

**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: Diversion Evaluation
Committee Membership

SECTION(S) AFFECTED: California Code of Regulations (CCR), Title 16, Division 10,
Article 5.5, Section 1020.4

INTRODUCTION AND PROBLEM STATEMENT:

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 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, disciplining licensees for violating the Dental Practice Act (DPA), monitoring licensees whose licenses have been placed on probation, and managing a diversion program for licensees whose competency may be impaired due to abuse of dangerous drugs or alcohol.

In 1982, the California Legislature authorized the Board through legislation to seek ways and means to identify and rehabilitate licensees whose competency may be impaired due to abuse of dangerous drugs or alcohol, so that licensees so afflicted may be treated and returned to the practice of dentistry in a manner that will not endanger the public health and safety. The Legislature intended the Board implement the legislation by establishing a diversion program as a voluntary alternative approach to traditional disciplinary actions. The Board's diversion program is a confidential program that permits those licensed dentists and allied dental health professionals who meet eligibility criteria the opportunity to recover without the loss of a license to practice. Through the diversion program, the Board can closely monitor the recovery progress of licensees, thereby enhancing the Board's mission to provide consumer protection.

The Board is authorized to establish a diversion evaluation committee (DEC) comprised of members with experience or knowledge in the evaluation and treatment of alcohol or drug abuse. The Board currently has established two such committees: a northern DEC (DEC N) and southern DEC (DEC S). Each committee consists of six members: three licensed dentists, one licensed dental auxiliary, one public member, and one licensed physician or psychologist. These committees assist the Board in the

evaluation of licensees whose competency may be impaired due to the abuse of alcohol or dangerous drugs.

Pursuant to the Board's regulations, membership for the DEC's is limited to specific license types and two four-year terms. It is becoming increasingly difficult to recruit qualified individuals to serve on the Board's DEC's. At its February, 2019 meeting, the Board approved language to amend the regulation pertaining to the membership composition and term restrictions for the purpose of increasing the probability of recruiting and retaining qualified DEC members.

SPECIFIC PURPOSE OF EACH ADOPTION OR AMENDMENT:

The Board proposes to amend Title 16, Section 1020.4, of the CCR relating to DEC membership. Specifically, the Board is proposing the following:

- Amend section 1020.4(a) to no longer include one licensed dental auxiliary and to increase the number of public members to two instead of one.
- Amend section 1020.4(c) to delete the limitation for DEC members to only serve two four-year terms.

BENEFITS

By modifying the composition of the DEC, the Board will be able to:

- Maintain full membership of its DEC by converting the currently vacant designated licensed dental auxiliary position to an additional public member position, while continuing to consider licensed dental auxiliaries who possess the necessary qualification to fill vacancies of the public member positions; and,
- Allow DEC members, who serve at the Board's pleasure, to continue serving until such time the Board deems it necessary to replace a DEC member or a DEC member no longer wishes to serve the Board.

These modifications will aid the Board in keeping the DEC's fully staffed. This will ensure that the DEC's can better achieve their mission of evaluating licentiates for rehabilitation and ensuring that licentiates may safely continue or resume the practice of dentistry. This in turn will protect the health and safety of licentiates' patients.

FACTUAL BASIS/RATIONALE:

The Board's highest priority is the protection of the public when the Board exercises its licensing, regulatory, and disciplinary functions. (Bus. & Prof. Code, § 1601.2.)

Business and Professions Code section 1695 provides that it is the intent of the Legislature that the Board seek ways and means to identify and rehabilitate licensees whose competency may be impaired due to abuse of dangerous drugs or alcohol, so that licensees so afflicted may be treated and returned to the practice of dentistry in a manner that will not endanger the public health and safety. (Bus. & Prof. Code, § 1695.) The Board is required to implement this intent in part by establishing a diversion program as a voluntary alternative approach to traditional disciplinary actions. (*Ibid.*)

The Board is authorized to establish the criteria for selection of the DEC. (Bus. & Prof. Code, § 1695.2.) This proposal is necessary to ensure the Board maintains a DEC comprised of qualified individuals who possess the necessary experience or knowledge in the evaluation and treatment of alcohol or drug abuse. Without qualified DEC members, the Board would be unable to continue managing its diversion program and effectively carry out its mission of protection of the public.

The Board has maintained continuous open recruitment for the DEC positions since the inception of the DEC. Despite several recruitment attempts, the Board has encountered difficulty in filling vacancies with individuals who possess the necessary experience or knowledge in the evaluation and treatment of alcohol or drug abuse and who are willing to serve as members of a DEC. Based on its experience, the Board has found that recruitment for the DEC is so difficult that limiting recruitment to only licensed dental auxiliaries members will result in positions being unfilled. Furthermore, limiting the number of terms a member can serve will result in willing and qualified members being cycled out of service without anyone in line behind them.

- The Board presently has the following vacancies on the DEC's:
 - The DEC-N has been without a dental auxiliary member since March 10, 2016.
 - The DEC-N has been without a public member since December 1, 2016.
 - The DEC-S has been without a dental auxiliary member since April 9, 2016
- These positions are unfilled because the Board has received very few applications of any kind for DEC membership for several years.

This has created a shortage of available qualified candidates to serve on the Board's DEC.

The Board has historically had difficulty recruiting for all positions on the DEC. The dental auxiliary positions are particularly difficult to fill. All DEC positions receive only nominal compensation of \$100 per quarterly meeting, meaning that the members are essentially volunteering their public service. Dental auxiliaries earn less than dentists and are more likely to be employees, who need to coordinate their schedules with their employers. Therefore, they have less financial and time flexibility to participate in the Committee's work.

In addition the position requires a familiarity with addiction and recovery which many professionals are reluctant to disclose publicly. Dental auxiliaries as employees, as opposed to business owners, have an additional reason to be reluctant discussing their familiarity with addiction and recovery publicly. There is a strong stigma associated with addiction and substance abuse. Knowing that an employee is in recovery for substance abuse can change an employer's perception of that employee, even if the employee is otherwise exemplary, and lead to negative repercussions for the employee's livelihood. For this reason alone many qualified candidates would not consider applying to the DEC.

As a result of the difficulty in recruiting members generally, the DEC N is currently operating with only 4 members and the DEC S is operating with 5 members. Both of these committees should have 6 members. Currently the membership of the DEC-S is composed entirely of dentists and or physicians, because the Board has been unable to find a suitable public or dental auxiliary candidate.

Reducing the limitations on the DEC membership composition and removing the term limitations is a cost neutral change to allow the Board to be better able to fill the remaining vacant DEC positions and retain DEC members into the future. Because the Board has received a very small volume of applications for all positions on the DEC despite maintaining continuous open recruitment, it is apparent that when current DEC members' terms expire there may not be any candidates to replace them, leaving the DEC further depleted.

Therefore, the Board anticipates that by eliminating the licensed dental auxiliary position from each committee, the Board will be able to better fill its DEC positions.

UNDERLYING DATA:

1. Minutes of the February 7-8, 2019 Meeting of the Dental Board of California

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 interested in becoming members of the Board's DEC.

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 interested in becoming members of the Board's DEC.

- 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 interested in becoming members of the Board's DEC.
- 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 interested in becoming members of the Board's DEC.
- This regulatory proposal benefits the health and welfare of California residents because it ensures the Board maintains a DEC comprised of qualified individuals who possess the necessary experience or knowledge in the evaluation and treatment of alcohol or drug abuse. Without qualified DEC members, the Board would be unable to continue managing its diversion program and effectively carry out its mission of protection of the public.
- This regulatory proposal does not affect worker safety or housing because this proposal is not related to worker safety or housing.
- 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 accepted or rejected:

Alternative 1: Amend Section 1020.4 as Proposed by the Board.

Accepted: The Board determined that this alternative is the most feasible because it provides the Board with the means to ensure it maintains full membership of the DEC, with individuals who possess the necessary experience or knowledge in the evaluation and treatment of alcohol or drug abuse. Maintaining full membership of the DEC will allow the Board to process and adequately oversee more diversion cases and effectively carry out its mission of protection of the public.

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 to ensure it maintains a DEC comprised of qualified individuals who possess the necessary experience or knowledge in the evaluation and treatment of alcohol or drug abuse. Without qualified DEC members, the Board would be unable to continue managing its diversion program and effectively carry out its mission of protection of the public.