

**DENTAL BOARD**  
**FINAL STATEMENT OF REASONS**

**Subject Matter of Proposed Regulations:** Diversion Evaluation Committee Membership.

**Section(s) Affected:** Sections 1020.4 of Title 16 of the California Code of Regulations (CCR).

**Updated Information**

The Informative Digest and Initial Statement of Reasons are included in the rulemaking file and incorporated as though set forth herein. The Board did not make any changes to the Informative Digest or the Initial Statement of Reasons.

The Board noticed the regulation proposal on November 20, 2020, and gave the public forty-five (45) days to provide public comment ending on January 5, 2021. No public hearing was requested or conducted. A public comment was received on November 22, 2020.

**Local Mandate**

A mandate is not imposed on local agencies or school districts.

**Objections or Recommendations/Responses**

On November 22, 2020, the Board received an email from Dr. Thien Vu on the proposed amendment to 16 CCR 1020.4. Below are the Board's proposed responses to the comments made therein.

**Comment 1:**

**Comment Summary:**

This comment states disapproval of the proposed regulations because they will remove the term limits for serving on the DEC, which will result in DEC members serving for too long and not being responsive to the needs of the public interest which they serve. The commenter believes that the positions have not been adequately advertised and that such adequate advertising would negate the need for this rulemaking. The commenter asserts that having a guaranteed position on the DEC will "foster complacent [sic] and trading favors."

## **Response:**

The Board rejects this comment. The purpose of the proposed amendments to section 1020.4 is because the Board has had substantial difficulty maintaining complete membership of the DEC. Removing the term limitation will allow DEC members to complete the Committee's important work without ending the members' terms when they are still willing to serve.

The Board finds the concern that DEC members who serve too long will be "complacent and trading favors" unfounded. The DEC only makes decisions regarding individual licensees who have voluntarily come to the DEC for help with substance abuse problems, and does not make decisions regarding policy or spending. DEC members are also required to file annual statements of economic interest, which is the standard transparency disclosure required of all elected officials and public employees who make or influence governmental decisions. Furthermore, the Board has the power to remove a DEC member who is failing in their duties on the DEC.

The DEC has not had complete membership in several years. There is turnover in the dentist and therapist positions and in the public member positions. However, there have been no dental auxiliary members on the DEC for multiple years. The purpose of the proposed amendments is to open up the dental auxiliary positions to the public to increase the likelihood of finding suitable candidates. This proposal will not preclude dental auxiliaries taking these positions, and the Board will continue to seek dental auxiliaries for these positions.

The manner in which the Board has advertised these positions has not been the chief impediment to filling these positions. The Board has advertised for all vacancies on the Board's website. This method has been successful in recruiting members for other DEC positions. The Board has experienced turnover in membership for the dentist, therapist, and public member positions, but successfully refilled those positions. The dental auxiliary positions have remained unapplied for and unfilled for multiple years. This indicates that the manner of advertising these positions is not the primary impediment to filling them.

As described in the Initial Statement of Reasons, the problem with filling these positions turns on the structural differences between the dental auxiliary position and the other positions. Individuals holding other positions may have professional reasons for experience with substance abuse and are more likely to be highly compensated professionals (as dentists and therapists, for instance) and business owners. Auxiliaries tend to have lower salaries, must coordinate their schedules with their employers, and may be concerned about their employers knowing about their experience with substance abuse. For these reasons, the DEC has had substantially more difficulty filling these positions than the other DEC positions. This is a motivating factor behind this proposed rulemaking.

## **Consideration of Alternatives**

The Board considered the alternatives presented in the public comment. The reasons for rejecting the suggested alternatives are described in the Board's responses to the public comment. No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulations or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.