

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

**NOTICE OF PROPOSED REGULATORY ACTION
CONCERNING UNIFORM STANDARDS FOR
SUBSTANCE-ABUSING LICENSEES**

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 July 16, 2024**, 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 to implement, interpret, or make specific BPC sections 315, 315.2, 315.4, and Government Code sections 11400.20 and 11425.50(e), the Board is considering amending section 1018.01 and adopting proposed section 1018.02 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.

On September 28, 2008, Senate Bill 1441 (Chapter 548, Statutes of 2008) was signed into law and enacted at BPC section 315. Among other things, the law established the Substance Abuse Coordination Committee (SACC) comprised of the executive officers of the Department of Consumer Affairs' (Department) healing arts boards, a representative of the California Department of Alcohol and Drug Programs and chaired by the Director of the Department. The SACC was charged with the task of developing uniform standards in sixteen specific areas for use by DCA boards in dealing with substance-abusing licensees. In April 2010, the SACC developed a document named "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," which contained the sixteen uniform standards as required by BPC section 315 ("SACC Uniform Standards"). In April 2011, the SACC made revisions to the April 2010 version and finalized the document.

The Board thereafter on April 1, 2014 adopted CCR Section 1018.01, which requires the Board to consult the "Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders (New February 28, 2013)" ("Uniform Standards") when making decisions on disciplinary cases where a licensee has been determined to be substance-abusing. Existing CCR section 1018.01 adopts the 2011 SACC Uniform Standards in regulation as well as specifies when the application of these standards would be "triggered" and therefore required to be used in a probationary order.

Thereafter, in 2018, Senate Bill 796 (Hill, Chapter 600, Statutes of 2017) became law and required the Department to reconvene the SACC, review the existing criteria for Uniform Standard #4 and determine whether the existing criteria should be updated to reflect recent developments in testing research and technology. The SACC revised the Uniform Standards by modifying Uniform Standard #4 (related to drug testing and frequency) in March 2019 and publishing an amended SACC Uniform Standards document.

Changes to CCR section 1018.01 are therefore being proposed in this rulemaking to ensure that the Board is compliant with the SACC's most recent Uniform Standards conditions as required by BPC section 315. In addition, some SACC Uniform Standards were inadvertently not included in the Board's original proposal and are being added to make the Board's Uniform Standards implementation consistent with the requirements of BPC section 315.

The Board's Uniform Standards have not been modified since they were adopted in 2014, and this rulemaking would update the Uniform Standards to better protect California consumers and ensure consistency in the Board's enforcement actions and the law enacted by BPC section 315. If the Uniform Standards' document is amended, the corresponding regulation, CCR section 1018.01, must also be amended to incorporate by reference the revised Uniform Standards as approved by the Board at its

November 9, 2023 meeting.

The Board is proposing additional changes to CCR section 1018.01 to add clarity with respect to specified terms relevant to substance-abusing licensees that are used throughout the Uniform Standards. The proposed changes add definitions for “major violation,” “minor violation,” “prohibited substance,” and “biological testing.” The proposed changes also describe what actions the Board may take if a substance-abusing licensee is found to have committed a major or minor violation of probation as specified and in accordance with the SACC’s Uniform Standards.

The Board is also proposing a new CCR section 1018.02 – Cease Practice – Probation. This new section describes the criteria for when the Board may issue a cease practice order, requirements for providing notice to the probationer subject to the order, and the process for appeal. The new proposed section also sets criteria for when a probationer subject to such an order can resume practice, either “full time” or with a full and unrestricted license. Finally, the proposal notes that the time when a probationer is subject to a cease practice order does not count toward the reduction of the probationary period.

The proposed changes would include:

- **Changes to Title 16 CCR section 1018.01**
 - Specify that the hearing and notice referenced in the section is to be conducted pursuant to the “Administrative Procedure Act” and “commencing with sections 11500” of the Government Code.
 - Update the reference to the “Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders” to reflect the new edition dated “Revised November 9, 2023” and provide a short form reference “Uniform Standards” document for the name of the Board’s Uniform Standards Document.
 - Define what actions would constitute a major violation of probation and what actions the Board may take against a substance-abusing licensee that has committed a major violation of probation.
 - Define what actions would constitute a minor violation of probation and what actions the Board may take against a substance-abusing licensee that has committed a minor violation of probation.
 - Define “prohibited substance” for the purposes of the Uniform Standards.
 - Define “biological testing” for the purposes of the Uniform Standards.
- **Adoption of Title 16 CCR section 1018.02**
 - Establishes that the Board would issue a cease practice order to any substance-abusing licensee who has committed a major or minor violation of probation as specified.

- Describes the procedure for the Board to notice the cease practice order, including the manner of giving such notice and updating the order in the Board’s licensing database
- Describes the procedure for the subject of the notice to appeal the cease practice order and notification of the outcome of such an appeal.
- Describes the conditions under which a probationer can resume practice after a cease practice order is issued and when the cease practice order is considered dissolved.
- Specifies that cessation of practice shall not apply to the reduction of the probationary period.
- **Changes to the Uniform Standards (document incorporated by reference at CCR section 1018.01)**
 - Strike “New February 28, 2013” and add the revision date of “November 9, 2023 on the title page.
 - Update references to the Substance Abuse Coordinating Committee’s document entitled “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees” to reflect the March 2019 edition of the document.
 - Change mentions of “licensee,” “the licensee,” “his or her,” and “him/her” to gender neutral “Respondent” throughout the document.
 - Strike “Decision” and replace it with “this Decision” when referring to the probationer’s disciplinary decision and order.
 - Revise Uniform Standard (3) “Drug and Alcohol Testing” to add an additional ground for the Board to reduce required testing – The Board may reduce testing frequency for affected probationers to a minimum of 24 times per year for any person who is a practicing licensee if the licensee receives a minimum of 50% supervision per day by a supervisor licensed by the Board.
 - Revise Uniform Standard (3) “Drug and Alcohol Testing” to require that prior to vacation or absence, any alternative to the licensee’s drug testing requirements (including frequency) must be approved by the Board.
 - Add New Standard (8) “Request for a Substance-Abusing Licensee to Return to Practice.” The Standard establishes what standards a Substance-Abusing Licensee must demonstrate to the Board in order to have a Cease Practice Order lifted and return to full time practice. The Standard also establishes what standards the substance-abusing licensee must meet for the Board to restore their license to a full and unrestricted status.

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 Uniform Standards consistent with current law, clarify the standards used for substance-abusing licensees under probation to reduce the likelihood of misinterpretation, provide

model language, and strengthen consumer protection. The Board anticipates that the updated Uniform Standards 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 for licensees that are determined to be substance abusers as specified.

The updated Uniform Standards will also serve as an educational and guidance tool for the ALJs who administer hearings for the Board to ensure compliance with the law as mandated by BPC section 315. The regulatory proposal will improve the consistency of penalties for violations of the Act and its regulations, therefore resulting in a more fully rehabilitated licensee who can safely practice.

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 "Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders" (Revised November 9, 2023). The Uniform Standards 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:

None. The regulations do not result in a fiscal impact to the state.

This proposal provides a more accurate overview of the Board's processes in formal disciplinary actions involving substance-abusing licensees, 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 regulations help to provide consistency in the application of discipline for violations of laws and/or regulations involving substance-abusing licensees. This proposal does not change fine amounts for violations, so no additional revenues are anticipated.

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 proposed regulations do not result in a fiscal impact to the state in the form of federal funding or any cost or savings to any state agency.

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 involving substance-abusing licensees. The proposed regulatory action only adversely affects dental and dental auxiliary licensees and applicants who, through their own conduct, subject themselves to disciplinary action for violations of the laws and regulations within the Board's jurisdiction and are deemed substance-abusing by the Board after notice and a hearing.

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 Board 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 the existing Uniform Standards but would not change fine amounts. The Board began implementing the Uniform Standards in 2014. The proposed regulatory changes are intended to better align the Board's regulations with current law and existing practice. As a result, the regulations are not anticipated to increase costs to the state.

The Board notes, the updated Uniform Standards provide for reduced biological testing frequency for qualifying probationers, as specified, which would result in reduced costs to these individuals of approximately \$1,780 in year-one and \$760 per year for the remaining five-year probation period.

The Board averages six probationers per year. If all six probationers qualified for reduced biological testing, costs would be reduced up to approximately \$6,600 per year and up to of \$66,000 over a 10-year period.

As described under the "Business Impact Estimates" section, the proposed regulatory action only adversely affects 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 standards for disciplinary and denial cases involving substance-abusing licensees only. As specified above in the "Business Impact Estimates" section, 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 and have been found to be substance-abusing licensees. 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 and determined to be substance abusers after a notice and hearing. Businesses operated by dentist or dental auxiliary 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.

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
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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
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E-Mail Address: 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