

**DENTAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS**

**INITIAL STATEMENT OF REASONS**

**HEARING DATE:** February 4, 2010

**SUBJECT MATTER OF PROPOSED REGULATIONS:** Retroactive Fingerprinting

**SECTION(S) AFFECTED:** Title 16, Division 10, California Code of Regulation, Section 1007, 1008, and 1017.2

**SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:**

The main purpose of the proposed language is to establish requirements that a licensee must furnish a full set of fingerprints to the Department of Justice ("DOJ") as a condition of renewal with the Dental Board ("Board") if the licensee was initially licensed prior to 1999 or if an electronic record of the fingerprint submission no longer exists. Generally, this proposal would:

- (1) set requirements and time frames for when the licensee would be required to submit criminal history information and other related records to the Board;
- (2) specify the conditions and the purpose for which a full set of fingerprints would be required;
- (3) establish that the licensee would be responsible for paying the costs associated with furnishing fingerprints and conducting criminal offender record searches;
- (4) require a licensee to certify compliance with this new fingerprinting requirement on his or her renewal form and maintain records of his or her compliance for at least 3 years;
- (5) authorize a waiver of these new fingerprinting requirements for licensees who are inactive or actively serving in the military outside of the country;
- (6) mandate that licensees 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;
- (7) specify that failure to comply these requirements or submit a full set of fingerprints to DOJ renders any application for renewal incomplete and is grounds for discipline by the Board; and,
- (8) add a new form and application requirement for activating or inactivating a license.

Proposed changes, by section, are more specifically identified as follows.

Add Section 1007. Response to Board Inquiry.

This Section heading and text would provide that if the Board asks a licensee to provide criminal history information, the licensee must respond to the request within 30 days by making available all documents and other records requested, and specifies that the information provided must be accurate. This Section would establish the timeframe for a licensee's compliance with such Board inquiries and would ensure that accurate information is received from the licensee. This Section would protect consumers by assisting the Board's Enforcement staff in the information gathering and investigative process for determining whether a licensee is in compliance with the Dental Practice Act.

Section 1008. Fingerprint and Disclosure Requirements for Renewal of License title and new Section.

This heading text would inform licensees that the Sections that follow relate to fingerprinting and disclosure requirements for the renewal of a license.

Add Section 1008(a)

This Section would establish requirements that a licensee must furnish a full set of fingerprints to the Department of Justice ("DOJ") as a condition of renewal with the Dental Board ("Board") if the licensee was initially licensed prior to 1999 or if an electronic record of the fingerprint submission no longer exists. Licensees need to be made aware that certain groups of licensees will be required to be fingerprinted as a condition of license renewal, and this regulation would authorize the Board to require fingerprinting of these licensees. This Section would protect consumers by giving the Board access to currently available DOJ information relative to criminal arrests and convictions and would enable the Board to determine if violations of the Dental Practice Act have occurred.

Add Section 1008(a)(1)

This Section would establish that the cost of fingerprinting and conducting the criminal history record check must be paid by the licensee. This regulation is necessary to authorize assessment of costs to licensees, which is consistent with fingerprinting and record check costs that have been paid by every other licensee or applicant since 1999.

Add Section 1008(a)(2)

This Section would establish that as part of the renewal process, each licensee will be asked to certify on his or her renewal form whether or not they have submitted fingerprints to the Department of Justice as required.

Add Section 1008(a)(3)

This Section would establish an exemption from or waiver of the fingerprinting requirement if the license is on an inactive status or if the licensee is actively serving in the military outside the country.

Add Section 1008(a)(4)

This Section would require affected licensees to retain a receipt, as specified, of compliance with the fingerprinting requirement for a period of at least three years. This requirement is necessary to provide evidence that a licensee has complied with the fingerprinting requirement.

Add Section 1008(b)

This Section would mandate that if a licensee is convicted of any violation of the law during the prior renewal cycle, the licensee must disclose that fact to the Board, with infractions specified that may be omitted, and requires that any disciplinary action against another license that the licensee may hold must be reported. This reporting requirement is necessary for consumer

protection and enforcement of the Dental Practice Act. Many licensees hold other licenses either in California or in other states. This language would assist the Board in obtaining information relative to discipline taken by other corresponding state or government licensing entities. This information is necessary to determine if disciplinary action is warranted pursuant to the Board's authority (e.g., Sections 141 and 1680 of the Business and Professions Code).

Add Section 1008(c)

This Section would establish that failure to comply with these requirements would result in non-renewal of the license until the licensee complies with all of the requirements of this Section (e.g., fingerprinting, disclosure or record-keeping requirements). This requirement is needed to ensure compliance with the unprofessional conduct statutes of the Dental Practice Act and prevents possible renewal of a license for a licensee who has violated the law.

Add Section 1008(d)

This Section would provide that failure to furnish a full set of fingerprints as required is grounds for discipline by the Board. The Board must have the ability to enforce the requirements of the section by disciplining the license of a licensee who refuses to comply with the requirements for fingerprinting. The licensee could be in violation of the law or potentially cause patient harm if the Board does not have the ability to verify the criminal history of its licensees through the DOJ or take action for non-compliance.

Article 4. Continuing Education

Section 1017.2. Inactive Licenses.

Amend Section 1017.2(a)-(b)

This Section would be amended to incorporate by reference the form that is required by the Dental Board for either RDA/RDAEF licensees or dentist licensees to inactivate or activate a license. Licensees would be required to submit a completed "Application to Activate/Inactivate License", Form LIC-6 (12/09) to restore or make inactive such licenses. This new application would ensure consistency and specificity in the application of the Board's requirements for categories of persons who are not actively engaged in the practice of their professions or who wish to re-activate their licenses.

Amend Section 1017.2(b)

This Section would also be amended to include a requirement that licensees, as a condition of restoring their license, would be required to submit a full set of fingerprints to the DOJ according to the provisions of Section 1008. This provision is necessary to ensure that criminal offender record information continues to be transmitted to the Board upon reactivation of a license.

Add new form incorporated by reference at Section 1017.2(a), (b)

Form LIC-6 (New 12/09)

APPLICATION TO ACTIVATE/INACTIVATE LICENSE

All licensees who wish to either activate or inactivate their license with the Board would be required to complete and submit this form to the Board for processing.

The form would contain the following:

- A requirement for submission of the name of the licensee;
- A requirement for submission of address information;
- A requirement for submission of the licensee's birth date and the license number;

- A requirement that the applicant certify to the truth and correctness of the information provided, and sign and date the application; and,
- A disclosure regarding the personal information collected on the application and the requirements and uses of that information by the board.

For inactivation requests, the form would include:

- A “Checkbox” indicating that a person wishes to inactivate his or her license;
- A requirement that the applicant acknowledge that he or she understands that upon inactivation that they cannot engage in any conduct for which a license is required and that they must continue to pay the board the required biennial license renewal fee; and,
- A clarification that upon inactivation that the applicant would not need to comply with the continuing education requirements of the Board. However, the form would require the applicant to acknowledge that he or she will complete the required continuing education courses prior to reactivating his or her license;

For activation requests, the form would include:

- A “Checkbox” indicating that a person is applying to activate his or her license;
- A requirement that the applicant disclose on what date their license was inactivated by the board;
- A requirement that the applicant attach evidence that he or she has completed the required number of approved continuing education courses within the last two years preceding this application, as required by the Dental Practice Act.

## **FACTUAL BASIS/RATIONALE**

### Proposed Adoption of Section 1007 of Division 10 of Title 16 of the California Code of Regulations

This proposal would require a licensee to provide timely and accurate responses to inquiries and provide necessary documents needed by the Board to investigate and take appropriate actions against a licensee convicted of a criminal offense that is substantially related to the practice of dentistry.

To conduct an investigation on whether a conviction is substantially related to a licensee’s scope of practice, the Board must review “certified” police reports, “certified” court documents and review documentation that substantiates compliance with probationary terms and rehabilitation efforts. Without this information the Board cannot make a final determination as to the appropriate action. This proposed language would enable the Board to issue a citation and fine for failure to provide the necessary documentation in a timely manner. Due to the enormous volume of conviction documents that must be obtained from the various court houses throughout California and other states, it is critical that the licensee provide accurate court and case number information to the Board. This regulatory proposal would assist in ensuring that such information is provided.

### Proposed Adoption of Section 1008 of Division 10 of Title 16 of the California Code of Regulations

Business and Professions Code Section 1629(b) provides that every applicant for licensure shall furnish fingerprint cards for submission to state and federal criminal justice agencies to establish the identity of the applicant and to determine if the applicant has a record of any criminal convictions in California or in any other jurisdiction. This proposed regulation would also require a licensee who was never fingerprinted by the Board or for whom a fingerprint record no longer exists, as a condition of renewal, to furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal criminal offender record information search conducted through the Department of Justice.

Currently, the Dental Board, along with other boards and bureaus, requires applicants to provide fingerprints for a background check before issuance of a license. When implemented, this requirement was not retroactive, so licensees who obtained their licenses prior to that requirement have not been fingerprinted. As a result, the board has no criminal history or subsequent arrest reports on any dentist licensed prior to 1984, or for any Registered Dental Assistant (RDA) or Registered Dental Assistant in Extended Functions (RDAEF) who received an initial license prior to 1999. The disparity in the implementation date of this requirement is due to the fact that RDAs and RDAEFs were licensed by the Committee on Dental Auxiliaries (COMDA) until July 2009, when COMDA was dissolved and the licensing and registration of Registered Dental Assistants (RDAs) and Registered Dental Assistants in Extended Functions (RDAEFs) transferred to the Dental Board.

Recently, the Board of Registered Nursing has been the subject of a Los Angeles Times article regarding nurses who have a criminal background or are incarcerated and continue to hold a California license. This report has made the Dental Board aware that there may be dental licensees who have committed criminal acts that have not come to the attention of the Board because the Board did not require fingerprinting of dental licensees prior to 1984, and the COMDA did not require fingerprinting of its dental assistant licensees until 1999. The Board believes that this places consumers at risk and that this rulemaking is required to enable the Board to fingerprint all licensees for which no fingerprinting record exists. The Department of Consumer Affairs has attempted to address this problem by seeking a statutory amendment in the form of SB 389 to retroactively require all licensees to provide fingerprints for a background check in order to continue to be licensed and state on renewals whether they have been convicted of a crime. However, since this bill has not yet passed, the Board's intent is to pursue this rulemaking to address this problem, consistent with its consumer protection mandate at Business and Professions Code section 1601.2.

#### Proposed Amendments to Section 1017.2 of Division 10 of Title 16 of the California Code of Regulations

Existing regulations specify that if a licensee wants to activate an inactive license, the licensee must submit an application to the Board on a form provided by the Board, accompanied by evidence that the licensee has completed the required number of hours of approved continuing education in compliance within the last two years preceding the application for activation. This proposal is necessary to require, in addition to the above-mentioned requirement, that a licensee who was never fingerprinted by the Board or for whom a fingerprint record no longer exists furnish a full set of fingerprints as a condition of activating an inactive license. Further, this regulation is necessary for the Board to standardize, implement or make specific the requirements for processing requests for inactivation of a license or for restoration of a license per Business and Professions Code sections 700-704.

“APPLICATION TO ACTIVATE/INACTIVATE LICENSE”, Form LIC-6 (New 12/09), incorporated by reference at Sections 1017.2(a),(b)

The form’s contents are necessary for the following reasons:

Name of Licensee

This information is necessary so that staff knows the identity of the person whose license is being activated or inactivated.

Address of Licensee

This information is necessary so that staff may contact the licensee by mail for any questions, and to further identify that the licensee is the individual who is making the request.

Birth Date and License Number

This information is required so that staff may look up the requestor’s license number and verify that the person requesting inactivation or activation of the license is actually the licensee before completing the request.

Checkbox – I wish to inactivate my \_\_\_\_\_ license. I understand that upon inactivation of my license, I am prohibited from engaging in any activity for which I previously held an active license and for which a license is required. I understand that I must continue to pay the board the required biennial license renewal fee; however I need not comply with the continuing education requirement. Prior to reactivating my license, I will complete the required continuing education.

This information is required from a licensee to inactivate a license. By checking this box, and indicating whether the licensee is a dentist, registered dental assistant, or registered dental assistant in extended functions, the licensee informs staff which staff member will be assigned the request, as different staff members handle these different license types. This places applicants on notice that: (1) fees will still be due and payable, (2) engaging in the practice of the profession is prohibited while the license is inactive, and (3) before the license can be reactivated, the licensee must complete any continuing education that is required for that license type.

Checkbox – I wish to activate my \_\_\_\_\_ license. I inactivated my license on \_\_\_\_\_. Attached to this request is evidence that I have completed the required number of approved continuing education courses within the last two years preceding this application, as required by the Dental Practice Act.

This information is required from a licensee to activate a license. By checking this box, and indicating whether the licensee is a dentist, registered dental assistant, or registered dental assistant in extended functions, the licensee informs staff which staff member will be assigned the request, as different staff members handle these different license types. This also places the applicant on notice that the request must be accompanied by evidence of continuing education before the license can be reactivated, and that the continuing education courses must have been completed within the two years preceding the application. This is the standard for renewal of licenses and must be completed before license reactivation according to existing law, Title 16, California Code of Regulations Section 1017.2.

Certification and Signature of licensee and date

This information is required to ensure that the individual submitting the form is in fact the licensee and certifies under penalty of perjury that the information contained in the form is true

and correct. If it is determined at a later date that this is not the case, this enables the board to take disciplinary action.

#### **UNDERLYING DATA**

1. A memorandum from the DCA Deputy Director of Legal Affairs, Doreathea Johnson, regarding retroactive fingerprinting was sent on January 16, 2009.
2. April 22, 2009 Dental Board Meeting Minutes
3. Application to Activate/Inactivate License LIC-6 (New 12/09)

#### **BUSINESS IMPACT**

The Board does not believe that this regulation will have a significant adverse economic impact on businesses. There are approximately 750 vendors statewide, including small businesses that provide fingerprinting services. There should be no initial or ongoing cost impact upon the vendors because they are already equipped to provide the service and the fingerprinting of the approximate 30,000 licensees will be extended over a two-year period. Additionally, this proposed regulation would only affect individuals for whom an electronic record of his or her fingerprints does not exist in the DOJ criminal offender record identification database and those licensees that do not comply with the proposed regulation. An individual licensee would pay an average of \$65.00 to comply with the fingerprinting requirement over its lifetime, since it is a one-time requirement.

#### **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

The regulatory proposal indirectly requires the use of Live Scan because the Department of Justice requires it for those submitting prints living in California. Live Scan is a well-established and readily available technology for the submission of fingerprints.

#### **CONSIDERATION OF ALTERNATIVES**

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.