

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

NOTICE IS HEREBY GIVEN that the Dental Board of California (hereinafter "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, March 5, 2012
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, March 5, 2012 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 Section 1614 of the Business and Professions Code, and to implement, interpret or make specific Sections 138 and 1611.3 of said 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 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.

Business and Professions Code Section 138 specifies that every board within the Department of Consumer Affairs (Department) shall initiate the process of adopting

regulations on or before June 30, 1999, 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.

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 Board until January 1, 2016 and made several changes to the provisions contained in the 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 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.

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.

Benefits: Business and Professions Code section 1601.2 states that the "Protection of the public shall be the highest priority for the Dental Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." 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.

Based on an initial evaluation, the board does not believe that the proposed regulation is inconsistent or incompatible with existing state regulations.

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/Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete:

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.

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.

Cost Impact on Representative Private Person or Business:

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 medical 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.

Effect on Housing Costs: None

ECONOMIC IMPACT ANALYSIS

The Dental Board of California has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the fact that the proposed regulation allows dentists to provide the notice in three different ways. Further, the estimated expense of less than \$5.00 per office would be minor and absorbable. This minimal cost is outweighed by the benefits to the public of providing accessible information that fully informs consumers about the license status of their dental health practitioner and the regulatory agency who is responsible for regulating dentistry in the State of California.

As part of its Economic Impact Analysis, the Board has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services, that it will not create or eliminate jobs or occupations in California, that it will not impact the creation of new businesses or the elimination of existing businesses, that it will not impact the expansion of businesses in California, and the proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services. The board's proposal does not impact multiple industries.

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not have a significant 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.

Occupations/Businesses Impacted: The Dental Board of California has made an initial determination that this regulatory proposal will impact dentists. As of January 2012, the Board had approximately 37,594 dentists (individuals) with current licenses issued by the Board.

Reporting Requirements: None

Comparable Federal Regulations: None

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 Dental Board of California 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 and Regulatory Analyst
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone No.: (916) 263-2187
Fax No.: (916) 263-2140
E-Mail Address: Sarah.Wallace@dca.ca.gov

The backup contact person is:

Name: Richard DeCuir, Executive Officer
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone No.: (916) 263-2300
Fax No.: (916) 263-2140
E-Mail Address: Richard.DeCuir@dca.ca.gov

Website Access: Materials regarding this proposal can be found at the Board's Web site at: <http://www.dbc.ca.gov/lawsregs/index.shtml>