

**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, September 23, 2013
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, September 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 Sections 1614 and 1724 of the Business and Professions Code, to implement, interpret or make specific Section 1724 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:

The 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.

The main purpose of this proposal is to amend Section 1021 of Article 6 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations. This proposal seeks an increase in the fees assessed dentists for initial licensure and biennial licensure renewal.

The Board is proposing the following changes:

- 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

According to its 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.

ANTICIPATED 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.

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 assesses a fee for initial licensure and biennial renewal.

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:

- 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.

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:

- *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, 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 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 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.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

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

Although small businesses owned by dentist licensees of the Board and small 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 small business; therefore the number or percentage of small businesses that may be impacted cannot be predicted. Accordingly, the initial or ongoing costs for a small 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.

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, which increase fees by an amount equal to less than 0.03% of a licensee's annual income is not sufficient to create or eliminate jobs or businesses.

Benefits of Regulation:

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 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.

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
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The backup contact person is:

Name: Jennifer Thornburg, Assistant Executive Officer
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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>