

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

FINAL STATEMENT OF REASONS

HEARING DATE: September 23, 2013

SUBJECT MATTER OF PROPOSED REGULATION: Dentistry Fee Increase

UPDATED INFORMATION:

The Initial Statement of Reasons is included in the file. The information contained therein is accurate and is further updated as follows:

The Dental Board of California (Board) maintains two funds: (1) the State Dentistry Fund and (2) the State Dental Assistant Fund. The State Dentistry Fund includes the revenues and expenditures related to dentist licensing. The State Dental Assistant Fund includes the revenues and expenditures as it relates to dental assistants, registered dental assistants, and registered dental assistants in extended functions. This proposed fee increase would only affect the State Dentistry Fund. At this time, the Board is not aware of changes to its dental assisting program that would warrant a fee increase to affect the State Dental Assistant Fund.

According to the State Dentistry Fund Condition for the Governor's Budget 13-14, the Board is projecting a fund balance deficit of \$2.74 million in Budget Year (BY) 2014-15 as well as an ongoing fund balance deficit thereafter. The Board has worked in consultation with the Department of Consumer Affairs' (Department) Budget Office and has determined it is necessary for the Board to increase the initial licensure and biennial renewal fees assessed to its dentist licensees. Pursuant to Business and Professions (B&P) Code section 1724, the Board has determined it is necessary to increase these fees to \$450, the maximum amount allowed by statute to reduce the fund balance deficit beginning BY 2014-15. Averting or delaying an immediate fee increase will cause the Board to become insolvent in BY 2014-15. The Board is proposing to correct a structural imbalance between its revenue and expenditures. The fees will result in an increase of revenue to the Board of an estimated \$1.6 million annually.

State Dentistry Fund:

Existing law, B&P Code section 1721, provides that the funds received by the Treasurer under the authority of the Dental Practice Act, shall be placed in the State Dentistry Fund and expenditure of those funds shall be subject to appropriation by the Legislature in the annual Budget Act.

The "Dental Board of California Analysis of Fund Condition Governor's Budget 13-14 (Dated 6/14/13)" reveals that the Board will suffer a deficit fund balance of \$2.740 million in BY 2014-15. An increase in the fees assessed to dentists for initial licensure and biennial renewal will result in lessening the deficit that the Board will incur in BY 2014-15 to \$153,000, as demonstrated in the "Dental Board of California Analysis of

Fund Condition Governor's Budget 13-14 with Fees at Statutory Max (Dated 7/16/13)." The Board has based these projections on the assumption it will receive the remaining \$2.7 million loan repayment in Current Year 2013-14 from the General Fund per item 1250-011-0741, Budget Act of 2003.

LOCAL MANDATE:

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

BUSINESS IMPACT:

The Board has determined 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 proposed fee increase:

- Businesses owned by dentist licensees of the Board that pay for the licensure and renewal fees of its dentist owners or dentist employees.

Although businesses owned by dentist licensees of the Board and businesses that employ dentist licensees of the Board may be impacted, the Board estimates that the fiscal impact would be minor and absorbable. 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. Accordingly, the initial or ongoing costs for a business owned by a licensee that pays for the licensure and renewal fees of its dentist owners or dentist employees cannot be projected. Licensees will be required to incur a 23% increase in fees ranging from \$21.25 - \$85 dependent on type. The Board is estimating a revenue increase by an average of \$1.6 million per fiscal year starting in FY 2014/15.

Fiscal Impact on Individuals

In addition to the individuals identified in the Initial Statement of Reasons, the Board has determined that the following individuals would also be impacted as a result of this proposal:

Delinquent Retirement/Disability Renewal:

An individual, whose retired or disabled status renewal becomes delinquent, will be assessed a delinquency fee in addition to the retired/disabled renewal fee in order to make the license current and valid. The Board estimates the fiscal impact on individuals, who must pay a delinquency fee in addition to the retired/disabled renewal fee, would be minor and absorbable. The current delinquency fee for retired/disabled renewals is \$91.25 (\$182.50 biennial renewal fee x 50% pursuant to B&P Code section 163.5). The Board's proposed biennial renewal fee increase would effectuate an increase of \$21.25 (from \$91.25 to \$112.50) in the delinquency fee associated with retired/disabled renewal. The Board estimates it would receive approximately seven (7) delinquency fees for retired/disabled renewals on an annual basis.

CONSIDERATION OF ALTERNATIVES:

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 regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

OBJECTIONS OR RECOMMENDATIONS/RESPONSES:

The California Dental Association (CDA) submitted a letter in response to the Board's proposed rulemaking to amend California Code of Regulations, Title 16, Section 1021 relative to the dentistry fee increase.

Summary of Comments from the CDA:

The CDA commented that its membership makes up for approximately seventy (70) percent of licensed dentists in California, and that the Board's oversight of the profession is important to its organization. The CDA recognizes and supports the Board's role in the licensure and enforcement of the practice of dentistry that set the standard of professionalism in California. The CDA agrees that it is necessary for the Board to have resources available to carry out its responsibilities, and that those resources must come from the dentists who benefit from the Board's oversight.

The CDA recognized that the Board had not increased the initial licensure and biennial renewal fees since 1998, and that those fees constitute the largest source of the Board's revenue. Additionally, the CDA commented that it recognized that in addition to the impact of inflation, the Board had been given "spending authority" but no direct revenue source to pay for the additional enforcement program expenses that came as part of the Department's Consumer Protection Enforcement Initiative (CPEI). The CDA commented that it believes that consumer protection is the most important responsibility of the Board, and that it has seen demonstrable improvements in the Board's enforcement caseload management that have been a result of the additional staff. The CDA commented that they do not want to see those gains eroded due to insufficient resources.

The CDA acknowledged the primary importance of the Board's enforcement program as the basis for the proposed fee increase, but expressed disappointment that the supporting rulemaking documents did not address basic customer service. The CDA have expressed multiple times in past public discussions that for the majority of dentists who will never face Board disciplinary action, their only contact with the Board is to solicit answers to licensure questions or to rectify paperwork issues. The CDA commented that the Board's customer service track record in recent years has been dismal, and that member dentists routinely turn to the CDA to intervene on their behalf when they are unable to reach Board staff by phone or email. The CDA recognized and appreciates that managerial changes made earlier this year have seemed to reduce the frequency of such occurrences. The CDA notes that it would be difficult to explain to

member dentists why they should pay an additional \$85 in licensure fees when they are unable to reach anyone at the Board to answer basic questions.

The CDA commented that without continued demonstrable and sustained improvements in customer service, it will be difficult, if not impossible, for the CDA to support legislation to increase the statutory cap on initial licensure and biennial renewal fees. The CDA notes that such support would be particularly difficult in 2014, when the current regulatory proposed increase of \$85 would just be going into effect. The CDA understands the Board's desire to plan ahead for future fee increases, which would need to be approved via the formal rulemaking process, but is still concerned that 2014 would be too soon to consider additional fee increases without clear evidence that the currently proposed increase will result in overall performance improvements that are visible to the average licensee. The CDA commented that raw numbers alone should not be used to justify an almost immediate further increase without a thorough examination of the Board's spending priorities and potential for improved efficiencies. The CDA noted that it looks forward to engaging in that discussion with the Board as it moves forward.

The CDA hopes that, in the future, the Board will begin to more carefully forecast its revenue needs on a yearly basis; the CDA believes that dentists would prefer a more incremental approach to fee increases so that this type significant one-time jump would become unnecessary. The CDA recognizes that the Board is following the standard budgetary process for all professional licensing boards, but would like to see improved clarity in budget documentation and explanation in the future, so that licensees and Board members may more easily comprehend why fee increases are deemed necessary even when the Board is not spending its entire annual budget augmentation.

Board's Response to Comments Received from the CDA:

The Board voted to reject the CDA's comments because if the Board averts or delays an immediate fee increase, and subsequent fee increase, the Board's State Dentistry Fund will become insolvent and the structural imbalance between its revenue and expenditures will continue to grow.

The Board must assess fees to licensees to sustain the financial resources necessary to carry out the methods of meeting its highest priority of consumer protection. Since 1998, the Board's enforcement program has grown exponentially in (1) response to consumer protection issues that have surfaced and (2) response to new statutory and regulatory requirements. Over time, the Board has been authorized to increase its staffing resources to meet consumer protection needs in California, without having to increase its licensing fees to offset such expenses; however, the Board cannot continue to absorb additional expenses without increasing fees. In May 2010, the Board's Executive Officer reported at a quarterly meeting, that the Board would need to look at fee increases in Fiscal Year 2012-2013 due to increased enforcement costs.

The CDA's concerns regarding staff resource availability to respond to licensees' questions have been recognized by the Board. However, this proposed fee increase

has not been presented as a mechanism to improve customer service. Rather, this fee increase has been proposed to sustain existing resources, especially enforcement related resources. It should be noted that the Board and Executive staff continue to evaluate and develop processes to improve access and communication between staff and licensees on an ongoing basis. Additionally, the Board's Executive Officer maintains open communication with the CDA to address communication issues and immediately resolve CDA members' licensure concerns.

If the Board does not correct the structural imbalance between its revenue and expenditures through this proposed fee increase, and a subsequent fee increase once the Board obtains statutory authority via increasing the fee caps, the Board will be forced to: (1) reduce staffing in licensing and enforcement, and (2) reduce operating resources and equipment to offset expenditures. The Board's licensing and enforcement programs would suffer from reductions in staffing and would result in delayed response times to licensing inquiries, application approvals, processing of consumer complaints, conducting investigations, and referring egregious cases to the Attorney General's Office for prosecution. Such staffing reductions would make continued demonstrable and sustained improvements in customer service improbable, and the Board would be unable to provide efficient and effective consumer protection.

The Board agrees that "raw numbers alone" do not justify further fee increases, which is the reason that Board staff works in consultation with the Department's Budget Office to continually analyze the condition of the State Dentistry Fund and annual budget appropriations. Board staff has provided budget reports at quarterly Board meetings to indicate the need for a fee increase, including information regarding the condition of the State Dentistry Fund and the annual budget appropriations. The Board has experienced reversions to the State Dentistry Fund at the conclusion of past fiscal years, and such reversions have delayed the need for a fee increase. Previous budget reports have clarified that unexpected restrictions on the spending of budget appropriations produce such reversions (e.g. Executive Orders that have resulted in furloughs, hiring freezes, travel restrictions, etc.); therefore, the Board is unable to depend on reversions to justify the further delay of the proposed fee increase. This proposed fee increase is necessary to support the State Dentistry Fund because it is insufficient to be able to sustain the Board's annual budget appropriation.

The Board recognizes that this proposal equates to a 23% overall increase in biennial renewal fees that have been assessed since 1998. However, the Board concludes that this proposed fee increase, that is the equivalent to an annual increase in the cost of licensure of less than 0.03% of an average dentist's annual income, is difficult to characterize as a dramatic one-time jump in licensure fees.

The Board's Executive Officer has previously indicated that she will be working with the CDA and other stakeholder groups to address concerns regarding forthcoming fee increases. Additionally, staff will strive to improve the presentation of budget information to maintain transparency so that necessary budgetary changes in the future may be

easier to understand and anticipate by Board members, stakeholders, and members of the public.