

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

**NOTICE OF PROPOSED REGULATORY ACTION  
CONCERNING DISCIPLINARY GUIDELINES**

**NOTICE IS HEREBY GIVEN** that the Dental Board of California (Board) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

**PUBLIC HEARING**

The Board has not scheduled a public hearing on this proposed action. However, the Board will, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under "Contact Person" in this notice.

**WRITTEN COMMENT PERIOD**

Written comments relevant to the action proposed, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be **received by the Board at its office no later than 5:00 p.m., November 14 , 2023**, or must be received by the Board at the hearing, should one be scheduled.

**AUTHORITY AND REFERENCE:**

Pursuant to the authority vested by Business and Professions Code (BPC) sections 315, 315.2, 315.4, and 1614, and Section 11400.20 of the Government Code to implement, interpret, or make specific BPC sections 315, 315.2, 315.4, 726, 729, 1680 and 1687 and Government Code sections 11400.20 and 11425.50(e), and Section 44010 of the Education Code, the Board is considering amending section 1018 of Article 4.5 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Board is responsible for licensing and regulating dental professionals in California. The Board licenses an estimated 89,000 dental professionals, including approximately 43,500 licensed dentists; 44,500 registered dental assistants (RDAs); and 1,700 registered dental assistants in extended functions (RDAEFs). The Board is also responsible for setting the duties and functions of an estimated 50,000 unlicensed dental

assistants.

The Board is responsible for disciplining licensees and enforcement of Articles 1 through 8 of Chapter 4 of the Business and Professions Code (BPC) (sect. 1600-1808) and Division 10 of Title 16 of the California Code of Regulations (CCR sections 1000-1088). CCR Section 1018 requires the Board to consult the “Dental Board of California Disciplinary Guidelines With Model Language” (Disciplinary Guidelines) when making decisions on disciplinary cases. In order to better protect the public from licensees who have committed one or more violations of the BPC or the CCR, conform the Disciplinary Guidelines to recent statutory and regulatory changes, and provide clarity to probationers of the terms of probation, the Board needs to revise its Disciplinary Guidelines. The current Disciplinary Guidelines contain many outdated terms and conditions of probation and, in many instances, do not reflect recent updates to statutory law and other changes that have occurred in the probationary environment since the last update in 2010. If the Guidelines are amended, the corresponding regulation, CCR section 1018, must also be amended to incorporate by reference the revised Guidelines as revised and approved by the Board at its February 10, 2023 meeting.

Proposed amendments to section 1018 would update references to the Disciplinary Guidelines and incorporate by reference the February 10, 2023 version of the document. The proposed changes would update the Disciplinary Guidelines to better protect California consumers and ensure consistency in the Board’s enforcement actions. The proposed changes to the regulation and to the Disciplinary Guidelines would include:

- **Changes to Title 16 CCR section 1018**
  - Update the title of the document to “Dental Board of California Disciplinary and Denial Guidelines with Model Language.”
  - Update the revision date to February 10, 2023.
  - Include aggravating circumstances as an additional example of what would justify the Board to deviate from the Disciplinary Guidelines.
  - Make non-substantive changes to replace the full name of the Dental Board of California with a short form reference to the “Board” (already defined in full at CCR section 1000)
- **Changes to the Disciplinary Guidelines (incorporated by reference at CCR section 1018)**
  - Amend the title in the proposed text and to the Disciplinary Guidelines to include the words “and Denial” to account for references to statutes governing denials of applications (e.g., Business and Professions Code section 480) and recommended enforcement actions in the Guidelines document.
  - Provide additional notes and guidance for when to use the Board’s approved Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Terms and Conditions (“Uniform Standards”). In compliance with Business and Professions Code section

315, in 2014, the Board adopted the document entitled “Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders,” New February 28, 2013 at California Code of Regulations, title 16 (16 CCR), section 1018.01. The notes further clarify the requirements in Section 1018.01 and restate the requirements in that document that specify the Uniform Standards terms are required to be used in any probationary order of the Board affecting a licensee found to be a substance abuser. This proposal would be updated to also add notes and additional clarifying direction to help assist the users of the Guidelines in understanding how and when the Uniform Standards are to be used in lieu of the terms listed in the Guidelines.

- Add “terms and” before the word “conditions” throughout the document.
- Reflect changes to California law since the last version of the Guidelines were approved by the Board, including the adoption of Substantially Related Criteria and Rehabilitation Criteria as outlined in 16 CCR sections 1019 and 1020, respectively, and required by Business and Profession Code (Code) sections 480, 481 and 482, as amended by Chapter 995, Statutes of 2018 (AB 2138).
- Add the term “Disclosure of Probation Status to Patients” and rationale to the list of Standard Probationary Terms and Conditions, which is required pursuant to Business and Professions Code (BPC) section 1673 only for probationers meeting specified criteria (e.g., commission of any act of sexual abuse, misconduct, or relations with a patient or client). This new Term reflects the requirements of BPC section 1673, which was put into law since the last Guidelines update, and requires Respondents provide a separate disclosure to patients if a Respondent is on probation due to specified circumstances involving direct harm to patients.
- Rename Term (6) on the Standard Probationary Terms and Conditions from “Status of Residency, Practice, or Licensure Outside of State” to “Tolling of Probationary Period”.
- Remove Term (11) “Function as a Licensee” from the list of Standard Probationary Terms and move substantive provisions of that term to the new Term “Tolling of Probationary Period” Condition and renumber subsequent Terms.
- Add Term (15) “Civil Penalty” and an accompanying Rationale to the list of Standard Probationary Terms and Conditions as this penalty is required in cases where a respondent fails or refuses to comply with a request for patient dental records or fails or refuses to comply with a court order mandating the release of records to the Board pursuant to BPC section 1684.1.
- Add model introductory language for all Disciplinary Orders.
- Add Notes to the Standard Terms section indicating precisely which Terms from the Uniform Standards apply for violations involving Substance Abusing Licensees.

- Add language to Standard Term (1) “Obey All Laws” to clarify compliance and reporting requirements.
- Expand Rationale behind Standard Term (1) to cover relevance of discipline from other boards and/or agencies.
- Strike redundant and unnecessary language on license restoration from Standard Term (3) “Comply with the Board’s Probation Program” and include additional rationale for this term.
- Add language to Standard Term (4) “Address Change, Name Change, License Status” clarifying that Respondent must keep the Board informed of any change in license status during any period of non-practice (as defined in the “Tolling of Probationary Period” term) or suspension of practice unless otherwise specified in the disciplinary order.
- Revise Standard Term (6) with new title “Tolling of Probationary Period” to describe Respondent’s responsibility and timeframe to notify the Board of any periods where the Respondent is not in dental practice for more than 30 calendar days, which it defines as non-practice unless otherwise specified in this term. The Term would define periods of non-practice totaling more than two (2) years as a probation violation and outlines the Respondent’s responsibilities during any periods of non-practice (regardless of whether Respondent is residing in or outside of California).
- Revise Standard Term (6) to specify that it is not considered a violation of probation if Respondent is residing and practicing in another state in the United States and is on active probation with the licensing authority of that state, in which case the two-year tolling limitation period shall begin on the date probation is completed or terminated in that state. This makes it clear that probationers are expected to comply with the Board’s probation, but the Board will permit probation to be considered served (and not “tolled” or paused) as long as the licensee is actively being monitored by another licensing authority.
- Revise Standard Term (6) to include provisions that specify that periods of non-practice do not relieve Respondent of the responsibility to comply with the terms and conditions of probation. Respondent shall continue to comply with all of the terms and conditions of probation, including the obligation to maintain an active and current license with the Board (see Term No. 4 “Address Change, Name Change, License Status”), meetings in person for interviews (see Term No. 5 “Meetings and Interviews”), and cost recovery (see Term No. 8 “Cost Recovery”).
- Revise text and Rationale of Term (8) “Cost Recovery” to further specify the costs Respondents are responsible for covering.
- Revise text of Term (9) “Probation Monitoring Costs” to emphasize that the term language is specific to probation monitoring.
- Revise text of re-numbered Term (11) “Continuance of Probationary Term/Completion of Probation” to clarify the Board’s continuing jurisdiction in the event of probation violations until the matter is final.

- Remove reference to discipline as unnecessary in the Rationale for re-numbered Term (12) “Sale or Closure of an Office”.
- Revise re-numbered Term (13) “Notification to Employer” to include copies of additional documents in the notice and to include prospective as well as current employers, supervisors and/or contractors, as appropriate.
- Add Note to Term (13) indicating when to use the Uniform Standards term for notice to employer rather than this term in the Guidelines.
- Add clarifying language to re-numbered Optional Term (16) “Suspension” about how monies owed for services prior to the suspension and monies earned by Respondent’s practice during the suspension are to be treated.
- Revise re-numbered Term (17) “Remedial Education” to indicate that failure to complete the required course in the first year of probation would constitute a violation of probation and specify the process by which a respondent would submit a written request for Board approval of a remedial course.
- Repeal existing references to the WREB examination and add the American Board of Dental Examiners (ADEX) exam reference to re-numbered Term (18) “Examination”.
- Add Note to Term (19) “Supervised Practice” to indicate that the Respondent shall be subject to the Uniform Standards term in lieu of this Term with respect to supervised practice if the Respondent is found to be a substance abusing licensee.
- Revise re-numbered Term (21) “Third Party Monitor (Chaperone)” to add additional enforcement documents to the list that the Monitor is required to review and fully understand in their role as a monitor who would be present at all times while Respondent is consulting, examining or treating specified patients.
- Revise re-numbered Term (23) “Community Service” to add additional enforcement documents to the list that Respondent must provide to the organization(s) where respondents are providing community service.
- Revise renumbered Term (24) “Psychological Examination” to delete the Board’s authority to excuse a Respondent from complying with recommendations of the evaluator at its discretion.
- Revise re-numbered Term (31) “Ethics Course” to include the process for submitting a written request for approval of an ethics course to the Board.
- Revise Term (32) “Billing Monitor” to expand the list of the types of relationships between the Monitor and Respondent that would disqualify a billing monitor from being approved by the Board (i.e., personal or business relationships perceived as creating conflicts of interest).
- Revise Rationale for Term (34) “Controlled Substance – Maintenance of Records and Inventories” to clarify the Term should be used only for cases involving dentists.
- Add Recommended Penalties and new grounds for discipline or enforcement action for violations of Business and Professions Code (BPC)

- sections 480(a)(1), 480(a)(2), 490, 650.2, 1628.5, 1638.1(j), 1638.5, 1646.1(b), 1646.1(d), 1646.7, 1647.9, 1647.17, 1647.25, 1647.31, 1647.31(b), 1647.31(c), 1647.34, 1658.6, 1670.1, 1680, 1680(g), 1680(n), 1680(af), 1680(ag), 1680(ah), 1683.1, 1683.2 1684.1 and 1687.
- Strike (i) as outdated and superseded by other revisions to this statute relating to dental group advertising and referral services from the Penalty section for BPC section 650.2.
  - Insert “or Administering” into the Penalty title for “Clearly Excessive Prescribing Drugs or Treatment.”
  - Add notice language to Penalty for BPC section 1680(r) – “Suspension or Revocation by Another State” to link the proposed penalty to the Uniform Standards for substance abusing licensees.
  - Revise Penalty title for BPC section 1680(ad) from “Unsafe and Sanitary Conditions” to “Failure to Follow Infection Control Guidelines”.
  - Add the word “Dental” before “Auxiliaries” in the Penalty section title for BPC section 1680(ae).
  - Revise Penalty title for BPC section 1681(a) from “Substance Abuse, Possession or Control, Alcohol Abuse, or Conviction related to Controlled Substances” (sic) to “Unlawfully Obtain or Possess Controlled Substance or Dangerous Drug”.
  - Add language to Penalty language for BPC section 1681(a), BPC section 1681(b) and BPC section 1681(c) to link penalties for substance abusing licensees to the Uniform Standards.
  - Make grammatical, syntax, re-numbering, gender neutral and other non-substantive changes for easier comprehension, consistency, and administration of the Guidelines.

### **ANTICIPATED BENEFITS OF PROPOSED REGULATIONS:**

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents. The proposed amendments make the Disciplinary Guidelines consistent with current law and the current probationary environment, clarify the terms and conditions of probation to reduce the likelihood of misinterpretation, provide model orders, and strengthen consumer protection. The Board anticipates that the updated Disciplinary Guidelines will be a more useful tool for the Board, applicants and licensees, Administrative Law Judges (ALJs), legal counsel, and the public by providing a more accurate overview of the Board’s processes in formal disciplinary actions. The updated Disciplinary Guidelines will also serve as an educational and guidance tool for the ALJs who administer hearings for the Board. The regulatory proposal will improve the consistency of penalties for violations of the Act and its regulations. This regulatory proposal promotes the fairness and standardization of cases requiring formal discipline or denial by clarifying the conditions under which licensees and applicants shall be subject to varying levels of enforcement actions and



terms and conditions of probation, as applicable.

This regulatory proposal does not affect worker safety or the state's environment.

## **EVALUATION OF CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS**

During the process of developing this regulatory proposal, the board has conducted a search of any similar regulations on these topics and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

## **INCORPORATION BY REFERENCE**

This proposal would incorporate by reference the document entitled "Dental Board of California Disciplinary and Denial Guidelines With Model Language" (Revised February 10, 2023). The Disciplinary Guidelines are incorporated by reference as they are too lengthy and cumbersome to be included in the CCR.

## **DISCLOSURES REGARDING THIS PROPOSED ACTION**

### **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 proposed regulations do not result in a fiscal impact to the state.

The regulations help to provide consistency in the application of discipline for violations of laws and/or regulations. This proposal does not change fine amounts for violations, so no additional revenues are anticipated.

This proposal provides a more accurate overview of the Board's processes in formal disciplinary actions, which will provide greater clarity to licensees, consumers, the Office of Attorney General, and the Administrative Law Judges by outlining relevant and transparent standards directly related to violations outlined in law. The Board does not anticipate additional workload or costs resulting from the proposed regulations.

The Board will ensure compliance with the proposed regulations through its existing continuing licensing and enforcement activities and does not anticipate a change in enforcement cases based on the proposed changes to regulations.

The regulations do not result in costs or savings in federal funding to the state.

**Nondiscretionary Costs/Savings to Local Agencies:** None

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

**Mandate Imposed on Local Agencies or School Districts:** None

**Significant Effect on Housing Costs:** None

**Business Impact Estimates:**

The Board has made the 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. This initial determination is based upon the following facts.

The Board does not believe this regulation will have a significant adverse economic impact on businesses. Adopting this regulation updates the guidance to the Board and its enforcement staff on how to handle existing and future disciplinary matters. The proposed regulatory action only adversely affects a negligible number dental and dental auxiliary licensees and applicants who, through their conduct, subject themselves to disciplinary action for violations of the laws and regulations within the Board's jurisdiction.

Any "adverse economic impact" would only occur as the result of a disciplinary order following a formal administrative proceeding and a finding of fact affirming a violation of the laws and/or regulations within the Board's jurisdiction. Any potential "adverse economic impact" may be avoided simply by complying with the existing laws and regulations governing the practice of dentistry in California.

**Cost Impact on Representative Private Person or Business:**

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulations would revise existing disciplinary guidelines but would not change fine amounts.

The proposed regulatory action only adversely affects a negligible number of dental and dental auxiliary licensees and applicants who, through their conduct, subject themselves to disciplinary action for violations of the laws and regulations within the Board's jurisdiction. Any potential "adverse economic impact" may be avoided simply by complying with the existing laws and regulations governing the practice of dentistry in California.



## **RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:**

### **Impact on Jobs/Businesses:**

The Board has determined that these regulations would not have any 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 because the proposed regulation sets out standard guidance for disciplinary and denial cases. Individuals in compliance with the Dental Practice Act and associated regulations will not be affected by the proposed regulations.

### **Benefits of Regulation:**

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents:

This regulatory proposal affects the health and welfare of California residents because the proposed regulation will enhance the Board's ability to take appropriate action against dental and dental auxiliary licensees and applicants who, through their conduct, subject themselves to disciplinary action by violating the laws and/or regulations. Additionally, this proposal will benefit Deputy Attorneys General (DAG), Administrative Law Judges, and others involved in the disciplinary process by ensuring consistency in the interpretation and application of penalties in administrative disciplinary and denial actions.

This regulatory proposal will have no impact on worker safety because the proposal does not address worker safety.

This regulatory proposal will have no impact on the California environment as the proposal is not related to the environment.

### **Business Reporting Requirements**

The regulatory action does not require businesses to file a report with the Board.

### **EFFECT ON SMALL BUSINESS:**

While the Board does not have, nor does it maintain, data to determine if any of its licensees (dentists or dental auxiliaries) are a "small business," as defined in Government Code section 11342.610, the Board has made an initial determination that the proposed regulatory action will not affect small businesses, as it only affects dentist and dental auxiliary licensees and applicants who are disciplined or denied for violations of the Act and/or Board regulations. Businesses operated by dentist licensees and applicants who follow the law will not incur any fiscal impact. The Board does not maintain data relating to the number or percentage of licensees who own a small

business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

### **CONSIDERATION OF ALTERNATIVES:**

In accordance with Government Code section 11346.5, subdivision (a)(13), 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 be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Board in writing relevant to the above determinations at 2005 Evergreen Street, Suite 1550, Sacramento, California 95815 during the written comment period or at the hearing if one is scheduled or requested.

### **AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE:**

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

### **TEXT OF PROPOSAL:**

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing (if requested) or prior to the hearing upon request from the Board at 2005 Evergreen Street, Suite 1550, Sacramento, California 95815 or by accessing the Board's website at [https://www.dbc.ca.gov/about\\_us/lawsregs/proposed\\_regulations.shtml](https://www.dbc.ca.gov/about_us/lawsregs/proposed_regulations.shtml).

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments, the Board, upon its own motion or at the request of any interested party, may, adopt the proposed regulations substantially as described in this notice, 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, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written comments or oral testimony related to this proposal or who have requested notification of any changes

to the proposal.

## **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 persons named below or by accessing the website listed below.

## **CONTACT PERSONS**

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

Name: David Bruggeman, Staff Services Manager I  
Dental Board of California  
Address: 2005 Evergreen Street, Suite 1550  
Sacramento, CA 95815  
Telephone No.: (916) 263-2327  
Fax No.: (916) 263-2140  
E-Mail Address [Lawrence.Bruggeman@dca.ca.gov](mailto:Lawrence.Bruggeman@dca.ca.gov)

The backup contact person is:

Name: Christy Bell, Staff Services Manager II  
Dental Board of California  
Address: 2005 Evergreen Street, Suite 1550  
Sacramento, CA 95815  
Telephone No.: (916) 263-2187  
Fax No.: (916) 263-2140  
E-Mail Address: [Christy.Bell@dca.ca.gov](mailto:Christy.Bell@dca.ca.gov)

## **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Board's website at:

[https://www.dbc.ca.gov/about\\_us/lawsregs/proposed\\_regulations.shtml](https://www.dbc.ca.gov/about_us/lawsregs/proposed_regulations.shtml)