

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

INITIAL 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: Title 16, Division 10, California Code of Regulations, Section 1065

INTRODUCTION:

On September 30, 2011, Governor Brown signed into law Senate Bill 540 (Chapter 385, Statutes of 2011). Senate Bill 540 extended the effective date of the Dental Board of California (Board) until January 1, 2016 and made several changes to the provisions contained in the Dental Practice Act (DPA). The bill added Business and Professions Code Section 1611.3 to require the Board to comply with the requirements of Business and Professions Code Section 138 by January 1, 2013. Section 1611.3 requires the Board's regulations regarding the notice to consumers include provisions that: (1) specify that the Board is the entity that regulates dentists, (2) provide the telephone number and Internet address of the Board, and (3) require the notice to be posted in a conspicuous location accessible to public view.

Business and Professions Code Section 138 specifies that every board within the Department of Consumer Affairs (Department) shall initiate the process of adopting regulations to require its licentiates, as defined in Section 23.8, to provide notice to their clients or customers that the practitioner is licensed by this state. The section provides that a board shall be exempt from the requirement to adopt regulations pursuant to this section if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state.

As Senate Bill 540 moved through the legislative process, the bill analyses provided by the Senate Business and Professions Committee indicated that the purpose of adding Business and Profession Code Section 1611.3 to the DPA was to have the Board adopt regulations in the same manner as the Medical Board of California. Therefore, the Board has proposed language comparable to regulatory language enforced by the Medical Board of California.

SPECIFIC PURPOSE OF EACH ADOPTION OR AMENDMENT:

The Board currently regulates 73,177 licensees; consisting of 37,594 dentists, 34,305 registered dental assistants, and 1,278 registered dental assistants in extended functions. 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 violating the Dental Practice Act (DPA); monitoring licensees whose license has been placed on probation; and managing the Diversion Program for licensees, whose practice may be impaired due to abuse of dangerous drugs or alcohol.

Business and Professions Code Section 1614 authorizes the Board 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 Dental Practice Act.

The primary purpose of these proposed regulations is to implement, interpret and make specific the provisions of Section 138 and 1611.3 of the Business and Professions Code relative to providing conspicuous notification to consumers that dentists are licensed and regulated by the Dental Board of California, require that the notice include a statement to that effect, and contain the Board's toll-free telephone number and its Web Site address.

The Board is proposing the following changes:

Adopt Section 1065 of Division 10 of Title 16 of the California Code of Regulations (Notice to Consumers):

This proposal adopts Section 1065 to require a licensed dentist engaged in the practice of dentistry to provide notice to each patient of the fact that he or she is licensed and regulated by the Board. This proposal would require the notice include a statement that dentists are licensed and regulated by the Board and contain the Board's toll-free telephone number and Web site address.

This proposal would specify that the notice is required to be provided by one of the following methods:

- (1) Prominently posted in an area visible to patients on the premises where services are provided in at least 48-point type font;
- (2) Including the notice in a written statement, signed and dated by the patient or patient's representative and retained in the patient's dental records, stating the patient understands the dentist is licensed and regulated by the Board; or
- (3) Including the notice in a statement on letterhead, discharge instructions, or other document given to a patient or the patient's representative, where the notice is placed for the patient in at least 14-point type.

Factual Basis/ Rationale:

Existing law, Business and Professions Code Section 138, specifies that every board within the Department shall initiate the process of adopting regulations to require its licentiates to provide notice to their clients or customers that the practitioner is licensed by this state. A board shall be exempt from the requirement to adopt regulations pursuant to this section if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state.

Newly enacted law, Business and Professions Code Section 1611.3 (SB 540, Chapter 385, Statutes of 2011) requires the Board to comply with the requirements of Business and Professions Code Section 138 by January 1, 2013. Section 1611.3 also requires the Board's regulations regarding the notice to consumers include provisions that: (1) specify that the Board is the entity that regulates dentists, (2) provide the telephone number and Internet address of the Board, and (3) require the notice to be posted in a conspicuous location accessible to public view.

Existing law, Business and Professions Code Section 1614 authorizes the Board 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 Dental Practice Act.

Benefits: As previously specified, 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.

UNDERLYING DATA:

1. Sunset Background Paper
2. Senate Bill 540 Senate Committee on Business, Professions and Economic Development Bill Analysis, As Amended April 25, 2011
3. Senate Bill 540 (Chapter 385, Statutes of 2011)
4. November 7, 2011 Dental Board Meeting Minutes
5. Economic Impact Analysis

BUSINESS IMPACT:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Initial Statement of Reasons

Notice to Consumers of Licensure by the Dental Board

Although many 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.

Implementation Costs for Licensees

Specifically, this proposed regulation requires dentists to notify their patients that they are licensed and regulated by the Dental Board of California and to provide the Board's contact information. Dentists may provide the notice in one of three specifically enumerated options: posting of a sign; including it in a written notice to be signed by the patient and kept in his/her dental record, or including it on a document given to the patient that the patient signs.

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 business, therefore a number or percentage of businesses that may be impacted cannot be predicted. The estimated expense of less than \$5.00 per office would be minor and absorbable.

Implementation Costs for the Board

Any implementation costs to the Board are negligible and absorbable within existing resources. By giving such notice to the public, it must be expected that some additional calls will be made to the Board. Some members of the public will contact the Board with questions about a person's license status, how to obtain their dental records, how to file a complaint, how to get certain forms from the Board, etc. However, by providing a direct link to the Board's Web site, the Board also estimates that there will be fewer calls to the Board, since those who are computer-savvy then will access that information directly.

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 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 proposed regulations. The board is directed by statute 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.