 4-year history of COMDA expenditures by individual line item, see the chart on page 28 of the COMDA sunset report.)

The portion of the Committee's expenditures attributable to its 9 committee members was as follows:

Committee Member Expenditures					
	FY92/93	*FY93/94*	*FY94/95*	*FY95/96*	Average
TOTAL Expenditures	**20,613**	**23,340**	**20,853**	**19,542**	**21,087**
(Exam Administration)	**13,879**	**14,175**	**13,964**	**9,080**	**12,775**
(Non-Exam Activities)	**6,734**	**9,165**	**6,889**	**10,462**	**8,312**

REGULATION AND LICENSING REQUIREMENTS

Dental auxiliaries perform various duties as employees and under the "direct" or the "general" supervision of licensed dentists in dental offices or legally specified alternative facilities (e.g., licensed health facilities). "General supervision" means supervision of dental procedures based on instructions given by a licensed dentist but not requiring his or her physical presence during the performance of those procedures. "Direct supervision" means supervision of dental procedures based on instructions of a licensed dentist who must be physically present in the dental office or treatment location.

Each category of dental auxiliary has its own specific requirements as to education, training, authorized dental procedures, level of supervision, and settings. These are primarily specified in detail through board regulation rather than by statute.

As a result of legislation enacted in 1992, the Board is required by law, every 7 years, to review the authorized functions, level of required supervision, and settings of unlicensed dental assistants and registered dental assistants to update its regulations to keep them current with the state of dental practice. The committee is currently conducting an occupational analysis of RDH and EF functions that may result in its making recommendations (to the BDE) to expand scopes of practice for auxiliaries and/or reduce the level of dentist supervision. Currently, the Committee re-inspects RDA educational programs every five years to assure they continue to comply with the regulatory requirements.

Licensing Requirements (education, training, examinations)

Dental assistant (DA): [unlicensed.] Requires no specified education, training or examination; performs "basic supportive dental procedures," as defined, under the supervision of a licensed dentist who must check and approve all DA-performed procedures.

Registered Dental Assistants (RDA): [25,000 licensed]. Applicants for licensure must have either: (1) graduated from a Board-approved RDA educational program of a minimum of 720 hours (approximately 8 months); or, (2) completed at least 18 months of satisfactory paid work experience as a dental assistant with a licensed dentist(s) in the United States; or (3) completed a Department of Education approved 4-month educational program, and 14 months of work experience. In addition, license applicants must pass both state written and practical examinations. In 1995/96 4,000 applicants were examined, with 2,163 new licenses issued. The pass rates on the written examination was 74%, and on the practical examination it was 56%.

Registered Dental Hygienist (RDH): [13,000 licensed]. Applicants for licensure must have graduated from a Dental Hygiene educational program accredited by the Joint Commission on Dental Accreditation (a minimum of a 2-year college program), and completed expanded functions courses if such expanded functions were not included in the program's course of instruction. In addition, license applicants must pass a written national examination and a state clinical examination. In 1995/96, 573 applicants took the state clinical exam, and 430 new licenses were issued. The pass rate on the state clinical exam was 75%.

Extended Functions (RDAEF and RDHEF): [400 licensed]: A licensed RDA with coronal polishing certification, or an RDH with expanded function certifications, may apply for licensure as an RDAEF or RDHEF after completing a specific Board-approved course affiliated with a dental school, which must be a minimum of 90 hours in length. In addition, a license applicant must pass a state clinical examination. In 1995/96, 56 applicants were examined, and 44 new licenses were issued. The pass rate on the state clinical exam was 82%.

Reciprocity/Comity

A person licensed as a dental auxiliary in another state or country must qualify in the same manner as any other applicant (i.e., no reciprocity or comity) since licensed California dental auxiliaries are authorized to perform many duties that auxiliaries elsewhere are not allowed to perform. [For a chart comparing functions and duties authorized in California versus other states -- see page 65 in the COMDA sunset report.]

CONTINUING EDUCATION/COMPETENCY REQUIREMENTS

The BDE is authorized by statute to require continuing education (CE) of dentists and dental auxiliaries as a condition of license renewal. The board has adopted regulations pursuant to this statutory authority to prescribe the amount and type of CE for its licensees. All licensed dental auxiliaries are required to complete 25 hours of continuing education every two years as a condition for license renewal, including courses in life support, California law, and infection control. (Nationally, 41 other states require continuing education ranging from 12 to 30 hours every two years.) Apart from requiring CE, the Board does not have a program to assure continuing competence of any of its licensees, dentists or auxiliaries. Nor does the Board require remedial education for licensees found to be guilty of incompetence or negligence.

ENFORCEMENT ACTIVITY

The complaint and disciplinary enforcement processes for both dentists and dental auxiliaries are administered by the BDE and not the Committee. Enforcement data generally shows that significantly fewer complaints and disciplinary actions are filed against auxiliaries than against dentists. This would appear to be due in part to the consumer's lack of expertise to determine who performed a particular procedure giving rise to a complaint, that consumers assume that the dentist, as the auxiliary's supervisor, is ultimately responsible, and that auxiliary education and training effectively screen for incompetence.

Enforcement activity against auxiliaries has increased in recent years, primarily due to the implementation of a criminal history background check of license applicants. Enforcement costs charged to the Committee's budget for investigation and discipline of auxiliaries has increased fivefold in the last four fiscal years, from about $14,000 in 1992/93 to over $76,000 in 1995/96. Any legislative or regulatory changes that allow a dentist to delegate more duties to auxiliaries, or to have them operate independent of dentist supervision would probably increase both consumer complaints and discipline against auxiliaries. In an effort to reduce illegal activity by dental auxiliaries, the Committee is in the process of developing a handbook specifying allowable duties for distribution to auxiliaries, as well as distribution of bi-annual newsletters.

Board of Dental Examiners/Complaints Received, Pending and Closed
Fiscal Years 1992/93 Through 1995/96*

	1992/93	1993/94	1994/95	1995/96	Average
Received:					
Dentists	2,820	2,712	2,793	2,738	2,765
Auxiliaries	25	29	38	58	37
Total	2,845	2,741	2,831	2,769	2,803
Pending:					
Dentists	1,789	1,438	1,101	1,170	1,375
Auxiliaries	19	15	11	30	19
Total	1,808	1,453	1,112	1,200	1,393
Closed:					
Dentists	2,554	3,176	3,129	2,696	2,889
Auxiliaries	20	38	29	50	34
Total	2,574	3,214	3,158	2,746	2,923

* Source: Agency Statistical Report

Board of Dental Examiners/Complaints Closed By Type
Fiscal Years 1991/92 Through 1994/95*

	1992/93	1993/94	1994/95	1995/96	Average
Fraud	249	409	262	271	298
Non-Jurisdictional	104	159	163	161	147
Unlicensed/ Unregistered	148	230	200	100	170
Incompetence/ Negligence	1,493	1,930	1,888	1,753	1,766
Service Quality	Na	2	0	0	0
Unprofessional Conduct	304	438	435	232	352
Personal Conduct	160	181	117	107	141
Health and Safety	76	125	94	116	103
Other:	2	8	2	0	3
Total Closed	2,536	3,482	3,161	2,740	2,980

* Source = Agency Statistical Report, Licensed and Unlicensed Activity

Unlicensed Activity Complaints Closed
Dentists and Auxiliary
Board of Dental Examiners
Fiscal Years 1991/92 Through 1994/95*

	1992/93	1993/94	1994/95	1995/96	Average
Closed:					
Dentist	125	172	137	159	148
Auxiliary	5	11	8	7	8
Total	130	183	145	166	156

* Source = Agency Statistical Report

COMPLAINT DISCLOSURE POLICY

Information regarding complaints and enforcement actions against a licensed auxiliary is subject to the disclosure policy of the BDE for all of its dental licensees, since it is the Board and not COMDA, that conducts all of the disciplinary enforcement activity related to dental practice, including that related to dental auxiliaries. The public has access to formal disciplinary actions such as the filing of an accusation against a licensee by the Attorney General, final disciplinary decisions or administrative citations. Ongoing complaints (still under investigation by the Board) and complaints that have been closed without any formal disciplinary action being taken (e.g., insufficient evidence of violation) are not disclosed to the public.

COST RECOVERY AND RESTITUTION TO CONSUMERS

(Data available does not separate dentists from dental auxiliaries)

Cost Recovery Requested and Received
Board of Dental Examiners
Fiscal Years 1992/93 Through 1995/96*

	1992/93	1993/94	1994/95	1995/96
Requested	$31,975	$18,596	$72,972	$332,263
Received**	$57,338	$57,316	$58,408	$74,503

*Source: CAS System
**Amounts requested and received have no relationship within a fiscal year due to prearranged payment schedules.

CONSUMER OUTREACH AND EDUCATION

COMDA in its report, states that the BDE has not delegated any responsibilities regarding consumer education to COMDA. The Committee requested and received a budget augmentation for 1996/97 to prepare and distribute to newly licensed auxiliaries, a handbook specifying allowable duties, as well as distribution to all licensed auxiliaries of a bi-annual newsletter. The Committee is in the process of developing the handbook and the newsletter.

Consumers have access to any public information allowed by law whether requested in writing, in person, or by telephone. The public can obtain the licensee's name, address of record, license number, date of issuance, expiration date and whether there has been any formal disciplinary action initiated or taken against the licensee. The public can also be advised of the method by which an applicant qualified for licensure, such as experience versus education. Statutes (Section 1798 et. seq. of the Civil Code, "Information Practices Act") prevent the release of personal information, such as educational background and employment history.

Information about applicants can only be released to persons who provide services to examinees, such as examination materials or preparatory courses. The information provided includes only the names and addresses of applicants, and the names and dates of tests for which they have applied.

2.

IDENTIFIED ISSUES AND FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

ISSUE #1. Should the Committee on Dental Auxiliaries (COMDA) be continued in its present form, eliminated and merged into the Dental Board, or made into a separate independent dental auxiliary licensing board as recommended by the dental auxiliary profession?

Recommendation: ***The Committee on Dental Auxiliaries (COMDA) should continue to be the state agency delegated responsibility for the regulation of dental auxiliaries, subject to organizational changes with the Board of Dental Examiners. COMDA's current role and responsibilities should be codified, and COMDA should manage its duties as a direct statutory committee of the Dental Board. Section 1742 of the B&P Code should be amended to define in the statute the duties and responsibilities to be performed by COMDA. The Joint Committee should not take a position on whether or not to create an independent licensing board for dental auxiliaries at this time. Recommend a subsequent sunset review in six years.***

Comment: There does not appear to be any administrative efficiencies or cost savings to be gained from eliminating COMDA and having its administrative functions assumed by the Dental Board. COMDA was created by the Legislature in 1974 to serve as an advisory committee to the Board on matters concerning the practice of dental auxiliaries. Its primary mission was to assist the Board in making decisions concerning the full utilization of dental auxiliaries to respond to the existence of unmet public dental care. It was also to advise the Board on what functions (duties and procedures) could be performed by dental assistants and hygienists, and the degree of supervision, or type of practice settings, which could be appropriate. COMDA has continued to operate in this capacity, along with assuming considerable additional responsibilities in the areas of examination and qualification of auxiliary applicants. It assures that auxiliaries have a voice in the decision making process of Board, and that fees paid by auxiliaries are devoted to regulation of auxiliaries. The Board of Dental Examiners has recommended maintaining the current advisory structure for COMDA -- indicating that it is operating satisfactorily.

Since 1982, the Board has delegated to COMDA the responsibility for receiving applications and determining the auxiliary qualifications for licensure, administration of all examinations for the auxiliaries, inspection of education programs for dental assistants, and maintaining appropriate records of persons who have taken approved courses to perform expanded duties within the dental field. The Board can, however, decide to re-assume those duties at any time. Other boards and committees under Department are granted statutory authority to perform such functions when they have primary responsibility for the administration of licensing and examination programs. There does not appear to be any reason for allowing the Board to have statutory authority over these administrative functions which have been delegated to COMDA for over the past 14 years. There may also be other duties or responsibilities performed by COMDA which should be codified in statute.

The issue of whether or not to create a separate licensing board for dental auxiliaries, independent of the Dental Board, as recommended by the organizations representing dental hygienists and assistants, is not within the purview of this Committee. This is considered as a "sunrise" issue and not "sunset," and is therefore subject to review under the requirements of Government Code Section 9148 et seq. (A plan to create any new state board must be submitted to the Legislature and the appropriate standing committee. The chairperson of the standing committee can only refer this issue to the Joint Legislative Budget Committee for its review and evaluation.)

ISSUE #2. Should the composition of the Committee on Dental Auxiliaries be changed?

Recommendation: ***The composition of COMDA should be reviewed, seeking input from all interested parties to strike a proper balance of representation.***

Comment: COMDA has a total of 9 professional members and no public members. It has 3 dentists, one of whom must be a member of the Dental Board, 2 registered dental hygienists, 2 registered dental assistants, 1 registered dental hygienist and 1 registered dental assistant in extended functions.

As an advisory committee on auxiliary matters, it is unclear why three (3) out of the nine (9) members are dentists. One or two dentists would seem sufficient, and one of which should be a Dental Board member. COMDA should also receive public input on its deliberations. One of the public members could replace one of the dentists on COMDA. This would assure that the public membership of the Board has a clear understanding of the discussions and recommendations of COMDA.