

**DENTAL BOARD OF CALIFORNIA
FINAL STATEMENT OF REASONS**

HEARING DATE: September 26, 2016

SUBJECT MATTER OF PROPOSED REGULATIONS: Discovery and Filing Date

SECTION(S) AFFECTED: CCR Sections 1001.1 and 1001.2

UPDATED INFORMATION:

The Initial Statement of Reasons is included in the file. The information contained therein is accurate and did not need to be updated as a result of no received public comment after the 45-day public comment period.

SECTION 100. CHANGE WITHOUT REGULATORY EFFECT

On December 21, 2016 Department of Consumer Affairs' Legal Office determined a statute cited within the proposed text of the regulatory rulemaking was repealed and as a result the Dental Board of California (Board) is amending proposed Section(s) 1001.1 of Article 1, Chapter 1, Division 10 of Title 16 of the California Code of Regulations (CCR) to reflect non-substantive changes to the proposed regulations as reflected in the changes made to Code of Civil Procedure (CCP) Section 364.1 which was repealed in Senate Bill 231 (Figueroa, Chapter 674, Statutes of 2005). This section required medical malpractice plaintiffs to transmit the 90-day intent-to-sue letter required by CCP Section 364 to the Medical Board of California at the same time it was sent to the defendant physician. At the time, CCP 364.1 did not extend authority to the Board nor did it later; authority was extended only to the Medical Board of California and the Board of Podiatric Medicine. The Board has no authority nor has it had authority to exercise CCP 364.1. Additionally, since CCP 364.1 has been repealed, it is no longer in effect.

As a result, the Board is recommending that the proposed CCR Section(s) 1001.1 be amended to correctly demonstrate the Board's authority since these proposed changes do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision.

The Board is proposing the following non-substantive changes to the proposed Title 16 CCR Sections(s) 1001.1:

§ 1001.1. Statute of Limitations.

(a) For purposes of Section 1670.2 of the code, the word "discovers" means, with respect to each act or omission alleged as the ground for disciplinary action:

- (1) the date the board received a complaint or report describing the act or omission.**
- (2) the date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the ground for disciplinary action against the same individual.**

(b) For purposes of this section:

(1) "Complaint" means a written complaint from the public or a written complaint generated by board staff that names a particular licensee.

(2) "Report" means any written report required under the code to be filed with the board, but does not include a notice filed under Code of Civil Procedure Section 364.1.

(c) A notice filed under Code of Civil Procedure Section 364.1 shall be retained, pursuant to that code section, in a potential investigation file. If a complaint or report on the same act or omission is subsequently received by the board, the date the board discovers the act or omission alleged as the ground for disciplinary action is the date the board receives that complaint or report.

Note: Authority cited: Section 1614, Business and Professions Code. Reference: Section 1670.2, Business and Professions Code.

LOCAL MANDATE

A mandate is not imposed on local agencies or school districts.

SMALL 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 internal enforcement procedures.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Alternative No. 1 - 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 that individuals who violate the laws relating to the DPA will be effectively disciplined within the reasonable amount of time allotted by the statute of limitations. Without some definition, the issue of when the violation was "discovered" or "filed" would be litigated in virtually every case, especially in cases where it would benefit the defendant, and the Board's resources would be diverted from consumer protection in order to address that issue. There would be no guidance to those most in need of it until the cases made their way through the court system. Litigation would be an inefficient, ineffective, and costly way to address this issue

Discovery and Filing Date

Final Statement of Reasons

OBJECTIONS/RECOMMENDATIONS/RESPONSES

The Board held its regulatory hearing on September 26, 2016 and no members of the public were present. Additionally, no comments were received during the 45-day public comment period.