

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

NOTICE OF PROPOSED CHANGES

NOTICE IS HEREBY GIVEN that the Dental Board of California (Board) is proposing to take the action described in the Informative Digest below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under "Contact Person" in this Notice.

WRITTEN COMMENT PERIOD

Any interested person, or his/her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 263-2140 or by e-mail to Gabriel.Nevin@dca.ca.gov. The written comment period closes at **5:00 p.m. on Tuesday, April 28, 2020**. The Board will consider only comments received at the Board's office by that time. Submit comments to:

Name: Gabriel Nevin, Legislative & Regulatory Analyst
Dental Board of California
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone No.: (916) 263-2027
Fax No.: (916) 263-2140
E-Mail Address: Gabriel.Nevin@dca.ca.gov

AUTHORITY AND REFERENCE:

Business and Professions Code Sections 141, 480, 481, 482, 490, 493, 1614, and 1670.1, authorize the Board to adopt this proposed regulation. The proposed regulation implements, interprets, and makes specific Sections 7.5, 141, 480, 481, 482, 488, 490, 493, 1614, and 1670.1 of the Business and Professions Code.

INFORMATIVE DIGEST:

A. Informative Digest

The Board regulates approximately 82,000 licensees; consisting of 35,000 dentists (DDS), 30,000 registered dental assistants (RDA), and 1,700 registered dental assistants in extended functions (RDAEF), and other various license and permit types. 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; 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.

B. Policy Statement Overview/Anticipated Benefits of Proposal

Existing law (Business and Professions Code Sections 480 and 490) presently authorizes the Board to deny an application for licensure or discipline a licensee based on a conviction for a crime or act substantially related to the licensed business or profession. Business and Professions Code Section 481 authorizes the Board to develop criteria for determining whether a crime or act is substantially related to the qualifications, functions, or duties of the dental profession. Business and Professions Code Section 482 requires the board to develop criteria to evaluate an applicant's or licensee's rehabilitation when considering the denial or discipline of a license. Consistent with that authority, the board has adopted regulations that set forth its substantial relationship criteria and rehabilitation criteria for crimes or acts considered substantially related to qualifications, functions, or duties of a licensee.

Effective July 1, 2020, under the provisions of Assembly Bill (AB) 2138 (Statutes 2018, Chapter 995), the Board's existing authority to deny an applicant a license based upon a substantially related criminal conviction will significantly change. This proposal seeks to update the Board's current regulations consistent with this recently enacted legislation and to more accurately reflect the Board's authority to consider denials, discipline or petitions for reinstatement or modification of penalty.

Effective July 1, 2020, Business and Professions Code Section 481, subsection (b) will require the Board's existing substantial relationship criteria regulations to include all the following:

- the nature and gravity of the offense,
- the number of years elapsed since the date of the offense, and
- the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

Further amendments to the Board's regulations will be needed to address other

changes to law enacted by AB 2138. These proposed amendments include the addition of references to “professional misconduct” as this will be considered a legal basis for denial under Business and Professions Code Section 480. The proposed language will also add references to discipline under Business and Professions Code Section 141 because substantially related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee under that section. Also, the board proposes to add new rehabilitation criteria to help the board consider whether an applicant or licensee made a “showing of rehabilitation” as required by AB 2138. This proposal will also implement changes to how the board considers rehabilitation evidence when considering denials, discipline or a petition for reinstatement of a license or modification of a disciplinary penalty (e.g., petition for early termination of probation).

ANTICIPATED BENEFITS:

The proposed amendments would place applicants and licensees on notice that the board is statutorily authorized to deny, suspend, or revoke a license because of professional misconduct and discipline taken by another licensing board or jurisdiction. The proposal would also make relevant parties (e.g., Deputy Attorneys General, Administrative Law Judges, respondents, and respondents’ legal counsel) aware that when considering denial or discipline of applicants or licensees, the Board uses the listed criteria to determine whether the crime, act, or professional misconduct is substantially related to the practice of dentistry. AB 2138 was enacted to reduce licensing and employment barriers for people who are rehabilitated. These proposed amendments would further that goal by adopting criteria that would emphasize an applicant’s or licensee’s rehabilitative efforts and what would be needed to make a showing of rehabilitation. This may lead to fewer denials and an increase in the number of licensees in the marketplace.

CONSISTENCY AND 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 and is the only authority that can amend regulations pertaining to the licensing process.

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 because the regulations pertain to the Board's enforcement of the Dental Practice Act and its regulations. This determination is based on the fact that the proposal only affects persons that have previous criminal offenses on their record. For example, a person with a prior conviction or criminal record's application for licensure may be denied.

A business owned by a licensee that will potentially employ persons with a prior conviction or criminal record may be impacted, as these applications will no longer be disqualified because of AB 2138. This may open the pool of applicants, allowing businesses a greater selection of candidates to hire. The Board does not maintain data relating to the number of percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted.

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 Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory change.

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 licensees of the Board and small businesses that employ 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 of percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

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, because the regulations pertain to the Board's process for licensure and renewal.

The Board has determined that this regulatory proposal may have impacts on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the state of California. Specifically, the proposal may create jobs, new businesses, and expand businesses to the extent that potential licensees were not able to apply previously because of license barriers and now can.

Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and state's environment:

The proposal helps the Board fulfill its highest priority: protection of the public when exercising its licensing, regulatory, and disciplinary functions. This proposal will continue to ensure that applicants have the continued competency and the minimum requirements necessary to protect the public from inexperienced or unqualified practitioners.

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 be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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, which may be obtained from the contact person identified in this notice.

TEXT OF PROPOSAL:

Copies of the exact language of the proposed regulations, and any document incorporated by reference, 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/laws/regs/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: Gabriel Nevin, Legislative & Regulatory Analyst
Dental Board of California
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone No.: (916) 263-2027
Fax No.: (916) 263-2140
E-Mail Address: Gabriel.Nevin@dca.ca.gov

The backup contact person is:

Name: Wilbert Rumbaoa, Staff Services Manager I
Administrative Services Unit
Dental Board of California
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone No.: (916) 263-2215
Fax No.: (916) 263-2140
E-Mail Address: Wilbert.Rumbaoa@dca.ca.gov

WEBSITE ACCESS

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

AVAILABILITY OF MODIFIED TEXT

After holding the hearing (if one is requested) and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of [Contact Person(s)] at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.