

**TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS**

ADDENDUM TO THE INITIAL STATEMENT OF REASONS

HEARING DATE: November 22, 2011

SUBJECT MATTER OF PROPOSED REGULATIONS: Sponsored Free Health Care Events

SECTION(S) AFFECTED: Title 16, Division 10, California Code of Regulations, Sections 1023.15, 1023.16, 1023.17, 1023.18, and 1023.19.

UPDATED INTRODUCTION:

The Introduction is updated as follows:

At its February 23, 2012 meeting, the Dental Board of California (Board) considered comments received during the 45-day public comment period. The Board voted to modify the text in response to the comments, and directed staff to notice the modified text for 15-day public comment.

Prior to staff noticing the Board's modified text for 15-day public comment, the Department of Consumer Affairs (Department) contacted all healing arts boards that proposed regulations relevant to sponsored free health care events, advising that boards may need to further clarify the Department's role in receiving and registering sponsoring entities. The Medical Board of California (MBC), Board of Occupational Therapy (BOT), and the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) had all submitted their final rulemaking files to the Office of Administrative Law (OAL). On March 13, 2012, OAL issued a Decision of Disapproval of MBC's proposed regulations due to failure to comply with clarity and necessity standards, as well as procedural issues.

OAL's primary clarity concern related to the specific content of MBC's Form 901-A in relation to the content of similar forms proposed by other healing arts boards within the Department. The BVNPT and BOT used similar forms incorporated by reference, and each form contained language similar to MBC's form indicating that only one registration form per event should be completed and submitted to the Department. The Office of Administrative Law was concerned that there was not one common form with a uniform set of regulatory requirements which would, with certainty, allow for the filing of a "single, common form" that meets the regulatory requirements of the three agencies. OAL could not easily understand how the "only one form per event" provision on each of the individual board's forms would work in practice. The differing forms from each board could create the potential for confusion and uncertainty among sponsoring entities legally required to comply with the regulations.

At its April 11, 2012 meeting, the Board voted to adopt a Resolution to formally delegate authority to the Department to receive and process sponsored entity registration forms and to register sponsoring entities for sponsored free health care events that utilize the services of dentists and to direct staff to add the adopted Resolution to the Board's Sponsored Fee Health Care Events rulemaking file.

By delegating authority to the Department, sponsoring entities will clearly understand that they should submit a single, common form that meets the regulatory requirements of multiple healing arts boards, rather than filing registration forms with each individual healing arts board.

At its April 11, 2012 meeting, the Board voted to modify the text to incorporate by reference the "Registration of Sponsoring Entity Under Business and Professions Code Section 901," Form 901-A (DCA/2011) in replacement of the originally proposed "Form DBC-901-A (02/2011)". Additionally, the Board voted to modify the text for the purpose of technical clean-up.

UPDATED SPECIFIC PURPOSE OF EACH ADOPTION OR AMENDMENT:

The Board's proposed changes are updated as follows:

Section 1023.16(a) - Registration:

This proposed subsection establishes a timeframe for submission of a sponsoring entity's registration form and prescribes the registration form to be used and incorporates the form by reference.

Factual Basis/Rationale:

Sponsoring entities are required under Section 901(d) to register with the board, or its delegatee, if they will have out-of-state practitioners participating in their sponsored event. The proposed regulation implements the statute by providing a form, "Registration of Sponsoring Entity Under Business and Professions Code Section 901," Form 901-A (DCA/2011), that a sponsoring entity can use to meet this requirement. The form includes space for all of the required information to be submitted under the statute. "Registration of Sponsoring Entity Under Business and Professions Code Section 901," Form 901-A (DCA/2011) would include the following:

- Provide filing requirements and disclosures regarding qualifications for registration as well as deadlines for filing a completed application 90 days in advance of the event.
- Part 1 – Requires the applicant to disclose organization name, organization contact information, type of organization, the organization's tax identification number and if the organization is community-based, disclose its mission, goals and activities.
- Part 2 – Requires the applicant to provide a list of responsible organization officials that includes the name, address, title, phone number and email address

of each responsible official.

- Part 3 – Requires the applicant to disclose event details including: name of the event, date(s) of the event, location(s) of the event, a description of the intended event, and attach a list of all out-of-state health care practitioners the organization currently intends to have apply for the event (name, profession and state of licensure required).
- Provide a notice regarding collection and use of personal information provided on the application.
- Provide notice regarding requirements for each out-of-state practitioner practicing at the event, including submission of the required application to the applicable licensing board or committee in advance of the event.
- Provide notice of the requirements for the maintenance of records for 5 years in California and for filing a report with the Board within 15 calendar days of the completion of the event.
- Require the applicant to certify their statements under penalty of perjury and attest that the individual is authorized to sign on behalf of the organization.

The foregoing form is necessary to create a process for the Board, and its delegatee, for review of sponsoring entities, to implement the requirements of Section 901, and to assist with providing detailed information to sponsoring entity applicants regarding the requirements for seeking and maintaining registration. The certification and disclosure requirements also assist in ensuring accurate, timely and complete information is being provided to the board, and its delegatee, prior to making a decision to grant or deny registration.

The proposed text also requires that sponsoring entities submit the registration form no later than 90 days prior to the date of the sponsored event. This will allow for sufficient time for review of the registration information and to have the registration in place prior to receipt of participation authorization requests from out-of-state practitioners.

Section 1023.16(b) – Determination of Completeness of Form:

This proposed subsection allows the Board to, by resolution, delegate to the Department the authority to receive and process “Registration of Sponsoring Entity Under Business and Professions Code Section 901,” Form 901-A (DCA/2011) on behalf of the Board. This proposed text also specifies that the Board shall inform the sponsoring entity within 15 days of receipt that the entity is registered or that the form is deficient and what specific information or documentation is required. The proposed section allows the board or its delegatee to reject the form if all of the identified deficiencies have not been corrected at least 30 days prior to the event.

Factual Basis/Rationale:

Sponsoring entities are required under Section 901(d) to register with the Board. The proposed regulation will allow the Board to delegate the responsibility of receiving and registering sponsoring entities to the Department of Consumer Affairs, which will avoid duplication of effort for healing arts boards when a sponsoring entity wishes to conduct a health fair with practitioners of various health care fields. The regulation will streamline the process for approval of such health fairs under the Department. At its April 11, 2012 meeting, the Board voted to adopt a Resolution to formally delegate authority to the Department to receive and process sponsored entity registration forms and to register sponsoring entities for sponsored free health care events that utilize the services of dentists and to direct staff to add the adopted Resolution to the Board's Sponsored Fee Health Care Events rulemaking file. By delegating authority to the Department, sponsoring entities will clearly understand that they should submit a single, common form that meets the regulatory requirements of multiple healing arts boards, rather than filing registration forms with each individual healing arts board.

The proposed regulation also sets out specific timelines for written notification to the sponsoring entity that their application was received and whether the application is deemed complete and the entity registered, or of the specific deficiencies and means of correction. This provides the sponsoring entity with clear timelines and requires that the Department or Board give adequate notice to the entity and specific information as to how to correct any deficiencies in a timely manner. The proposed regulation specifies 30 days prior to the event as the date of rejection if all identified deficiencies have not been corrected, so the event sponsor is informed of the final date that deficiencies must be corrected before rejection of the application. The regulation allows for staff time to process completed applications, while giving event sponsors written notification of deficiencies and a deadline.

Section 1023.17(a) – Request for Authorization to Participate:

This proposed subsection provides the mechanism by which an out-of-state practitioner may request authorization to participate in a sponsored event, and specifies that authorization must be obtained for each sponsored event in which the applicant seeks to participate. Requests for authorization would include submission of fingerprints, a completed application and \$30 processing fee to the Board. The requirement to submit fingerprints would only apply to the first application for authorization that is submitted to the Board by the applicant.

Factual Basis/Rationale:

Code Section 901(b) requires an out-of-state practitioner to request authorization from the Board in order to participate in a sponsored event. The statute specifically requires the Board to prescribe a form and set a processing fee. The proposed regulations implement Section 901(b) by incorporating proposed Form DBC-901-B (New 02/2012) to be submitted by the out-of-state practitioner to the Board to request authorization to participate in a sponsored event. The form provides space for the applicant to include all of the information required by the statute. Form DBC-901-B (New 02/2012) would include the following:

- Part 1 – Requires the applicant to provide: a completed application, a \$30 processing fee to the Board (or \$79 fee if using “ink on cards” for fingerprint processing), a copy of each current, active, and valid license authorizing the applicant to engage in the practice of dentistry in another jurisdiction, a copy of a valid photo identification issued from another jurisdiction, any documents or statements requested on the application, and fingerprints.
- Part 2 – Requires the applicant to disclose: name, social security number, contact information, employer, and employer’s contact information.
- Part 3 – Requires the applicant to respond regarding: current, active, and valid licensure in another state, district or territory of the United States; any pending investigations by any governmental entity; any past or pending charges against a dental license; disciplinary actions taken against any healing arts license; surrender of a dental license; malpractice settlements or judgments; criminal convictions; permits to prescribe controlled substances from the federal Drug Enforcement Agency (DEA); current physical or mental impairment related to drugs or alcohol; and, mental incompetency or conservatorship.
- Part 4 – Requires the applicant to provide: name of non-profit or community-based organization hosting the event, name of event, date(s) and location(s) of the event, date(s) and location(s) applicant will be performing healthcare services, the healthcare services the applicant intends to provide, and the name and phone number of the contact person with the sponsoring entity.
- Part 5 – Requires the applicant to acknowledge and certify the following: (1) agree to comply with applicable practice requirements and regulations of the Board; (2) agree to practice only within the scope of his/her licensure; (3) agree to provide services only to uninsured or underinsured persons at no cost; (4) agree to provide services only in association with the sponsoring entity and the event(s); (5) agree to provide written notice of out-of-state licensure to each patient or prospective patient prior to performing any service; (6) agree to be responsible for knowing and complying with California law and practice standards; (7) agree to permit the Board to notify the licensing authority of the applicant’s home jurisdiction of any potential grounds for discipline associated with the event; (8) acknowledge that practice without proper licensure may subject the applicant to administrative, civil and/or criminal penalties; and, (9) certify that the applicant has read the questions in the application and that all information is true and complete to the best of the applicant’s knowledge.
- Notification that completion and submission of the application grants permission to the Board to verify and investigate any information provided.
- Notification regarding collection and use of personal information provided on

the application.

- Notification that the applicant's signature on the application authorizes the National Practitioner Data Bank (NPDB) and the DEA to release any and all information required by the Board.
- Notification that authorization will not be issued until clearance has been received from the California Department of Justice and the Federal Bureau of Investigation.

The Board has determined that the processing fee of \$30 is sufficient to cover the cost of processing the request of the health care practitioner. Additionally, the regulation's form requires the applicant to submit additional material not specifically listed in the statute. First, the applicant must submit personal identifying information including contact information, the individual's social security number, employer's contact information and either a full set of fingerprints or a Live Scan inquiry. These requirements are reasonably necessary in order for the Board to verify that an applicant is "in good standing" as required by Section 901, including the requirement of Section 901(b)(1)(B)(i) that the applicant has "not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under [Code] Section 480." Section 480 authorizes the Board to deny licensure based on an applicant's conviction of a substantially-related crime or the commission of an act substantially-related to the qualifications, functions or duties of a licensed dentist. A criminal background check cannot be effectuated if the Board does not have the appropriate personal identifying information. Further, the Board is authorized to require applicants to furnish fingerprints for criminal background checks under Business and Professions Code Section 144 and to require disclosure of Social Security Numbers for all other applicants under Section 30 of the Business and Professions Code. Further, Section 901(b)(1)(B)(iii) requires a health-care practitioner to agree to comply with all applicable practice requirements set forth in Section 901 and the Board's applicable regulations. This form, with its accompanying attestation provisions, would provide the mechanism to effectuate such an agreement.

BENEFITS OF THE PROPOSED REGULATION:

The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. This proposal is consistent with the Board's priority of protecting the public. This proposal will enable dental care services to be provided at sponsored free health care events to uninsured or under-insured Californians who would otherwise not have the ability to obtain health care. There may also be benefits to private businesses that are not able to provide dental care to employees. Many small businesses are legally required to provide health care, but are not required to provide dental care. Poor oral health can impact the overall health of an individual. These regulations will promote access to dental care in California in addition to providing public protection through Board's registration of out-of state volunteer dentists.

Additionally, this proposed regulation complies with the provisions of Business and Professions Code Section 901, as it pertains to licensed dentists, including the application and registration requirements, disciplinary actions, recordkeeping requirements and provisions for termination of an out-of-state licensed dentist who wishes to participate in a sponsored free health care event. The Board's proposed regulations are intended to implement Section 901 in a manner that will provide the greatest protection for the people of California.

UPDATED UNDERLYING DATA:

As noticed in the "Availability of Modified Text and Documents Added to the Rulemaking File," the Board updates the list of underlying data as follows:

1. Assembly Bill 2699 (Chapter 270, Statutes of 2010)
2. Title 20 USC Section 7801
3. February 25, 2011 Dental Board Meeting Minutes
4. Draft Meeting Minutes Re: Agenda Items 3(A) and 3(B) from the February 23, 2012 Dental Board Meeting Relating to Sponsored Free Health Care Events Proposed Regulations
5. Draft Meeting Minutes from the April 11, 2012, Dental Board Meeting
6. Office of Administrative Law Decision of Disapproval of Regulatory Action In Re: Medical Board of California Proposed Regulations to Adopt Cal. Code of Regs., Title 16, Sections 1333, 1333.1, 1333.2, and 1333.3
7. Dental Board of California Resolution: Delegation to Department of Consumer Affairs for the Review and Registration of Sponsoring Entities
8. "Registration of Sponsoring Entity Under Business and Professions Code Section 901," Form 901-A (DCA/2011)
9. Form DBC-901-B (New 02/2012)
10. TABLE A: Data Supporting Application Fee for Out-of-State Practitioner Authorization to Participate in Sponsored Event
11. Notification from Department of Justice Regarding the Revised Processing Fee for Federal Level Criminal Offender Record Information
12. Economic Impact Analysis

UPDATED BUSINESS IMPACT:

The Board's estimated business impact is updated as follows:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This regulation will impact non-profit organizations sponsoring free health care events and practitioners licensed out-of-state who wish to volunteer at such events.

Implementation Costs for Sponsoring Entities:

Sponsoring entities may incur nominal expenses associated with submitting the registration form to the Department, and complying with recordkeeping and reporting requirements. Sponsoring entities shall be responsible for submitting the "Registration of Sponsoring Entity Under Business and Professions Code Section 901," Form 901-A (DCA/2011) to the Department. Expenses associated with submitting the registration form include printing and mailing; these expenses are minimal and should not have a significant fiscal impact on sponsoring entities. Additionally, sponsoring entities shall be responsible for maintaining copies of all records required by Code Section 901, as well as the copy of the authorization for participation issued by the Board to an out-of-state practitioner at a physical location in California. The records must be maintained for a period of at least five years after the date the sponsored event ended; the records may be kept in electronic or paper form. The sponsoring entity shall also be responsible for maintaining copies of all records required by Code Section 901(g) at the physical location of the sponsored event. Expenses associated with these recordkeeping requirements are nominal and include storage and transportation of the required records; these expenses are minimal and should not have a significant fiscal impact on sponsoring entities. Finally, the sponsoring entity shall be responsible for providing a report to the Board summarizing the details of the sponsored event within fifteen days after the conclusion of such event. The report may be provided to the Board on a form of the sponsoring entity's choosing. Expenses associated with these reporting requirements are nominal and include printing and postage; these expenses are minimal and should not have a significant fiscal impact on sponsoring entities.

Implementation Costs for Out-of-State Practitioners:

Public comments submitted to the Board, during the 45-day public comment period, raised concern that the \$100 processing fee required for each application to participate in a sponsored free health care event was too high and could serve as an impediment to participation. When the regulations were initially drafted it was unknown how many sponsors of free healthcare events and how many volunteer out-of-state licensees may apply to the Board as a result of these regulations. Initially, the Board estimated that it would receive at least 250 applications per year from out-of-state dentists seeking authorization to provide services at sponsored health care events. In order for the Board to absorb the workload associated with processing the requests for authorization from the out-of-state dentists, the Board would have needed to charge a \$100 non-refundable processing fee to offset the costs associated with staff's processing of the application.

After further evaluation, the estimated number of applications the Board would receive each year from out-of-state practitioners has been determined to be significantly lower. It is now estimated that the Board would receive approximately 75 applications per year from out-of-state dentists seeking authorization to provide services at sponsored free health care events. To absorb the workload associated with processing 75 applications per year, the Board would need to charge a \$30 non-refundable processing fee per application. This fee will offset the costs associated with staff's processing of the application. Tasks associated with processing each request for authorization and corresponding time allocated to each task is illustrated in *Table A: Data Supporting Application Fee for Out-of-State Practitioner Authorization to Participate in Sponsored Event*.

Additionally, applicants will incur costs associated with furnishing fingerprints for the purpose of the Board conducting a criminal history check. As initially proposed, the cost for an out-of-state licensed dentists to get fingerprinted via Live Scan was approximately \$65; of this fee, \$51 would go to the Department of Justice for conducting the background check and providing criminal record reports to the Board; an average of \$14.00 goes to the vendor for fingerprinting the individual. The vendor's fee ranges from \$5.00 to \$45.00 with the average fee being \$14.00. For those out-of-state licensed dentists who are not able to submit fingerprints electronically via Live Scan, the fee for the Board to process "ink on cards" fingerprints was \$51. The fee of \$51 fixed fee determined by the Department of Justice. On March 9, 2012, the Department of Justice notified all clients that, effective March 19, 2012, the FBI processing fee would be reduced from \$19 to \$17. The \$32 DOJ processing fee remained unchanged. The fingerprinting fee of \$49 (\$17 FBI + \$32 DOJ) is a direct cost to be paid to the Department of Justice for the purpose of conducting a criminal history check. The Board does not determine this fee.

As amended in the modified text, the cost for an out-of-state licensed dentist to get fingerprinted via Live Scan is approximately \$63.00. Of this fee, \$49.00 goes to the Department of Justice for conducting the background check and providing criminal record reports to the Board; an average of \$14.00 goes to the vendor for fingerprinting the individual. The vendor's fee ranges from \$5.00 to \$45.00 with the average fee being \$14.00. For those who are not able to submit fingerprints electronically via Live Scan, the fee for the Board to process "ink on cards" fingerprints is \$49. The fingerprinting fee of \$49 (\$17 FBI + \$32 DOJ) is a direct cost to be paid to the Department of Justice for the purpose of conducting a criminal history check. The Board does not determine this fee. The requirement to submit fingerprints would only apply to the first application for authorization that is submitted to the Board by the applicant. These fees will have to be factored into the cost of the individual's volunteered services. The fees may be covered by sponsoring entities, who will also incur minor costs with respect to maintaining records for their volunteers, reporting to the board after the events and filing a registration. These costs are necessary for the protection of the public and to provide staff time and resources for registration of

sponsored events and volunteer out-of-state practitioners in the short timeframes set in the statute.

ECONOMIC IMPACT ASSESSMENT:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that businesses operated by licensees would not be affected by these regulations, as these businesses do not normally provide services at no cost. Businesses owned by small business owners may benefit from these regulations if their employees attend sponsored events and are thus provided dental care at no cost.

Sponsoring entities may incur nominal expenses associated with submitting the registration form to the Department, and complying with recordkeeping requirements, and reporting requirements. Out-of-state licensed dentists who apply for authorization to participate in sponsored free health care events will incur a \$30 non-refundable application fee. In addition to the application fee, applicants will incur costs associated with furnishing fingerprints for the purpose of conducting a criminal history check. The requirement to submit fingerprints would only apply to the first application for authorization that is submitted to the Board by the applicant. These fees will have to be factored into the cost of the individual's volunteered services. The fees may be covered by sponsoring entities, who will also incur minor costs with respect to maintaining records for their volunteers, reporting to the Board after the events and filing a registration. These costs are necessary for the protection of the public and to provide staff time and resources for registration of sponsored events and volunteer out-of-state practitioners in the short timeframes set in the statute. This cost is outweighed by the benefits to the public of providing access to dental health care services to underinsured or uninsured, who would otherwise be unable to obtain these services. Poor oral health can affect the overall health of an individual.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, that it will not create or eliminate jobs or occupations in California, that it will not impact the creation of new businesses or elimination of existing businesses, that it will not impact the expansion of businesses in California, and the proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services. The Board's proposal does not impact multiple industries.