

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

NOTICE IS HEREBY GIVEN that the Dental Board of California is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the:

Department of Consumer Affairs
1st Floor Hearing Room
2005 Evergreen Street
Sacramento, California on

February 4, 2010

10:00 a.m.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Dental Board of California (hereinafter "Board") at its office not later than 5:00 p.m. on February 4, 2010 or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 1614 of the Business and Professions Code, and to implement, interpret or make specific Sections 1601.2 and 1629(b) of the Business and Professions Code, and Penal Code Section 11105, the Board is considering changes to Division 10 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code Section 1614 authorizes the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Dental Practice Act. The Board is proposing the following changes:

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; and,
- 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.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The costs to the Board associated with this regulation for the fiscal year 2010-11 would total \$1,637,830. Board costs associated with this regulation for fiscal year 2011-2012 would total \$1,644,874. For fiscal year 2012-2013, costs would total \$730,619.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination:

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.

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: Dentists, Registered Dental Assistants and Registered Dental Assistants in Extended Functions who have not previously been fingerprinted for the Board for whom a fingerprint record no longer exists, will be required to be fingerprinted at the time of their license renewal, reactivation, or reinstatement. The cost for a person to get fingerprinted is approximately \$69.00. Of this fee, \$56.00 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. An individual licensee would pay an average of \$69.00 to comply with this regulation over its lifetime, since it is a one-time requirement.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not have a significant economic impact on small businesses. There are approximately 750 vendors statewide, including small businesses, which 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.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be 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 proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Dental Board of California at 2005 Evergreen Street, Suite 1550, Sacramento, California 95815.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Donna Kantner
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone No.: (916) 263-2211
Fax No.: (916) 263-2140
E-Mail Address: Donna_Kantner@dca.ca.gov

The backup contact person is:

Name: Richard DeCuir, Executive Officer
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone No.: (916) 263-2300
Fax No.: (916) 263-2140
E-Mail Address: Richard_DeCuir@dca.ca.gov

Website Access: Materials regarding this proposal can be found at the Board's Web site: www.dbc.ca.gov.