

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

INITIAL STATEMENT OF REASONS

HEARING DATE: April 7, 2015

SUBJECT MATTER OF PROPOSED REGULATIONS: Delegation to Board's Executive Officer

SECTION(S) AFFECTED: California Code of Regulations, Title 16, Division 10, Section 1001

INTRODUCTION:

In July 2009, the *Los Angeles Times* published an article indicating that the Board of Registered Nursing often takes years to take disciplinary action on complaints of egregious misconduct, while the licensees were still practicing. These articles exposed the need for healing arts boards within the Department of Consumer Affairs (Department) to improve the enforcement process to ensure patient safety.

As a result of the article, the Department held an informational hearing and investigated the problems that were addressed in the *Los Angeles Times* article. The Department developed a report (*Department of Consumer Affairs "Consumer Protection Enforcement Initiative BCP Independent Verification & Validation Report, March 2010"*) regarding the existing enforcement problems and made recommendations for improving the enforcement programs of the healing arts boards. The Department also sponsored legislation, Senate Bill 1111 (Negrete McLeod), during the 2009-2010 Legislative Session to codify many of the recommendations contained within the report. However, the bill failed to be enacted.

When the bill failed to be enacted into law, the Department encouraged the healing arts boards to pursue regulatory action to assist the boards with investigating and prosecuting complaints in a timely manner, and to provide the boards with tools to improve the enforcement process and ensure patient safety.

In response to this, the Dental Board of California (Board) reviewed proposed regulatory amendments that would improve the Board's enforcement process in an effort to address public concern. In November 2010, as part of its discussion on which provisions of SB 1111 to implement via regulation, the Board discussed promulgating a regulation to delegate authority upon the Board's Executive Officer to approve settlement agreements for the revocation, surrender, or interim suspension of a license; however, the Board did not move forward with promulgating a proposal. In the end, the Board promulgated a rulemaking to further define unprofessional conduct and to permit the Board to require the examination of an applicant who may be impaired by a physical or mental illness affecting competency. This regulation became effective on March 9, 2012.

At its May 2014 meeting, the Board reconsidered promulgation of a rulemaking to amend California Code of Regulations, Title 16, Section 1001 as it relates to delegating authority to the Board's Executive Officer to approve settlement agreements for the revocation, surrender, or interim suspension of a license and directed staff to initiate the rulemaking in the interest of expediting the Board's enforcement process.

SPECIFIC PURPOSE OF EACH ADOPTION OR AMENDMENT:

The Board proposes to amend California Code of Regulations, Title 16, Section 1001 to delegate to the Board's Executive Officer the authority to approve settlement agreements for the revocation, surrender, or interim suspension of a license without requiring the Board to vote to adopt the settlement.

FACTUAL BASIS/RATIONALE:

Pursuant to Business and Professions Code (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 Dental Practice Act.

Pursuant to Code Section 1601.2, the protection of the public is the highest priority of the Board when exercising its licensing, regulatory, and disciplinary functions.

Existing law, Code Section 1670 provides that any licensee of the Board may have his license revoked or suspended or be reprimanded or be placed on probation by the Board for unprofessional conduct, or incompetence, or gross negligence, or repeated acts of negligence in his or her profession, or for the issuance of a license by mistake, or for any other cause applicable to the licensee.

The Board currently has the authority to render decisions on proposed decisions prepared by an Administrative Law Judge (ALJ) and settlement agreements prepared by a Deputy Attorney General (DAG) of the Attorney General's Office. In the event of a disciplinary case against a Board licensee, the ALJ issues a proposed decision after a licensee has had an opportunity to dispute the charges at an administrative hearing. However, the licensee and DAG, upon consultation with the Board's Executive Officer, may negotiate a settlement agreement to resolve the case prior to the hearing. In this case, the licensee agrees to proposed disciplinary action and the Board must vote to approve all proposed decisions and settlement agreements. Authorizing the Board's Executive Officer to approve a settlement agreement to resolve a case where an individual has agreed to the revocation, surrender, or interim suspension of their license would no longer require a Board vote to approve the agreement and will shorten the timeline for these cases by two to three months, thus reducing the amount of time for the decision to take effect and providing better protection of the public.

UNDERLYING DATA:

1. Charles Ornstein, Tracy Weber and Maloy Moore, "Problem nurses stay on the job as patients suffer", *Los Angeles Times*, July 12, 2009

<<http://www.latimes.com/news/local/la-me-nurse12-2009jul12,0,2185588.story>>, accessed on January 19, 2011

2. Department of Consumer Affairs “Consumer Protection Enforcement Initiative A Systematic Solution to a Systematic Problem, Updated 1/21/10”
3. Department of Consumer Affairs “Consumer Protection Enforcement Initiative BCP Independent Verification & Validation Report, March 2010”
4. Senate Bill 1111 (Negrete McLeod) from 2009/2010 Legislative Session as Amended in Senate April 12, 2010
5. May 29, 2014 Dental Board Meeting Minutes

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.

The Board has determined that only the following types of businesses may be affected by the proposal:

- Businesses owned by licensees of the Board who face disciplinary action due to violations of the Dental Practice Act that would warrant revocation, surrender, or interim suspension of licensure.
- Businesses that employ licensees of the Board who face disciplinary action due to violations of the Dental Practice Act that would warrant revocation, surrender, or interim suspension of licensure.

The Board currently regulates approximately 102,000 licensees; consisting of approximately 45,600 dentists (DDS), approximately 54,700 registered dental assistants (RDA), and 1,700 registered dental assistants in extended functions (RDAEF). The average salary of a DDS in California is approximately \$150,000 per year and the annual salary of a RDA in California is approximately \$35,000 per year.

A business owned by a licensee whose license is revoked, surrendered, or suspended may incur a significant fiscal impact. Businesses that employ a licensee whose license is revoked, surrendered, or suspended may incur a significant fiscal impact. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a license and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of revocation, surrender, or interim suspension order cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Fiscal Impact on Individuals:

This proposal would impact individual licensees of the Board whose license is the subject of the revocation, surrender, or interim suspension order as a result of committing a violation of the Dental Practice Act. Revocation, surrender, or interim suspension of a license means that the individual would no longer be able to legally practice which would result in a loss of income earned by an individual when the license was valid. Licensees who are in compliance with the law will not incur any fiscal impact.

Fiscal Impact on the Board:

The Board estimates approximately forty-two (42) licensees per year would be subject to the revocation, surrender, or interim suspension order as a result of a settlement agreement approved by the Board’s Executive Officer. This estimate is based on the number of cases the Board has encountered over the last five years that have gone to a settlement agreement phase and have resulted in the revocation, surrender, or interim suspension order of a license (see Table A). Every case referred to the Attorney General’s Office that results in a settlement agreement costs the Board an average of \$4,250 (\$3,500 Attorney General’s Office Expenses + \$750 Evidence/Witness Expenses).

Table A.
Average No. of Cases Resolved by Settlement Agreement

	Revocation	Surrender	Interim Suspension Order	Total
5 Year Avg. (2010-2014)	28	10	4	42

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 of sufficient amount to have the effect of creating or eliminating jobs. The Board has made this determination because this proposal would only impact individuals whose license has been revoked, surrendered, or suspended as a result of a settlement agreement approved by the Board’s Executive Officer. The Board estimates that approximately 42 individuals whose license has been revoked, surrendered, or suspended as a result of a settlement agreement approved by the Board’s Executive Officer may result in the potential elimination of employment annually.
- It will not create new business or eliminate existing businesses within the State of California because this proposal will not be of a sufficient amount to have the effect of creating or eliminating business. The Board has made this determination because this proposal would only impact individuals whose license has been revoked, surrendered, or suspended as a result of a settlement

agreement approved by the Board's Executive Officer. The Board estimates that approximately 42 individuals whose license has been revoked, surrendered, or suspended as a result of a settlement agreement approved by the Board's Executive Officer may result in the potential elimination of a business if owned by a licensee whose license is revoked, surrendered, or suspended annually.

- It will not affect the expansion of businesses currently doing business within the State of California because the proposal will not be of a sufficient amount to have the effect of limiting or furthering the expansion of businesses. The Board has made this determination because this proposal would only impact individuals whose license has been revoked, surrendered, or suspended as a result of a settlement agreement approved by the Board's Executive Officer. The Board estimates that approximately 42 individuals whose license has been revoked, surrendered, or suspended as a result of a settlement agreement approved by the Board's Executive Officer may result in the potential limiting of the expansion of a business if owned by a licensee whose license to practice is revoked annually.
- This regulatory proposal does not affect worker safety because this proposal is not relative to worker safety.
- This regulatory proposal does not affect the state's environment because this proposal is not relevant to the state's environment.

Benefits:

The benefit from these proposed regulations will be to provide efficient protection to the California consumers against licensees who are found to be in violation of the laws or the Dental Practice Act and whose license may be revoked, surrendered, or suspended as a result of a settlement agreement approved by the Board's Executive Officer. These benefits are a direct result of the Board's statutorily mandated priority (BPC Section 1601.2). The protection of the public is the highest priority of the Board in exercising licensing, regulatory, and disciplinary functions. This proposal will ensure that individuals who have violated the laws relating to the practice of dentistry will be effectively and efficiently disciplined in a manner that will protect the public.

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 rejected:

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 have violated the laws relating to the practice of dentistry will be effectively disciplined in a manner that will protect the public.