

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

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING

Diversion Evaluation Committee Membership, § 1020.4

California Code of Regulations

NOTICE IS HEREBY GIVEN that the Dental Board of California (Board) is proposing to adopt amendments to California Code of Regulations (CCR), Title 16, Division 10, Article 5.5, Section 1020.4, as described in the Informative Digest.

PUBLIC HEARING

Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

The Board has not scheduled a public hearing on this proposed action. The Board will, however, 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.

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 **JANUARY 5, 2021** 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 sections 1614 and 1695.2 of the Business and Professions Code (Code), to implement, interpret or make specific section 1695.2 of the Code, the Board is considering changes to Division 10 of Title 16 of the CCR as follows:

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW / ANTICIPATED BENEFITS:

The 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.

Pursuant to Code Section 1614, the Board is authorized 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 DPA.

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 diversion evaluation committees (DEC) comprised of members with experience or knowledge in the evaluation and treatment of persons whose competency may be impaired due to alcohol or drug abuse. The Board currently has established two such committees: a northern DEC and southern DEC. 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.

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

The main purpose of this proposal is to amend California Code of Regulations, Title 16, Section 1020.4 to modify the requirements of DEC membership to no longer include one licensed dental auxiliary and to increase the number of public members to two (2), and to delete the limitation for DEC members to only serve two four-year terms. 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.

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 benefit from these proposed regulations will be to ensure the Board maintains a DEC comprised of qualified individuals who possess the necessary experience or knowledge. 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.

CONSISTENCY & COMPATIBILITY WITH EXISTING STATE REGULATIONS:

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations. The Board is the only state entity that regulates the practice of dentistry and dental assisting through a licensure process in the interest of public protection; therefore, the Board is the only entity that may regulate the composition of DEC members for the Board's diversion program.

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. The regulations are not anticipated to result in a fiscal impact to the state because the Board currently convenes the DEC as standard operating practice and because the proposed regulations do not increase the number of DEC members or other requirements, which could result in additional costs.

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 an 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. The Board has made this determination because this proposal would only impact qualified candidates interested in becoming members of the Board's DEC.

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 action. This proposal would only impact qualified candidates interested in becoming members of the Board's DEC.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. This proposal would only impact qualified candidates interested in becoming members of the Board's DEC.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California. This determination was made because the proposed changes are not sufficient to create or eliminate jobs or businesses.

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

The benefit from these proposed regulations will be to ensure the Board maintains DEC members 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 because this proposal is not related to worker safety.

This regulatory proposal does not affect the state's environment because this proposal is not relevant to the state's environment.

CONSIDERATION OF ALTERNATIVES

The Board must determine that 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.

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 Board at 2005 Evergreen Street, Suite 1550, Sacramento, California 95815 or by accessing the Board's website at https://www.dbc.ca.gov/about_us/lawsregs/.

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
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The backup contact person is:

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