

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

INITIAL STATEMENT OF REASONS

HEARING DATE:

Tuesday, September 22, 2015

SUBJECT MATTER OF PROPOSED REGULATIONS:

Abandonment of Applications

SECTION(S) AFFECTED:

California Code of Regulations, Title 16, Section 1004

INTRODUCTION:

The Dental Board of California (Board) currently regulates approximately 102,000 licensees, consisting of approximately 45,900 dentists (DDS), approximately 54,400 registered dental assistants (RDA), and approximately 1,700 registered dental assistants in extended functions (RDAEF). 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, disciplining licensees for violating the Dental Practice Act (DPA), monitoring licensees whose license has been placed on probation, and managing the Diversion Program for licensees.

Existing law, Business and Professions Code (Code) Section 1753.4 specifies requirements relative to the Board's RDAEF examination. Specifically, Code Section 1753.4 specifies that the RDAEF examination consists of: (1) a clinical examination consisting of two specified procedures, assigned by the Board, performed on a patient provided by the applicant, and (2) a practical examination consisting of two specified procedures, assigned by the Board, performed on a mounted simulated articulated patient head. Currently, if a candidate fails any of the procedures in either the clinical or the practical examination, the candidate is required to retake the entire RDAEF examination.

In April 2011, the Board's previously established Dental Assisting Forum (Forum) met and developed a recommendation to split the RDAEF examination into two separate parts for the purpose of candidates re-taking an examination. The Forum agreed that the current examination format, in which a candidate must re-take the entire examination even if the candidate only failed one component, created undue burden on candidates, especially in the event they need to bring a live patient for re-examination after having already passed that component of the exam.

At its May 2011 meeting, the Board reviewed the Forum's recommendations to split the RDAEF examination for the purpose of re-examination, and directed staff to study the

issue of exam validity and psychometric aspects and requested an opinion from the Department of Consumer Affairs (Department) Office of Professional Examination Services (OPES).

During its November 2011 meeting, the Board discussed concerns raised by the OPES and whether California Code of Regulations, Title 16, Section 1004 adequately addressed the time frame within which the application would be abandoned should the re-examination not be taken and passed within two years. The Board's Legal Counsel advised that California Code of Regulations, Title 16, Section 1004 did not adequately address the issue of splitting the examination into two components, and recommended the Board develop a regulation so that applicants clearly understand they cannot take the re-examination components more than a specified number of years apart.

At its February 2012 meeting, the Board voted to allow RDAEF candidates to retake the RDAEF examination in two separate components (practical and clinical), but to continue the current requirement of retaking the entire examination (both the practical and the clinical) until the Board has a regulation in effect that specifies a 2-year time limit to retake the examination from the date of the prior failure and directed staff to develop regulatory language.

Additionally, Board staff and Legal Counsel developed proposed regulatory language to clearly specify that any applicant for a license, issued by the Board, who fails to complete application requirements within a specified time frame, shall be deemed to have abandoned his or her application and would be required to file a new application.

At its May 2012 meeting, the Board approved proposed regulatory language relevant to the abandonment of applications and directed staff to initiate a rulemaking.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

The Board proposes to amend California Code of Regulations, Title 16, Section 1004, subdivision (a), to specify that an application for RDAEF licensure shall be deemed to have been abandoned if the applicant, after failing either the clinical or practical component of the RDAEF examination, fails to take a re-examination of the failed component within two years after the date the applicant was notified of such failure. This proposed amendment is necessary because it would implement provisions of Code Section 1753.4 and clarify that an applicant who fails a component of the RDAEF examination would only need to re-exam in the failed component, rather than both components, thus relieving undue burden upon candidates who may have passed one component already. The Board also proposes technical amendments to subdivision (a) for the purpose of clarity.

Additionally, the Board proposes to add subdivision (c) to Section 1004 to specify that for any other application deficiencies not listed in subdivision (a), an applicant for any license issued by the Board who fails to complete application requirements within one year after being notified by the Board of application deficiencies will have their

application deemed abandoned and will be required to file a new application and meet all of the requirements which are in effect at the time of reapplication.

FACTUAL BASIS/RATIONALE:

Pursuant to Code Section 142, subdivision (b), provides that the abandonment date for an application that has been returned to an applicant as incomplete shall be twelve (12) months from the date of returning the application.

Pursuant to 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 DPA.

Code Section 1753.4 specifies that on and after January 1, 2010, each applicant for licensure as a RDAEF is required to successfully complete an examination consisting of (1) a clinical examination performed on a patient provided by the applicant testing cord retraction of gingival for impression procedures and a final impression for a permanent indirect restoration, and (2) a practical examination performed on a mounted simulated articulated patient head testing the ability of a candidate to place, condense, carve, and contour amalgam and nonmetallic restorations.

This proposal is necessary because it would clarify that an applicant who fails one component of the RDAEF examination would only need to re-exam in the failed component, rather than both components, thus relieving undue burden upon candidates who may have passed one component already.

Additionally, in the event the Board deems an application deficient or incomplete, this proposal would provide the Board with the ability to return only a letter to the applicant outlining the deficiencies rather than returning an entire copy of the incomplete application. This would reduce the amount of money the Board would spend on mailing deficient applications back to applicants as the envelopes would be lighter and the mailing cost lower. It would also alleviate unnecessary duplication and filing expenses to ensure a copy of the application is returned to the applicant and a copy of the application is retained at the Board's office.

UNDERLYING DATA:

1. Draft Minutes of the April 8, 2011 Meeting of the Dental Assisting Forum
2. Minutes of the May 19, 2011 Meeting of the Dental Assisting Committee
3. Minutes of the May 20, 2011 Meeting of the Dental Board of California
4. Minutes of the November 7, 2011 Meeting of the Dental Assisting Committee
5. Minutes of the November 8, 2011 Meeting of the Dental Board of California
6. Minutes of the February 23, 2012 Meeting of the Dental Assisting Committee
7. Minutes of the February 24, 2012 Meeting of the Dental Board of California
8. Minutes of the May 18, 2012 Meeting of the Dental Board of California

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 because this proposal would not affect businesses. This proposal would only impact applicants applying for licensure from the Dental Board of California who either fail a component of the RDAEF examination or fail to complete application deficiencies within a reasonable amount of time.

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 applying for licensure from the Dental Board of California.
- 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 applying for licensure from the Dental Board of California.
- 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 applying for licensure from the Dental Board of California.
- 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 clarify that an applicant who fails one component of the RDAEF examination would only need to re-exam in the failed component, rather than both components, thus relieving undue burden upon candidates who may have passed one component already.

An additional benefit would be that, in the event the Board deems an application deficient or incomplete, this proposal would provide the Board with the ability to return only a letter to the applicant outlining the deficiencies rather than returning an entire copy of the incomplete application. This would reduce the amount of money the Board would spend on mailing deficient applications back to applicants as the envelopes

would be lighter and the mailing cost lower. It would also alleviate unnecessary duplication and filing expenses to ensure a copy of the application is returned to the applicant and a copy of the application is retained at the Board's office.

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 applying for licensure comply with the application requirements within a reasonable amount of time and applications remain in compliance with statutory and regulatory requirements at the time so as to protect the public.