BACKGROUND PAPER FOR THE DENTAL BOARD OF CALIFORNIA

(Oversight Hearing, March 14, 2011, Senate Committee on Business, Professions and Economic Development)

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE DENTAL BOARD OF CALIFORNIA

BRIEF OVERVIEW OF THE DENTAL BOARD OF CALIFORNIA

The Dental Board of California (DBC) was created by the California Legislature in 1885, and was originally established to regulate dentists. Today, DBC is responsible for regulating the practice of approximately 71,000 licensed dental health professionals in California, including 35,500 dentists, 34,300 registered dental assistants (RDAs), and 1,300 registered dental assistants in extended functions (RDAEFs). In addition, DBC is responsible for setting the duties and functions of approximately 50,000 unlicensed dental assistants. DBC, as a whole, generally meets at least four times throughout the year to address work completed by various committees of DBC and hear disciplinary cases.

The Dental Practice Act provides that the "[p]rotection of the public shall be the highest priority of the Dental Board of California in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." In concert with this statutory mandate, DBC formally adopted a mission statement in its 2010/2012 Strategic Plan, as follows: "The mission of the Dental Board of California is to protect and promote the health and safety of consumers of the State of California." The Strategic Plan also included a vision statement which indicated that DBC will be the leader in public protection, promotion of oral health, and access to quality care.

DBC implements regulatory programs and performs a variety of functions to protect consumers. These programs and activities include setting licensure requirements for dentists, and dental assistants, including examination requirements, issue and renew licenses, issue special permits, monitor probationer dentists and RDAs and manage a Diversion Program for dentists and RDAs whose practice may be impaired due to chemical dependency or mental illness.

DBC is composed of 14 members; 8 practicing dentists, 2 dental auxiliaries (RDH and RDA), and 4 public members. The 8 licensed dentists, the registered dental hygienist, the registered dental assistant, and 2 public members are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each get a public member appointment. According to DBC, public membership is 29% of the Board's composition. Of the 8 practicing dentists, 1 must be a member of a dental school faculty, and one shall be a dentist practicing in a nonprofit clinic.

Members of DBC are appointed for a term of 4 years, and each member may continue to hold office until the appointment and qualification of his or her successor or until 1 year has elapsed since the

expiration of the term, whichever occurs first. Each member may serve no more than 2 full terms. The following is a listing of the current members of the DBC with a brief biography of each member, their current status, appointment and term expiration dates and the appointing authority:

Board Members	Appointment Date	Term Expiration Date	Appointing Authority
John Bettinger, DDS, Board President Dr. Bettinger is a member of the American Dental Association, California Dental Association and Western Los Angeles Dental Society. He is a Life Member with Fellowship status in the Academy of General Dentistry. He served on the Western Los Angeles Dental Society Peer Review Committee for 10 years and on the Diversion Evaluation Committee of DBC for 2 years. Dr. Bettinger has been affiliated with Saint John's Hospital and the UCLA/Santa Monica Hospital and Health Care Center (formally the Santa Monica Hospital).	March 26, 2009	January 1, 2013	Governor
Bruce L. Whitcher, DDS, Board Vice President Dr. Whitcher has maintained a private practice of Oral and Maxillofacial Surgery in San Luis Obispo since 1987. Dr. Whitcher is a member of the Central Coast Dental Society, the California Dental Association, the California Association of Oral and Maxillofacial Surgeons, and the American Association of Oral and Maxillofacial Surgeons. He maintains hospital affiliations with French Hospital Medical Center, Sierra Vista Regional Medical Center, and Twin Cities Hospital Medical Center.	January 2, 2011	January 1, 2015	Governor
Luis Dominicis, DDS, Board Secretary Dr. Dominicis is a general dentist in private practice in the City of Downey, California since 1993. Dr. Dominicis is the President of Los Angeles Dental Society, Past President of the Latin American Dental Association; he has also served in various Councils in the California Dental Association such as Council on Legislative Affairs, Council on Community Health and in the Reference Committee for the House of Delegates. Dr. Dominicis is presently a member of the Dental Forum, which represents the ethnic dental societies in California.	March 26, 2009	January 1, 2012	Governor
Steven Afriat Mr. Afriat is President of the Los Angeles County Business License Commission. He was also the Los Angeles City Councilmember's Chief of Staff. Mr. Afriat has also served as President of the Los Angeles City Animal Services Commission, the LA City Council Redistricting Commission, and on the Boards of the Valley Community Clinic, Equality California, the West Hollywood Chamber of Commerce, and the Valley Industry and Commerce Association. Mr. Afriat owns his own Governmental Relations firm in Burbank.	July 2010	January 1, 2013	Speaker of the Assembly
Fran Burton Ms. Burton served twenty-one years in California in the Legislative and Executive branches of government. She currently consults on health policy issues. She holds a Master of Social Work degree from California State University, Sacramento.	June 2009	January 1, 2013	Senate Rules Committee
Stephen Casagrande, DDS Dr. Casagrande has been a dentist in private practice since 1974. He was previously the director of the Sacramento District Dental Society, a past member of the peer review committee, an advisor to the Sacramento City College Dental Hygiene Program Advisory Board Member to Hi-Tech Institute, a Proprietary School for Dental Assistants. Dr. Casagrande is a member of the American Dental Association, California Dental Association, and Sacramento District Dental Society.	March 27, 2009	January 1, 2012	Governor

Rebecca Downing Ms. Downing was appointed by Governor Schwarzenegger to the Dental Board in March of 2009. She is an attorney and the Chief Legal Officer for Western Health Advantage, a Sacramento-based health plan. Previously, she served as general counsel for Landmark Healthcare, Inc., a chiropractic / acupuncture health care company. In addition, Ms. Downing was the Executive Director of the California Chiropractic Association, and served in various capacities with the California Veterinary Medical Association and the California Dental Association. She received her Juris Doctorate degree from University of Southern California Gould School of Law and her Bachelor's degree from California State University, Sacramento.	March 26, 2009	January 1, 2012	Governor
Judith Forsythe, RDA Judith Forsythe, of Riverside, has been a Registered Dental Assistant in the State of California since 1994. She currently holds the position of director of back office development for Pacific Dental Services, where she has worked since 1998. She is a member of the American Dental Assistant Association.	March 26, 2009	January 1, 2013	Governor
Houng Le, DDS Dr. Le is a member of the American Dental Association, California Dental Association and Alameda County Dental Society. Dr. Le serves as a member on Board of Directors of National Network for Oral Health Access and Secretary for Western Clinicians Network. Additionally, she is President-Elect for Alameda County Dental Society. Dr. Le presently serves as Assistant Clinical Professor at UCSF School of Dentistry, A. T. Still School of Dental and Oral Health in Arizona and Dental Director of Lutheran Medical Center-affiliated AEGD program at Asian Health Services.	January 2, 2011	January 1, 2015	Governor
Suzanne McCormick, DDS Dr. McCormick is an Oral and Maxillofacial surgeon in private practice who is an active staff member at the Department of Oral and Maxillofacial Surgery at Tri-City Medical Center in Oceanside, California. She has been affiliated with many hospitals including, but not limited to, Health North Medical Center, Loma Linda University Medical Center, Riverside Medical Center, Metropolitan Medical Center, St. Vincent's Hospital and Medical Center, and New York University Medical Center. She has served as Trustee from District I, of the Board of Directors, International College of Oral and Maxillofacial Surgeons.	March 26, 2009	January 1, 2013	Governor
Steven Morrow, DDS After sixteen years of endodontic practice, Dr. Morrow returned to the field of dental education, completed a Master of Science Degree in Microbiology and accepted a faculty appointment in the Department of Endodontics at Loma Linda University School of Dentistry. Dr. Morrow is a Life Member of the American Dental Association and the American Association of Endodontists. He is a member of the California State Association of Endodontists, Tri-County Dental Society, Southern California Academy of Endodontics, and the American Dental Education Association. He is a Diplomate of the American Board of Endodontics and a member of the Scientific Advisory Board of the Journal of Endodontics. He is currently a Professor of Endodontics and Director of Patient Care Services and Clinical Quality Assurance at Loma Linda University School of Dentistry.	August 17, 2010	January 1, 2014	Governor
Thomas Olinger, DDS Since 1979, he has owned and operated his private practice. Dr. Olinger has also served as a dental officer in the U.S. Navy Reserve since 1976. He is a member of the California Dental Association, American Dental Association and San Diego County Dental Society. This position does not require Senate confirmation and the compensation is $100 per diem.	March 26, 2009	January 1, 2013	Governor

DBC currently has active committees dealing with dental assisting, enforcement, examinations, legislation and regulations, and licensing, certification, and permits. The Enforcement Committee reviews complaint and compliance case-aging statistics, citation and fine information, and investigation case-aging statistics in order to identify trends that might require changes in policies, procedures, and/or regulations. This Committee also receives updates on dentists participating in the Diversion Program. The Examination Committee reviews clinical/practical and written examination statistics and receives reports on all examinations conducted by staff. The Legislative/Regulatory Committee actively tracks legislation relating to the field of dentistry that might impact consumers and licensees and makes recommendations to the full Board whether or not to support, oppose, or watch a particular legislation. The Legislative/Regulatory Committee also develops legislative proposals, seeks authors, and attends Legislative hearings. The Licensing, Certification, and Permits Committee reviews dental and dental assistant licensure and permit statistics, and looks for trends that would indicate efficiency and effectiveness or might identify areas in the licensing units that need modifications. Additionally, the Dental Assisting Committee, made up of DBC members, evaluates all issues relating to dental assistants, RDAs, and RDAEFs.

DBC is a special fund agency, and its funding comes from the licensing of dentists and biennial renewal fees of dentists and RDAs. Currently, the license and renewal fee for dentists is $365 and the renewal fee for RDAs is $70. DBC also receives revenue through its cite and fine program. The total revenues anticipated by DBC for fiscal year 2010/2011 is $7,758,000, for FY 20111/2012, it is $8,929,000, and for FY 2012/2013 it is $10,021,000. DBC's anticipated expenditures for FY 2010/2011 is $11,159,000, for FY 2011/2012, it is $11,386,000, and for FY 2012/2013 it is $11,641,000. DBC spends approximately 68% of its budget on its enforcement program, with the major portion of these expenditures going to salary and wages followed by Attorney General and Evidence and Witness costs. DBC anticipates it would have approximately 4.7 months in reserve for FY 2010/2011, 2.1 months in reserve for FY 2011/2012, and 1.3 months reserve for 2012-2013.

In 2009, with the implementation of SB 853 (Perata), the State Dental Assistant Fund was established where all funds for the regulation of dental assistants is deposited. According to DBC, the total revenues anticipated for the dental assistant fund for FY 2010/2011, 2011/2012 and 2012/2013 is over $1.1 million. The total expenditures for each of the fiscal years is over $1.7million. DBC anticipates a 9.4 months reserve in 2010/2011, 5.1 months reserve in 2011/2012 and .7 months reserve in 2012/2013.

Currently, DBC has 72.8 authorized positions, of which 60.8 are filled and 12 are vacant. The Enforcement Unit is comprised of 35 staff, with 10.5 vacant positions. In 2010, the DCA launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement process of healing arts boards. According to DCA, the CPEI is a systematic approach designed to address three specific areas: Legislative Changes, Staffing and Information Technology Resources, and Administrative Improvements. Once fully implemented, DCA expects the healing arts boards to reduce the average enforcement completion timeline to between 12 -18 months. As part of CPEI, DBC was authorized to hire 12.5 positions. However, because of a hiring freeze ordered by the Governor on August 31, 2010, as well as a 5% staff reduction directive from the Department of Finance on October 26, 2010, DBC has only hired 4 of the 12.5 positions allocated under CPEI.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

DBC was last reviewed by the former Joint Legislative Sunset Review Committee (JLSRC) in 2002. At that time, the JLSRC issued five recommendations. Additionally, prior to this last review, SB 26 (Figueroa), Chapter 615, Statutes of 2001 required the Director of the DCA to appoint an Enforcement Monitor (Monitor) to evaluate DBC's disciplinary system and procedures with specific focus on the quality and consistency of complaint processing and investigation, timeframes needed for complaint handling and investigation, complaint backlogs, and other related managerial, organizational, and operational problems, issues, and concerns. The Monitor submitted his initial report to the Legislature in 2002, and made 40 specific recommendations for improvements. In this initial report, the Monitor indicated that there are numerous significant inconsistencies in the way complaints are processed and investigated, it was taking much too long to resolve or investigate complaints, and as a result of staff turnover and the state's hiring freeze, backlogs have begun to accumulate. The following are actions which DBC took to address the issues raised by the Monitor and the last sunset review. For those which were not addressed and which may still be of concern to the Committee, they are addressed and more fully discussed under "Current Sunset Review Issues."

On October 1, 2010, DBC submitted its required Sunset Report to this Committee. In this report, DBC described actions it has taken since its last sunset review and to address the recommendations of the Monitor. The following are some of the changes and enhancements that DBC had undertaken:

- Augmentation of enforcement unit staff and restructuring of its Complaint Unit has allowed DBC to respond to consumer complaints in a timely manner and has reduced the processing times of complaints.

- In response to concerns raised that DBC is unable to administer an adequate amount of examinations, DBC sponsored AB 1524 (Hayashi), Chapter 446, Statutes of 2010 which repeals the previous clinical and written examination administered by DBC and replaced it with a portfolio examination of an applicant's competence to practice dentistry to be administered while the applicant is enrolled in a dental school program.

- DBC converted limited term peace officer positions to permanent full time positions.

- New licensure, examination and permit requirements were established.

- To address issues raised by the Monitor on the lack of a case tracking system, DBC will be one of the Boards that will benefit from a new, integrated, enterprise-wide enforcement and licensing system, called BreEZe that will support applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management. According to DCA, BreEZe will replace the existing CAS, ATS, and multiple "workaround" systems with an integrated system for use by all DCA organizations. The BreEZe project was approved by the Office of the State Chief Information Officer (OCIO) in November 2009, and the Request For Proposal (RFP) for a solution vendor is currently under development.

- To address the need for tracking investigative case activity, in 2003, DBC tested a version of the Investigation Activity Reporting (IAR) program used by the Medical Board of California (MBC). According to DBC, although this demonstration version of MBC's database was intended to provide a method for managers to track casework on all cases, the system was not

established in protocol and was only used sporadically. DBC's enforcement program has partnered with the MBC to utilize MBC's newest version of the IAR to track casework. This format is intended to provide information for cost recovery purposes and allow managers to better track staff performance and productivity. Transition to the new IAR was anticipated to be completed by the end of 2010.

- The Expert Reviewer rate was increased from $75 to $100. However, DBC indicates it continues to struggle to recruit experts.

- Effective August 1, 2010, a new consumer survey procedure has been adopted.

- The Disciplinary Guidelines of DBC were revised and approved by the Office of Administrative Law on December 14, 2010. The regulations became effective January 13, 2011.

- DBC's regulatory authority and responsibility was extended to all dental assisting functions. The duties and functions of unlicensed dental assistants, RDAs, RDAEFs, Dental Sedation Assistants, and Orthodontic Assistants were revised in statute.

- The Board updated its dental assisting educational requirements relating to RDA programs, infection control courses, Orthodontic Assistant Permit Courses, Dental Sedation Assistant Courses, and RDAEF programs, and is moving forward with finalizing the rulemaking process.

- The DBC updated the regulations for the minimum standards for infection control applicable to all DBC licensees and is moving forward with finalizing the rulemaking process.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to DBC, or areas of concern for the Committee to consider, along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. DBC and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

BOARD ADMINISTRATION ISSUES

ISSUE #1: (CHANGE COMPOSITION OF DBC.) Should the composition of DBC be changed to include more public member representation?

Background: DBC's current composition of 8 professionals and 4 public members may not be in the best interest of consumer protection. DBC currently has 14 members: 8 dentists, 1 RDA, 1 RDH and 4 public members. The 8 licensed dentists, 1 RDH, 1 RDA, and 2 public members are appointed by the Governor. The Senate Rules Committee and the Speaker of the Assembly each get 1 public member appointment. According to DBC, public membership is 29% of DBC's composition.

Generally, a public member majority for occupational regulatory boards or greater representation of the public where current board membership is heavily weighted in favor of the profession is preferred for consumer protection. Since any regulatory program's (including DBC) primary purpose is to protect the public, increasing the public's representation on DBC assures the public that the professions' interests do not outweigh what is in the best interest of the public. Requiring closer parity between public and professional members is also consistent with both this Committee's and the DCA's recommendations regarding other boards that have undergone sunset review over the past 8 years. Additionally, almost all health related consumer boards have no more than a simple majority of professional members.

Staff Recommendation: ***To ensure the continued commitment of DBC to protect the public, the composition of DBC should be changed to include more public members. This could be accomplished by replacing one of the dentists appointed by the Governor with a public member and giving the Governor an additional public member appointment. This would bring the total of DBC to 15 members: 7 dentists, 1 RDA, 1 RDH and 6 public members.***

ISSUE #2: (STRATEGIC PLAN UPDATE NEEDED.) Should DBC's Strategic Plan include action items and realistic target dates for how its goals and objectives will be met?

Background: As part of the sunset report, DBC submitted its 2010-2012 Strategic Plan which laid out its mission, vision, values, goals and objectives. The Strategic Plan recognizes that the mission of DBC is to protect and promote the health and safety of consumers in California and lays out objectives in achieving this goal. However, the Strategic Plan lacks depth and specificity as to how the Board will achieve its specific objectives. For example, DBC specifies as goal 3: Ensure the Board's Enforcement and Diversion Programs provide timely and equitable consumer protection. For the objectives, DBC specifies that the Board will implement improved reporting and tracking of enforcement cases; implement short- and long-term IT improvements; maintain optimal staffing by continuing to fill vacant enforcement and diversion staff positions. However, there is no discussion on how the Board will achieve these objectives. The Strategic Plan is transparently lacking on the specifics of how DBC in concrete steps will achieve its objectives.

Staff Recommendation: ***DBC should develop and publish a detailed action plan with specific action items and realistic target dates for how each of the objectives will be met. Additionally, the Board should be given a written status report on the action plan at each board meeting.***

ISSUE #3: (LACK OF PERSONNEL EVALUATION.) Should DBC implement annual personnel performance evaluations or appraisals?

Background: According to the 2002 Enforcement Program Monitor's Initial Report, among other issues identified, there was no evidence of management or supervisory analysis of workload or work processes. At that time, the Monitor recommended that specific supervisory responsibilities and requirements should be defined, including conducting case reviews and annual performance appraisals. Additionally, the Monitor suggested that DBC identify all areas requiring documentation of policies and procedures, and schedule the completion of this activity over a phased period of time. The Monitor indicated that improved supervisory practices will be critical to achieving marked improvements in the aging of closed cases. However, the Monitor also recognized that previous

appraisal efforts were met with considerable employee resistance, and the appraisals were never completed.

Additionally, a 2009 Enforcement Process Assessment (Enforcement Assessment) of DBC indicated that the lack of personnel performance evaluations is evident in various areas of the enforcement program. Personnel appraisals, the Enforcement Assessment indicated are especially important in the case review and audit process to effectively track and manage investigations, and concluded that a consideration should be given to monthly reports, training participation and attendance to measure staff productivity and investigative progress, which will also help in conducting annual appraisals with staff.

Staff Recommendation: ***DBC should explain to the Committee its system of work performance evaluations and ensure that these evaluations or appraisals are completed by staff on a timely basis.***

ISSUE #4: (CLARIFICATION OF THE AUTHORITY OF DBC OVER THE DENTAL HYGIENE COMMITTEE AND DENTAL ASSISTANTS.) Is there some clarification needed regarding the authority which DBC has over the Dental Hygiene Committee and the Dental Assisting Forum?

Background: In 1974, the Legislature created the Committee on Dental Auxiliaries (COMDA) to provide advice on the functions of and work settings of dental auxiliaries, including dental assistants and dental hygienists. COMDA was vested with the authority to administer dental auxiliary license examinations, issue and renew dental auxiliary licenses, evaluate auxiliary educational programs, and recommend regulatory changes regarding dental auxiliaries. SB 853 (Perata) (Chapter 31, Statutes of 2008) abolished COMDA and transferred the regulation of dental hygienists to the Dental Hygiene Committee, and the regulation of RDAs and RDAEFs to DBC. SB 853 was the result of years of negotiations between stakeholders to create within the jurisdiction of DBC the Dental Hygiene Committee of California (DHCC). It removed dental hygienists from the more restrictive COMDA and provided it with a more autonomous regulatory direction. This was an action consistent with JLSRC's conclusion that the dental hygienists had reached the point where their responsibilities warranted a regulatory body separate from DBC. While the DHCC is proving successful, there have been issues raised regarding its autonomy. It has been argued that the autonomy that was designed and expected with the independent funding and governance of this new Committee has been sometimes limited by the suggestion that their actions, outside of changing the scope of practice for dental hygiene, requires special reporting or some kind of consent from DBC. Dental hygiene advocates claim that the adoption of the regulatory packet that will create the Dental Hygiene Practice Act remains stalled, and the DHCC is still acting under the old regulations that are found only in the Dental Practice Act that is controlled by DBC. However, according to DBC staff, it is unclear as to why the DBC is responsible for the failure to enact DHCC regulations. With new appointments due to occur in January 2012, it is imperative that the DHCC's ability to adopt regulations independent of DBC be clarified. Without clarification, the DHCC members are unclear as to what they can do as a Committee.

Additionally, SB 853 also stated legislative intent that DBC create and implement an effective forum where dental assistant services and regulatory oversight of dental assistants can be heard and discussed in full and where all matters relating to dental assistants can be discussed, including matters related to licensure and renewal, duties, standards or conduct and enforcement. In response to SB 853, in 2009, DBC established two groups to deal with dental assisting issues: The Dental Assisting Committee (DAC) composed of DBC members and chaired by the RDA appointee to DBC; and the Dental

Assisting Forum (DAF), composed of RDAs and RDAEFs. According to DBC, "the purpose of the DAF is to be a forum where dental assistants can be heard, and to discuss all matters relating to dental assistants in the State, including requirements for dental assistant licensure and renewal, duties, supervision, appropriate standards of conduct and enforcement for dental assistants." This purpose is essentially similar to the legislative intent specified in SB 853. The DAC meets at every board meeting and the DAF held short meetings in January and April 2010, and met again in January 2011. Advocates for dental assistants have indicated to Committee staff that many items that DAF members have requested be included on agendas but have been removed, requests that meetings be held in conjunction with DBC so that there can be open lines of communication and establish greater efficiency have been denied, and dental assisting issues are placed on the agenda for DBC's DAC, instead of on the DAF agenda. Additionally, Committee staff is unclear as to DBC's policy for referring issues to the DAF and DAC, how recommendations are referred from the DAF and DAC to DBC and what kind of discretion DBC has over deciding dental assisting issues; how often are issues referred to DAF and DAC and how often are they taken up by DBC, and how often are DAF and DAC recommendations accepted. Essentially, the establishment of two groups to deal with dental assisting issues has resulted in very inefficient and ineffective process. It is also unclear why DBC established a bifurcated process for hearing dental assisting issues.

Recommendation: ***It would appear as if the intent of the Legislature was that the Dental Hygiene Committee was created so that it could make independent decisions on issues related to the regulation of the hygienist profession unless it involved scope of practice changes which would need to be worked out between both the dentistry and hygienist professions. Clarification may be needed to assure that the Dental Hygiene Committee maintains its independence over that of DBC. Additionally, the Committee should ask DBC to explain the purpose for establishing two groups to deal with dental assisting issues, and consider merging the DAC and DAF into one entity.***

DENTAL WORKFORCE AND DIVERSITY ISSUES

ISSUE #5: (IMPACT OF FEDERAL HEALTH CARE REFORM ON THE DENTAL WORKFORCE?) Will California meet the increased demand for dental services with the enactment of the Federal Health Care Reform, and what can DBC do to assist in the implementation of the Federal Health Care Reform?

Background: A June 2009 Health Policy Fact Sheet (Health Policy Fact Sheet) by the University of California, Los Angeles Center for Health Policy Research indicated that California has about 14% of the total number of dentists nationwide (the largest percentage of any state). The dentist-to-population ratio in California is estimated as 3.5 dentists per 5,000 or a dentist for every 1,440 persons. This ratio is higher than the national estimate of three dentists per 5,000, or a dentist for every 1,660 persons. However, the Health Policy Fact Sheet revealed that although there is a large number of practicing dentists in California, many areas in the state continue to have a shortage of dentists, and these areas are mostly located in rural areas, including Yuba, Alpine, Colusa, Mariposa, Mono and San Benito Counties. The Health Policy Fact Sheet indicated that there are 233 dental health professional shortage areas statewide. These areas generally have a dentist-to-population ratio of one per 5,000 or lower; a high population need with a ratio of at least 1.25 dentists per 5,000 (or 1 per 4,000); and a public or non-profit health center that provides dental services to shortage areas or populations. Additionally, the Health Policy Fact Sheet indicated that the percentage of dentists who may be nearing retirement

age is greater than the percentage of newly licensed dentists. In some counties, far fewer are newly licensed and many more are nearing retirement age.

These shortages could potentially impact the implementation of the recently enacted federal health care reform measure, referred to as the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010. In California, implementation of the PPACA is under way with the enactment last year of AB 1602 (Perez), Chapter 655, Statutes of 2010, and SB 900 (Alquist, Steinberg), Chapter 659, Statutes of 2010, establishing the California Health Benefits Exchange within the California Health and Human Services Agency. According to advocates, an estimated 1.2 million California children will soon gain dental coverage due to the recent enactment of the PPACA. However, advocates argue that California will not be able to fulfill the promise of improving children's dental health if there are not enough dental providers to meet this growing demand. The following provisions are included in the PPACA and will impact dental workforce in California:

- Requires that insurance plans offered under the Exchange to include oral care for children.
- Expands school-based sealant programs.
- Authorizes $30 million for fiscal year 2010 to train oral health workforce.
- Establishes 5-year, $4 million demonstration projects to test alternative dental health care providers.
- Establishes a public health workforce track, including funding for scholarships and loan repayment programs for dental students and grants to dental schools.
- Establishes three-year, $500,000 grants to establish new primary care residency programs, including dental programs.
- Provides funding for new and expanded graduate medical education, including dental education.

Staff Recommendation: ***The Committee should ask DBC whether it has assessed the impact of, and planned for, implementation of the PPACA; how DBC is looking at the dental workforce capacity in light of implementation of the PPACA, given that millions of additional Californians, especially children, will gain dental coverage when the PPACA is implemented. Additionally, DBC should continue in its efforts to increase the dental workforce in California, explore approaches and work collaboratively with for-profit and non-profit organizations and other stakeholders to address the increased demand for oral healthcare as a result of the PPACA. Additionally, DBC should be proactive in finding ways to increase access to dental programs especially for socio-economic disadvantaged students.***

ISSUE #6: (IS THERE A LACK OF DIVERSITY IN THE DENTAL PROFESSION?)

Should DBC enhance its efforts to increase diversity in the dental profession?

Background: As indicated by the Center for the Health Professions (Center), it has long been known that certain ethnic and racial groups are underrepresented in the health professions. "The subject of racial and ethnic underrepresentation in California's health professions training programs and workforce has come to occupy a central role in the effort to develop better models of health care practice and better systems for health care delivery," as stated by the Center. The reasons for this are varied, as explained by the Center as follows:

- The practice of linguistically and culturally competent health care of a diverse health professions workforce is critical to addressing health disparities.

- Student experiences in health professions training programs are enriched by the presence of fellow students with diverse social and cultural experiences.

- Economic development in communities is another reason to promote greater diversity in the health professions. The health industry is one of the few economic sectors in California that continues to create jobs and most jobs in health care are well paid, and many of them offer opportunities for professional development.

According to a 2008 report by the Center entitled "*Diversity in California's Health Professions: Dentistry*," a 2005/2006 gender and racial/ethnic composition of dentists shows that although White/Caucasians represent 44.5% of California's labor force, they make up 56.7% of active dentists, Asians account for 32.4% of active dentists while representing a 13.2% of the total labor force, and Latino dentists represent an estimated 7% of the state's active dentists, but roughly 34% of California's general labor workforce. African-American dentists represent an estimated 2.5% of California's dentists, which is roughly half the size of the state's African American general labor force. Native Americans, Native Hawaiians & Pacific Islanders, and multiracial dentists represent just 1.3% of active dentists in the state but almost 3% of California's general labor force. Available data indicates that active dentists are overwhelmingly male, but the gender composition may be expected to shift over time as more women graduates of DDS programs enter the labor force. Trended education data describing first-year enrollments indicate that women are more highly represented in California's five DDS programs by comparison with currently active dentists. In contrast, education data indicate that the racial/ethnic composition of students in California's DDS programs is similar to the active dental labor force. This suggests that the profession will remain largely White/Caucasian and Asian at least in the near term.

Furthermore, the report indicated that there are several factors that contribute to the successful recruitment of minority dental students, including the availability of dental programs that are committed to integrating community-based practice experience that highlight the role of cultural differences in treatment planning as part of the clinical education; the presence of minority clinical faculty; well-designed mentorship programs that foster relationships between students and practicing professionals in the community; increasing recruitment efforts for minorities (establishing dental pipeline programs); financial support and other career development programs.

Staff Recommendation: ***DBC should enhance its efforts on diversity issues, and increase its collaboration efforts with dental schools, dental associations, other state and local agencies, and for-profit and non-profit organizations.***

DENTAL PRACTICE ISSUES

ISSUE #7: (DIFFICULT TO DETERMINE SPECIALTY AREAS OF DENTAL PRACTICE.) Should DBC be responsible for determining and reviewing areas of specialty education and accreditation requirements for those specialized areas of Dentistry?

Background: In 2001, AB 1026 (Oropeza), Chapter 313, Statutes of 2001, enacted Section 651 (h)(5)(A) of the B&P Code which prohibits a dentist from holding himself or herself out as a specialist, or advertise in a specialty recognition by an accredited organization, unless the practitioner completed specialty education programs approved by the American Dental Association (ADA), as specified. Additionally, this section prohibits a dentist from representing or advertising himself or herself as accredited in a specialty area of practice unless the dentist is a member of, or credentialed by, an accredited organization recognized by DBC as a bona fide organization for an area of dental practice. This section also specified requirements to be considered a bona fide organization for purposes of credentialing. AB 1026 was sponsored by the California Dental Association (CDA) and was enacted in response to a DBC advertising regulations that were found to violate the First Amendment and were ruled unconstitutional by a federal court. In 2003, DBC was sued by Dr. Potts, a dentist, and a credentialing organization challenging the constitutionality of Section 651(h)(5)(A). See *Potts v. Hamilton*, 334 F.Supp.2d 1206. At issue was the statute's requirement that in order to advertise a post-dental school credential, a dentist must first complete a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school. A federal court ultimately ruled in favor of the dentist and held that the statute (Section 651(h)(5)(A)) was an unconstitutional restriction on commercial speech. Although DBC appealed this decision, it began negotiations with various stakeholder groups associated with or interested in the *Potts* litigation and worked out a dental advertising legislative proposal, but ultimately the proposed legislation did not push through and the appeal proceeded to the Ninth Circuit Court. In 2005, AB 1268 (Oropeza) was sponsored by CDA in an effort to amend Section 651(h)(5)(A) and provide that a disclaimer must be included on all advertising by any non-ADA recognized credential. However, AB 1268 did not move forward. In 2007, the Ninth Circuit Court remanded the case back to the Federal District Court and in 2010, the court reaffirmed its decision that the provision was unconstitutional. According to DBC, to prevent future litigation in this area and to mitigate costs associated with the *Potts* litigation (over $1.1 million), it is recommending that Section 651(h)(5)(A)(i) through 651(h)(5)(A)(iii) of the B&P Code be deleted from statute. They do not believe this is an area in which DBC needs to be involved.

Staff Recommendation: ***Adopt the recommendation of DBC to delete B & P Code Section 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii).***

EXAMINATION ISSUES

ISSUE #8: (LENGTHY PROCESSING TIME FOR EXAMINATION APPLICATIONS.)
Currently DBC is averaging up to five months to process examination applications.

Background: The Dental Practice Act provides that each applicant for dentistry licensure must successfully complete Part I and Part II written examinations of the National Board Dental Examination of the Joint Commission on National Dental Examinations, an examination in California Law and Ethics developed and administered by DBC, and one of the following: A portfolio examination conducted while the applicant is enrolled in a dental school program; or a clinical and written examination administered by the Western Regional Examining Board (WREB).

According to DBC's Sunset Report, the timeframe for processing examination application averages is from 45 to 150 days. In a follow-up discussion, DBC staff reported that statistics for the past 5 months show that dentist applications with no deficiencies are completed within an average of 32 days.

Applications that are deficient may be delayed depending upon how quickly the requirements are submitted by the applicant.

Staff Recommendation: ***DBC should explain further the reasons for the delays in processing examination application averages and whether these delays are attributable to DBC.***

ISSUE #9: (RANDOMIZATION OF DENTAL AND RDA LAW AND ETHICS EXAMINATIONS NEEDED.) Are there sufficient safeguards to avoid, if not limit, examination compromises and ensure that testing reflect current laws and regulations? Should the California Law and Ethics examination questions for dentists and RDAs be randomized and reflect current laws and regulations?

Background: As indicated above, as part of the licensure process, an applicant must also pass a California Law and Ethics examination that is developed and administered by DBC. DBC contracts with the DCA's Office of Professional Examination Services (OPES) for its examination development services. According to DBC, in FY 2006/2007 and 2007/2008, the pass rate for the Dental Law and Ethics examination was 96%, and for fiscal years 2008/2009 and 2009/2010, the pass rate increased to 98%. This pass rate is extremely high.

Aside from dentists, RDAs are also required to pass an RDA Law and Ethics Examination. On May 3, 2010, DBC was notified by OPES that information contained within the RDA Law and Ethics examination was posted on an Internet blog. Staff reviewed the information posted and stopped the examination from being administered beginning June 1, 2010. A special examination workshop was held on June 5 and 6, 2010, and the RDA Law and Ethics examination was modified and updated, and DBC resumed testing August 1, 2010. As part of the examination sign-in procedure, applicants are now required to certify that they will not release content information. Additionally, DBC did not grant licensure to the applicant who posted examination information on the blog.

Staff Recommendation: ***To avoid examination compromises and ensure that the examination questions reflect current law and regulations, DBC should require that OPES randomize (scramble) California law and ethics examinations for dentists and RDAs. Additionally, dentists should be required to certify that examination content will not be released.***

ISSUE #10: (RDA WRITTEN EXAMINATION PASS RATE IS LOW.) Should DBC explore pathways to improve the pass rates of RDAs taking the written examinations if the low pass rate trend continues?

Background: The pass rate in 2009/2010 (the first fiscal year that the RDA is under DBC) for the RDA written examination is 53%. There was no explanation given by DBC on why the pass rate was low.

Staff Recommendation*:* ***If in fiscal year 2010/2011, the RDA examination pass rate remains low, DBC should explore approaches to improve the passage rate of RDAs****.*

CONTINUING COMPETENCY ISSUES

ISSUE #11: (LACK OF CONTINUING EDUCATION AUDITS.) DBC suspended audits of continuing education prior to 2009, and does not audit RDAs.

Background: The Dental Practice Act requires that each dentist and RDA fulfill continuing education (CE) requirements to renew their dental license. Currently, a dentist must fulfill 50 hours of continuing education for each renewal period, whereas RDAs are required to fulfill 25 hours of CE credits for each renewal period. Courses in basic life support, 2 hours of California Infection Control and 2 hours of California Dental Practice Act are required courses for both practitioners. DBC also approves continuing education courses and approves the CE provider. Effective January 1, 2010, all unlicensed dental assistants in California must complete an approved 8-hour infection control course, an approved 2-hour course in the California Dental Practice Act, and a course in basic life support.

There were no random CE audits since the last Sunset Review in 2002. According to DBC, random audits did not begin until the summer of 2009 when staff was redirected to perform the audits. DBC indicates that an average of 98% of dentists who were audited were found to be in compliance with continuing education requirements. Furthermore, DBC points out that when it inherited the dental assisting program and staff, there was no funding or staff to perform CE audits.

Staff Recommendation: ***DBC should explain to the Committee its current policy on continuing education audits for dentists and the reasons for suspension of the audits prior to 2009. DBC should also explain why it does not audit CE for RDAs and describe plans, if any, to implement audit for RDA CE.***

ENFORCEMENT ISSUES

ISSUE #12: (DISCIPLINARY CASE MANAGEMENT TIMEFRAME STILL TAKING ON AVERAGE 2 ½ YEARS OR MORE.) Will DBC be able to meet its goal of reducing the average disciplinary case timeframe from 2 ½ years or more, to 12 to 18 months?

Background: DBC is responsible for regulating the practice of approximately 35,000 dentists and 34,000 RDAs. DBC indicates that it receives between 3,000 and 3,800 complaints per year (See table below), and processes and closes about 3,900 complaints a year. Complaints are categorized into 4 distinct groups: complaints received from the public, other governmental agencies, licensee/professional groups and complaints labeled as "other." Complaints classified as "other" include mandatory reports from specific entities; including settlements and malpractice judgments pursuant to Business & Professions Code Section 801 et. seq., and Section 805 reports from peer review bodies, including health care service plans, dental societies, and committees that review quality of care cases if certain actions are taken by or imposed on dentists. The table below summarizes the sources and number of complaints received by DBC from 2006-2010. DBC states that the number of complaints referred to investigation has increased from 14% in 2000 to 25% in 2009. However, the percentage of complaints which ultimately result in the filing of accusations and disciplinary action averages about 3% which has remained stable over time, according to the Board.

Source of Complaint	2006-2007	2007-2008	2008-2009	2009-2010

Public	1858	2175	2528	2370
Governmental Agencies	454	286	87	67
Licensee/Professional Groups	633	1154	833	639
Other	137	94	79	96
TOTAL	**3,082**	**3,709**	**3,527**	**3,712**

According to DBC, the average number of days to process a claim from receipt of complaint to final disposition of a case ranged from 836 days in 2008/2009 to 857 days in 2009/2010. More recent statistics provided to the Committee shows that the average cycle time from the date the case was received as a complaint to when the Disciplinary Order was issued for 2010 is 951.7 days. This means that on average it is taking DBC 2 ½ years to pursue a disciplinary action against a problem dentist. It should be noted that DBC is not alone in its problems related to its lengthy disciplinary process; all other health boards under DCA are also affected. The table below shows the average case aging, and often the biggest bottleneck occurs at the investigation and prosecution stages of the process.

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECURE CASES				
	2006/2007	**2007/2008**	**2008/2009**	**2009/2010**
Complaint Processing	238	280	278	180
Investigations	247	211	302	351
Pre-Accusation*	208	283	182	187
Post-Accusation**	341	363	361	335
TOTAL AVERAGE DAYS * **	**668**	**773**	**836**	**857**
*From Completed investigation to formal charges being filed ** From formal charges filed to conclusion of disciplinary case ***From date complaint received to date of final disciplinary of disciplinary case				

The cycle time is affected by several factors including the length of time it takes to process complaints, conduct investigations, file accusations by the AG's Office and schedule and hold hearings with the Administrative Law Judges. Lastly, the case goes back to DBC for a final decision. As the table above indicates, there has been a vast improvement in the case processing timeframe (from 278 days in 2008/2009 to 180 days in 2009/2010). According to DBC, the recent hiring of additional dental consultants has contributed to improved complaint processing. However, the 6 months average time to process complaints remains lengthy. It should be noted that since the release of the Sunset Report, the DBC has continued to reduce this timeframe, which is now 92 days.

A complaint that has merit is referred to investigation and assigned an investigator. DBC uses its own in-house investigators to conduct investigations. Assignment for investigation is based on a number of criteria including case complexity, investigator experience, companion cases on the same licensee, and caseload. An investigator then evaluates the case and sets priorities based on their own caseload. DBC indicates that over the past four years the average length of time required to complete investigation has risen from 247 in 2006/2007 to 351 days in 2009/2010. DBC points out that factors affecting the investigation timeframe include investigator vacancies, length of time to train new staff, increase in the number of complaints referred to investigation, and mandatory furloughs of last year.

At the conclusion of an investigation, if it is determined that there has been a violation of the Dental Practice Act, the case is referred by the investigator to the Office of Attorney General (AG's Office) for preparation and review of the administrative accusation. According to DBC, in 2009/2010, the average days from the date a case is received to the date a case is assigned to a Deputy Attorney General (DAG) is 44 days (96 days in 2007/2008 and 52 days in 2008/2009). As the table on the prior

page provides, it is taking the AG's Office over 6 months (187 days) in 2009/2010 from the time an investigation is completed to file an accusation. Additionally, the average number of days from when an accusation is served to a settlement is completed is 356 days for 2009/2010 (346 days in 2008/2009 and 379 days in 2007/2008). As such, it is taking the AG's office over 19 months to close cases that are not referred to the Administrative Law Judge for an administrative hearing. As noted above, these statistics were provided to Committee staff by DBC which is generated from DBC's database. The AG's office tracks its own cases with a different database, and was requested to provide the same information but was not made available for purposes of this Paper. Staff anticipates that the AG will provide their own statistics during the hearing. DBC indicates in the Sunset Report that the AG's Office is aware of these timeframes and recognizes that their staffing constraints have contributed to case aging.

On August 17, 2009, this Committee held an informational hearing entitled "*Creating a Seamless Enforcement Program for Consumer Boards*." This hearing revealed that Deputy AGs within the AG's Licensing Section handle both licensing and health care cases in a similar fashion without any expertise devoted to the prosecution of those cases involving serious health care quality issues. Moreover, the AG's staff often allows respondents to file a notice of defense long after the 15-day time limit has ended, which lengthens the time a case is processed by the AG's Office. The practice of the AG's Office of not requesting a hearing date when notice of defense is received is also contributing to the delays. The AG's Office often waits for settlement negotiations to break down before requesting a hearing date with Office of Administrative Hearings (OAH). It can then take one to two years to prosecute the case and for a disciplinary decision to be reached. Finally, OAH provides services to over 950 different governmental agencies. The DCA's cases are not given a higher priority and are calendared according to available hearing dates and Administrative Law Judges (ALJs) assigned. Cases on average can take up to 12 months or more months to be heard. Also, the DCA's boards and bureaus have over 40 different laws and regulations with which ALJs must be familiar. This lack of specialization and training for the cases referred by the other health care boards creates a situation in which judges are issuing inconsistent decisions. A board is then placed in a position of non-adopting the decision of the ALJ and providing for a hearing of its own to make a different determination regarding the disciplinary action which should be taken against the dentist.

As noted above, cases begin to age tremendously during the investigative phase. DBC points out that there are 10.5 positions currently vacant in the Enforcement Unit. Of these vacancies, 8.5 are CPEI positions. It should be noted that CPEI positions were created to expedite and maximize the efficiency of handling all pending disciplinary actions and are dedicated to tracking of AG cases. However, it is unclear if these positions will be filled and may be in jeopardy because of the recent hiring freeze ordered by the Governor.

The enforcement caseload is expected to rise as DBC implements new fingerprinting requirements for its licensees around April 2011. The new regulations would require a licensee to furnish a full set of fingerprints to the Department of Justice as a condition of renewal with DBC if the licensee was initially licensed prior to 1999 or if an electronic record of the fingerprint submission no longer exists. According to DBC, about 18,000 dentists, 23,500 RDA and RDAEFs will need to be fingerprinted and an additional 5,000 who were manually fingerprinted may need to update their prints. Additionally, licensees must disclose on the renewal form whether the licensee has been convicted of a crime, as defined, or had any disciplinary actions taken against any other license he or she holds.

Staff Recommendation: ***In order to improve case processing and case aging, and to meet its goal of reducing the timeframe for the handling of its disciplinary cases, the following recommendations from the Monitor and Assessment Report should be considered by DBC:***

1) ***Continue to reduce the amount of time to process and close complaints.***
2) ***A Guideline for case assignments must be established, taking into consideration the skills or experience level of staff and other factors.***
3) ***Making Case Processing and Aging a major focus of DBC's improvement planning.***
4) ***Prioritize the review of aged cases.***
5) ***Establish reasonable elapsed time objectives for each step of the case processing.***
6) ***Monitor Performance by establishing regular oversight of case progress and staff productivity.***
7) ***A policy or procedures for supervisory staff in performing case reviews should be established.***

Additionally, the Committee should give consideration to auditing both the Investigation Unit of DBC and the Licensing Section of the AG's Office to determine whether improvements could be made to the investigation and prosecution of disciplinary cases.

ISSUE #13: (DISCIPLINARY CASE TRACKING SYSTEM INADEQUATE.) Should DBC continue to monitor the quality of enforcement data and ensure that investigative activities are tracked? Additionally, should DBC adopt guidelines for the completion of specific investigative functions to establish objective expectations?

Background: One of the issues raised by the Monitor was the lack of reliable statistical data system to track disciplinary cases and investigative case activity. DBC currently uses the Consumer Affairs System (CAS) as its complaint, investigation, and discipline tracking database. However, because of constraints associated with the CAS, the DCA recently entered into the Request for Proposal process to identify a vendor and develop an updated applicant and licensing database to better meet the needs of all DCA users. This project is called "BreEZe." Boards and bureaus within DCA will transition into the BreEZe system, and for DBC, the target date is June 2013.

Furthermore, to track investigative activity, DBC transitioned into the Investigator Activity Report (IAR) program utilized by the Medical Board of California (MBC) in 2010. According to DBC, the Dot Net Sequel Server database provided a method for managers to track casework on all cases, provided information for cost recovery purposes and allowed them to better monitor staff performance and productivity. Although DBC had transitioned into the new IAR program used by the MBC, there has always been a resistance to complete the IAR and inconsistency in the use of this tracking tool. The Assessment Report highlighted the importance of the IAR indicating, "If a case is referred to the AG's Office for discipline, the IAR is the source document to recover investigative costs in any eventual settlement, probation terms, or penalty decision. In many cases, if staff had not completed the IAR and received a request for cost recovery, the information that was produced after the fact was based on rough estimates."

Staff Recommendation: ***Although all the boards and bureaus within the DCA will transition into the BreEZe system, this process is several years out. In the meantime, DBC should continue to monitor the quality of enforcement data and tracking of investigative services. Moreover, although DBC had transitioned to the IAR utilized by the MBC, DBC should ensure that the IARs are***

consistent and completed. Additionally, as the Enforcement Assessment recommended, guidelines should be established for the completion of specific investigative functions to establish objective expectations. Lastly, DBC should continue in its role to work collaboratively with the DCA's Office of Information Services project staff, as well as with any vendor, to assist in creating an efficient and user-friendly integrated computer system.

ISSUE #14: (PROTRACTED PROCESS TO SUSPEND LICENSE OF A DENTIST.)

DBC must go through a cumbersome process to suspend the license of a licensee who may pose an immediate threat to patients or who have committed a serious crime and may even be incarcerated.

Background: Currently in California, even if a health care provider is thought to be a serious risk to the public, the boards must go through a cumbersome legal process to get permission to stop the provider from practicing, even temporarily. DBC had only obtained immediate suspension of dentists just seven times within five years. Under existing law, the Interim Suspension Order (ISO) process (Section 494 of the B&P Code) provides boards with an avenue for expedited suspension of a license when action must be taken swiftly to protect public health, safety, or welfare. However, the ISO process currently takes weeks to months to achieve, allowing licensees who pose a serious risk to the public to continue to practice for an unacceptable amount of time. Also the timeframes in which a future action against the licensee must be taken, where there is only 15 days to investigate and file an accusation, are unreasonable and prevents most boards from utilizing the ISO process to immediately suspend the license of a health care practitioner. Also, there are no uniform requirements for health care boards to automatically suspend the license of a practitioner who has been incarcerated after the conviction of a felony. Existing law allows for physicians and podiatrists to be suspended while incarcerated but not for other health care professionals, including dentists. Additionally, although existing law allows the DBC to revoke the license of an individual who is required to register as a sex offender, there is no similar requirement for when a licensee is convicted of acts of sexual exploitation of a patient.

Staff Recommendation: ***Extend the time constraints placed on the AG to file an accusation thus allowing the AG to utilize the ISO process without having to have their accusation prepared within a very limited time frame (15 days). Pursuant to Section 494 of the B&P Code, DBC does not have to always rely on an ALJ to conduct the ISO hearing, DBC also has authority to conduct the hearing and could do so more expeditiously where serious circumstances exist regarding the suspension of a dentist's license. Provide for automatic suspension of a dental license if the dentist is incarcerated and mandatory revocation of a license if a dentist is convicted of acts of sexual exploitation of a patient.***

ISSUE #15: (DIFFICULTY COLLECTING CITATIONS AND FINES FOR CERTAIN TYPES OF VIOLATIONS AND COST RECOVERY.) Should DBC contract with a collection agency to improve its cost recovery and cite and fine functions?

Background: Section 125.3 of the Business & Professions Code specifies that in any order issued in resolution of a disciplinary proceeding before any board with the DCA, the ALJ may direct the licensee, found to have committed a violation of the licensing act, to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General. DBC must make a cost recovery request to the ALJ who

presides over the hearing. The ALJ may award full or partial cost recovery to DBC or may reject the request for cost recovery. In cases where cost recovery has been ordered, licensees may be granted a payment schedule. As the table below indicates for FY 2008/2009, DBC collected approximately 60% of the costs ordered but for 2009/2010, it collected 45% of the costs ordered.

COST RECOVERY DATA	2006/2007	2007/2008	2008/2009	2009/2010
Total Enforcement Expenditures	$4,832,720	$5,310,717	$5,373,274	$5,351,113
# Potential Cases for Recovery*	86	100	75	132
# Cases Recovery Ordered	46	46	56	97
Amount of Cost Recovery Ordered	$125,216	$116,796	$229,195	$469,040
Amount Collected	**$90,376**	**$160,970**	**$148,905**	**$211,654**
* The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation, or violations, of the Dental Practice Act.				

Moreover, Section 125.9 of the B & P Code authorizes DBC to issue citations and fines for certain types of violations. The majority of citations are issued for violations of unsafe and unsanitary conditions. Additionally, dentists who fail to produce requested patient records within the mandated 15 day time period are also subject to administrative citations. As is the case with cost recovery, the table below shows that DBC continues to struggle to collect citations and fines.

CITATIONS & FINES	FY 2006/2007	FY 2007/2008	FY 2008/2009	FY 2009/2010
Total Citations	25	16	11	48
Total Citations with Fines	21	16	10	42
Amount Assessed	$24,497	$14,300	$11,500	$75,100
Reduced, Withdrawn, Dismissed	3	3	2	6
Amount Collected	**$9,140**	**$5,000**	**$3,500**	**$6,700**

Staff Recommendation: ***In order to improve cost recovery and fine collection efforts, DBC should be allowed to procure a contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts. According to the DCA, most of the boards within DCA are struggling to collect cost recovery amounts, outstanding fees, citations or fines. If this is the case, the DCA may wish to procure a contract with one collection agency for all its boards.***

ISSUE #16: (PROBLEMS WITH PROBATION MONITORING.) Should DBC adopt written guidelines on how to make probation assignments and ensure that probationary and evaluation reports are conducted consistently and regularly as recommended by the Enforcement Assessment?

Background: The Dental Practice Act authorizes DBC to discipline a licentiate by placing him or her on probation under various terms and conditions. The terms and conditions could include obtaining additional training or passing an examination upon completion of training; restricting or limiting the extent, scope or type of practice; requiring restitution of fees to patients; or community services. Additionally, dentists on probation are required to pay the monetary costs associated with monitoring the dentists' probation. Generally, DBC recommends five years of probation unless a longer or shorter term is warranted.

According to DBC, probation cases are assigned to inspectors or investigators after taking into consideration the variety of circumstances necessitating probation, combined with the known behavior

of certain licensees. RDAs are generally assigned to inspectors, and difficult or questionable probation subjects are assigned to sworn investigative staff. According to the Enforcement Assessment, there are no written guidelines on how to make probation assignments, and that probationary reports and evaluation reports have not been conducted with regularity. This observation was echoed by the Enforcement Monitor who indicated that probation monitoring practices differ between DBC's Tustin and Sacramento offices.

Staff Recommendation: ***As recommended in the Enforcement Assessment, DBC should adopt written guidelines on how to make probation assignments, and ensure that probationary and evaluation reports are conducted consistently and regularly.***

ISSUE #17: (NEED FOR ANNUAL REPORTING REQUIREMENTS.) Should DBC annually report specific licensing and enforcement information to its licensees and the Legislature?

Background: One of the issues raised by the Monitor was the need to improve DBC's statistical reporting capabilities. The Monitor indicated that DBC needs major enhancements to its complaint tracking system, including regular monthly, quarterly, and annual reporting of Enforcement Program workload and performance. The Monitor suggested that reports of this type also should be provided to DBC's governing Board and the Legislature on a periodic basis. Additionally, the Monitor indicated that DBC staff needs to comply with existing Section 806 reporting requirements (number and type of peer review reports received), which has been in effect since 1975.

According to DBC staff, during its quarterly board meetings, board members are given updated licensing and enforcement reports. However, these reports are not submitted to the Legislature. On the other hand, the Medical Board of California (MBC) is statutorily required to submit annual reports to the Legislature on specific information. The annual report is also included in MBC's newsletters that are distributed to physicians and surgeons and is also available on MBC's Website.

Staff Recommendation: ***The Dental Practice Act should be amended to require DBC to report annually to the Legislature information required under Business and Professions Code Section 2313 that applies to dentists, including malpractice settlements and judgments, Section 805 reports, the total number of temporary restraining orders or interim suspension orders sought by DBC, and other licensing and enforcement information as specified. Staff recommends that annual reports should also be published in DBC's newsletter and made available on its Website.***

ISSUE #18: (IMPLEMENT 2009 DBC ENFORCEMENT ASSESSMENT CORRECTIVE ACTION PLAN.) Should DBC implement the recommendations of a 2009 Enforcement Assessment of DBC's Enforcement Program?

Background: In the fall of 2009, DBC requested an outside assessment of its internal enforcement processes, to measure progress and determine if there were any new barriers to efficiency and productivity. The areas reviewed included: Complaint Intake & Assignment, Non-Sworn Enforcement Processes, Sworn Investigative Services, Enforcement Tools and Investigative Resources, Administrative Discipline Processes, Enforcement Program Data for Management Oversight, Personnel Resources, Peace Officer Training Requirements, Policies and Procedures, and Customer Satisfaction Surveys. Several of the recommendations contained in the Assessment are included in this background paper. However, there are other issues that need to be addressed, including evidence and

storage, tracking of criminal prosecutions, the need for procedures or policy directing supervisory staff to perform case reviews, and continued training of investigative staff.

Staff Recommendation: ***DBC should submit to this Committee a corrective action plan detailing how DBC intends to address and implement the recommendations contained in the 2009 Enforcement Assessment.***

ISSUE #19: (CONTINUED USE OF THE DENTAL LOAN REPAYMENT PROGRAM.) The California Dental Corps Loan Repayment Program still has funds available to provide to dental students.

Background: The California Dental Corps Loan Repayment Program, administered by DBC, was created in 2002 (AB 982, Chapter 1131, Statutes of 2002) to increase the number of dentists who practice in historically underserved areas by providing grants to help pay for the high cost of attending dental school. DBC selects participants to practice in underserved areas, in practice settings with a majority of underserved patients, and gives priority consideration to applicants who are best suited to the cultural and linguistic needs of those populations and meet other related criteria. After each consecutive year of service completed, participants will receive money for loan repayment ($25,000 for the 1st year, $35,000 for the 2nd year, and $45,000 for the 3rd year) for up to three years. The law states each participant may receive no more than $105,000 over three years. The program was extended until July 1, 2012 and authorized DBC to distribute funds remaining in the account. However, due to limited participation, DBC points out that the program should be extended until DBC distributes all the remaining money in the fund.

Staff Recommendation*: The California Dental Corps Loan Repayment Program should be extended until DBC distributes all the funds in the account. DBC should indicate to the Committee its efforts to inform students about the availability of the loan repayment program.*

SUBSTANCE ABUSE AND DIVERSION PROGRAM ISSUES

ISSUE #20: (EFFECTIVENESS OF DIVERSION PROGRAM AND IMPLEMENTATION OF SB 1441 STANDARDS.) It is unknown how successful DBC's Diversion Program is in preventing recidivism of dentists who may abuse drugs or alcohol, and if the Diversion Program is effectively monitoring and testing those who participate in the program. Additionally, it is unclear when "Uniform Standards" for their Diversion Programs will be implemented.

Background: DBC administers a Diversion Program intended to identify and rehabilitate dentists whose competence may be impaired due to abuse of dangerous drugs or alcohol, so that licentiates may be treated and returned to the practice of dentistry in a manner that will not endanger the public health and safety. According to DBC's website, the diversion program offers a means of recovery without the loss of license by providing access to appropriate intervention programs and treatment services. DBC has established DECs for northern and southern California to assist it in evaluating licensees who may be impaired due to the abuse of alcohol or drugs. DECs are composed of three dentists, one dental auxiliary, one physician or psychologist, and one public member who all have experience or knowledge in the field of chemical dependency. Entry into the diversion program may be through self-referral but most participants enter the diversion program because they are under

investigation by DBC and were referred by a program manager. Since 1983, the clinical management of the diversion program has been done by MAXIMUS, Inc. After an initial evaluation, individuals accept a participation agreement (diversion program recovery terms and conditions contract) and are regularly monitored in various ways, including random drug testing, to ensure compliance. According to the DBC, a Clinical Assessment (initial evaluation) is conducted in accordance with acceptable practice standards for chemical dependency and mental health assessments. It includes a complete psychosocial and drug history. The intent of the evaluation is to determine whether the licensee has a substance abuse problem, is a threat to himself/herself or others, and will provide recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice. Each chemically impaired professional entering the program is responsible for meeting the requirements of the Diversion program. A Diversion Program Recovery Terms and Conditions Agreement serves to clearly define the monitoring requirements and reports of the Program and obtain the participant's written statement of acceptance. MAXIMUS provides the following services: medical advisors, compliance monitors, case managers, urine testing system, reporting, and record maintenance. The table below summarizes the number of participants and the costs of administering the program.

DIVERSION PROGRAM STATISTICS	**2006/2007**	**2007/2008**	**2008/2009**	**2009/2010**
Total Program Costs	$141,060	$113,026	$137,452	$133,471
Total Participants	58	52	61	59
Successful Completions	9	5	4	4
Unsuccessful Completions	2	7	4	1

In 2007 and 2008, this Committee held informational hearings on the Physician Diversion Program (PDP) after an audit of MBC's diversion program revealed that the MBC's program was not sufficiently protecting the public. Although the MBC voted unanimously to end the PDP on June 30, 2008, this Committee recognized the need to strengthen the diversion programs of boards that continue to administer them. As such, in 2008, SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) became law and required the DCA to establish a Substance Abuse Coordination Committee (SACC) to adopt uniform guidelines on sixteen specific standards that would apply to substance abusing health care licensees, regardless of whether a board has a diversion program. The intent of SB 1441 was to establish common and uniform standards to govern the different health care licensing boards' diversion programs so as to maintain public confidence that these programs are truly monitoring and rehabilitating substance abusing licensees. These sixteen standards, at a minimum, include: requirements for clinical diagnostic evaluation of licensees; requirements for the temporary removal of the licensee from practice for clinical diagnostic evaluation and any treatment, and criteria before being permitted to return to practice on a full-time or part-time basis; all aspects of drug testing; whether inpatient, outpatient, or other type of treatment is necessary; worksite monitoring requirements and standards; consequences for major and minor violations; and criteria for a licensee to return to practice and petition for reinstatement of a full and unrestricted license.

On March 3, 2009, the SACC conducted its first public hearing and the discussion included an overview of diversion programs, the importance of addressing substance abuse issues for health care professionals and the impact of allowing health care professionals who are impaired to continue to practice. During this meeting, the SACC members agreed to draft uniform guidelines for each of the standards. During subsequent meetings, roundtable discussions were held on the draft uniform standards, including public comments. In December 2009, the DCA adopted the uniform guidelines for each of the standards required by SB 1441. Last year, SB 1172 (Negrete McLeod) Chapter 517,

Statutes of 2010, was passed to give boards the statutory authority to implement certain standards that needed statutory authority. Moreover, the DCA had instructed health care boards to begin the process of implementing the SB 1441 standards, including amending disciplinary guidelines through the regulatory process to be consistent with SB 1441.

In 2010, MAXIMUS was audited by the DCA and it was indicated that they were complying with all of the requirements of their contract; however, Committee staff had serious concerns about the completeness of this audit and the serious deficiencies which may still exist with this program. This came to light when it was found that MAXIMUS was recently testing those participants in the health boards' Diversion Programs and using inexact standards (i.e., participants were tested at a higher standard and tested negative when they should have been tested at a lower standard and may have potentially tested positive). The DCA took immediate steps to rectify this problem, but it still raises questions about the effectiveness and efficiency of MAXIMUS and those diversion programs which rely on this contractor.

Staff Recommendation: ***The Committee should consider requiring an audit of DBC's Diversion Program in 2012, along with the other health boards which have Diversion Programs to assure that these programs are appropriately monitoring and treating participants and to determine whether these programs are effective in preventing further substance abuse. Additionally, the audit should also determine the value of utilizing DECS in a diversion program. DBC should also indicate to the Committee how the Uniform Standards are being implemented and if all Uniform Standards are being followed, and if not, why not; give a definite timeframe when disciplinary guidelines will be amended to include SB 1441 standards, whether formal training for DECS is necessary to ensure that standards are applied consistently, and the necessity of revising the Maximus diversion program recovery contract signed by a dentist who enters the diversion program to incorporate certain aspects of SB 1441 including the requirement that a dentist must undergo a clinical diagnostic evaluation to participate in the program; the practice restrictions that apply while undergoing a diagnostic evaluation; the requirement to provide the names and contacts of employers or supervisors for participants who continue to work; the frequency of drug testing; that collection of specimens shall be observed; that certain requirements exist for facilitators; what constitutes major or minor violations; and the consequences for major or minor violations.***

ISSUE #21: (DBC CANNOT ACCESS RECORDS OF THE DIVERSION PROGRAM WHEN A DENTIST IS TERMINATED FOR NON-COMPLIANCE.) Should DBC be authorized to access diversion records for dentists who are terminated from the diversion program for non-compliance, which usually involves relapse?

Background: Section 1698 of the B&P Code specifies that except where the licentiate presents a threat to the public's health and safety, all DBC and DEC records and records of proceedings pertaining to the treatment of a licentiate in a diversion program is kept confidential and are not subject to discovery or subpoena. In 2009, AB 456 (Emmerson) was sponsored by DBC to make changes to the current confidentiality of diversion records, and would have allowed for the sharing of diversion information with DBC's enforcement program when a licensee participating in the diversion program is terminated for non-compliance while on probation by DBC. DBC further indicated at that time that the exception when a licensee presents a threat to the public's health and safety, does not allow DBC's diversion program to notify its own enforcement program when a licensee participating in diversion is not in substantial compliance. The diversion program can only provide the name of the terminated licensee and not any specifics as to why the individual was terminated from the program. This

notification, DBC argues, is necessary as the information obtained in the diversion program could be used for subsequent disciplinary action by DBC. At that time, Committee staff, among other issues and recommendations, suggested that AB 456 should be amended to indicate that rules and regulations required by AB 456 shall, at a minimum, be consistent with the uniform standards adopted pursuant to SB 1441. The Author and Sponsor eventually decided not to pursue the bill. However, the confidentiality of diversion records remain a priority for DBC and staff recognizes the need for the enforcement unit to have all available records if a licensee is terminated from the program for non-compliance and disciplinary action ensues.

Staff Recommendation: ***Amend the Dental Practice Act to authorize DBC to access any diversion records of a licensee who participates in a diversion program and is terminated for non-compliance, for purposes of investigation and imposition of a disciplinary action.***

CONSUMER NOTICE ISSUE

ISSUE #22: (NOTICE TO CONSUMERS THAT DENTISTS ARE REGULATED BY DBC.) Should DBC promulgate regulations pursuant to a statute enacted in 1999 to require dentists to inform patients that they are licensed by DBC?

Background: Section 138 of the Business & Professions Code requires that DCA board and bureaus, including healing arts boards such as DBC, initiate the process of adopting regulations on or before June 30, 1999, to require its licentiates, to provide notice to their clients or customers that the practitioner is licensed by this state. A board is exempt from the requirement to adopt regulations if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state. The purpose of this statute is to inform consumers the appropriate regulatory body that regulates a particular licensee or practitioner.

Recently, the MBC promulgated regulations pursuant to Section 138 to require physicians and surgeons to inform their patients that they are licensed by the MBC, and includes the board's contact information. In the same manner, DBC should implement Section 138 and adopt regulations to require dentists to inform their patients that they are licensed by the Board.

Staff Recommendation: ***Pursuant to Section 138 of the B & P Code, DBC should adopt regulations to require dentists to inform their patients that they are licensed by the DBC.***

BOARD, CONSUMER AND LICENSEE USE OF THE INTERNET ISSUES

ISSUE #23: (NEED FOR CONTINUED ENHANCEMENT OF DBC's INTERNET SERVICES.) Should DBC continue to explore ways to enhance its Internet Services and Website to licensees and members of the public?

Background: DBC points out that one of the major changes since its last sunset review has been its increased utilization of the Internet and computer technology to provide services and information to the public and its licensees on its Website. These include:

- A DBC Website, www.dbc.ca.gov, which receives an average of 966 visitors per day.

- Full texts of final enforcement decisions, including accusations are now available on the Website. A consumer may look up a licensee by name and/or license number, and is provided with all information relevant to the final decision.

- An online complaint form is available for filing a complaint, a "Frequently Asked Questions" section, a pamphlet on "Problems with Your Dentist," and general information about DBC's complaint process.

- Licensees may review continuing education requirements, disciplinary guidelines, and access various forms.

- E-News subscription service sign-up is available online to be notified of DBC's activities.

The Board indicated that it has begun modifying its Website to allow for the posting of meeting materials, and allow consumers, stakeholders, and interested parties to download these documents at no charge. Furthermore, DBC plans on publishing an online newsletter beginning 2011, and is exploring the feasibility of providing live webcasts of its board meetings. Additionally, all reports submitted to the Legislature should be posted on DBC Website

Staff Recommendation: ***DBC should continue to explore ways to enhance its Internet Services to licensees and members of the public, including posting meeting materials, board policies, and legislative reports on the Internet and webcasting Board meetings.***

BUDGETARY ISSUES

ISSUE #24: (ARE RECENT LICENSING FEES SUFFICENT TO COVER DBC COSTS?) Is DBC adequately funded to cover its administrative, licensing and enforcement costs and to make major improvements to its enforcement program?

Background: DBC is a self-supporting, special fund agency that obtains its revenues from licensing fees of dentists and RDAs. The collection of fees supports DBC's ability to operate its Enforcement, Licensure, Examination, Renewal/Continuing Competency, Permit Programs and Dental Assisting Programs. DBC's primary source of revenue is the biennial renewal for dentists and RDAs. DBC currently charges dentists a $365 renewal fee. The statutory maximum is $450. There have been no fee increases from dental license or renewal since 1998. As DBC explains, it anticipates a significant increase in enforcement costs starting FY 2010/2011 due to the implementation of CPEI. Increased productivity and a higher rate of case closures, in addition to reduction in processing timeframes, is expected to justify the costs. Additionally, the Board will be implementing its new portfolio examination to replace the current dental licensure examination. In FY 2002/2003 and 2003/2004 loans were made from the State Dentistry Fund to the State General Fund in the amount of $5 million for each fiscal year. Of the $10 million total loan, $0.6 million was repaid in FY 2004/2005, $2.5million was repaid in FY 2005/2006, and another $2.5 million was repaid in FY 2006/2007. There is an outstanding loan balance of $4.4 million. In the 2011/2012 Budget Act, the Governor proposed a reimbursement of $2.5 million but the Legislature recently reduced this to $1.2 million. The table

below illustrates the fund condition of the Dental Fund if CPEI positions are filled and the remaining $3.2 million loan to the General Fund is reimbursed by FY 2012/2013. DBC points out that assuming all the loans to the General Fund are reimbursed, it may be looking at fee increases for dentists as soon as FY 2012/2013, because the fund reserve at that time would be at 1.3 months. According to DBC, its objective is to maintain a three-month reserve of funds for economic uncertainties and to operate with a prudent reserve. However, if the CPEI positions are not filled, all the loans to DBC are repaid and the Governor's hiring freeze directive continues, then the fund reserve will be much higher and fee increases may be delayed to a later time.

Dental Board Updated Fund Condition Table

ANALYSIS OF FUND CONDITION	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/2011 (Projected)	FY 2011/2012 (Projected)	FY 2012/2013 (Projected)
Total Reserves, July 1	$7,053,000	$7,394,000	$7,320,000	$7,865,000	$4,464,000	$2,007,000
Total Rev. & Transfers	$8,037,000	$7,985,000	$7,920,000	$7,758,000	$8,929,000	$10,921,000*
Total Resources	$15,345,000	$15,548,000	$15,424,000	$15,623,000	$13,393,000	$12,928,000
Total Expenditures	$7,948,000	$8,230,000	$7,559,000	$11,159,000	$11,386,000	$11,641,000
Unreimbursed Loans to General Fund	$4,400,000	$4,400,000	$4,400,000	$4,400,000	$3,200,000	$0
Accrued Interest	$0	$0	$0	$0	$0	$0
Loans to General Fund	$0	$0	$0	$0	$0	$0
Reserve, June 30	**$7,394,000**	**$7,318,000**	**$7,865,000**	**$4,464,000**	**$2,007,000**	**$1,287,000**
MONTHS IN RESERVE	**10.8**	**11.6**	**8.5**	**4.7**	**2.1**	**1.3**
NOTES:*This table assumes the repayment of the $1.9 million balance of GF loan, in FY 12/13. GF loan must be fully reimbursed before a fee increase can be implemented. (Item 1250-011-0741, BAs 2002/2003 and 2003/2004)						

For RDAs, DBC currently charges $70 for license renewal, with an $80 statutory maximum. The table below shows that the Dental Assisting Fund will be in a deficit spending situation in FY 2012/2013. DBC points out that it will need to increase, via Board Resolution pursuant to Section 1725 of the B & P Code, the renewal fees for RDA's to the $80 statutory maximum.

Dental Assisting Fund Condition Table

ANALYSIS OF FUND CONDITION	2007/08	2008/09	2009/10	2010/11 (Projected)	2011/12 (Projected)	2012/13 (Projected)
Total Reserves, July 1	N/A	N/A	$0	$1,925,000	$1,354,000	$760,000
Total Rev. & Transfers			$3,183,000	$1,146,000	$1,141,000	$1,134,000
Total Resources			$3,183,000	$3,071,000	$2,495,000	$1,894,000
Total Expenditures			$1,258,000	$1,715,000	$1,735,000	$1,787,000
Unreimbursed Loans to General Fund			$0	$0	$0	$0

Accrued Interest			$0	$0	$0	$0
Loans to General Fund			$0	$0	$0	$0
Reserve, June 30			$1,925,000	$1,354,000	$760,000	$107,000
Months in Reserve			**13.5**	**9.4**	**5.1**	**0.7**

Staff Recommendation: DBC should assure the Committee that it will have sufficient resources to cover its administrative, licensing and enforcement costs and to provide for adequate staffing levels for critical program areas if appropriate staffing and funding is provided. Additionally, the Committee may consider amending Section 1725 of the B & P Code to instead require that any changes in licensing and permitting fees of dental assistants be established by regulations, instead of Board Resolutions as currently required.

ISSUE #25: (LACK OF STAFF CONTINUES TO HAMPER DBC'S ENFORCEMENT PROCESS.) DBC should explain to the Committee the negative impact of enforcement program vacancies to its overall functions.

Background: There are currently 72.8 authorized positions for DBC, wherein 60.8 positions are filled and 12 positions are vacant. The CPEI authorized 12.5 positions for DBC, of which 4 positions are filled and 8.5 remain vacant. The Enforcement Unit is comprised of 35 staff, including peace officers, inspectors and staff managers. The Enforcement Unit currently has 10.5 vacant positions. DBC points out that the enforcement program is allocated 16 peace officer positions to perform criminal and complex quality of care investigations. However, due in part to vacancies within enforcement, up to five positions have been vacant for 6 months or more since July 2006.

Contributing to these lengthy vacancies are required background processes which can take six to nine months, training academies (four months), and the establishment of a new hiring list. More recently, mandatory furloughs have reduced the number of hours staff can legally work by three days per month. As a consequence, case age has increased as less staff hours were available to perform the necessary work.

DBC indicates that during previous reviews, a number of efforts (case reviews, approved overtime) were initiated to focus on closing the oldest cases and reducing the overall number of cases pending investigation. Case reviews have been ongoing with field investigative staff and continue to focus on case progress and closing older cases. Despite these challenges, DBC indicates, the additional positions from the CPEI offer the potential for the enforcement program to show marked improvements in its case statistics. DBC points out that it is still under order to continue with a former Governor's Directive for a hiring freeze that began on August 31, 2010, as well as to continue with a 5% staff reduction. The hiring freeze allows state departments to transfer existing employees within the department, and for DBC, it was able to hire employees away from other DCA boards or bureaus. DBC states that it needs to fill its vacant positions, including the sworn and non-sworn investigative staff it was authorized to hire under CPEI in order to critically improve its enforcement process.

Staff Recommendation: ***DBC should express to the Committee its frustration in being unable to meet the staffing needs of its various critical programs, especially that of its enforcement program,***

and the impact that it will have on its ability to address the problems identified by this Committee, especially as it concerns its goal to reduce the timeframe for the investigation and prosecution of disciplinary cases.

ISSUE #26: (IMPACT ON DBC OF THE UNPAID LOANS MADE TO THE GENERAL FUND.) Will the unpaid loan to the General Fund have an impact on the ability of DBC to deal with its case aging and case processing?

Background: In FY 2002/2003 and 2003/2004 loans were made from the State Dentistry Fund to the State General Fund in the amount of $5 million for each fiscal year. Of the $10 million total loan, $0.6 million was repaid in FY 2004/2005, $2.5million was repaid in FY 2005/2006, and another $2.5 million was repaid in FY 2006/2007. There is an outstanding loan balance of $4.4 million. In the 2011/2012 Budget Act, the Governor proposed a reimbursement of $2.5 million but the Legislature recently reduced this to $1.2 million, and with this reduction the loan balance is $3.2 million. It is unclear when DBC should anticipate these payments. If the loan balance remains unpaid in FY 2012/2013, DBC will be in deficit spending.

This has been a constant problem for the Committee and the Legislature in regards to the boards and bureaus under the DCA. This Committee along with the Assembly Business and Professions Committee has over the years reviewed all boards (through the process of sunset review) and any anticipated problems in the appropriate funding of their programs has been considered and efforts have been made to either reduce their budget or program requirements, or increase their level of funding through license fee increases. The boards over the years have been placed in a position of not being able to spend the revenue which has been made available to them for purposes of properly running their enforcement programs. They have either been denied spending authority for their increased revenue by denial of BCPs or by other directives, which has had the effect of increasing their reserve funds, and then find that rather than having any chance of using these funds in the future to deal with increased enforcement costs, the money reverts back to the General Fund by way of a "loan." Unless there is a strong mandate that licensing fees should only be used for purposes of properly operating the boards this vicious cycle will continue. One of the outcomes of budget changes and cutbacks to boards has been the slow-down of cases or actual holding off on pursuing cases by the AG's Office because the board(s) ran out of money at some point later in the fiscal year.

Staff Recommendation: ***No more loans from the reserve funds of the DBC to the General Fund. DBC should explain to the Committee what the impact will be to its overall Budget and its enforcement process if the outstanding loan is not repaid as soon as possible. This of course is if DBC is granted an exemption from the hiring freeze, otherwise new expenditures will not be necessary.***

CONTINUED REGULATION OF THE PROFESSION BY THE CURRENT MEMBERS OF THE DENTAL BOARD OF CALIFORNIA

ISSUE #27: (CONSUMER SATISFACTION WITH DBC IS LOW.) A 2010/2011 Consumer Satisfaction Survey of DBC shows only about 30% of complainants are satisfied with the service provided by the Board. Additionally, DBC failed to disseminate a consumer satisfaction survey prior to 2010.

Background: In 2002, the Monitor recommended that DBC implement a survey tool to establish measurements of customer satisfaction with the Enforcement Program. Although a document was developed, according to the 2009 Enforcement Assessment, the survey was not used. In its sunset report, DBC indicated that in August 1, 2010, it joined in DCA's effort to develop ongoing performance measures. DBC indicates that consumers are provided with a web address at the bottom of complaint and case closure letters and encouraged to visit the site and provide feedback on their satisfaction with the Board's complaint process. The questions used in the survey and the identifying five-rankings for evaluating the consumers' responses are consistent with the Joint Legislative Sunset Review Committee's recommendations back in 1996 for all DCA boards to conduct a consumer satisfaction survey. DBC indicates that on a monthly basis consumer responses will be compiled and analysis will be provided. Committee staff requested a sample of consumer surveys, and at its early stages, it appears that only about 30% of complainants were satisfied with the way in which DBC handled their complaints. This is a shortcoming of many of the boards under the DCA; most have low satisfaction rates around 50%. The most prominent reason for dissatisfaction with boards is that consumers do not feel as if they are being kept updated about the status of their complaint and case, and the outcome takes so long that they see the board as not really having any real interest in their case as it moves slowly through the process. And the only satisfaction the complainant gets is usually to either see the licensee placed on probation (with conditions) or to have their license revoked. Waiting 2 ½ years or more for some resolution to their case is extremely frustrating for consumers and is probably something they don't clearly understand, and while the final result may be taking the practitioners license or placing them on probation, one wonders whether there could be a better result for the original complainant. The Contractor's Board seems to enjoy a better satisfaction rate in resolving a complaint because it tries under certain circumstances to try and mediate disputes first to hopefully bring quicker resolution to the matter and possibly provide some form of restitution to the consumer who has been harmed by the licensee. If there is an issue of competency or violation of law(s) then the Contractor's Board will still proceed with licensing action against the contractor even though the complainants issue has been settled. This Committee should begin to explore the use of mediation or what is called alternative dispute resolution (ADR) for health boards and whether they could utilize those trained in ADR or current ADR programs to resolve complaints. Consideration could be made of possibly expanding on the current "Complaint Mediation Program" (CMP) of DCA to also include consumers who have problems with health professionals. The CMP under DCA now only deals with difficulties by consumers in purchasing products or services, but there are certainly instances where ADR could be utilized when disputes arise (in the form of a complaint to the board) regarding services provided by health professionals.

Staff Recommendation: ***DBC should explain to the Committee why a Consumer Satisfaction Survey was not implemented as recommended by the Monitor, and explain why it believes consumer satisfaction regarding its service is so low, and what other efforts DBC could take to improve its general service to the consumer. Does DBC believe that mediation could be used in certain circumstances to help resolve complaints from the general public regarding health care practitioners?***

ISSUE #28. (CONTINUED REGULATION OF DENTISTS BY DBC.) Should the licensing and regulation of the dental profession be continued, and be regulated by the current board membership?

Background: The health and safety of consumers are protected by a well-regulated dental profession. DBC should be continued with a four-year extension of its sunset date so that the Committee may review it once again if the issues and recommendations in this Paper and others of the Committee have been addressed.

Staff Recommendation: ***Recommend that the dental profession should continue to be regulated by the current DBC members in order to protect the interests of consumers and be reviewed once again in four years.***