

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

NOTICE IS HEREBY GIVEN that the Dental Board of California 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 the:

Department of Consumer Affairs
1st Floor Hearing Room
2005 Evergreen Street
Sacramento, California on

July 19, 2010

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 Dental Board of California (hereinafter "Board") at its office not later than 5:00 p.m. on July 19, 2010 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 1754.5, 1755, 1756, 1756.1, 1756.2 and 1758 of the Business and Professions 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

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 it to carry into effect the provisions of the Dental Practice Act. The Board is proposing the following changes:

The main purpose of the proposed language is to clarify and place into regulation existing requirements for dental assisting educational programs and courses. These requirements were established by AB 2637 (Ch. 499, Statutes of 2008) that expanded duties allowed to be performed by a dental assistant, registered dental assistant (RDA) and registered dental assistant in extended functions (RDAEF), and added corresponding educational requirements. Two new categories of permits were also created by this bill, the Orthodontic Assistant Permit and the Dental Sedation Assistant Permit, and a specified course of instruction for each. As this bill was passing through the Legislature, it became clear that it would be impossible to promulgate regulations governing the various dental assisting educational courses and programs to implement the law in a timely manner. Therefore, they were included as statutes with inoperative dates of January 1, 2011 so that the Board could develop replacement regulations by the inoperative date. If these proposed regulations are not effective by the inoperative date of the statutes, there will be no laws to govern the approval of the required

educational programs and courses that address the current duties allowed. Therefore, there would not be adequate regulatory oversight of current educational programs that are teaching the allowed duties for dental assistants, RDAs, OAs, DSAs and RDAEFs that are allowed by statutory law and will continue since only the statutory provisions relative to educational programs and courses expire.

The proposed amendments also delete time-sensitive language that is no longer applicable, make reference changes, and further clarify the existing statutes that they will replace.

Proposed changes, by section, are more specifically identified as follows.

Adopt new Section 1070. General Provisions Governing All Dental Assistant Educational Programs and Courses.

This proposed regulation would govern all dental assisting educational programs. It reinstates the provisions of Business and Professions Code Section 1755, which become inoperative on January 1, 2011. This section sets out the general requirements applicable to all programs and courses seeking approval by the board, specifies applicable references, and is renumbered to conform to the text.

The proposed changes:

- (1) Clarify in subdivision (b) that RDHs, whose licenses will be issued by the Dental Hygiene Committee of California (DHCC) rather than the Board on and after July 1, 2009, may continue to serve as program or course directors. Current statutory language states that a program or course director must be licensed by the board, making the status of RDHs as program or course directors unclear, since their licenses will be issued by the DHCC on and after July 1, 2009.
- (2) Clarify in subdivision (b) that the program or course director is responsible for ensuring that programs or courses meet the requirements specified in the following subsections.
- (2) Clarify in subdivision (c) that RDAs who have held an RDA license for 2 or more years do not need to also hold an Orthodontic Assistant (OA) permit for an additional 2 years in order to perform as faculty in an OA course. This will assure that such courses remain accessible.
- (3) Clarify that objective evaluation criteria used for evaluating students must be the same for both the program or course and the extramural facility, if one is used.

Add new Section 1070.1 Educational Program and Course Definitions and Instructor Ratios

This heading text would inform students, educators, educational program directors and applicants for educational or course approval that the Sections that follow relate to requirements for faculty ratios for all dental assisting educational programs and courses. This Section reinstates the provisions of Business and Professions Code Section 1754.5, which become inoperative on January 1, 2011.

Add new Section 1070.1(a)

This Section would define the term "Didactic instruction" to clarify that this instruction does not involve active participation by students and can be accomplished by home study, electronic media or live lecture and specify that the content must be approved by the board.

Add new Section 1070.1(b)

This Section would define the term “Laboratory instruction” to clarify that this instruction consists of supervised experience using study models, mannequins or other simulated means, and specifies that at least one instructor for each 14 students be required for this instruction.

Add new Section 1070.1(c)

This Section would define the term “Preclinical instruction” to clarify that this instruction consists of supervised experience performing procedures on students, faculty or staff members, and specifies that at least one instructor for each six students be required for such instruction.

Add new Section 1070.1(d)

This Section would define the term “Clinical instruction” to clarify that this instruction consists of supervised experience performing procedures in a clinical setting on patients, and specifies that at least one instructor for each six students be required for such instruction.

Add new Section 1070.2 Approval of Registered Dental Assistant Educational Programs

This Section would specify the requirements for Registered Dental Assistant educational programs. This Section reinstates the provisions of Business and Professions Code Section 1757, which become inoperative on January 1, 2011, with the following proposed changes.

The proposed changes are as follows:

- (1) Subsection (b)(1) was changed to clarify the information that a program must submit if the maximum student enrollment is increased.
- (2) Subsection (b)(3)(B) relating to the requirement that program faculty complete a 30-hour teaching methodology course has been amended to delay implementation until 2012, since the current statutory deadline of January 1, 2010 has passed and the proposed regulatory language governing such courses has not yet been set for hearing.
- (3) Subsection (b)(5) relating to the number of extern hours has been amended, since the wording in Section 1757 is incorrect and essentially eliminates extern instruction, which is an integral part of all current RDA programs.
- (4) The requirement that program faculty visit each extramural clinical facility at least once every ten clinical days has been added to subsection (b)(6)(B). This requirement is in existing RDA program regulations, but was inadvertently omitted from Section 1757.
- (5) Equipment ratios have been added in subdivision (b)(7). The ratios stated for model trimmers, dental rotary equipment, vibrators, typodonts and bench mounts, and sets of hand instruments are the same ratio requirements contained in the current RDA program regulations. The ratio for orthodontically banded typodonts is the same as required for OA courses. The ratios for light curing devices, facebows, pulse oximeters, and caries detection devices are proposed as appropriate new ratios to provide students with adequate access to such equipment that were not addressed in the statute, and which are necessary to provide guidance to providers, Board staff and consultants who evaluate such courses and programs.
- (6) Subsection (b)(7)(C) has been amended to clarify that either a portion, or all, of the library holdings may be via the internet, to recognize current educational technologies.

- (7) Subsection (b)(9) is amended to clarify that programs may require that students complete CPR as a prerequisite to program enrollment, or provide evidence of completion from another provider, which was unclear in Business and Professions Code Section 1757.
- (8) Subsection (b)(9) is amended to clearly specify the manner in which programs must teach the Infection Control and Dental Practice Act (DPA) courses that RDA applicants must complete in order to apply for licensure on and after January 1, 2010. The proposed amendments reflect that their instruction in the DPA must meet the requirements set forth in the Board's continuing education regulations, and provide specific section references.
- (9) Subsection (b)(9) is amended to specify the Sections of regulatory law referenced as requirements for a radiation safety course, a coronal polishing course, a pit and fissure sealant course, an infection control course, a course in the removal of excess cement with an ultrasonic scaler, an orthodontic assistant permit course, a dental sedation permit course and continuing education courses.

Add Section 1070.6

This Section would govern Infection Control courses. It reinstates the provisions of Business and Professions Code Section 1756, which become inoperative on January 1, 2011, with appropriate reference corrections. No changes are proposed to this section other than the reference corrections and deletion of the repealer date.

Add Section 1070.7

This proposed regulation would govern approval of Orthodontic Assistant (OA) permit courses. It reinstates the provisions of Business and Professions Code Section 1756.1, which become inoperative on January 1, 2011, with appropriate reference corrections and elimination of transition language that will not be necessary in the future.

The proposed modification to the current expiring statute in subsection (a) clarifies that OA course providers, like RDA programs, may reduce the course hours for RDA licensees, and for RDA licensees who also hold an ultrasonic scaling permit. This assures that such licensees are not required to repeat training for duties that they are already legally allowed to perform.

Add Section 1070.8

This proposed regulation would govern Dental Sedation Assistant permit courses. It reinstates the provisions of Business and Professions Code Section 1756.2, which become inoperative on January 1, 2011, with appropriate reference corrections and the elimination of transition language that is unnecessary.

The proposed changes to existing statute are as follows:

- (1) Adds definitions for "AED", "CO2", and "EKG/ECG," which are used throughout the section.
- (2) Replace "but not limited to" with the phrase "at a minimum", to clarify that these are minimum requirements that may be exceeded at the course's discretion.
- (3) Replace "amount and time intervals" with "dosage and frequency" in subsection (m)(1)(c) for clarity.

Add Section 1071

This proposed regulation would govern RDAEF educational programs. It reinstates the provisions of Business and Professions Code Section 1758, which becomes inoperative on January 1, 2011, with appropriate reference corrections and elimination of transition language that is unnecessary.

The proposed changes to existing statute are as follows:

- (1) Adds a definition of the term "RDAEF" for clarity.
- (2) Current statute allows polishing of existing amalgams as a duty for RDAEFs, however fails to specify the instruction that is required for this duty. New subdivision (m) has been added to address this omission.
- (3) In subsection (a)(2), replaces "existing RDAEFs" with "RDAEFs licensed on or before January 1, 2010 to clarify the licensees to whom those provisions apply.
- (4) In subsection (a)(2)(B) adds "endodontic" to clarify the procedure referenced.
- (5) In subsection (e)(1) strikes "The following are minimum requirements for" as redundant, since similar text appears in subsection (e).
- (6) In subsection (f), strikes "In addition to the requirements of those subdivisions" as redundant.
- (7) In subsection (h), replaces "but not limited to" with the phrase "at a minimum", to clarify that these are the required minimum components of a preliminary evaluation, but the course may exceed these minimums at its discretion.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The costs to the Board associated with this regulation would be minor and absorbable, as the Board currently performs all functions within the statutory requirements.

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 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.

AND

The following studies/relevant data were relied upon in making the above determination:

The Board does not believe that this regulation will have a significant adverse economic impact on businesses. Dental assisting courses and programs currently operate under these same requirements within existing statutory law.

Impact on Jobs/New 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.

Cost Impact on Representative Private Person or Business: Educational program and course providers currently are subject to these same requirements under statutory law, as are students taking these programs and courses. The Board anticipates no cost impact on these individuals or businesses as a result of this regulatory action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not have a significant economic impact on small businesses. There are approximately 86 existing RDA educational programs currently approved and in compliance with these statutory provisions that will be placed into regulation. New educational programs and courses seeking approval must meet the same existing criteria to achieve Board approval. This proposal ensures that students taking any board approved educational program or course receive the same standard of education and training that is needed to teach them to perform procedures safely and effectively on patients.

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 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.

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
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The backup contact person is:

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Website Access: Materials regarding this proposal can be found at the Board's Web site:
www.dbc.ca.gov.