

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

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
Monday, January 6, 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, December 23, 2013** 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 1630, 1632, and 1632.1 of the Business and Professions 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:

Assembly Bill 1524 (Chapter 446, Statutes of 2010) eliminated the clinical and written examination administered by the Board and replaced it with a portfolio examination of an applicant's competence to enter the practice of dentistry, to be conducted while the applicant is enrolled in a Board-approved dental school located in California. The bill required the portfolio examination to utilize uniform standards of clinical experiences and competencies as approved by the Board. The bill provided that at the end of that dental school program, the passage of a final assessment of the applicant's portfolio was required, subject to certification by his or her dean and payment of a \$350 application fee to the Board. The bill specified that the portfolio examination could not be conducted until the Board adopted regulations to implement the portfolio examination. The bill required the Board to oversee the portfolio examination and final assessment process, and required the Board to biennially review each dental school with regard to the standardization of the portfolio examination. The bill also set forth

specified examination standards, including direction for the Board to consult with the Board-approved dental schools located in California to approve portfolio examination competencies and the minimum number of clinical experiences necessary for the successful completion of the portfolio examination. The bill specified that the Board would require and verify successful completion of competency examinations that were performed on a patient of record of the dental school, including, but not limited to, the following: (1) comprehensive oral diagnosis and treatment planning, (2) periodontics, (3) direct restorations, (4) indirect restorations, (5) removable prosthodontics, and (6) endodontics. On September 29, 2010, Governor Arnold Schwarzenegger signed Assembly Bill 1524 (Chapter 446, Statutes of 2010), enacting the portfolio examination pathway to dentistry licensure in California.

The main purpose of this proposal is to implement the requirements of the Board's portfolio examination as a new pathway to dental licensure in California. Specifically, this proposal would:

- Amend § 1021 to delete provisions relating to fees for the Board's clinical and written examination that no longer exists;
- Amend §§ 1028 and 1030 to specify the portfolio examination application process and incorporate by reference applicable forms;
- Amend §§ 1032 to 1032.6 replace existing obsolete examination regulations relating to the Board's previously administered clinical examination with the new portfolio examination requirements, as follows:
 - Amend § 1032 to specify eligibility requirements for an examinee to take the portfolio examination;
 - Amend § 1032.1 to define terms used throughout the examinations Article relevant to the portfolio examination;
 - Amend § 1032.2 to specify the requirements for clinical experience in each of the required competencies;
 - Amend § 1032.3 to specify the requirements for the portfolio, competency examination, acceptable criteria, and scoring for the oral diagnosis and treatment planning competency of the portfolio examination;
 - Amend § 1032.4 to specify the requirements for the portfolio, competency examination, acceptable criteria, and scoring for the direct restoration competency of the portfolio examination;
 - Amend § 1032.5 to specify the requirements for the portfolio, competency examination, acceptable criteria, and scoring for the indirect restoration competency of the portfolio examination;

- Amend § 1032.6 to specify the requirements for the portfolio, competency examination, acceptable criteria, and scoring for the removable prosthodontics competency of the portfolio examination;
- Add § 1032.7 to specify the requirements for the portfolio, competency examination, acceptable criteria, and scoring for the endodontics competency of the portfolio examination;
- Add § 1032.8 to specify the requirements for the portfolio, competency examination, acceptable criteria, and scoring for the periodontics competency of the portfolio examination;
- Add § 1032.9 to specify the requirements for portfolio competency examiner qualifications;
- Add § 1032.10 to specify the requirements for portfolio competency examiner training requirements;
- Amend § 1033 to delete existing obsolete examination regulations relating to the Board's previously administered clinical examination;
- Amend § 1033.1 to replace existing obsolete examination regulations relating to the Board's previously administered clinical examination with the general procedures and policies for the portfolio examination;
- Amend § 1034 to replace existing obsolete examination regulations relating to the Board's previously administered clinical examination with the criteria for portfolio examination grading;
- Amend § 1034.1 to make a technical amendment relating to the Western Regional Examination Board;
- Amend § 1035 to specify that the Board's examination review procedures and appeals are not applicable to the portfolio examination;
- Repeal § 1035.1 to delete an obsolete section number and title;
- Repeal § 1035.2 to delete an obsolete section number and title;
- Amend § 1036 to specify the remediation requirements for an examinee who fails to pass a portfolio competency examination after three attempts;
- Repeal § 1036.1 to delete an obsolete section number and title;
- Repeal § 1036.2 to delete an obsolete section number and title;

- Repeal § 1036.3 to delete an obsolete section number and title;
- Repeal § 1037 to delete an obsolete section number and title;
- Repeal § 1038 to delete an obsolete section number and title;
- Repeal § 1039 to delete an obsolete section number and title; and
- Incorporate by reference the following forms:
 - Application for Determination of Licensure Eligibility (Portfolio) Form 33A-22P (New 08/2013)
 - Application for Issuance of License Number and Registration of Place of Practice (Rev. 11-07)
 - Portfolio Examination Certification of Clinical Experience Completion Form 33A-23P (New 08/13)
 - Certification of Successful Completion of Remedial Education for Portfolio Competency Re-Examination Eligibility Form (New 08/13)

ANTICIPATED BENEFITS:

The portfolio examination will provide an additional pathway to licensure in the State of California. Students enrolled in Board-approved dental schools located in California will benefit from the portfolio examination because it has the advantage of being integrated within the current curriculum and within the context of a treatment plan of a patient of record. This examination provides an accurate reflection of the competency areas in which a licensed dentist should be able to practice competently. The portfolio examination will have a positive impact on the dental health of California consumers because those licensed via the portfolio examination have successfully demonstrated the competencies necessary to provide qualified and competent dental healthcare. There are important benefits of using actual patients of record within the dental schools instead of simulated (manikin) patients. First, procedures are performed as part of treatment thereby eliminating circumstances fostering commercial procurement of patients, particularly the cost of such patients. Second, the safety and protection of patients is ensured because procedures are performed in the course of treatment. Third, examinees would be treated similarly at all of the dental schools in a manner that allows communication of examination logistics and results.

CONSISTENCY & COMPATIBILITY WITH EXISTING STATE REGULATIONS:

After conducting a review for any regulations that would relate to or affect this area, the Board 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 implement the portfolio examination as a pathway to licensure.

INCORPORATION BY REFERENCE:

The Application for Determination of Licensure Eligibility (Portfolio)” Form 33A-22P (New 08/2013), Portfolio Examination Certification of Clinical Experience Completion” Form 33A-23P (New 08/13), Application for Issuance of License Number and Registration of Place of Practice (Rev. 11-07), and the Certification of Successful Completion of Remedial Education for Portfolio Competency Re-Examination Eligibility” (Form New 08/13) are incorporated by reference in these proposed regulations. It would be cumbersome, unduly expensive and otherwise impractical to publish the documents in the California Code of Regulations. These forms are available on the board’s Web site and from the board upon request.

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:

The 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 proposed fee increase:

- Board-approved pre-doctoral dental schools located in California that offer the Board’s portfolio examination; and,
- The Western Regional Examination Board (WREB)

Although the six (6) Board-approved pre-doctoral dental schools located in California that will offer the Board’s portfolio examination may be impacted, the Board estimates that the economic impact would be minor and absorbable. The Board does not maintain data relating to the expenses incurred by the Board-approved dental schools to administer and oversee their respective dental programs. However, the Board anticipates that the economic impact on the Board-approved dental schools will be

minor and absorbable because the portfolio examination has been designed and will be implemented to work in concert with the already established curriculum and competency testing currently being conducted within all of the schools. As a result, schools will incur minimal implementation costs to comply with this proposal's requirements.

The Board acknowledges that WREB may experience a slight decrease in the number of California candidates taking its examination. However, the Board does not anticipate this decrease to significantly impact revenue that WREB receives from its examination. Because the WREB examination is a recognized pathway to dental licensure in 35 states, the Board believes that a significant portion of its portfolio examination applicants will go on to take the WREB examination so that they may qualify for licensure in other states.

Impact on Private Person or Business:

This proposal would impact individual students at Board-approved dental schools located in California who apply for initial licensure from the Board via the portfolio examination pathway. The Board estimates that the economic impact on these individuals would be minor and absorbable. The application fee for the portfolio examination is \$350 and is payable to the Board. This fee has been established in statute and has not been changed as a result of this proposal.

The Board anticipates that the portfolio examination will be economically beneficial because: (1) students will be able to complete the portfolio examination while enrolled in school, (2) students will be able to perform competency examinations on patients of record of the school, and (3) students will be able to utilize resources readily available in the dental schools. Since the student's tuition already pays for these resources, the Board anticipates that the only real expense for a student to participate in the portfolio examination would be the \$350 portfolio examination application fee payable to the Board.

In comparison, the WREB examination fee is \$2,360 and examinees are required to provide their patients for the examination. In addition, WREB examinees may have to pay for the travel, lodging, and meals of patients so that they may be utilized, which can significantly increase the overall cost for a student to take the WREB examination.

Applicants for initial licensure are required to furnish fingerprints for criminal background checks pursuant to Business and Professions Code section 1629. Applicants will incur costs associated with furnishing fingerprints for the purpose of the Board conducting a criminal history check. The cost for an applicant to get fingerprinted via Live Scan is approximately \$63.00. Of this fee, \$49.00 goes to the Department of Justice for conducting the background check and providing criminal record reports to the Board; an average of \$14.00 goes to the vendor for fingerprinting the individual. The vendor's fee ranges from \$5.00 to \$45.00 with the average fee being \$14.00. For those who are not able to submit fingerprints electronically via Live Scan, the fee for the Board to process "ink on cards" fingerprints is \$49. The fingerprinting fee of \$49 (\$17 FBI + \$32 DOJ) is a

direct cost to be paid to the Department of Justice for the purpose of conducting a criminal history check. The Board does not determine this fee.

Impact on the Board:

The Board estimates that there are approximately 100 students in each graduating class in each of the six (6) Board-approved dental schools located in California. The Board anticipates that approximately 50% of each graduating class will choose to participate in the portfolio examination as a pathway to initial licensure because of its availability and harmony with the dental school curriculum.

Beginning in Fiscal Year (FY) 2015-2016, the Board estimates that its ongoing annual revenue related to application for the portfolio examination will be approximately \$105,000 (50 students x 6 dental schools x \$350 application fee). The Board anticipates that this revenue will cover the Board's expenses relating to the administration of the examination (e.g. administrative expenses, expenses related to Board examiners conducting a final assessment of the portfolio, expenses related to the auditing of the portfolio examination at the dental schools, etc.).

The Board anticipates that the required criminal background check of portfolio examination applicants will result in approximately one (1) applicant requiring Board action annually. If an applicant has been convicted of a crime substantially related to the practice of dentistry, the Board may deny the application. Applicants may appeal the denial through administrative adjudication. Board cases requiring administrative adjudication cost the Board an average of \$5,000 (\$3,500 Attorney General's (AG's) Expenses + \$750 Office of Administrative Hearing (OAH) Expenses + \$750 Evidence/Witness Expenses). Beginning in FY 2015-16, the Board estimates it will incur an estimated ongoing annual cost of \$5,000 for the administrative adjudication of portfolio examination application appeals.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. This proposal would impact Board-approved dental schools located in California and the WREB examination.

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 implement a new pathway to dental licensure and is not sufficient to create or eliminate jobs or businesses.

Benefits of Regulation:

The portfolio examination will provide an additional pathway to licensure in the State of California. Students enrolled in Board-approved dental schools located in California will benefit from the portfolio examination because it has the advantage of being integrated within the current curriculum and within the context of a treatment plan of a patient of record. This examination provides an accurate reflection of the competency areas in which a licensed dentist should be able to practice competently. The portfolio examination will have a positive impact on the dental health of California consumers because those licensed via the portfolio examination have successfully demonstrated the competencies necessary to provide qualified and competent dental healthcare.

There are important benefits of using actual patients of record within the dental schools instead of simulated (manikin) patients. First, procedures are performed as part of treatment thereby eliminating circumstances fostering commercial procurement of patients, particularly the cost of such patients. Second, the safety and protection of patients is ensured because procedures are performed in the course of treatment. Third, examinees would be treated similarly at all of the dental schools in a manner that allows communication of examination logistics and results.

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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Sacramento, CA 95815
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E-Mail Address: Sarah.Wallace@dca.ca.gov

The backup contact person is:

Name: Jennifer Thornburg, Assistant Executive Officer
Dental Board of California
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Sacramento, CA 95815
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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>