



MEMORANDUM - SECOND REVISED

First Revisions in Red Text

Second Revisions in Blue Text

DATE	August 19, 2022
TO	Members of the Dental Board of California
FROM	Paige Ragali, Licensing and Examination Unit Manager Dental Board of California
SUBJECT	Agenda Item 23: Discussion and Possible Action on Legislative Proposal to Amend Business and Professions Code Sections 1701.5 and 1804 Regarding Fictitious Name Permit and Dental Corporation Name Requirements

IDENTIFICATION OF ISSUE(S)

Pursuant to Business and Professions Code (BPC) section 1701.5, a dentist, pair of dentists, or association or partnership or corporation or group of three or more dentists may practice under a fictitious name if the dentist, pair of dentists, or association, partnership, corporation, or group holds a valid fictitious name permit (FNP) issued by the Dental Board of California (Board), as specified. Board staff have identified problems with the information required to be reported on the FNP application, compliance with the statutory requirements, and the representation of the fictitious name to the public. If amendments are made to BPC section 1701.5 to clarify the FNP requirements, similar revisions should be made to BPC section 1804 to clarify dental corporation names.

BACKGROUND

Pursuant to BPC section 1701.5, the Board issues FNPs to dentists and entities dental corporations that who wish to engage in dental practice under a fictitious name at a specified location. The sole purpose of an FNP is to inform the public which individual(s) or business entity is conducting business under the assumed or fictitious name. The FNP does not reserve the name, provide rights to the use of the name, or prevent another party from using the name.

The Board receives an average of 800 FNP applications per year. Board staff review and process the applications for FNPs submitted by dentists, as individuals, a pair of dentists, or association, partnership, or group of three or more dentists, and dental corporations to engage in dental practice. for dental offices that are owned by a sole proprietor, two dentists, or a group of three or more dentists, as an association,

~~partnership, corporation, or group.~~ BPC section 1625, subdivision (e), defines the practice of dentistry to include managing or conducting as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed. As such, only Board licensed dentists can manage, conduct, or own a place where dental operations are performed. In addition, BPC section 1800 authorizes specified licensed individuals to organize as a dental corporation to render professional dental services.

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In accordance with BPC section 1800, a dental corporation may be formed to render professional dental services if that corporation, its shareholders, officers, directors, and employees rendering professional services who are dentists, physicians and surgeons, dental assistants, registered dental assistants, registered dental assistants in extended functions, registered dental hygienists, registered dental hygienists in extended functions or registered dental hygienists in alternative practice are in compliance with the Moscone-Know Professional Corporation Act (Corp. Code, § 13400 et seq.). The Medical Board of California licenses physicians and surgeons and the Dental Hygiene Board of California licenses registered dental hygienists, registered dental hygienists in extended functions, and registered dental hygienists in alternative practice.

The Board will grant an FNP to an applicant if the Board finds to its satisfaction that:

- (a) The applicant or applicants are duly licensed dentists.
- (b) The place or establishment, or the portion thereof, where the applicant or applicants practice, is owned or leased by the applicant or applicants, and the practice conducted at the place or establishment, or portion thereof, is wholly owned and entirely controlled by the applicant or applicants.
- (c) The name that the applicant or applicants propose to operate contains at least one of the following designations: “dental group,” “dental practice,” or “dental office” and contains the family name of one or more of the past, present, or prospective associates, partners, shareholders, or members of the group, and is in conformity with Section 651 and subdivisions (i) and (l) of Section 1680.
- (d) All licensed persons practicing at the location designated in the application hold valid and outstanding licenses and that no charges of unprofessional conduct are pending against any persons practicing at that location. (BPC, § 1701.5.)

With respect to naming conformity with BPC sections 651 and 1680, it is important to note that fictitious name permit applicants whose fictitious name indicates a specialty dental practice are not required to submit proof of training or certification in such specialty. Assembly Bill 1026 (Oropeza, Chapter 313, Statutes of 2002) initially added

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to BPC section 651 subdivision (h)(5)(A)(i), which prohibited a licensed dentist from advertising or holding himself or herself out as a specialist or advertising membership in or specialty recognition by an accrediting organization unless the practitioner had completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, or was eligible for examination by, or was a diplomate of a national specialty board recognized by the American Dental Association. That bill also prohibited a dentist from representing to the public or advertising accreditation either in a specialty area of practice or by a board not meeting the above requirements unless the dentist had attained membership in or had been credentialed by an accrediting organization recognized by the Board as a bona fide organization. However, Senate Bill 540 (Price, Chapter 385, Statutes of 2011), among other things, repealed the requirements in BPC section 651, subdivision (h)(5)(A)(i), related to advertising by a dentist of specialization or accreditation in a specialty area of practice.

In addition to the naming requirements in BPC section 1701.5, subdivision (c), BPC section 1804 requires the name of a dental corporation and any name or names under which it may be rendering professional services to contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders and include the words “dental corporation” or wording or abbreviations denoting corporate existence, unless otherwise authorized by an FNP issued pursuant to BPC section 1701.5.

The Board has received questions and complaints from applicants regarding the eligibility criteria for FNPs. Applicants and staff are requesting that the Board clarify the following requirements: the application process; the allowable family name, specifically relating to past or prospective associates, partners, shareholders, or members of the group; the permit fees and term; and reporting changes in the practicing dentists at the location.

As the FNP is outlined solely in statute, Board staff propose amending BPC section 1701.5 to resolve these issues and make conforming changes to BPC section 1804. Board staff anticipate the proposed statutory amendments will benefit licensees, consumers, and Board staff by better identifying the ~~dentists~~ dental practitioners practicing under the fictitious name, clarify the FNP requirements, and make the FNP application and renewal process more efficient. The promulgation of regulations may not be necessary if the issues can be clarified through statute.

DISCUSSION AND RECOMMENDATIONS

Board staff propose to amend BPC section 1701.5 to resolve several issues that have arisen in FNP applications and make conforming changes to dental corporation naming requirements, as follows.

A. FNP Application Process

As noted above, dentists, as individuals or as members of an association, partnership, or group, and ~~entities-dental corporations~~ engaging in practice under a fictitious name must apply to the Board for an FNP. (BPC, § 1701.5.) A review of BPC section 1701.5 highlighted several problems with the FNP application process that could be clarified with amendments to the statute.

First, since only licensed dentists can manage, conduct, lease, or own, a dental practice, and only dental corporations formed with non-dentist members can engage in the practice of dentistry (BPC, §§ 1625, subd. (e), 1626, 1800), BPC section 1701.5, subdivision (a), should be amended to clarify that a dentist, as a sole proprietor, or dentists who are organized as an association, partnership, or group, or a dental corporation can engage in the practice of dentistry under a fictitious business name pursuant to this statute. Next, Board staff propose changing the statutory text from requiring the Board to issue written permits if the Board finds to its satisfaction the permitholder has complied with the specified requirements, to instead require fictitious name applicants and permitholders to submit an application to the Board and provide information demonstrating compliance with the specified requirements. (Prop. BPC, § 1701.5, subds. (a), (b).) This amendment would update and better align the FNP application process with recent application processes established for other types of permits issued by the Board.

In addition, Board staff propose applicants should specify the names, license numbers, and contact information for each dentist engaging in practice under the fictitious name, rather than merely requiring the Board to find to its satisfaction that the applicant(s) are duly licensed dentists. (Prop. BPC, § 1701.5, subd. (b)(1).) Since the FNP applicant can be an entity rather than an individual, the FNP applicants also should identify the names, titles, ~~and~~ contact information, and license, registration, or permit number and type issued by the board, Dental Hygiene Board of California, or Medical Board of California, as applicable, for each officer, director, or shareholder of the association, partnership, group, or dental corporation, as applicable. (Prop. BPC, § 1701.5, subd. (b)(2).) These proposed changes would clarify the information applicants need to provide for the Board's review of the application.

The FNP statute should also be clarified to add the word "dental" before "corporation," which would conform the statute to the existing dental corporation statutes (BPC, § 1800 et seq.) that only authorize a dental corporation to render professional services, and the Moscone-Knox Professional Corporation Act (Corp. Code, § 13400 et seq.) under which the dental corporation must be formed. (Prop. BPC, § 1701.5, subd. (a), (b)(2), (3), (5).) The proposed amendment to clarify that a professional corporation can apply for the FNP would also conform to the fictitious-name permit statute under the Medical Practice Act (MPA) (see BPC, § 2415).

Board staff also propose FNP applicants should provide the address of the place or establishment, or portion thereof, where the ~~dentists~~fictitious name permit applicants practice under the fictitious name. (Prop. BPC, § 1701.5, subd. (b)(3).) This requirement is inferred from current statutory text but should be clarified in statute. Additional non-substantive amendments to the statute are also requested to better organize the FNP requirements. (Prop. BPC, § 1701.5, subds. (a), (b)(4), ~~and~~ (5), ~~and~~ (c6), and (fe).)

B. FNP and Dental Corporation Name Containing Past or Prospective Dentist Family Names

BPC section 1701.5, subdivision (c), among other things, requires the fictitious name to contain the family name of one or more of the past, present, or prospective associates, partners, shareholders, or members of the group. Similarly, BPC section 1804 requires the name of a dental corporation to contain the name or the last name of one or more of the present, prospective, or former shareholders. However, when a dentist whose family name was used in the fictitious or corporate name is no longer practicing at the location associated with the fictitious name or otherwise associated with the dental corporation, to the general public, it would seem that the fictitious or corporate name is false or misleading. There may be an expectation of service from the dentist associated with the name who no longer engages in dental practice under that name. In addition, using the name of a prospective dentist who has not yet agreed to engage in practice under the fictitious or corporate name would be misleading if the dentist never practices under that fictitious name or becomes part of the dental corporation.

Recently, dental offices are using the first part of the fictitious name on the physical structure of the dental office and letterhead, and the family name only appears on the FNP. A review of the MPA shows the identification of a family name in the fictitious name is not required (see BPC, § 2415) and is likely unnecessary under the Dental Practice Act to protect dental consumers. Accordingly, Board staff propose that BPC sections 1701.5 and 1804 should be amended to remove the family name requirement. (Prop. BPC, §§ 1701.5, subd. (b)(5), 1804.) BPC section 1701.5 should also be clarified to require the remaining permitholders to report to the Board when the “named” dentist departs from the practice by applying to change the fictitious name to remove the family name of the department dentist. (Prop. BPC, § 1701.5, subd. (ih).)

Further, BPC section 1804 currently requires a dental corporation to include “dental corporation” in the name, unless otherwise authorized by a valid permit issued pursuant to section 1701.5. Since a dental corporation enjoys the ability to practice dentistry and receives corporate protections under the Corporations Code, a dental corporation should be identified as such in its name. Accordingly, Board staff propose amending BPC section 1701.5 and 1804 to require the name of a dental corporation to indicate that corporate designation, rather than allowing the corporation to identify itself as a group, practice, or office. (Prop. BPC, § 1701.5, subd. (b)(5), 1804.) This provision is intended to apply to the initial naming of the dental corporation, not to the dental

corporation's subsequent FNP applications, as whole or partial owner, of dental offices at specified locations.

C. Licensed Practitioners at Place or Establishment

Current BPC section 1701.5, subdivision (d), requires all licensed persons practicing at the location designated in the application to hold valid and outstanding licenses and that no charges of unprofessional conduct are pending against any persons practicing at that location. This provision appears overinclusive in that it would prohibit issuance of a fictitious name permit to a dental corporation on the grounds that anyone not associated with the dental corporation itself (such as a contract dentist or registered dental assistant or hygienist not part of the dental corporation) had pending discipline. The proposed amendments would renumber the subdivision as subdivision (c), and change the requirement that all licensed persons practicing at the place or establishment hold valid and outstanding licenses with no pending charges of unprofessional conduct be limited to the fictitious name applicants.

Further, this subdivision fails to provide for the other dental practitioners who may be members of the dental corporation, such as registered dental assistants, applying for the fictitious name permit. Also, the Board issues oral maxillofacial permits for licensed physician and surgeons. To properly protect the public and include non-dentist members of the dental corporation applicant, BPC section 1701.5, subdivision (d) should be amended to update the change in subdivision numbering and require, in addition to licensed applicants, registered or permitted applicants practicing at the place or establishment to hold valid and outstanding registrations or permits with no pending charges of unprofessional conduct.

D. Initial and Renewal Permit Terms and Application Fees

BPC section 1724.5 establishes the amount of fees payable to the Board in connection with FNPs issued under BPC section 1701.5. However, BPC section 1724.5 is under Article 6 (Fees) of Chapter 4 of Division 2 of the BPC, while BPC section 1701.5 is under Article 5 (Offenses Against This Chapter). Board staff propose adding a new subdivision to BPC section 1701.5 to alert FNP applicants and permit holders of the initial permit and renewal fees required under BPC section 1724.5. (Prop. BPC, § 1701.5, subd. (~~de~~).

In addition, BPC section 1701.5 currently advises permit holders that FNPs expire and become invalid unless renewed at the times and in the manner provided for the renewal of certificates issued under Chapter 4 (Dental Practice Act). To clarify the initial and renewal permit terms, Board staff propose revising the statute to explicitly state the permits are issued for a two-year term, which is consistent with the two-year term of dentist licenses pursuant to BPC section 1715. (Prop. BPC, § 1701.5, subd. (~~ed~~).

E. Disciplinary Action Against Sole Proprietor

BPC section 1701.5 currently delays discipline against an FNP when it is held by an association, partnership, group, or corporation. That delay would be appropriate when one dentist has been charged with unprofessional conduct violations, but the other dentists or other dental practitioners associated with the FNP are not parties to the formal disciplinary action.

However, when there is only one dentist associated with the FNP, the statute should be amended to authorize suspension or revocation of the FNP when the dentist license is suspended or revoked. This way, the FNP would be included in the accusation filed against the dentist license, which is more efficient to ensure consumer protection. As such, Board staff propose adding a new subdivision to require an FNP issued to a dentist in a sole practice as a sole practitioner or otherwise without other dentists or dental practitioners associated with the permit to be suspended or revoked if the dentist's license is suspended or revoked. (Prop. BPC, § 1701.5, subd. (gf).) This provision is modeled on BPC section 2415, subdivision (g), which authorizes the Medical Board of California to automatically revoke a fictitious-name permit in the event a licensee's certificate to practice medicine or podiatric medicine is revoked.

F. FNP Reporting Requirements for Additional or Departing Dentists

BPC section 1701.5, subdivision (d), authorizes the Board to issue an FNP if the Board finds that all licensed persons practicing in the location designated in the application hold valid and outstanding licenses and that no charges of unprofessional conduct are pending against any persons practicing at the location. However, an issue has been raised whether dentists, especially contracting dentists, who join the practice after issuance of the FNP, must be added to the FNP.

The Board is asked to consider whether and how a dentist, including a contracting dentist, who engages in dental practice under the fictitious name after the FNP is issued should be reported to the Board. Further, the Board is asked to consider whether a departing dentist, who will no longer engage in practice under the fictitious name, should be reported to the Board and whether a departing dentist whose name was used in the fictitious name should be replaced in the fictitious name.

To resolve these issues, Board staff propose that any additions or departures of dentists engaged in practice under the fictitious name should be reported to the Board within 30 days of such addition or departure, which is consistent with the licensee change of address reporting requirement under BPC section 136, subdivision (a). (Prop. BPC, § 1701.5, subd. (ih).)

For departing dentists whose names are used in the fictitious name, Board staff propose the departing dentist shall be removed as a permitholder, if applicable. (Prop. BPC, § 1701.5, subd. (ih).) Removing a dentist as a permitholder may not be applicable if the FNP is held by an association, partnership, group, or dental corporation. In addition, Board staff propose that the remaining permitholder(s) be required to apply to the Board

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to change the fictitious name to remove the departing dentist's family name. (Prop. BPC, § 1701.5, subd. (i~~h~~)). Board staff believe these changes will ensure consumers are better informed of the dentists practicing under the fictitious name.

OPERATIONAL/FISCAL IMPACT

Board staff have made an initial determination that the proposed statutory amendments would not have a significant operational impact in regard to the demand of more staff, or higher expectancy of licensee's applying for FNPs. It has been determined that the statutory amendments would have minimal fiscal impact in regard to updating the online system to reflect new language for permit requirements.

CRITICAL TIMEFRAMES

The proposed statutory changes do not impose any critical timeframes.

ACTION REQUESTED

The Board is asked to discuss and consider the above-described legislative proposal. If the Board approves of the legislative proposal, the Board is asked to include, in the Board's next Sunset Review Report, a recommendation to amend Business and Professions Code sections 1701.5 and 1804 to clarify the fictitious name permit application process and dental corporation name requirements.

ATTACHMENT: Legislative Proposal to Amend Business and Professions Code Sections 1701.5 and 1804 Fictitious Name Permits and Dental Corporation Name

DENTAL BOARD OF CALIFORNIA
LEGISLATIVE PROPOSAL TO AMEND
BUSINESS AND PROFESSIONS CODE SECTIONS 1701.5 AND 1804
FICTITIOUS NAME PERMITS AND DENTAL CORPORATION NAME

FIRST REVISION – RED TEXT

SECOND REVISION – BLUE TEXT

Additions are indicated in single underline.

Deletions are indicated in ~~single strikethrough~~.

Amend section 1701.5 of the Business and Professions Code as follows:

1701.5. (a) Any dentist ~~who, pair or group of dentists as a sole proprietor, dentists who are organized as an~~ association, partnership, or group, or a dental corporation, ~~that desires to~~ association or partnership or corporation or group of three or more dentists, engaging in practice under any name that would otherwise be in violation of Section 1701 may practice under this name if, and only if, the ~~proprietor~~dentist(s), association, partnership, group, or dental corporation ~~or group holds an outstanding, unexpired, unsuspended, and unrevoked~~ obtains and maintains in current status a fictitious name permit issued by the board under this section. On and after July 1, 1995, any individual dentist or pair of dentists engaging in the practice of dentistry under any name that would otherwise be in violation of Section 1701 may practice under that name if and only if the dentist or pair of dentists hold an outstanding, unexpired, unsuspended, and unrevoked permit issued by the board under this section. The board shall issue written permits authorizing the holder to use a name specified in the permit in connection with the holder's practice if, and only if, the board finds to its satisfaction that:

(b) To obtain or renew a fictitious name permit pursuant to subdivision (a), the dentist(s), association, partnership, group, or dental corporation shall apply to the board on an application form prescribed by the board and provide all of the following information:

(a1) The names, license numbers, and contact information for each dentist engaging in practice under the fictitious name ~~applicant or applicants are duly licensed dentists.~~

(2) As applicable, the names, titles, and contact information, and license, registration, or permit number and type issued by the board, Dental Hygiene Board of California, or Medical Board of California, as applicable, for each officer, director, or shareholder of the association, partnership, group, or dental corporation.

(b3) The address of the place or establishment, or the portion thereof, where the dentist, as a sole proprietor, or dentist members of the association, partnership, or group, or dental corporation ~~applicant or applicants~~ practice under the fictitious name.

(4) Evidence that the place or establishment, or the portion thereof, identified in paragraph (3) is owned or leased by the applicant or applicants, and the practice conducted at the place or establishment, or portion thereof, is wholly owned and entirely controlled by the applicant or applicants.

~~(e5) The fictitious name under which that the applicant or applicants propose to engage in dental practice that operate contains at least one of the following designations: "dental group," "dental practice," or "dental office," or "dental corporation," as applicable pursuant to Section 1804, and contains the family name of one or more of the past, present, or prospective associates, partners, shareholders, or members of the group, and is in conformity with Section 651 and subdivisions (i) and (l) of Section 1680.~~

~~(cd6) The names and contact information for~~Evidence that a~~All licensed, registered, or permitted persons applicants practicing at the location designated in the application place or establishment identified in paragraph (3) of subdivision (a), who must hold valid and outstanding licenses, registrations, or permits and that no charges of unprofessional conduct are pending against any persons applicants practicing at that place or establishment location.~~

(de) Initial permit application and renewal fees shall be submitted to the Board in accordance with Section 1724.5.

(ed) Permits issued under this section by the board shall be issued for a two-year term expire and become invalid unless renewed at the times and in the manner provided for the renewal of certificates issued under this chapter.

(fe) Any permits issued under this section may be revoked or suspended at any time that the board finds that any one of the requirements for original issuance of a permit is no longer being fulfilled by the holder to whom the permit was issued. Proceedings for revocation or suspension shall be governed by the Administrative Procedure Act Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(gf) A fictitious name permit issued to a dentist in a sole practice as the sole proprietor shall be suspended or revoked in the event the dentist's license to practice dentistry is suspended or revoked.

(hg) In the event charges of unprofessional conduct are filed against the holder of a permit issued under this section, or a member of an association, or partnership, or a member of a group, or dental corporation to whom a permit has been issued under this section, proceedings shall not be commenced for revocation or suspension of the permit issued under this section until final determination of the charges of unprofessional conduct and unless the charges have resulted in revocation or suspension of the member's license, registration, or permit.

(ih) Any additions or departures of dentists engaged in practice under the fictitious name shall be reported to the Board within 30 days of such addition or departure. Additional dentists engaging in practice under the fictitious name shall comply with the requirements of paragraph (6) of subdivision (ca). If a departing dentist is the dentist whose family name was used in the fictitious name, the departing dentist shall be removed as a permitholder, as applicable, and the remaining permitholder(s) shall apply

to the Board to change the fictitious name to remove the family name of the departing dentist.

Amend section 1804 of the Business and Professions Code as follows:

1804. Notwithstanding subdivision (i) of Section 1680 and subdivision (g) of Section 1701, the name of a dental corporation and any name or names under which it may be rendering professional services shall ~~contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders and shall~~ include the words "dental corporation" or wording or abbreviations denoting corporate existence, ~~unless otherwise authorized by a valid permit issued pursuant to Section 1701.5.~~