

Date of Hearing: April 18, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

AB 1277 (Daly) – As Amended March 28, 2017

SUBJECT: Dentistry: Dental Board of California: regulations.

SUMMARY: Requires the Dental Board of California (DBC) to amend through emergency regulations, the minimum standards for infection control, consistent with the federal Centers for Disease Control and Prevention's recommendations for procedural water quality and adopt final regulations on or before December 31, 2018.

EXISTING LAW:

- 1) Establishes the Dental Practice Act (Act) to license and regulate dentists, registered dental assistants (RDAs), and registered dental assistants in extended functions (RDAEFs). (Business and Professions (BPC) Section 1600 et seq.)
- 2) States that protection of the public is highest priority for the DBC in exercising its licensing, regulatory, and disciplinary functions. (BPC Section 1601.2)
- 3) States that all committees of the DBC have the authority to evaluate all suggestions or requests for regulatory changes related to their committee; committees have the authority to hold informational hearings in order to report and make appropriate recommendations to the DBC after consultation with the Department of Consumer Affairs' legal counsel and the DBC's executive officer; and, the committees are required to include in any report regarding a proposed regulatory change, at a minimum, the specific language or the proposed change or changes and the reasons and facts supporting the change. (BPC Section 1601.3)
- 4) Establishes the Office of Administrative Law (OAL) in the Government Operations Agency, as specified. (Government Code (GC) Section 11340.2)
- 5) Specifies that a state agency is prohibited from issuing, utilizing, enforcing or attempting to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule which is a regulation, as specified, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State. (GC Section 11340.5)
- 6) Defines regulation to mean "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific law enforced or administered by it, or to govern its procedure. (GC Section 11342.600)
- 7) Requires the adopting agency, at least five working days before submitting an emergency regulation to the OAL, to send a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency which must include the following: (GC Section 11346.1(a)(2))

- a) The specific language proposed to be adopted; and,
 - b) The finding of an emergency, as specified.
- 8) Exempts an agency from providing the notice as set forth in 7) above, if the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest. (GC Section 11346.1(a)(3))
- 9) Requires every agency to prepare and submit to the OAL with the adopted regulation a final statement of reasons which includes all of the following: (GC Section 11346.9(a))
- a) An update of the information contained in the initial statement of reasons;
 - b) A determination as to whether adoption, amendment, or repeal of the regulation imposes a mandate on local agencies or school districts;
 - c) A summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change;
 - d) A determination with supporting information that no alternative considered by the agency would be more effective in carrying out the purposes for the which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation is proposed, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law; and,
 - e) An explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses.

California Code of Regulations:

- 10) Establishes, through regulation by the DBC, the “Minimum Standards for Infection Control,” as specified. (California Code of Regulations (CCR) Title 16 Section 1005)

THIS BILL:

- 1) Requires the DBC, consistent with and in addition to the federal Centers for Disease Control and Prevention recommendations for procedural water quality, to amend the regulations on the minimum standards for infection control to require water or other methods used for irrigation to be sterile or contain recognized disinfecting or antibacterial properties when performing dental procedures that expose dental pulp.
- 2) Specifies that until December 31, 2018, the adoption and readoption of a regulation as set forth in 1) above are deemed to be an emergency necessary for the immediate preservation of public peace, health and safety, or general welfare purposes and the DBC is exempt from the requirement that it describe facts showing the need for immediate action and from review of the emergency regulations by the OAL.

3) Requires the DBC to adopt final regulations on or before December 31, 2018.

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the author. According to the author, "[This bill] seeks to minimize the odds of another outbreak like the one that has occurred in Orange County. While such outbreaks have been rare, [this bill] proposes significant changes to existing law to strengthen protections for vulnerable populations such as the young children who have been treated by the [Children's Dental Group] CDG. The pain and trauma suffered by these young children are inexcusable and unforgiveable, and we need to act now to prevent something like this from ever happening again."

Background. *Dental Board of California.* The DBC is responsible for the licensure and regulation of dentists, RDA, and RDAEFs, along with the regulation of orthodontic assistant and dental sedation assistant permits. The DBC's current licensee population is approximately 97,000 individuals. The DBC is responsible for enforcing the provisions of the Act, and often establishes regulations to effectuate the Act. This bill requires the DBC of California to amend its current regulations on the minimum standards for infection control to include the federal Centers for Disease Control and Prevention's recommendations for procedural water quality. This bill authorizes the DBC to adopt the regulations through the emergency regulation process until December 31, 2018, at which time; the DBC will be required to adopt final regulations on this issue. The DBC currently has nine subcommittees to review and address issues relevant to the DBC, including health and safety protocols. The DBC reports that currently, the TBD Subcommittee met informally in March of 2017 to discuss the issue of revising the CDB's regulations pertaining to the minimum standards for infection control and plans for this topic to be on the agenda at the next full board meeting in order to consider revising or changing regulations pertaining to the minimum standards of infection control as found in 16 CCR Section 1005.

Incident in Orange County. The genesis of this bill is the result of an incident in Orange County where it was reported that dozens of children became sick after receiving a certain dental procedure at an Anaheim pediatric dental clinic. According to a *frequently asked questions* document released by the Orange County Health Care Agency updated on March 28, 2017, "apparent *Mycobacterium abscessus* (*M. abscessus*) infections have been seen in children who had pulpotomy procedures at [a pediatric dental facility] in 2016....A pulpotomy is a dental procedure during which the infected pulp tissue of a tooth is treated/removed to prevent the loss of the tooth. It is commonly called a 'baby root canal.'" As a result of the infection, the County of Orange's Health Officer issued an order to close the dental office due to the positive laboratory results for *Mycobacterium* in the dental office's internal water system. According to the recent case count update provided by the Orange County Health Care Agency on April 4, 2017, the total case count remains at 68 cases; 22 confirmed, 46 probable; all have been hospitalized at some point.

The *Mycobacterium abscessus* infections and the subsequent closure of the dental clinic to address the water line concerns resulted in numerous headlines in local papers such as the

Orange County Register and the Los Angeles Times. According to a December 17, 2016, article in the Los Angeles Times,

"Orange County health officials have ordered the closure of a children's dental office in Anaheim after lab tests found bacteria in its new internal water system, which had replaced a system blamed for an earlier outbreak of bacterial infections."

OAL Process. The OAL ensures that agency regulations are clear, necessary, legally valid, and available to the public. The OAL is responsible for reviewing administrative regulations proposed by state agencies, including the DBC, for compliance with the standards in California's Administrative Procedure Act. When the DBC approves a regulation change, it is then submitted to the director of the DCA for approval and then forwarded to the OAL for final approval or rejection. This bill, until December 31, 2018, allows the adoption and re-adoption of the regulation change regarding the minimum standards for infection control under the DBC, to be adopted by emergency regulations and then requires the DBC to adopt final regulations related to the minimum standards on or before December 31, 2018.

ARGUMENTS IN SUPPORT:

The **California Dental Association** writes in support, "[This bill] addresses a weakness identified when 67 children were hospitalized with serious infections after receiving dental treatment at a dental clinic in Anaheim. Investigation into what occurred suggests that the bacterium that infected the children was likely introduced by water used during the performance of a dental procedure that exposed the dental pulp."

ARGUMENTS IN OPPOSITION:

None on file.

REGISTERED SUPPORT:

California Dental Association

REGISTERED OPPOSITION:

None on file.

Analysis Prepared by: Elissa Silva / B. & P. / 916-319-3301