

DENTAL BOARD OF CALIFORNIA
FINAL STATEMENT OF REASONS

HEARING DATE: March 5, 2012

SUBJECT MATTER OF PROPOSED REGULATIONS: Notice to Consumers of Licensure by the Dental Board

SECTION(S) AFFECTED: California Code of Regulations, Title 16, Division 10, Section 1065

UPDATED INFORMATION:

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

At its November 7, 2011 meeting, the Dental Board of California (Board) approved proposed regulatory language relative to notice to consumers of licensure by the Dental Board and directed staff to take all steps necessary to initiate the formal rulemaking process, including noticing the proposed language for 45-day public comment, setting the proposed language for a public hearing, and authorized the Executive Officer to make any non-substantive changes to the rulemaking package. If after the close of the 45-day public comment period and public regulatory hearing, no adverse comments are received, the Executive Officer was further authorized to make any non-substantive changes to the proposed regulations before completing the rulemaking process and adopted the proposed additions to California Code of Regulations, Title 16, Section 1065 as noticed in the proposed text.

The proposed text was noticed on the Board's web site and mailed to interested parties on January 20, 2012. The 45-day public comment period began on January 20, 2012 and ended on March 5, 2012. The Board held a regulatory hearing on March 5, 2012 in Sacramento, California. The Board did not receive comments in response to the proposed regulation. Since there were no adverse comments received in response to the proposed text, the Board adopted the final text as noticed in the proposed text at its November 7, 2011 meeting.

Staff submitted the final rulemaking package to the Department of Consumer Affairs (Department) on March 12, 2012 to begin the review process. On April 26, 2012, the Department notified Board staff of concerns that the proposed language was not legally consistent with Business and Professions Code Section 1611.3. Business and Professions Code Section 1611.3 states: "The board shall comply with the requirements of Section 138 by January 1, 2013. The board shall require that the notice under that section include a provision that the board is the entity that regulates dentists and provide the telephone number and Internet address of the board. The board shall require the notice to be posted in a conspicuous location accessible to public view."

At its May 18, 2012 meeting, the Board voted to modify the text in response to the Department's concerns and directed staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which included the amendments accepted by the Board at the meeting. If after the 15-day public comment period, no adverse comments are received, the Executive Officer was further authorized to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopted the proposed amendments to California Code of Regulations, Title 16, Section 1065 relevant to requirements for posting notice to consumers of licensure by the Dental Board as noticed in the modified text. The modified text was noticed on the Board's web site on May 24, 2012. The 15-day public comment period began May 25, 2012 and ended June 8, 2012. The Board did not receive comments in response to the modified text. Since there were no adverse comments received in response to the modified text, the Board adopted the final text as noticed in text at its May 18, 2012 meeting.

LOCAL MANDATE:

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

SMALL BUSINESS IMPACT:

This action will not have a significant adverse economic impact on small businesses.

Although many small businesses will be required to comply, the economic impact will be minor. Dentists would only be required to prominently post a sign, which will be available on the Board's Web site, or include the brief, written notice in a written statement to be signed by the patient or his/her representative and retained in his/her file; or include the notice on another document given to each patient. The proposed regulation permits the dentist to choose how he or she will comply with the notice requirements.

The Board believes that the vast majority of dentists would implement this regulation via the easiest means: posting a sign in a visible place, such as a reception/check-in area or waiting room. The most "professional" way to achieve this would be for a practice setting to print the sign on a laser jet printer (less than \$0.05 per page) and then buy a simple black plastic "document" frame (estimated to cost \$4.50 at an office supply store). Thus, per office, the cost would be less than \$5.00 to implement. The Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore, a number or percentage of small businesses that may be impacted cannot be predicted. The estimated expense of less than \$5.00 per office would be minor and absorbable.

This action will impact dentists. As of January 2012, the Board had approximately 37,594 dentists (individuals) with current licenses issued by the Board.

BENEFITS OF THE PROPOSED REGULATION:

The protection of the public is the Board's highest priority when exercising its licensing, regulatory, and disciplinary functions. This proposal is consistent with the Board's priority of protecting the public. An informed consumer is in a better position to make a reasoned choice relating to dental health care. Additionally, an informed consumer would be able to assist the Board in regulating the practice of dentistry via the Board's complaint process, should a problem arise. Oftentimes, consumers are unaware of the existence and role of the Board or the public services it offers, e.g., license verifications, statutes and regulations, or the complaint process. If consumers do not know that they can contact the Board when an issue with a licensee arises or where to seek information about a licensee, then the Board's effectiveness is hampered and its priority of public protection is compromised. The adoption of this proposal will promote better communication with the public regarding the Board's contact information and purpose. The notice would also promote transparency in both government and the profession by making information regarding license status and the State's responsibility to regulate the profession easily available to the public.

Additionally, this proposed regulation complies with the provisions of Business and Professions Code Section 138, which requires boards within the Department to promulgate regulations requiring licentiates to provide notice to their clients or customers that the practitioner is licensed by this state.

CONSIDERATION OF ALTERNATIVES:

No alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed, 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.

The board is directed by statute, Business and Professions Code Section 1611.3, to develop these regulations. One possible alternative would be to delay or not promulgate these regulations. This is not reasonable because the statute provides that the Board is required to comply with the requirements of Business and Professions Code Section 138 by January 1, 2013. A delay is unreasonable due to the express statutory requirement of compliance by January 1, 2013. The Board must act to implement the statutory requirement as soon as possible.

OBJECTIONS OR RECOMMENDATIONS/RESPONSES:

Summary of Comments Received During the 45-Day Public Comment Period:

The Board did not receive any comments in response to the proposed text.

Summary of Comments Received From the Department:

After no adverse comments had been received in response to the proposed text, the final rulemaking package was submitted to the Department on March 12, 2012 to begin the review process. On April 26, 2012, the Department notified Board staff of concerns that the proposed language was not legally consistent with Business and Professions Code Section 1611.3. Business and Professions Code Section 1611.3 states: "The board shall comply with the requirements of Section 138 by January 1, 2013. The board shall require that the notice under that section include a provision that the board is the entity that regulates dentists and provide the telephone number and Internet address of the board. The board shall require the notice to be posted in a conspicuous location accessible to public view."

Board staff worked with Legal Counsel and the Department to develop proposed modified text to address the Department's concerns. Business and Professions Code Section 1611.3 provides that the Board shall require the notice to be posted in a conspicuous location accessible to public view; therefore, staff recommended subdivisions (b)(2) and (b)(3) be stricken because providing notice in the patient's record or on a statement on letterhead, discharge instructions, or other document may not be accessible to public view.

The Board voted unanimously to accept staff's recommendation.

Summary of Comments Received During the 15-Day Public Comment Period:

The Board did not receive any comments in response to the modified text.