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Catching Up to the California Medical Board: The Dental Board of California May Take Action Against Registered Sex Offenders

Pritee K. Thakarsey

Code Section Affected

Business and Professions Code § 1687 (new).
SB 252 (Aanestad); 2007 STAT. Ch. 13.

I. INTRODUCTION

Dr. Grimmitt, a dentist, was convicted in September 2005 for repeated sexual abuse against multiple female patients.¹ One woman testified that Dr. Grimmitt made repeated comments to her about her breasts and, on one occasion, actually caressed her chest.² Another woman claimed that the dentist placed his hand on her inner thigh.³ Although Dr. Grimmitt was placed on probation for three years for his crimes, his dental license was not revoked.⁴ The district attorney that prosecuted Dr. Grimmitt continually urged the Dental Board of California (DBC) to revoke his license so that he could not sexually abuse any other patients.⁵ Unfortunately, Dr. Grimmitt was recently charged again for sexual battery against a female patient.⁶

Another dentist served two years in a military jail for engaging a child in indecent acts and communications.⁷ After being released, the dentist moved to California and registered as a sex offender in 2002.⁸ However, he too was allowed to continue practicing dentistry.⁹

1. Scott Smith, *Dentist Faces New Groping Charges: S.J. Man Convicted of Misdemeanor Sexual Battery in '05*, STOCKTON REC., Feb. 8, 2007, at A1.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Letter from Richard L. Wallinder, Jr., Executive Officer, Dental Bd. of Cal., to Senator Sam Aanestad, Cal. State Senate (Apr. 16, 2007) [hereinafter Wallinder Letter] (on file with the *McGeorge Law Review*).

8. *Id.*

9. *Id.*

In both cases, the DBC did not have the authority to immediately revoke or deny a dental license to a registered sex offender.¹⁰ Chapter 13, which was sponsored by the DBC, is aimed at resolving this problem.¹¹

II. LEGAL BACKGROUND

A. *The Dental Board of California (DBC)*

The DBC, organized under the umbrella of the Department of Consumer Affairs (DCA), is a consumer protection agency.¹² The Dental Practice Act gives the DBC the power to license practicing dentists¹³ and to regulate the practice of dentistry.¹⁴ The DBC has fourteen members who are appointed by the Governor, the Senate Rules Committee, and the Assembly Speaker.¹⁵ Twelve members of the board, including eight dentists, one registered hygienist, one registered dental assistant, and two members of the public, are appointed by the Governor.¹⁶ The Senate Rules Committee, as well as the Assembly Speaker, appoints one public member.¹⁷

B. *Procedures for Revoking Dental Licenses*

Existing law allows the DBC to take action against a licensed dentist for a “conviction of a crime substantially related to the qualifications, functions, or duties of a dentist.”¹⁸ However, the DBC’s authority is limited.¹⁹ The DBC may reprimand or place a dentist convicted of a criminal offense on probation.²⁰ But the DBC may not suspend, revoke, or deny a dentist a license while his or her criminal case is on appeal.²¹ Instead, the DBC must wait until either “the judgment of conviction has been affirmed on appeal” or “the time for appeal has elapsed.”²² As a result, the DBC must continue to issue new licenses and renew existing licenses until a dentist has been convicted of a crime and the criminal

10. See CAL. BUS. & PROF. CODE § 1670.1 (West 2003) (lacking any provision that allows the DBC to take action against dentists who are registered as sex offenders).

11. ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 252, at 2 (June 12, 2007).

12. Collette C. Galvez & Peter Sansom, *Dental Board of California*, 17 CAL. REG. L. REP. 10, 10 (2001).

13. “[P]racticing dentist’ includes a member of a faculty of any dental college or dental department of any medical college in the State of California.” CAL. BUS. & PROF. CODE § 1601.5 (West 2003).

14. *Id.* § 1601.2 (West 2003).

15. Galvez & Sansom, *supra* note 12, at 10.

16. *Id.*

17. *Id.*

18. CAL. BUS. & PROF. CODE § 1670.1 (West 2003).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

appeal has been resolved.²³ The DBC may then hold a time-consuming administrative hearing on the matter.²⁴ Before Chapter 13, the Dental Practice Act did not contain a provision that would immediately allow the DBC to prohibit registered sex offenders from obtaining or maintaining a dental license.²⁵

III. CHAPTER 13

Chapter 13 mandates the DBC to take immediate action against any dentist who has been ordered to register as a sex offender under Penal Code section 290,²⁶ or the law of any other state, territory, or the military.²⁷ Not only must the DBC deny a license for the practice of dentistry to any person who is registered as a sex offender,²⁸ but the DBC must also revoke all California dental licenses from any dentist who is currently registered as a sex offender.²⁹

However, Chapter 13 does not pertain to all registered sex offenders.³⁰ For instance, the DBC is not required to take action against a person who is guilty of a misdemeanor for indecent exposure under Penal Code section 314.³¹ Although the DBC is not obligated to pursue action against certain types of registered sex offenders, Chapter 13 allows the DBC, in its discretion, to discipline a licensee who has violated Penal Code section 314.³²

23. Wallinder Letter, *supra* note 7.

24. *Id.*; see also ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS, COMMITTEE ANALYSIS OF SB 252, at 2 (June 12, 2007) ("Currently the [DBC] must proceed under a time consuming administrative disciplinary system.").

25. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 252, at 2 (Apr. 25, 2007).

26. According to California law, an individual must register as a sex offender if they are convicted of various sexually related crimes including:

sodomy with a minor, lewd acts with a minor, oral copulation of a minor, forced sexual penetration, kidnapping and rape, assault with the intent to commit rape or sodomy, unlawful intimate touching of a restrained victim, spousal rape, rape of an incapacitated victim, aiding in the prostitution of a minor, aggregated sexual assault of a minor, coerced sexual acts, kidnapping and prostitution of a minor, consensual incest, indecent exposure to a minor, continuous sexual abuse of a minor, possession/distribution/advertisement of child pornography, and sexual exploitation of a child.

ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 252, at 2 (June 13, 2007); see also CAL. PENAL CODE § 290 (West 1999 & Supp. 2007) (listing persons who must register as sex offenders).

27. CAL. BUS. & PROF. CODE § 1687(a) (enacted by Chapter 13).

28. *Id.* § 1687(a)(1) (enacted by Chapter 13).

29. *Id.* § 1687(a)(1)-(2) (enacted by Chapter 13).

30. *Id.* § 1687(b) (enacted by Chapter 13).

31. *Id.* § 1687(b)(2) (enacted by Chapter 13).

Every person who willfully and lewdly, either: 1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or, 2. Procures, counsels, or assists any person so to expose himself or take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts, is guilty of a misdemeanor.

CAL. PENAL CODE § 314 (West 1999).

32. CAL. BUS. & PROF. CODE § 1687(b)(2) (enacted by Chapter 13).

Even after a license is revoked, the DBC may either reinstate or grant a dental license to a person who has been relieved of the duty to register as a sex offender.³³ Chapter 13 specifies that a person may be relieved of the duty to register as a sex offender under Penal Code section 290.5,³⁴ under other California law, or under the law of the jurisdiction that initially required the person to register as a sex offender.³⁵

IV. ANALYSIS

Protecting consumers is the most important service provided by the DBC.³⁶ With the help of Chapter 13, the DBC can now quickly respond and protect the public's safety by immediately revoking a dental license from a registered sex offender.³⁷ The availability of this legal action puts the DBC on par with the California Medical Board (CMB), which is another healing arts board under the DCA.³⁸

The CMB already has the authority to take action against registered sex offenders.³⁹ Although laws regulating medical professionals for the most part mirror the laws regulating dentists, there are a few differences.⁴⁰ Like Chapter 13, existing law gives the CMB the authority to revoke a medical license from or to refuse a medical license to any physician or surgeon who has been ordered to register as a sex offender.⁴¹ Also, like Chapter 13, a physician or surgeon who is ordered to register as a sex offender for a misdemeanor under Penal Code section 314 will not automatically get his or her license revoked by the CMB.⁴² However, unlike Chapter 13, a medical professional whose license has been revoked can petition the superior court for a license reinstatement hearing five years after revocation and three years after termination of parole or probation.⁴³ The superior court's decision is binding on the CMB, and the petitioner cannot re-file for a

33. *Id.* § 1687(b)(1) (enacted by Chapter 13).

34. *See* CAL. PENAL CODE § 290.5 (West 1999 & Supp. 2007) (stating that certain persons required to register under Penal Code section 290 shall be relieved of any further duty to register if that person obtains a certificate of rehabilitation and is not in custody, on parole, or on probation).

35. CAL. BUS. & PROF. CODE § 1687(b)(1) (enacted by Chapter 13).

36. Wallinder Letter, *supra* note 7.

37. *Governor Signs Aanestad Patient Safety Bill Into Law*, CAL. CHRON., June 23, 2007, <http://www.californiachronicle.com/articles/viewArticle.asp?articleID=30465> (on file with the *McGeorge Law Review*). The DBC's enforcement section is notified of any licensee who has been convicted of any crimes. Dental Board of California, About the Enforcement Program, <http://www.dbc.ca.gov/consumers/enforcement.html> (last visited Dec. 9, 2007) (on file with the *McGeorge Law Review*).

38. CAL. BUS. & PROF. CODE §§ 2221(d), 2232(a) (West 2003 & Supp. 2007).

39. *See id.* § 2232(c)(1) (allowing a person whose medical license has been revoked to petition for its reinstatement).

40. *Id.* §§ 2221(d), 2232(a).

41. *Id.* §§ 2221(d), 2232(a).

42. *Id.* §§ 2221(e), 2232(c)(1).

43. *Id.* § 2232(c)(1).

subsequent hearing on the same conviction.⁴⁴ A physician or surgeon who has been denied a license must wait three years before reapplying, or one year if the CMB finds, in its discretion, that there is good cause to permit reapplication.⁴⁵

Although Chapter 13 allows the DBC to better protect the public from sex offenders, Chapter 13 does not give the DBC the authority to automatically revoke a dental license from persons who have been convicted of other crimes.⁴⁶ In those cases, the DBC must wait until either the conviction is affirmed on appeal or the time for an appeal has elapsed.⁴⁷

V. CONCLUSION

Chapter 13 takes a step toward protecting patients from being treated by convicted sex offenders who practice as healing arts professionals.⁴⁸ The DBC can now take immediate legal action against a dentist who is a registered sex offender.⁴⁹ As a result, patients can be assured that a dentist, like Dr. Grimmitt, will be prohibited from continuing to use the practice of dentistry to sexually abuse patients.

44. *Id.* § 2232(c)(3).

45. *Id.* § 2221(e).

46. *Id.* § 1670.1 (West 2003).

47. *Id.*

48. *Id.* § 1687(a) (enacted by Chapter 13) (allowing the Dental Board of California to revoke the license of certain classes of registered sex offenders).

49. *Id.*