

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

INITIAL STATEMENT OF REASON

HEARING DATE: September 23, 2013

SUBJECT MATTER OF PROPOSED REGULATION: Dentistry Fee Increase

SECTION(S) AFFECTED: California Code of Regulations, Title 16, Division 10, Section 1021

INTRODUCTION:

The Dental Board of California (Board) regulates approximately 101,500 licensees; consisting of 45,400 dentists (DDS), 54,500 registered dental assistants (RDA), and 1,600 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.

Existing law, Business and Professions Code Section 1724, authorizes the Board to charge various fees for dentists licensed by the Board as is necessary for the purpose of carrying out the responsibilities required by the Act. Code Section 1724 also establishes the maximum fee amount the Board may assess its dentist licensees by regulation. The Board's existing initial licensure and biennial renewal fees have been in effect since 1998.

SPECIFIC PURPOSE OF EACH ADOPTION OR AMENDMENT:

The Board proposes to amend California Code of Regulations, Title 16, Section 1021 relative to an increase in the fees assessed to dentists for initial licensure and biennial licensure renewal. Specifically, the Board is proposing the following:

- Amend Section 1021(g) to raise the initial license fee for dentists from \$365 to the statutorily authorized maximum of \$450.
- Amend Section 1021(h) to raise the biennial license renewal fee for dentists from \$365 to the statutorily authorized maximum of \$450.

As a result of raising the initial licensure fee and the biennial renewal fee, the following fees assessed by the Board will be impacted; this is because these fees are determined

by the fee amounts assessed by the Board for initial licensure and biennial renewal as specified in statute:

- Inactive Licenses;
- Licenses on Retirement Status;
- Licenses on Disability Status;
- Oral and Maxillofacial Surgery (OMS) Permit Renewal Fees; and,
- Fictitious Name Permit Application Fees

The proposed increase in fees is necessary to enable the Board to sustain operations to effectively protect consumers through its licensing and enforcement functions.

FACTUAL BASIS/RATIONALE:

The 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 DDS licensing. The State Dental Assistant Fund includes the revenues and expenditures as it relates to dental assistants, RDAs, and RDAEFs. 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' 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 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 Board's initial licensure and biennial renewal fees have been in effect since 1998. These fees are utilized by the Board to carry out its responsibilities, including: issuing licenses to eligible applicants; investigating complaints against licensees and disciplining licensees for violations of the 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. As previously stated, the Board's highest priority is the protection of the public. To provide better public protection, the Board has made enhancements to its enforcement program over the last fifteen years; these enhancements have included increased analytical and

investigative staffing to process and investigate consumer complaints in an effective and efficient manner. The proposed fee increases will support the Board's enforcement program so that it may continue to process and investigate consumer complaints efficiently and effectively.

If the Board does not increase the initial licensure and biennial renewal fees for dentists, the Board's operations will suffer and it would become necessary for the Board to reduce expenditures, including the reduction of staffing and reduction of operating resources and equipment. The Board's licensing program would suffer from reductions in staffing and would result in delayed response times to licensing inquiries and application approvals. Such delays would create a barrier to licensure for those applicants graduating dental school and seeking licensure and employment in a timely-manner. Students must gain licensure and employment as soon as possible after graduation to begin paying down debt accumulated during school. Additionally, the Board's enforcement program would suffer from reductions in staffing and resources. Such reductions would lead to delays in processing consumer complaints, conducting investigations, and referring egregious cases to the Attorney General's Office for prosecution. Those types of delays ultimately would prevent the Board from being able to protect the public efficiently and effectively.

The Board recognizes that this proposal will not eliminate the projected deficit in its entirety; however, the Board will need to seek authorization via legislative amendment to increase the maximum fees it may assess in order to sustain a positive fund balance. The Board is seeking a legislative solution to resolve this issue and will promulgate an additional regulatory proposal to increase fees in the future once authorized by law.

Rulemaking Authority:

Pursuant to Business and Professions Code (Code) 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 Act.

Initial License/Biennial Renewal:

Code Section 1724(d), authorizes the Board to establish a fee for an initial license and for the renewal of a license up to a maximum of \$450 for dentists. The revenue generated from these fees is placed in the State Dentistry Fund and is utilized by the Board to carry out its responsibilities as required by the Act. Code Section 1716, specifies that every person practicing dentistry in California shall pay a renewal fee irrespective of the time when he was licensed or first had the right to lawfully practice dentistry in California or elsewhere. Code Section 1717, provides that in order to renew an unexpired license, the licensee shall apply for renewal and pay the renewal fee to the Board. The Board receives approximately 1,000 applications for initial DDS licensure annually and receives approximately 36,000 active DDS license renewals biennially.

Inactive Licenses:

Code Sections 700 through 704 provide that licensees from healing arts boards within the Department of Consumer Affairs (Department) who have not actively engaged in their professional practice may maintain an inactive license in order to maintain licensure in a non-practicing status. Each healing arts board within the Department is authorized to issue an inactive license to a current holder of an active license whose license is not suspended, revoked, or otherwise punitively restricted by that board. Holders of inactive licenses are not authorized to engage in any activity for which an active license is required. Inactive licenses are required to be renewed during the same time period at which an active license is renewed and the renewal fee for a license in an inactive status is required to be the same as the renewal fee for a license in active status; however, those licensees renewing in inactive status are not required to complete the continuing education requirements for renewal. California Code of Regulations, Title 16, Section 1017.2, requires Board licensees who desire an inactive license to complete a specified application and continue to pay the Board the required biennial renewal fee. The Board has approximately 3,750 inactive DDS licensees.

Licenses on Retirement Status:

Code Section 1716.1(a), provides that the Board may reduce the renewal fee for a licensee who has practiced dentistry for twenty (20) years or more in California, has reached the age of retirement under the federal Social Security Act (42 U.S.C. Sec. 301 et seq.), and customarily provides his or her services free of charge to any person, organization, or agency. Section 1716.1(a) also provides that in no event shall the aggregate of these charges in any single calendar year be in an amount that would render the licensee ineligible for full social security benefits. Pursuant to this Section, the Board is not authorized to reduce the renewal fee to an amount less than one-half of the regular renewal fee. The Board has approximately 1,750 DDS licensees on retirement status.

Licenses on Disability Status:

Code Section 1716.1(b), provides that a Board licensee who demonstrates that he or she is unable to practice dentistry due to a disability, may request a waiver of 50 percent of the renewal fee. A licensee to who is granted a waiver is not authorized to engage in the practice of dentistry unless and until they pay the current renewal fee in full and establishes that the licensee's disability either no longer exists or no longer affects his or her ability to safely practice dentistry. The Board has approximately 110 DDS licensees on a disability status.

OMS Permit Fees:

Code Section 1638.3, specifies that the fee to renew an OMS permit shall be the same as the biennial renewal for a dentist license. The Board has 83 active OMS permit-holders.

Fictitious Name Permit Fees:

Code Section 1724.5, specifies that the initial permit fee for a fictitious name permit is an amount equal to the renewal fee for the applicant's license to practice dentistry.

Except that, if the permit will expire less than one year after its issuance, then the initial permit fee is an amount equal to 50 percent of the renewal fee. Additionally, Section 1724.5 specifies that the renewal and delinquency fees for a fictitious name permit shall be fixed by the Board at not more than the then current amount of the renewal fee for a license to practice dentistry nor less than five dollars. California Code of Regulations, Title 16, Section 1021(o) specifies that the Board's initial fee for the fictitious name permit is the fee prescribed by Business and Professions Code Section 1724.5. The Board receives approximately 300 applications for fictitious name permits annually that would require paying the full renewal fee amount as the application fee and approximately 200 applications for fictitious name permits annually that require paying 50 percent of the renewal fee amount as the application fee. California Code of Regulations, Title 16, Section 1021(o) specifies that the Board's renewal fee for the fictitious name permit is \$150. Currently, the Board has approximately 5,250 active fictitious name permit-holders that renew on a biennial basis.

State Dentistry Fund:

Existing law, Business and Professions Code Section 1721, provides that the funds received by the Treasurer under the authority of the 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 (CY) 2013-14 from the General Fund per item 1110-011-0763, Budget Act of 2011.

State Dentistry Fund Loan to the General Fund:

During 2002 and 2003, \$10 million was transferred to the General Fund from the State Dentistry Fund. Over the course of the last ten years, incremental repayments have been made to the State Dentistry Fund. Currently, there is an outstanding repayment remaining of \$2.7 million which is expected to be repaid during Fiscal Year 2013-2014. The following is an itemization of the loan and repayments:

Loan Transfers:

- Pursuant to Item 1250-011-0741 of the Budget Act of 2002, \$5.0 million was transferred to the General Fund from the State Dentistry Fund in Fiscal Year 2002-2003.
- Pursuant to Item 1250-011-0741 of the Budget Act of 2003, \$5.0 million was transferred to the General Fund from the State Dentistry Fund in Fiscal Year 2003-2004.

Repayment Transfers:

- Pursuant to Item 1250-011-0741 of the Budget Act of 2003, a \$0.6 million repayment from the General Fund to the State Dentistry Fund was made in Fiscal Year 2004-2005.
- Pursuant to Item 1250-011-0741 of the Budget Act of 2003, a \$2.5 million repayment from the General Fund to the State Dentistry Fund was made in Fiscal Year 2005-2006.
- Pursuant to Item 1250-011-0741 of the Budget Act of 2003, a \$2.5 million repayment from the General Fund to the State Dentistry Fund was made in Fiscal Year 2006-2007.
- Pursuant to Item 1250-011-0741 of the Budget Act of 2003, a \$1.7 million repayment from the General Fund to the State Dentistry Fund was made in Fiscal Year 2011-2012.
- Pursuant to Item 1110-011-0763 of the Budget Act of 2011, a \$2.7 million repayment from the General Fund to the State Dentistry Fund has been proposed for Fiscal Year 2013-2014.

It was the Legislature's intent that the loan repayment be made to ensure that the programs supported by this fund are not adversely affected through reduction in services or increased fees. Based on this provision, the loan is scheduled to be repaid in full before the Board implements this proposal.

UNDERLYING DATA:

- (1) Dental Board of California Meeting Minutes, March 1, 2013
- (2) Dental Board of California Analysis of Fund Condition – Governor's Budget 13-14 (Dated 6/14/13)
- (3) Dental Board of California Analysis of Fund Condition – Governor's Budget 13-14 with Fees at Statutory Max (Dated 7/16/13)

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:

- 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. The proposed fee increase would impact individual dentist licensees. The Board estimates the average salary of a DDS in California is approximately \$150,000 per year.

Fiscal Impact on Individuals:

Applicants for Initial Licensure/ Licensees Seeking Biennial Renewal

This proposed fee increase would impact individual DDSs seeking initial licensure from the Board or seeking biennial renewal of their DDS license. The Board estimates that the fiscal impact on these individual dentists would be minor and absorbable. Currently, the Board's initial licensure fee and biennial renewal fee is \$365. The Board is proposing to increase these fees by \$85 to \$450; therefore, candidates for initial DDS licensure would be required to pay an application fee of \$450 and DDS licensees would be required to pay the biennial renewal fee of \$450. The proposed renewal fee increase would equate to an annual increase of \$42.50 in additional licensing fees being paid by a DDS licensee, which reflects an annual increase in the cost of licensure of less than 0.03% of a licensee's annual income. The Board receives approximately 1,000 applications for initial licensure annually; and approximately 36,000 active licensees renew biennially.

Inactive Licensees:

A California licensed DDS who does not actively engage in the practice of dentistry may maintain an inactive license in order to maintain licensure in a non-practicing status. Inactive licenses are required to be renewed during the same time period at which an active license is renewed and the renewal fee for a license in an inactive status is required to be the same as the renewal fee for a license in active status; however, those licensees renewing in inactive status are not required to complete the continuing education requirements for renewal.

The Board estimates that the fiscal impact on individuals seeking inactive status would be minor and absorbable. The current biennial renewal fee for inactive status is \$365. The Board's proposed biennial renewal fee increase would effectuate an increase of \$85 for a total of \$450 for the inactive biennial renewal fee. The proposed renewal fee increase would equate to an annual increase of \$42.50 in additional licensing fees being paid by a DDS inactive licensee, which reflects an annual increase in the cost of licensure of less than 0.03% of the licensee's annual income. The Board has approximately 3,750 inactive DDS licensees who continue to pay the biennial renewal fee.

Licensees on Retirement Status:

The Board may reduce the renewal fee for a licensee who has practiced dentistry for twenty (20) years or more in California, has reached the age of retirement under the federal Social Security Act, and customarily provides his or her services free of charge

to any person, organization, or agency. If a licensee meets these requirements, the Board assesses a fee of one-half of the regular renewal fee.

The Board estimates that the fiscal impact on individuals seeking retirement status would be minor and absorbable. The current biennial renewal fee for retirement status is \$182.50 (\$365 biennial renewal fee x 50% = \$182.50). The Board's proposed biennial renewal fee increase would effectuate an increase of \$42.50 for a total of \$225 for the retirement status biennial renewal fee. The proposed renewal fee increase would equate to an annual increase of \$21.25 in additional licensing fees being paid by a DDS retired status licensee, which reflects an annual increase in the cost of licensure of less than 0.01% of the licensee's annual income. The Board has approximately 1,750 DDS licensees on retirement status.

Licensees on Disability Status:

A DDS licensee who demonstrates that he or she is unable to practice dentistry due to a disability, may request a waiver of 50 percent of the biennial renewal fee.

The Board estimates that the fiscal impact on individuals seeking disability status would be minor and absorbable. The current biennial renewal fee for disability status is \$182.50 (\$365 biennial renewal fee x 50% = \$182.50). The Board's proposed biennial renewal fee increase would effectuate an increase of \$42.50 for a total of \$225 for the disability status biennial renewal fee. The proposed renewal fee increase would equate to an annual increase of \$21.25 in additional licensing fees being paid by a DDS disability status licensee, which reflects an annual increase in the cost of licensure of less than 0.01% of the licensee's annual income. The Board has approximately 110 DDS licensees on a disability status.

OMS Permit-Holders:

Code Section 1638.3(a), specifies that the fee to renew an OMS permit shall be the same as the biennial renewal for a dentist license.

The Board estimates that the fiscal impact on individuals seeking renewal of an OMS permit would be minor and absorbable. The current biennial renewal fee for OMS permit-holders is \$365. The Board's proposed biennial renewal fee increase would effectuate an increase of \$85 for a total of \$450 for the OMS permit renewal fee. The proposed renewal fee increase would equate to an annual increase of \$42.50 in additional licensing fees being paid by a OMS permit-holder, which reflects an annual increase of less than 0.03% of the OMS permit-holder's annual income. The Board has 83 active OMS permit-holders.

Applicants for Fictitious Name Permits:

The initial permit fee for a fictitious name permit is an amount equal to the renewal fee for the applicant's license to practice dentistry. Except that, if the permit will expire less than one year after its issuance, then the initial permit fee is an amount equal to 50 percent of the renewal fee.

The Board estimates that the fiscal impact on individuals applying for an initial fictitious name permit would be minor and absorbable. The current application fee for an initial fictitious name permit is \$365. The Board's proposed biennial renewal fee increase would effectuate an increase of \$85 for a total of \$450 for the application fee for an initial fictitious name permit. The Board receives approximately 300 applications for fictitious name permits annually that would be required to pay the full biennial renewal fee amount as the application fee.

For those applicants whose permit would expire less than one year after its issuance, the Board estimates that the fiscal impact on individuals applying for an initial fictitious name permit would be minor and absorbable. This current application fee for an initial fictitious name permit fee is \$182.50 ($\$365 \text{ biennial renewal fee} \times 50\% = \182.50). The Board's proposed biennial renewal fee increase would effectuate an increase of \$42.50 for a total of \$225 for the application fee for an initial fictitious name applicant whose permit would expire less than one year after issuance. The Board receives approximately 200 applications for fictitious name permits annually that would be required to pay 50 percent of the renewal fee amount as the application fee.

California Code of Regulations, Title 16, Section 1021(o) specifies that the Board's renewal fee for the fictitious name permit is \$150. This rulemaking proposal would not impact the current renewal fee for fictitious name permits. Currently, the Board has approximately 5,250 active fictitious name permit-holders that renew on a biennial basis.

Delinquency Status/Cancelled License:

If a licensee chooses not to pay the required fee to maintain licensure with the Board, the license shall become delinquent. To renew a license back to active status after delinquency, a licensee will be required to pay the back renewal fees from each renewal cycle missed in addition to delinquency fees. The license may maintain a delinquency status for five years. If after five years the license is not renewed back into an active status, the license will be cancelled. A licensee who wishes to regain licensure after a license has been cancelled will have to reapply for licensure to the Board.

Below is a table illustrating the existing fee and the proposed fee increase for each license type impacted by this proposal:

License Type:	Existing Fee:	Proposal To Increase Fee By:	Proposed New Fee Total:
Initial License Application	\$365.00	\$85.00	\$450.00
Biennial Renewal (Active)	\$365.00	\$85.00	\$450.00
Inactive License Renewal	\$365.00	\$85.00	\$450.00
Retirement Status Renewal	\$182.50	\$42.50	\$225.00
Disability Status Renewal	\$182.50	\$42.50	\$225.00
OMS Permit Renewal	\$365.00	\$85.00	\$450.00
Initial Fictitious Name Permit	\$365.00	\$85.00	\$450.00
Fictitious Name Permit Renewal	\$150.00	No Change	No Change

ECONOMIC IMPACT ASSESSMENT:

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because this proposed fee increase will not be of sufficient amount to have the effect of creating or eliminating jobs.
- It will not create new business or eliminate existing businesses within the State of California because this proposed fee increase will not be of a sufficient amount to have the effect of creating or eliminating business.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposed fee increase will not be of a sufficient amount to have the effect of limiting or furthering the expansion of businesses.
- 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.

Benefits:

The proposed fee increase will correct the structural imbalance between the Board’s revenue and expenditures and will allow it to maintain its current operating structure to

provide consumer protection. The proposed fee increases will support the Board's licensing program so that it may continue to license qualified applicants to provide dental health care services to consumers. Additionally, the proposed fee increase will support the Board's enforcement program so that it may continue to process and investigate consumer complaints efficiently and effectively in the interest of patient protection within the timelines established by the Department of Consumer Affairs.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either 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 than the proposed regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory requirement or other provision of law.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

Alternative No. 1 – Rejected:

The Board considered not seeking a fee increase for DDS initial licensure and biennial renewal fees. This option was rejected because 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. 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.

If the Board does not increase the initial licensure and biennial renewal fees for dentists, the Board's operations will suffer and it would become necessary for the Board to reduce expenditures, including the reduction of staffing and reduction of operating resources and equipment. The Board's licensing program would suffer from reductions in staffing and would result in delayed response times to licensing inquiries and application approvals. Such delays would create a barrier to licensure for those applicants graduating dental school and seeking licensure and employment and a timely-manner. Students must gain licensure and employment as soon as possible after graduation to begin paying down debt accumulated during school. Additionally, the Board's enforcement program would suffer from reductions in staffing and resources. Such reductions would lead to delays in processing consumer complaints, conducting investigations, and referring egregious cases to the Office of the Attorney General for prosecution. Those types of delays ultimately would prevent the Board from being able to protect the public efficiently and effectively.

Alternative No. 2 – Rejected:

The Board considered raising other DDS examination, licensing, and permitting fees in addition to the proposed increase for DDS initial licensure and biennial renewal fees.

Board staff is still in the process of conducting workload analyses to determine if additional fees for DDS examination, licensing, and permitting will require increases. At this point in time, it would be premature to propose any additional fee increases until these workload analyses are complete.