

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

NOTICE OF PROPOSED CHANGES

NOTICE IS HEREBY GIVEN that the Dental Board of California (Board) 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:

**Department of Consumer Affairs
2005 Evergreen Street, 1st Floor Hearing Room
Sacramento, California 95815
Tuesday, May 13, 2014
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 Board at its office not later than 5:00 p.m. on Monday, May 12, 2014 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, to implement, interpret or make specific Sections 726, 729, 1680, and 1687 of the Business and Professions Code, and Section 44010 of the Education Code, the Board is considering changes to Division 10 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW:

The Board currently regulates approximately 102,000 licensees; consisting of approximately 45,600 dentists (DDS), approximately 54,700 registered dental assistants (RDA), and 1,700 registered dental assistants in extended functions (RDAEF). In addition, the Board has the responsibility for setting the duties and functions of approximately 50,000 unlicensed dental assistants. The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees and disciplining licensees for violations of the Dental Practice Act (Act); monitoring licensees whose licenses have been placed on probation; and managing the Diversion Program

for licensees whose practice may be impaired due to abuse of dangerous drugs or alcohol.

Pursuant to Business and Professions Code (BPC) Section 1614, the Board is authorized to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Dental Practice Act.

The main purpose of this proposal is to amend California Code of Regulations, Title 16, Section 1018 to require an Administrative Law Judge (ALJ) to order revocation of a license when issuing a proposed decision that contains any findings of fact that: (1) a licensee engaged in any act of sexual contact with a patient, client, or customer; or, (2) the licensee has been convicted of or committed a sex offense. This proposal would prohibit the proposed decision issued by the ALJ under such circumstances from containing an order staying the revocation of the license or placing the licensee on probation.

Furthermore, this proposal specifies that the terms “sexual contact” has the same meaning as defined in Business and Professions Code Section 729(c) and the term “sex offense” has the same meaning as defined in Education Code Section 44010.

ANTICIPATED BENEFITS:

The benefit from these proposed regulations will be to provide maximum protection to the California consumers against licensees who are found to be in violation of the laws relating to sexual misconduct. These benefits are a direct result of the Board’s statutorily mandated priority (BPC Section 1601.2). The protection of the public is the highest priority of the Board in exercising licensing, regulatory, and disciplinary functions. This proposal will ensure that individuals who have violated the laws relating to sexual misconduct will be effectively disciplined in a manner that will protect the public.

CONSISTENCY & COMPATIBILITY WITH EXISTING STATE REGULATIONS:

After conducting a review for any regulations that would relate to or affect this area, the Board has evaluated this regulatory proposal and it is not inconsistent or incompatible with existing state regulations. The Board is the only state entity that regulates the practice of dentistry through a licensure process in the interest of public protection; therefore, the Board is the only entity that may require an ALJ to order revocation of a license when issuing a proposed decision that contains any findings of fact that: (1) a licensee engaged in any act of sexual contact with a patient, client, or customer; or, (2) the licensee has been convicted of or committed a sex offense and prohibit such proposed decision from containing an order staying the revocation of the license or placing the licensee on probation.

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

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:

Board has made the initial determination that the proposed regulation would not have a significant, statewide adverse economic impact directly affecting business, including the inability of California businesses to compete with businesses in other states.

The Board has determined that the following types of businesses may be affected by the proposal:

- Businesses owned by licensees of the Board who face disciplinary action due to sexual misconduct.
- Businesses that employ licensees of the Board who face disciplinary action due to sexual misconduct.

A business owned by a licensee whose license is revoked may incur a significant fiscal impact. Businesses that employ a licensee whose license is revoked may incur a significant fiscal impact. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a license and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of revocation cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

The Board has not considered proposed alternatives that would lessen any adverse economic impact on businesses and invites you to submit such proposals. Submissions may include the following considerations:

- (A) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (B) Consolidation or simplification of compliance and reporting requirements for businesses.

(C) The use of performance standards rather than prescriptive standards.

(D) Exemption or partial exemption from the regulatory requirements for businesses.

The rulemaking file includes the facts, evidence, documents, testimony, and/or other evidence which supports this determination.

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are:

➤ Impact on Licensees Whose License is Revoked:

The Board currently regulates approximately 102,000 licensees; consisting of approximately 45,600 dentists (DDS), approximately 54,700 registered dental assistants (RDA), and 1,700 registered dental assistants in extended functions (RDAEF). The average salary of a DDS in California is approximately \$150,000 per year and the annual salary of a RDA in California is approximately \$35,000 per year.

This proposal would impact individual licensees of the Board whose license has been revoked as a result of committing a violation relating to sexual misconduct (i.e. engaging in sexual contact with a patient, client, or customer, or having been convicted of or committed a sex offense as defined). Revocation of a license means that the individual would no longer be able to legally practice which would result in a loss of income earned by an individual when the license was valid. The Board estimates that approximately one (1) licensee will have their licenses revoked annually as a result of committing a violation relating to sexual misconduct. Licensees who are in compliance with the law will not incur any fiscal impact.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses.

A small business owned by a licensee whose license is revoked may incur a fiscal impact. Small businesses that employ a licensee whose license is revoked may incur a 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. The Board only has authority to take administrative action against a license and not a small business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of revocation cannot be projected. Small businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/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. This determination was made because the proposed changes are not sufficient to create or eliminate jobs or businesses.

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety, and state's environment:

The proposed regulations will aid in the Board's ability to provide maximum protection to the California consumers against licensees who are found to be in violation of the laws relating to sexual misconduct. These benefits are a direct result of the Board's statutorily mandated priority (BPC Section 1601.2). The protection of the public is the highest priority of the Board in exercising licensing, regulatory, and disciplinary functions. This proposal will ensure that individuals who have violated the laws relating to sexual misconduct will be effectively disciplined in a manner that will protect the public.

This regulatory proposal does not affect worker safety because this proposal is not relative to worker safety.

This regulatory proposal does not affect the state's environment because this proposal is not relevant to the state's environment.

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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law 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 Board at 2005 Evergreen Street, Suite 1550, Sacramento, California 95815 or by accessing the Board's website at <http://www.dbc.ca.gov/lawsregs/index.shtml>.

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: Sarah Wallace, Legislative & Regulatory Analyst
Dental Board of California
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The backup contact person is:

Name: Karen M. Fischer, MPA, Executive Officer
Dental Board of California
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Website Access: Materials regarding this proposal can be found at the Board's Web site at: <http://www.dbc.ca.gov/lawsregs/index.shtml>