BACKGROUND PAPER FOR THE Dental Hygiene Committee of California

(Joint Oversight Hearing, March 17, 2014, Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business, Professions and Consumer Protection)

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE DENTAL HYGIENE COMMITTEE OF CALIFORNIA

BRIEF OVERVIEW OF THE DENTAL HYGIENE COMMITTEE OF CALIFORNIA

History and Function of the Committee

In 2002, the Joint Legislative Sunset Review Committee (JLSRC) agreed that "dental hygienists had reached the point where their responsibilities warranted a regulatory body, separate from Dental Board of California (DBC)." The Dental Hygiene Committee of California (DHCC) was created in fiscal year (FY) 2009/10 as result of the passage of Senate Bill (SB) 853 (Ch. 31, Statutes of 2008) in 2008.

As an independent committee, the DHCC represents the only self-regulating dental hygiene agency of its kind in the United States. The DHCC has the authority regarding all aspects of the licensing of dental hygienists, enforcement and investigation authority regarding all dental hygienists and the approval of educational programs that provide the prerequisite education to become a licensed dental hygienist. According to the Business and Professions Code (BPC) § 1900, the purpose for the DHCC is, "to permit the full utilization of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions in order to meet the dental care needs of all of the state's citizens."

The DHCC is responsible for overseeing 31,804 licensed hygienists in the state of California. There are three categories of dental hygienists including: registered dental hygienist (RDH), registered dental hygienist in alternative practice (RDHAP) and registered dental hygienist in extended functions (RDHEF).

- **RDH** – An RDH, under the direct or general supervision of a dentist, depending upon the procedure, may include dental hygiene assessment and development, planning and implementation of a dental hygiene care plan which can include oral health education, counseling and health screenings.

- **RDHAP** – An RDHAP can perform the functions of an RDH, as they have already obtained the RDH license, and have a unique distinction in that they can work for a dentist or as an employee of another RDHAP as an independent contractor, as a sole proprietor of an

alternative hygiene practice, or in other locations such as residences of the homebound, schools, residential facilities, and other institutions, and dental health professional shortage areas of the State as certified by OSHPD. An RDHAP may operate a mobile dental clinic or operate an independent office or offices in the dental shortage areas.

- **RDHEF** – An RDHEF can perform the same functions as an RDH as they are also licensed as an RDH. In addition, they have completed additional clinical training approved by the DHCC in a facility affiliated with a dental school under the direct supervision of the dental school faculty. This consists of more advanced restorative techniques and duties that the dental assistant and RDH are not trained to perform.

The DHCC develops and administers written and clinical licensing examinations, conducts occupational analyses of the various professional categories, evaluates educational courses, pursues legislation, establishes regulations, approves educational programs and has licensing and enforcement responsibilities.

The current DHCC mission statement, as stated in its 2013-2015 Strategic Plan, is as follows:

To promote and ensure the highest quality of oral health care for all Californians.

DHCC Membership and Subcommittees

The DHCC is comprised of 9 members; 5 professional and 4 public members. The professional members consist of 4 dental hygienists, 1 practicing dentist and 4 public members, each appointed by the Governor. By law, the Committee is required to meet at least two times per year. The public is invited and encouraged to attend all sessions except those that are specifically designated as "closed sessions," pursuant to the Government Code. All DHCC meetings are subject to the Bagley-Keene Open Meetings Act. The DHCC has not had to cancel any meetings due to a lack of a quorum in the last four years. There are no vacancies on the DHCC. The following is a listing of the current DHCC members and their background:

DHCC Members	Appointment Date	Term Expiration Date	Appointing Authority
Susan Good, Public Member Good has been owner at Susan Good Consulting since 2010. She was district director for California Senate Majority Leader Dean Florez from 2002 to 2010, and served in various positions at the 21st District Agricultural Association, Big Fresno Fair, including director, president and vice president from 2001 to 2005. She was district director for Senator Jim Costa from 1996 to 2002 and senior vice president at Bank One from 1988 to 1996. Good served in multiple positions at Coast Savings and Loan, including vice president, branch manager, assistant vice president and director of advertising from 1978 to 1988.	4/5/13	1/1/18	Governor
Sherrie-Ann Gordon, Public Member Gordon has served in various positions at AARP since 2006, including manager of multicultural markets and specialty programs, associate state director of multicultural outreach and senior operations associate and project manager.	4/5/13	1/1/16	Governor
Michelle Hurlbutt, RDH Educator Hurlbutt has been an assistant professor at the Loma Linda University School of Dentistry since 1999 and a registered dental hygienist at the office of Nathan Pfister DDS and William Domb DMD since 1998.	8/23/12	1/1/16	Governor

Noel Kelsch, RDHAP Kelsch has been the learning and development manager at Coast Dental since 2012. She has served as an infection control columnist at RDH Magazine, a national dental magazine, and has been an international speaker and consultant since 2002. Kelsch was a registered dental hygienist for Steven Kaminsky, DDS from 2003 to 2007 and for Philip Wolff DDS from 1999 to 2003. She has been a registered dental hygienist in alternative practice since 2008 and a registered dental hygienist since 1992.	8/23/12	1/1/16	Governor
Timothy Martinez, DMD Martinez has been associate dean for community partnerships and access to care at the Western University of Health Sciences since 2009 and president of Outer Cape Dental Center since 2003. He served as program evaluator at the Forsyth Institute from 2010 to 2011, state dental Medicaid director at the Commonwealth of Massachusetts, Executive Office of Health and Human Services from 2006 to 2009 and dental consultant at the Office of Public Protection, Board of Registration in Dentistry, Massachusetts Department of Public Health from 2005 to 2009. He was the owner of Mid-Cape Dental Center from 2000 to 2005 and the dental director at South End Community Health Center from 2000 to 2003. Martinez served as dental director for Harbor Health Services Inc. from 1999 to 2003 and dental director at Boston Healthcare for the Homeless from 1994 to 2003.	8/23/12	1/1/18	Governor
Nicolette Moultrie, RDH Moultrie has served in multiple positions at the Contra Costa County Regional Medical Center since 2010, including program manager of the children's oral health program and project liaison. She has been the owner and registered dental hygienist in alternative practice at Strategies for Healthy Smiles since 2008 and a dental hygienist at the Contra Costa Health Services, Children's Oral Health Program since 2007. She was a registered dental hygienist for Jess J. Santucci, DDS from 2000 to 2009.	8/23/12	1/1/18	Governor
Garry Shay, Public Member Shay has been an associate trial attorney at Stockwell, Harris, Woolverton and Muehl since 2012. He was senior trial attorney at Chernow and Lieb Law Offices from 2004 to 2012, trial attorney at Glauber, Berenson and Salazar from 1999 to 2004 and associate at Richlin and Theofanis from 1997 to 1999. Shay was senior associate at Ingber and Ivey from 1988 to 1997 and managing attorney for the Law Offices of Gary A. Rosenberg P.C. from 1987 to 1988. He served as associate at Strantz, Sobelsohn, Elkin and Bradford from 1986 to 1987 and associate for the Law Offices of Lloyd Robinson and Associates from 1981 to 1986.	5/5/13	1/1/18	Governor
Evangeline Ward, RDH Ms. Ward has been a dental hygienist for Dr. Duwad Muhammin since 2009 and for Dr. Tom Sharp since 2007. She was a dental hygienist for Dr. Michael Carpentier and Dr. Grace Mary Hume from 2007 to 2011 and for Dr. John Bristow and Dr. Scott Swoboda from 2009 to 2010. She was a probation counselor for the Contra Costa County Probation Department from 2001 to 2009 and for the Fresno County Probation Department from 1999 to 2001.	2/12/12	1/1/18	Governor
Susan Johnson, Public Member Johnson was an independent residential sales agent at Leu Enterprises and at Keller Williams Realty from 2005 to 2010 and principal and owner of Tallent Johnson Consulting from 2001 to 2011. She was vice president and manager at various Bank of America banking centers from 1974 to 2000.	12/3/13	1/1/16	Governor

The DHCC has four ad hoc subcommittees, each of which consists of three to four committee members. The subcommittee members are appointed by the President to review, discuss, deliberate, hear public comment and vote on any issue(s) that pertain to the specific subcommittee's jurisdiction. The subcommittees bring forth recommendation(s) to the full DHCC to discuss and take possible action. The subcommittees and their purposes are as follows:

- **Education and Outreach Subcommittee** – The purpose of the Education and Outreach Subcommittee is to provide recommendations to the DHCC on the development of informational brochures and other publications, planning of outreach events for consumers and licensees, preparing articles for submission in trade magazines and attending trade shows. (Note: this subcommittee's name and function was changed at the DHCC's December 2013 meetings to the Education Committee. Its function was revised to provide recommendations to the DHCC for granting, renewing, and withdrawing approval of educational programs for registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions, and approval of feasibility studies for new dental hygiene educational programs in the State. The Education Subcommittee may also provide information and recommendation to the DHCC on issues relating to a dental hygiene school's curriculum and approval. The subcommittee's transformation was due to the educational program workload and the restrictions placed upon programs to limit expenditures for outreach.)

- **Enforcement Subcommittee** – The purpose of the Enforcement Subcommittee is to advise the DHCC on policy matters that relate to protecting the health and safety of consumers. This includes maintenance of disciplinary guidelines and other recommendations on the enforcement of the DHCC's statutes and regulations.

- **Legislative and Regulatory Subcommittee** – The purpose of the Legislative and Regulatory Subcommittee is to review and track legislation which affects the DHCC's licensees and consumers and recommends positions on legislation. It also provides information and recommendations to the DHCC on regulatory additions or changes.

- **Licensing and Examination Subcommittee** – The purpose of the Licensing and Examination Subcommittee is to advise the DHCC on policy matters relating to the examining and licensing of individuals who want to practice dental hygiene in California. The subcommittee may also provide information and recommendations on issues relating to curriculum and school approval, exam appeals and laws and regulations.

Fiscal and Fund Analysis

As a Special Fund agency, the DHCC receives no General Fund support, relying solely on fees set by statute and collected from examination, licensing and renewal fees. The fees support the licensing, examination, enforcement and administration programs, which includes processing and issuing licenses, maintaining DHCC records, administration of the DHCC Clinical Licensure Examination, administration of the law and ethics examination, mediating consumer complaints, enforcing statutes, disciplinary actions, personnel expenditures and general operating expenses.

In FY 2011/12, SB 1202 (Ch. 331, Statutes of 2012) increased the RDH biennial renewal fee ceiling to $160 in addition to creating new permit categories for additional office spaces for RDHAPs, extramural clinical facilities for educational institutions, teaching permits for out-of-state licensees, mobile dental hygiene clinics and their associated renewal fees. Although these new fee categories

were created in FY 2012/13, they will not generate enough continuous and reliable revenue to sustain the fund to avoid insolvency.

At its September 2013 meeting, the DHCC approved an increase of the license renewal fees for all licensure categories including Fictitious Name Permits (FNP) by $80.00 (to $160 biennially) effective January 1, 2014. This fee increase is comparable to or lower than the same license renewal fees in other regions of the United States (i.e., Nevada = $300 biennially; Arizona = $300 triennially; Oregon = $155 biennially). To avoid insolvency of its fund, it was necessary for the DHCC to make this decision to increase its revenue. The DHCC waited until it was absolutely necessary to raise its fees, understanding that the increases may cause a financial burden on its licensees. The increase in revenue is projected to sustain the fund's solvency for three to five years, barring any new additional mandates or programmatic expenses.

License Renewals

DHCC licenses are renewed biennially, expiring on the last day of the registrant's birth month. A registrant can place a license on inactive status, which means that he or she must continue to pay the renewal fee, but is not required to complete the required continuing education requirements. A license can be renewed with an inactive status indefinitely.

A licensee who has not practiced in California for more than one year, because he or she has a disability, is not required to comply with the continuing education requirements during the renewal period within which such disability falls. However, the licensee must pay the required renewal fee.

Fee Schedule and Revenue

Fee	Current Amount	Statutory Limit	FY 2009/10 Revenue[a]	FY 2010/11 Revenue[a]	FY 2011/12 Revenue[a]	FY 2012/13 Revenue[a]
APPLICATION FEES						
RDH Application Fee	$50	$250	8,900	49,350	46,350	30,800
RDH Application Fee (2004/05-2009/10)	$20	$250	3,520	N/A	N/A	N/A
RDHAP Application Fee	$50	$250	1,200	3,650	3,000	2,700
RDHEF Application Fee	$50	$250	0	0	0	0
CE Provider Application Fee	$250	$500	0	0	0	0
EXAMINATION FEES						
RDH Clinical Exam Fee	$525	Actual Cost of Exam	184,790	481,374	309,225	100,800
RDHEF Clinical Exam Fee	$250	Actual Cost of Exam	0	0	0	0
Dental Student Exam Fee	$525	Actual Cost of Exam	0	0	0	0
LICENSURE FEES						
RDH Original License Application Fee*	$100	$250	N/A	N/A	N/A	26,400
RDHAP Initial License Fee	$100	$250	N/A	N/A	N/A	2,700
RDHAP License Fee	$250	$250	10,250	18,250	15,000	13,500
RDHAP FNP Initial License Fee	$80	$250	400	1,920	3,040	1,840
RDHAP FNP ½ Initial License Fee	$40	$125	120	320	560	240
RENEWAL FEES						
RDH Biennial Renewal Fee	$80	$160	620,920	706,290	701,030	736,640
RDH Biennial Renewal Fee (2007/08 to 2008/09)	$70	$80	7,060	3,430	770	N/A

RDH Biennial Renewal Fee (2005/06 to 2006/07)	$55	$80	1,100	990	275	N/A
RDH Biennial Renewal Fee (2004/05 to 2006/07)	$35	$80	210	660	315	N/A
RDHAP Biennial Renewal Fee	$80	$160	9,440	11,680	15,520	16,160
RDHAP FNP Biennial Renewal Fee	$80	$80	0	800	2,240	2,960
RDHAP FNP ½ Biennial Renewal Fee (2009/10 to 12/31/13)	$40	$80	0	0	0	0
RDHAP FNP ½ Biennial Renewal Fee (2007/08 to 2008/09)	$35	$70	0	0	35	N/A
RDHEF Biennial Renewal Fee	$80	$160	1,440	640	1,760	720
RDH Delinquent Renewal Fee	$40	½ License Renewal Fee	10,020	11,230	12,680	13,040
RDH Delinquent Renewal Fee (2007/08 to 2008/09)	$35	½ License Renewal Fee	2,870	1,530	70	N/A
RDH Delinquent Renewal Fee (2005/06 to 2006/07)	$25	½ License Renewal Fee	625	825	150	N/A
RDHAP Delinquent Renewal Fee	$40	½ License Renewal Fee	190	120	160	80
RDHAP FNP Delinquent Renewal Fee	$40	½ License Renewal Fee	0	40	120	0
RDHEF Delinquent Renewal Fee	$40	½ License Renewal Fee	0	0	0	0
OTHER DHCC PROGRAM FEES						
Duplicate License Fee	$25	$25	7,025	6,100	6,750	8,625
Certification of Licensure Fee	$25	½ License Renewal Fee	2,275	1,875	2,150	1,950
CE Course Review Fee*	$300	$300	N/A	N/A	N/A	300
CE Provider Annual Renewal Fee	$250	$250	0	0	0	0
Curriculum Review & Site Evaluation Fee*	$2,100	$2,100	N/A	N/A	N/A	0
RDHAP Additional Office Permit Fee*	$100	$250	N/A	N/A	N/A	0
RDHAP Additional Office Permit Renewal Fee*	$100	$250	N/A	N/A	N/A	0
Extramural Dental Facility Fee*	$200	$250	N/A	N/A	N/A	200
Mobile Dental Hygiene Unit Permit Fee*	$100	$250	N/A	N/A	N/A	0
Mobile Dental Hygiene Unit Permit Renewal Fee*	$100	$250	N/A	N/A	N/A	0
Special Permit (Teaching)*	$80	$160	N/A	N/A	N/A	0
Special Permit (Teaching) Renewal Fee*	$80	$160	N/A	N/A	N/A	0

Note: Revenue data is listed as per CALSTARS FM13 reports; N/A = not applicable due to fee change or not implemented

*Fees effective as of January 1, 2013

a) Total Revenue: FY 2009/10 = $1,349,526; FY 2010/11 = $1,307,531; FY 2011/12 = $1,121,228; FY 2012/13 = $972,256

The DHCC is projected to experience a fund reserve deficiency in FY 2014/15. However, it is anticipated that there will be a very low fund reserve (1.1 months) by the end of FY 2013/14. Without a means to increase revenue and replenish the fund reserve, the DHCC's fund is threatened with insolvency. The reasons for the decrease in the fund reserve are as follows:

- The cost of doing business continually increases as contracted services, equipment and supplies, travel and salary and wages progressively increase each year.
- The DHCC was previously restricted from raising its primary revenue generating fee (RDH license renewal fee) as it was already at its statutory maximum of $80 and legislation was required to raise the statutory maximum for this fee. Once the maximum fee ceiling was increased by SB 1202 (Ch. 331, Statutes of 2012), staff was able to present fee increase scenarios to the DHCC for additional revenue generation options. The scenarios presented would increase revenue to sustain its fund for an extended period (projected 3-5 years) barring any additional expenses or mandates to avoid insolvency.
- A decrease in the number of examination candidates electing to take the DHCC Clinical Licensing Examination in preference of the WREB regional examination has lowered the amount of examination revenue available to the DHCC to pay for the examination and examiner contracts.
- The amount of overall revenue that the DHCC collected from its fees has decreased since its inception in FY 2009/10, with a substantial drop in FY 2012/13 due to a decrease in the number of applicants taking the DHCC Clinical Licensing Examination. Because the existing fund reserve was used to pay for the increased cost of doing business, the reserve was gradually depleted. Without any additional revenue, the current revenue generation is projected to remain flat for the foreseeable future and will not maintain the fund's solvency.

To avoid insolvency of its fund, an overdue fee increase to collect additional revenue took place on January 1, 2014. The primary revenue generating fees that had a substantial effect on the fund balance to avoid insolvency were the biennial license renewal and delinquent renewal fees for each of the licensure categories of RDH, RDHAP and RDHEF.

Fund Condition

(Dollars in Thousands)	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15
Beginning Balance*	$85	$423	$714	$888	$565	$141
Revenues and Transfers**	$1,350	$1,305	$1,119	$1,089	$1,106	$1,105
Total Revenue	**$1,435**	**$1,728**	**$1,833**	**$1,977**	**$1,671**	**$1,246**
Budget Authority	$1,521	$1,193	$1,354	$1,409	TBD	TBD
Expenditures	$1,009	$1,032	$945	$1,412	$1,530	$1,553
Loans to General Fund	N/A	N/A	N/A	N/A	N/A	N/A
Accrued Interest, Loans to General Fund	N/A	N/A	N/A	N/A	0	0
Loans Repaid From General Fund	N/A	N/A	N/A	N/A	0	0
Fund Balance	**$426**	**$696**	**$888**	**$565**	**$141**	**-$307**
Months in Reserve	**5.0**	**8.8**	**7.5**	**4.4**	**1.1**	**-2.3**

Expenditures by Program Component: For the last four fiscal years, the DHCC has expended approximately 25% on enforcement, 32% on examinations, 28% on licensing and 15% on administration.

The DHCC is statutorily authorized to seek cost recovery. The DHCC also has authority to seek cost recovery as a term and condition of probation. The DHCC's Disciplinary Guidelines lists the reimbursement of costs as a standard term of probation and is included when settling cases with a stipulated settlement, and most, but not all, administrative hearing decisions. The DHCC has not used the Franchise Tax Board intercept to collect any outstanding fines, but is prepared to do so if needed.

Staffing Levels

The DHCC appoints its Executive Officer. The current Executive Officer, Lori Hubble, has served as executive officer since the DHCC's inception in 2009. Her prior position was as the Executive Officer of the Committee on Dental Auxiliaries (COMDA). For FY 2013/14, the DHCC is authorized for 8.2 staff positions; however, due to a lack of office space, refilling the current two vacant positions has been postponed until the DHCC moves into a new larger office. The positions and their respective duties are delineated below.

- **Executive Officer** – oversees and is responsible for all of the programmatic functions and management of staff as well as Executive Officer duties;
- **Enforcement** – One staff person for enforcement including probation;
- **Examinations** – One staff person for examinations, including licensure preparation and exam administration;
- **Licensing** – One staff person for licensing including fingerprint clearances, the new BreEZe computer system, educational program review and Special Permits;
- **Administration** – Two staff persons for administrative functions such as reception, cashiering, budgets, procurement, contracts, website oversight, special projects (i.e. Sunset Review Report) and personnel;
- **Retired Annuitants** – Two individuals who work part time to complete regulations, special projects, the DHCC newsletter and coverage for staff while they are in training or away from the office;
- **Vacancies** – Two vacant positions will be filled once the DHCC moves to a new office suite (current office cannot accommodate additional work stations or positions);
- **0.2 position** – This position was reduced from a 0.5 Special Investigator position due to a Workforce Reduction Executive Order in 2012.

The DHCC's staff vacancy rate is roughly 13% which is equal to approximately one out of eight vacant positions per year that the DHCC is currently authorized. In FY 2010/11, and part of FY 2011/12, the DHCC had difficulty in filling vacated positions due to the state's hiring freeze that was in place at the time. For one of these two years, the DHCC operated with only three staff where only vital program operations could be addressed. Once the hiring freeze was lifted, additional staff was hired and the DHCC has not had any issue with recruiting qualified individuals to fill its vacant positions.

The DHCC previously requested additional staff through a BCP to address the CE review and audit programmatic workloads. However, due to the economic climate within the state at that time, the request was denied.

In 2013, the DHCC also attempted to re-classify one of its vacant positions to create a managerial position to assist the EO with in-office programmatic oversight and management. This would free the EO to address other pressing issues such as enforcement, outreach, education and communication with associations, dental hygiene schools, applicants, licensees, the Legislature, the DCA Executive Office and other interested stakeholders. Unfortunately, the request was denied by the DCA Office of Human Resources (OHR) as they indicated that it did not conform to the current CalHR standards due to an insufficient number of analytical staff that the manager would supervise.

Licensing

The DHCC registers approximately 31,257 RDHs, 509 RDHAPs and 38 RDHEFs. The Licensing Program of the DHCC provides public protection by ensuring licenses are issued only to applicants who meet the minimum requirements of current statutes and regulations and who have not committed acts that would meet grounds for denial.

The DHCC's established performance expectations are that all applications are processed within 120 days. Currently, the DHCC is processing applications within 30 days. For incomplete or deficient applications, the processing time is approximately 58 days. Upon approval of the application and supporting documents, a license is issued.

In 2012, the DHCC was authorized to add an examinations analyst position. The addition of this position improved the processing time for examination results from 4 to 6 weeks in 2012 to approximately 2 weeks in 2013. The information that the DHCC has recently received indicates that interested licensing stakeholders (e.g., dental hygiene schools, applicants, and licensees) are very satisfied with the DHCC's efforts to process examination results in a short time span to progress individuals toward licensure.

The DHCC requires primary source documentation for any educational transcripts, experience records, license verification from other states and professional certifications. As part of the license process, all applicants are required to submit fingerprint images in order to obtain criminal history background checks from the DOJ and Federal Bureau of Investigation (FBI).

School Approval

The DHCC grants and renews approval of educational programs that meet the statutory and regulatory requirements set by the DHCC including adherence to the Council on Dental Accreditation (CODA) standards. The DHCC may withdraw or revoke a dental hygiene school approval if CODA has indicated intent to or has withdrawn approval. The DHCC has current oversight of 30 CODA accredited dental hygiene educational programs in the state. These programs are reviewed by CODA every seven years and must continue to meet strict requirements in order to continue their accreditation.

New educational programs must submit a feasibility study demonstrating the need for a new educational program and apply for approval prior to seeking initial accreditation from CODA, the national accrediting body. The program must also be provided by a college or institution of higher education accredited by a regional agency recognized by the United States Department of Education. The DHCC has the authority to approve, provisionally approve or deny approval of a new dental hygiene educational program.

The DHCC and Bureau for Private Postsecondary Education (BPPE) maintain constant communication and share information with regard to the dental hygiene educational programs throughout the state. The BPPE concentrates its efforts on private, non-exempt schools, while the DHCC oversees all dental hygiene educational programs. The DHCC will also promulgate new regulations to require new dental hygiene schools to obtain approval from the BPPE prior to implementing their program.

Continuing Education

The DHCC requires, as a condition of biennial license renewal, that licensees complete 25 hours (RDH & RDHEF licensees) or 35 hours (RDHAP licensees) of continuing education (CE), of which two hours of CE is in infection control standards and two hours of CE is in the California Dental Practice Act. In addition, the completion of a four unit maximum certification training course in basic life support is required (CCR, § 1017). Licensees sign an affidavit that the number of CE units (hours) have been met as well as the mandatory courses have been completed.

The DHCC conducted 98 CE compliance audits in the last four years. The limited numbers of audits were due to a lack of staff during the state's economic downturn and hiring freeze. Once staff is hired, this ongoing workload will be fully addressed to conduct a larger number of CE audits to ensure compliance.

Enforcement

The DHCC's statistics show that the DCA Performance Measurement expectations are being met. For example, in the second quarter of 2012, the average for intake of investigations was 2 days and for intake and investigations, it was 97 days. The DHCC Enforcement Program is exceeding its expectations in processing its enforcement cases and, as such, will monitor its current efficiencies and modify them as needed to improve performance.

In the last few years, the DHCC has seen an increase in the number of complaints received. For example, in FY 2011/12, 10 complaints were received and in FY 2012/13, a total of 23 complaints were received, which is a 130% increase. The number of Attorney General (AG) Office cases initiated in FY 2011/12 was four cases, while in FY 2012/13, a total of 13 cases were initiated, which is a 225% increase in the number of cases initiated. The number of accusations filed against a licensee has also increased. In FY 2011/12, one accusation was filed but in 2012/13 a total of eight accusations were filed which is a 700% increase in the number of accusations filed against a licensee.

One main performance barrier that affects the DHCC is the six to twelve month long process when referring cases to the AG's Office for administrative discipline. Due to the AG Office's heavy workload and shortage of staff, there are always delays when they prepare accusations and statement of issues for the DHCC cases.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

This is the first Sunset Review Hearing that the DHCC has participated in. As such, the following section includes important programmatic and operational changes and enhancements which have occurred throughout the tenure of the DHCC as well as other important policy and regulatory changes the DHCC has adopted.

Reorganization, Relocation and Leadership

Over the past two fiscal years, the DHCC has experienced a major reorganization and change in leadership as seven out of eight committee members were replaced with new Governor appointees, and only a single member remained as the veteran member to maintain and continue the institutional memory and program knowledge. This member, President Michelle Hurlbutt, is an original founding member of the DHCC and had an instrumental role in the creation of the current DHCC strategic plan and program functions.

The DHCC is planning to relocate its office location in the near-future, as the current office suite cannot accommodate additional authorized staff. The Department of Consumer Affairs (DCA) is working with the DHCC to accommodate additional office space in anticipation of new staff to address current and additional programmatic workloads. The relocation is pending until two other DCA programs relocate and the DHCC will then backfill one of those program's office suites.

Strategic Plan

The DHCC originally met in July 2010 to determine the important issues that should be contained in its strategic plan. In September 2010, the DHCC voted to approve its first strategic plan that detailed the mission, goals and objectives to be completed over the next three years. In May 2013, the DHCC extended its strategic plan from a three year to a five year plan with an expiration date in 2015.

CURRENT SUNSET REVIEW ISSUES FOR THE DENTAL HYGIENE COMMITTEE OF CALIFORNIA

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

STAFFING ISSUES

ISSUE #1: Should the DHCC be approved to have an additional managerial position?

Background: The DHCC has noted throughout its Sunset Review Report the need for additional staff. This was apparent in 2011-2012 when the retroactive fingerprint requirement for all registrants went into effect. Due to a lack of staff, the DHCC was unable to respond to the high volumes of calls received regarding the new fingerprinting requirement. The DHCC was also unable to fulfill its strategic plan objectives and goals during this time period.

In response, the DHCC submitted a budget change proposal to the DCA, but due a hiring freeze at the time, the BCP was denied. Once the hiring freeze was lifted, three additional staff were hired which helped alleviate some of the backlogged work. One area of concern that the DHCC identified is that its Executive officer serves in a managerial role for all staff in addition to her statutorily required duties. In response, the DHCC attempted to reclassify a vacant position to create a managerial position in 2013. However, the DCA Office of Human Resources indicated that it did not conform to the current CalHR standards due to, "an insufficient number of analytical staff that the manager would supervise." The DHCC disagrees with the decision and they note in the Sunset Review Report:

> *After a review of the CalHR standards for managerial positions as posted on their website, the DHCC disagrees with the DCA OHR's decision that the request does not conform to the manager standards. As per CalHR standards, a Staff Services Manager I is the first working supervisor level that supervise a small group of analysts performing journeyperson level work and personally performs the most difficult or sensitive work and may direct functions such as budgeting, management analysis, and/or personnel. There is no "small group of analysts" definition on the website and, as such, the DHCC's re-classification request fulfilled the CalHR standard's programmatic function and supervisory description by having four analytical positions on staff.*

The DHCC has indicated that a lack of staff continues to hinder the DHCC's ability to function efficiently in the areas of reviewing applications and auditing continuing education, auditing education programs, promulgating regulations, legislation and utilizing its cite and fine authority. In addition, they have not been able to fulfill their strategic plan objectives. They also note that there are new regulations that require review and processing of additional application types which is anticipated to result in additional workload. Lastly, they outline the need for a managerial position in order to alleviate the EO who is presently over-burdened between office oversight/managerial duties and EO functions. The DHCC suggests that the CalHR standards have been met and thus they should be granted permission to create a managerial position.

Staff Recommendation: ***The DHCC should confer with administrative staff of the DCA to review the recently submitted request for a managerial position. Both parties should work to create a solution for filling the vacant position in order to assist the DHCC with their increasing workload.***

TECHNOLOGY ISSUES

ISSUE #2: What is the status of BReEZe implementation by the DHCC?

Background: The BreEZe Project will provide DCA boards, bureaus and committees with a new enterprise-wide enforcement and licensing system. BreEZe will replace the existing outdated Legacy systems and multiple "work around" systems with an integrated solution based on updated technology.

BreEZe will provide all DCA organizations with a solution for all applicant tracking, licensing, renewal, enforcement, monitoring, cashiering and data management capabilities. In addition to meeting these core DCA business requirements, BreEZe will improve DCA's service to the public and connect all license types for an individual licensee. BreEZe will be web-enabled, allowing licensees to complete applications, renewals and process payments through the Internet. The public will also be able to file complaints, access complaint status and check licensee information. The BreEZe solution will be maintained at a three-tier State Data Center in alignment with current State IT policy.

BreEZe is an important opportunity to improve the DHCCs operations to include electronic payments and expedite processing. Staff from numerous DCA boards and bureaus have actively participated with the BreEZe Project. Due to increased costs in the BreEZe Project, SB 543 (Steinberg, Chapter 448, Statutes of 2011) was amended to authorize the Department of Finance (DOF) to augment the budgets of boards, bureaus and other entities that comprise DCA for expenditure of non-General Fund moneys to pay BreEZe project costs.

The DHCC anticipates being able to begin using BreEZe in 2015. It would be helpful to update the Committees about the DHCCs current work to implement the BreEZe project.

Staff Recommendation: ***The DHCC should update the Committees about the current status of its implementation of BreEZe. Have there been any challenges in working to implement this new system? What are the anticipated costs of implementing this system?***

PRACTICE ISSUES

ISSUE #3: What changes should be made to how RDHAPs practice?

Background: In the Sunset Review Report, the DHCC identified barriers to RDHAP practice. These include: 1) the closure of a dental practice when the area no longer meets criteria as a designated shortage area, and 2) the ability for RDHAPs to collect payment for services rendered.

Shortage Area

In 1986, the California Office of Statewide Health Planning and Development (OSHPD) created the RDHAP. In 1993, the professional designation was made permanent in statue. An RDHAP must complete 150 additional hours of education coursed and pass a written exam. An RDHAP has a unique distinction in that they can work for a dentist or as an employee of another RDHAP as an independent contractor, as a sole proprietor of an alternative hygiene practice, or other locations such as residences of the homebound, schools and/or residential facilities. They may also operate a mobile dental clinic or operate an independent office or offices. They can practice without supervision in these settings only if the settings have been designated as underserved "dental shortage areas" by the OSHPD.

A 2009 survey of California RDHAPs found that more than two thirds of their patients had no other source of oral health care. RDHAPs also struggled to find referrals to dentists for patients in need of more advanced care. Additionally, RDHAPs charged lower fees than dentists.

The DHCC noted in their Sunset Review Report that problems have arisen when the shortage area in which an RDHAP sets up a practice is re-designated as a non-shortage area. Law requires the RDHAP to close down the practice when this occurs. The DHCC views this as "counterproductive…as the closure of the practice would leave patients with no access to dental hygiene services." As such, the DHCC desires to amend BPC § 1926(d) to read:

(d) Dental health professional shortage areas, as certified by the Office of Statewide Health Planning and Development in accordance with existing office guidelines. An alternative dental hygiene practice established within a designated shortage area will remain in full effect regardless of designation.

Payment for Services Rendered

The DHCC noted in the Sunset Review Report that RDHAPs have difficulty collecting payment for services from insurance companies based outside of California. This is because not all states have the RDHAP provider status making them ineligible for reimbursement. As a solution, the DHCC desires to add the following language to BPC § 1928:

§ 1928. Registered dental hygienist in alternative practice, submitting of insurance and reimbursement of providers:

- A registered dental hygienist in alternative practice may submit or allow to be submitted any insurance or third-party claims for patient services performed as authorized pursuant to this article.

- Whenever any such insurance policy or plan provides for reimbursement for any service which that may be lawfully performed by a person licensed in this state for the practice of dental hygiene, reimbursement under such policy or plan shall not be denied when such service is rendered by a person so licensed.

- Nothing in this article shall preclude an insurance company from setting different fee schedules in an insurance policy for different services performed by different professions, but the same fee schedule shall be used for those portions of health services which are substantially identical although performed by different professions.

Staff Recommendation: ***Based on the concerns raised regarding the re-designated shortage area, as well as the issues with reimbursement from insurance companies, the DHCC might consider seeking legislation to make the necessary changes to both BPC § 1926(d) and BPC § 1928.***

ISSUE #4: Should the DHCC seek statutory changes to allow the DHCC to implement measures of continued competency?

Background: The DHCC indicated in the Sunset Review Report that there is no process in place to assure the public and the DHCC that dental hygienists continue to practice safely. The DHCC noted in their report:

> *CE requirements could be viewed as an avenue to ensure continued competence; however, it has been debated that CE does little to ensure that licensees remain competent and provide quality care. Continued competence moves beyond CE and speaks to the ongoing application of professional knowledge, skills and abilities, which relate to the occupational performance objectives in a range of possible encounters that is defined by the individual scope of practice and practice setting.*

As such, the DHCC desires to add the following to BPC § 1936.1:

(c) The committee may also, as a condition of license renewal, establish a measure of continued competency as adopted in regulations by the committee.

Staff Recommendation: ***The DHCC should advise the Committees what the "measure of continued competency" would consist of. If the DHCC decides to expand its practice act to include measures of continued competency it will need to seek legislation to pursue this change.***

ISSUE #5: Should supervision requirements for dental hygienists be amended?

Background: Supervision requirements for dental hygienists vary widely across the nation. There are two types of supervision models. Direct supervision requires that a dentist is physically present while general supervision allows the hygienist to practice without the physical presence of a dentist. In the general supervision model, the hygienist receives authorization from a dentist to perform services for specific patients. The authorization, known as a standardized procedure and protocol, outlines the manner in which the hygienist must complete certain procedures. In some states, the dentist is required to perform an examination before a hygienist is allowed to provide services.

In California, hygienists are required to be under direct supervision when administering soft tissue curettage, local anesthesia and nitrous oxide-oxygen analgesia. Six states mandate general supervision for preventative tasks such as prophylaxis fluoride and sealants. Seven states allow hygienists to administer local anesthesia under general supervision.

The DHCC argues in its Sunset Review Report:

> *There have been no reported incidents of consumer harm [for hygienists who administer soft tissue curettage, local anesthesia and nitrous oxide-oxygen analgesia]…Changing the supervision level from direct to general would allow dental hygienists to provide these services without the restriction of having the dentist in the office…but still [under the direction] of the supervising dentist…Soft tissue curettage is performed as an adjunct therapy to scaling and root planing which is performed under general supervision and therefore, should not require direct supervision.*

The California Dental Hygienists' Association agrees with the argument of the DHCC and it states:

> *Removing direct supervision will increase access to provision of dental hygiene services when the dentist is out of the office. These duties would not be done unsupervised as the duties would be under the dentist's general supervision which would require the dentist to have orders to allow the RDH to provide the services.*

The California Dental Association disagrees with the DHCC's argument and it states:

> *CDA has concerns with the DHCC's proposal to remove the direct supervision requirement for curettage and the administration of local anesthesia and nitrous oxide, the dental hygiene duties that carry the greatest risk for patients. The direct supervision requirement ensures a depth of experienced professionals that are equipped to both prevent and deal with potential medical emergencies.*

The Dental Board of California has not taken a position on this issue.

It is important to note that there is limited research establishing the safety and efficacy of an expanded scope of practice for hygienists. However, various pilot programs across the nation have shown safe and effective outcomes.

Staff Recommendation: ***The DHCC should consult with the Dental Board of California regarding the implications of adopting a general supervision model for the procedures. If the DHCC desires***

to amend its practice act to allow for a change in supervision model, it will need to seek legislation to pursue this change.

ADMINISTRATIVE ISSUES

ISSUE #6: Should the DHCC be changed to an independent board under the DCA?

Background: The DHCC indicates that it has functioned as an independent agency since its inception in 2009. Though tied to the DBC, the DHCC argues that the only tie it has is the use of the diversion program through a contract with the DBC. The DHCC regulates licensees, regulates educational programs and has its own enforcement staff. The DHCC also argues that being under the jurisdiction of the DBC has led to confusion among licensees, the public and national associations. Further, the DHCC is a special fund agency that generates revenue from its fees. As such, it would have no impact on the state's general fund. The DHCC is not subject to restrictions set by the DBC and thus believes that the DHCC should operate as an independent board under the DCA.

The California Dental Hygienists Association agrees with the DHCC and it states:

> *In drafting the language for the DHCC, the author originally proposed use of the term "Board" rather than committee. However, the administration at the time of the drafting of this language was adamantly opposed to the developments of any new boards. Compromise was reached by the author agreeing to use the term "Committee" instead of Board… CDHA supports the DHCC recommendation to change the name of the DHCC to Dental Hygiene Board of California and establishing a dental hygiene practice act… CDHA believes that the DHCC has proven that it is acting as a Board rather than a Committee. In practice and in principle, the DHCC is functioning as a board.*

The California Dental Association disagrees and it states:

> *Becoming a separate Dental Hygiene Board is in direct conflict with the letter and intent of current law. Section 1901 (a) of the B&P Code clearly states the DHCC was "created within the jurisdiction of the Dental Board of California…" This and other matters were reviewed in great detail by the Legislature in 2008 when the DHCC was created following years of negotiation, and the result was to create the current jurisdictional relationship, specifically to address scope of practice issues. Completely separating the regulatory oversight for dentists and hygienists by making the DHCC an independently functioning board does not reflect the real-world model of dental care delivery, where the overwhelming majority of registered dental hygienists practice side by side with dentists to deliver care.*

The Dental Board of California has not taken a position on this issue.

Staff Recommendation: ***Despite the DHCC's stated ability to operate independently from the DBC, it is important to note that this is only the first Sunset Review Hearing of the DHCC. The BP&ED Committee has established a pattern of reviewing entities multiple times before creating independent boards. As such, the Committees suggest that the DHCC undergo additional review(s) before seeking legislation to change their name to the Dental Hygiene Board of California.***

CONTINUED REGULATION OF DENTAL HYGIENISTS BY THE DHCC

ISSUE #7: Should the licensing and regulation of dental hygienists be continued and be regulated by the current DHCC?

Background: The health, safety and welfare of consumers are protected by a well-regulated dental hygiene profession. Despite a quickly growing profession and the impact of a lack of staff, it appears as if the DHCC has shown a strong commitment to improving efficiency in its operations and protecting the public. The DHCC should be continued with a four-year extension of its sunset date so that the Committees may determine if the issues and recommendations in this paper have been addressed.

Staff Recommendation: ***Recommend that the practice of dental hygiene continue to be regulated by the current DHCC in order to protect the interests of the public. The DHCC should be reviewed by the Committees again in four years.***