

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

NOTICE OF PROPOSED CHANGES

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

**Department of Consumer Affairs
2005 Evergreen Street, 1st Floor Hearing Room
Sacramento, California 95815
Monday, September 26, 2016
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 Board at its office not later than 5:00 p.m. on Monday, September 26, 2016 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, to implement, interpret or make specific Sections 1670.2 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:

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). In addition, the Board has the responsibility for setting the duties and functions of approximately 50,000 unlicensed dental assistants. 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 and disciplining licensees for violations of the Dental Practice Act (Act); monitoring licensees whose licenses have been placed on probation; and managing the Diversion Program

for licensees whose practice may be impaired due to abuse of dangerous drugs or alcohol.

The Board routinely receives complaints against licensees from consumers or the profession, and reports of settlements, insurers, etc pursuant to Business and Professions Code (Code) Sections 801, 802, 803, and 805. The Board investigates all complaints and reports. If grounds exist, the Board may pursue disciplinary action against the licensee by filing an accusation through the Office of the Attorney General.

It has been the practice of the Board that an accusation was considered filed on the same day it is signed by the Board's Executive Officer. Upon receipt of the accusation with the appropriate signature and the date it was signed, staff would then post the accusation online which showed the date the document was considered filed by the Board and signed by the individual actually filing the document. Board staff then served the accusation on the respondent and relevant parties. The date the accusation was served was usually the same day it was filed.

While working through the Board's administrative discipline process, the Attorney General's Office advised that it would be beneficial to establish definitions for the terms "filing" and "discovery" in regulation.

The statute of limitations in Code Section 1670.2, which requires that accusations "shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action..." The Board has not defined the terms "discovery" or "filing" as the Medical Board of California has done.

California Code of Regulations, Title 16, Section 1356.2(a)(1) defines the word "discovers" under the Medical Board's statute of limitations set forth in Code Section 2230.5 to be "the date the board received the complaint or report describing the act or omission."

California Code of Regulations, Title 16, Section 1356.5 defines the word "filed" under the Medical Board's statute of limitations set forth in Code section 2230.5 as "an accusation or petition to revoke probation shall be deemed "filed" on the date it is signed by the Executive Director or other person described in section 1356."

It was advised by the Attorney General's Office that the Board consider promulgating a regulation to define the terms "discovery" and "filing" as found in Code Section 1670.2, as done by the Medical Board of California.

Since no regulations exist to implement this under Business and Professions Code, the Board must establish regulations to implement, interpret, and make specific Section 1670.2 to define the term "discovers" and to clarify when accusations are considered filed by the Board. This would provide a clearer understanding for both prosecutors, who have the duty to file accusations timely, and for respondents.

Pursuant to Business and Professions Code (BPC) 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.

The main purpose of this proposal is to adopt California Code of Regulations, Title 16, Sections 1001.1 and 1001.2 in order to define the term “discovers” to comply with statute of limitations and to clarify when accusations are considered filed by the Board.

ANTICIPATED BENEFITS:

The implementation of this rulemaking will aid the Board’s ability to provide direction regarding internal enforcement procedures by defining the terms “discovers” and “filing”. These would also clarify when accusations are considered filed by the Board. This rulemaking would provide a clearer understanding for all parties involved regarding a timely filing of an accusation against a licensee and ensure that the filing and discovery dates are not open for discussion, but can be explicitly interpreted.

CONSISTENCY & COMPATIBILITY WITH EXISTING STATE REGULATIONS:

During the process of developing these regulations, the Board has conducted a search of any similar regulations on this topic and has concluded that all these regulations are neither inconsistent nor incompatible with existing state regulations.

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

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 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.

The rulemaking file includes the facts, evidence, documents, testimony, and/or other evidence which supports this determination.

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.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses, because the proposed regulation pertains to the Board's internal business processes as it pertains to disciplinary action against licensees.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses

The Board has determined that this regulatory proposal will not have any 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.

Benefits of Regulation

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 proposed regulations would benefit dental patients because of the improved disciplinary procedures and ultimately provide protection for consumers; and would provide improved disciplinary proceedings and procedures for licensees.
- This regulatory proposal does not affect worker safety because the regulations pertain to the Board's business processes as it pertains to disciplinary action against licensees and this proposal is not relative to worker safety.
- This regulatory proposal does not affect the state's environment because the regulations pertain to the Board's business processes as it pertains to disciplinary action against licensees and this proposal is not relevant to the State's environment.

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 be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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 any document incorporated by reference, 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 <http://www.dbc.ca.gov/lawsregs/index.shtml>.

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: Lusine M Sarkisyan, Legislative & Regulatory Analyst
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The backup contact person is:

Name: Sarah Wallace, Assistant Executive Officer
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Website Access: Materials regarding this proposal can be found at Board's Web Site at: <http://www.dbc.ca.gov/lawsregs/index.shtml>.