

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

**INITIAL STATEMENT OF REASONS**

**HEARING DATE:** No hearing has been scheduled for the proposed action.

**SUBJECT MATTER OF PROPOSED REGULATIONS:** California Dentistry Law & Ethics Examination

**SECTION(S) AFFECTED:** Section 1031 of Title 16, California Code of Regulations (CCR)

**INTRODUCTION:**

The Dental Board of California (Board) regulates approximately 91,600 licensees, consisting of approximately 43,800 dentists, approximately 46,000 registered dental assistants, and approximately 1,800 registered dental assistants in extended functions. The Board's highest priority is protecting the public in exercising its licensing, regulatory, and disciplinary functions. (Bus. & Prof. Code (BPC), § 1601.2.) The Board achieves this goal by issuing licenses to eligible applicants, investigating complaints against licensees, disciplining licensees for violating the Dental Practice Act (DPA), monitoring licensees whose license 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.

Pursuant to BPC section 1632, applicants for dental licensure in California are required to successfully complete an examination in California law and ethics developed and administered by the Board. Pursuant to 16 CCR 1031, the current passing score for the Board's Dentistry California Law and Ethics Examination is set at 75%.

The Department of Consumer Affairs (DCA) Office of Professional Examination Services (OPES) provides professional consulting services in examination validation and development to DCA's boards, bureaus, and committees and provides recommendations based on regulations, professional guidelines, and technical standards related to licensure examinations. In 2018, OPES completed an occupational analysis of the dentistry profession in California. Based on the findings of this analysis, the Board seeks to ensure its California Dentistry Law and Ethics Examination is up to date and in compliance with BPC section 139. The OPES recommended the Board not specify a particular passing score in regulation and instead utilize a criterion-referenced passing score.

At its February, 2019 meeting, the Board approved regulatory language to amend the regulation pertaining to the passing score of the California Dentistry Law and Ethics Examination to allow for OPES to use a criterion-referenced passing score to make the Board's California Dentistry Law and Ethics Examination legally defensible. At its August 2020 meeting, the Board approved revised regulatory language.

**SPECIFIC PURPOSE OF EACH ADOPTION OR AMENDMENT:**

The Board proposes to amend 16 CCR 1031 relating to the California Dentistry Law and Ethics Examination. Specifically, the Board proposes to:

- Amend 16 CCR 1031 to replace “successfully complete” with “achieve a criterion-referenced passing score on the” supplemental written examinations in California law and ethics to clarify that successful completion of the required examination means to have achieved a criterion-referenced passing score on the combined California law and ethics examinations. This is necessary to establish how a passing score is determined and that candidates have not passed the exam merely by completing the administration of the exam.
- Amend 16 CCR 1031(c) to delete the provision stating that a candidate is deemed to have passed the examination if his or her score is at least 75% in each examination, and replace this subdivision with a definition of, “criterion-referenced passing score” which “is a specified point in a distribution of scores at or above which candidates have achieved entry level competence.” This amendment is necessary to maintain consistency with the DCA Departmental Licensure Examination Validation Policy (OPES 18-02). Removing this specified passing score will allow the Board to implement a criterion-referenced passing score, and defining criterion-referenced passing score is necessary to clarify how a passing score is determined in the absence of a specified passing score.

Presently, applicants for dental licensure in California are required to successfully complete an examination in California law and ethics developed and administered by the Board. Pursuant to the Board's current regulations, the current passing score for the Board's Dentistry California Law and Ethics Examination is set at 75%.

The Board contracted with OPES to complete an occupational analysis of the dentistry profession in California. Based on the findings of this analysis, the Board worked with OPES to ensure its California Dentistry Law and Ethics Examination is up to date and in compliance with BPC section 139. OPES recommended the Board not specify a particular passing score in regulations. Alternatively, OPES recommended the Board implement a criterion-referenced passing score, which applies standards for competent practice to all candidates regardless of the form of the examination administered. A criterion-referenced passing score increases the likelihood that candidates who pass

the licensure examination have sufficient knowledge and experience to practice safely and competently.

OPES follows a criterion-referenced methodology called the “modified Angoff technique” for determining licensure examination passing scores. Standard setting is a group process. The group is composed of licensed practitioners representing all aspects of practice or profession and a test development specialist. The process should always include a number of newly licensed practitioners to ensure participation from entry-level licensees.

Criterion-referenced standard setting begins with the establishment of a minimally acceptable level of competence for safe practice that candidates must possess in order to pass the examination. The group develops common definitions of different levels of candidate performance by identifying critical work behaviors that contrast the highly competent, the minimally competent, and the incompetent candidate.

Because licensing examinations are known to vary in difficulty from one examination form to another, a fixed passing score or percentage such as 75% does not represent the minimally acceptable competence for all administrations of an examination. Therefore, arbitrary passing scores are not considered legally defensible.

By applying a criterion-referenced methodology, a passing score is lowered for an examination containing a large number of difficult items (questions) and raised for an examination containing a small number of difficult items. Candidates who take a more difficult test would be placed at a disadvantage unless a criterion-referenced passing score is established. Thus, the passing score provides safeguards to both the candidate and the consumer affected by the particular profession.

Another advantage of using criterion-referenced methodology is that the passing score is independent of the performance of other candidates who take the examination at the same time. The passing score is not based on performance with respect to the group. Rather, the passing score is based upon the difficulty of the items within the examination.

For these reasons, the Board approved this regulatory proposal to delete the passing score requirement in regulations to allow for OPES to use a criterion-referenced passing score to make the Board’s California Dentistry Law and Ethics Examination legally defensible.

### **FACTUAL BASIS/RATIONALE:**

The examination of applicants for a license to practice dentistry in this state must be sufficiently thorough to test the fitness of the applicant to practice dentistry. (BPC section 1630.) To this end, the Board must require each applicant to successfully

complete an examination in California law and ethics developed and administered by the Board. (BPC section 1632, subd. (b).)

The Legislature has recognized that occupational analyses and examination validation studies are fundamental components of licensure programs. (Bus. and Prof., § 139, subd. (a).) The DCA is required to develop a policy regarding examination development and validation, and occupational analysis in consultation with the Board. (BPC section 139, subd. (b).) This policy is required to address the following issues:

- A. An appropriate schedule for examination validation and occupational analyses, and circumstances under which more frequent reviews are appropriate.
- B. Minimum requirements for psychometrically sound examination validation, examination development, and occupational analyses, including standards for sufficient number of test items.
- C. Standards for review of state and national examinations.
- D. Setting of passing standards.
- E. Appropriate funding sources for examination validations and occupational analyses.
- F. Conditions under which boards, programs, and bureaus should use internal and external entities to conduct these reviews.
- G. Standards for determining appropriate costs of reviews of different types of examinations, measured in terms of hours required.
- H. Conditions under which it is appropriate to fund permanent and limited term positions within a board, program, or bureau to manage these reviews.

Pursuant to the DCA Departmental Licensure Examination Validation Policy (OPES 18-02), a criterion-referenced passing score is a specified point in a distribution of scores at or above which candidates are considered successful in the selection process. By definition, the criterion referenced passing score is related to a minimally acceptable competence criterion and is the same for all applicant groups.

Pursuant to the DCA Departmental Licensure Examination Validation Policy (OPES 18-02) passing score standards for licensure examinations must:

- Follow a process that adheres to accepted technical and professional standards.

- Adhere to a criterion-referenced passing score methodology that uses minimum competence at an entry-level to the profession.

The Board is authorized to establish the definition of successful results of the California Dentistry Law and Ethics Examination by regulation. This proposal is necessary to ensure the legal defensibility of the Board's California Dentistry Law and Ethics Examination.

### **UNDERLYING DATA:**

1. Minutes of the February 7-8, 2019 Meeting of the Dental Board of California
2. Minutes of August 14, 2020 Meeting of the Dental Board of California
3. DCA Departmental Licensure Examination Validation Policy (OPES 18-02)
4. OPES Informational Series No. 4 Criterion-Referenced Passing Score

### **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 ability of California businesses to compete with businesses in other states because this proposal would not affect businesses. This proposal would only impact qualified candidates applying to take the California Dentistry Law and Ethics Examination.

### **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 proposal will not be sufficient to have the effect of creating or eliminating jobs. The Board has made this determination because this proposal would only impact qualified candidates applying to take the California Dentistry Law and Ethics Examination.
- It will not create new business or eliminate existing businesses within the State of California because this proposal will not be sufficient to have the effect of creating or eliminating business. The Board has made this determination because this proposal would only impact qualified candidates applying to take the California Dentistry Law and Ethics Examination.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposal will not be sufficient to have the effect of limiting or furthering the expansion of businesses. The Board has made this

determination because this proposal would only impact qualified candidates applying to take the California Dentistry Law and Ethics Examination.

- This regulatory proposal benefits the health and welfare of California residents because it ensures the Board maintains a legally defensible and valid California Dentistry Law and Ethics Examination that allows only those who are qualified to competently and safely practice dentistry to achieve a passing score and eventually become licensed in California.
- This regulatory proposal does not affect worker safety because this proposal is not related to worker safety.
- This regulatory proposal does not affect the state's environment because this proposal is not relevant to the state's environment.

#### **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 or accepted:

Alternative 1: Amend Dentistry Law and Ethics Examination Passing Score as Proposed by the Board

Accepted: The proposed rulemaking implements a criterion-referenced passing score for the Dentistry Law and Ethics Examination. Using a criterion-referenced passing score increases the likelihood that candidates who pass the licensure examination have sufficient knowledge and experience to practice safely and competently. The proposed rulemaking allows the Board to maintain a legally defensible and valid California Dentistry Law and Ethics Examination that allows only those who are qualified to competently and safely practice dentistry to achieve a passing score and eventually become licensed in California.

Alternative No. 2: Do not seek a regulatory change.

Rejected: The Board's highest priority is the protection of the public while exercising its licensing, regulatory, and disciplinary functions. These proposed regulatory changes provide the Board with the means maintain a legally defensible and valid California Dentistry Law and Ethics Examination that allows only those who are qualified to competently and safely practice dentistry to achieve a passing score and eventually become licensed in California.

**FISCAL IMPACT ASSESSMENT:**

Because the Board currently administers the Dentistry California Law and Ethics Examination and requires license applicants to take and pass the exam, any increase in additional workload and costs resulting from the proposed regulations are anticipated to be minimal and absorbed within existing resources.