

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

NOTICE IS HEREBY GIVEN that the Dental Board of California (hereinafter "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, April 4, 2011
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 April 4, 2011 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, and to implement, interpret or make specific Sections 480, 482, 820, 1670. 1670.1, 1680, and 1684.1 of said 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 a total of 72,866 licensees; consisting of 37,508 dentists, 34,084 registered dental assistants, and 1,277 registered dental assistants in extended functions. 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 violating of the Dental Practice Act (DPA); monitoring licensees whose license has been placed on probation;

and managing the Diversion Program for licensees, whose practice may be impaired due to abuse of dangerous drugs or alcohol.

Business and Professions Code Section 1614 authorizes the Board 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 Department of Consumer Affairs (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.

The main purpose of the proposed language is to provide the Board with the means to expedite the enforcement process by further defining 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. Existing laws do not provide the Board with the authority to receive reports or require examinations of applicants. These changes have been proposed to provide the Board with the ability to provide better public protection by receiving more timely information from licensees and the authority to examine applicants for possible physical or mental illness affecting competency. The Board is proposing the following changes:

Adopt Section 1018.05 of Article 4.6 of Division 10 of Title 16 of the California Code of Regulations (Unprofessional Conduct Defined):

This proposal adopts a new Article 4.6, Section 1018.05 to define the term “conviction” for the purposes of this Section, and to specify that the following acts constitute unprofessional conduct:

- Failure to provide records requested by the Board within 15 days;
- Failure of a licensee to report an indictment within 30 days;
- Failure of a licensee to report a felony charge within 30 days;
- Failure of a licensee to report a conviction within 30 days; and
- Failure of a licensee to report disciplinary action taken by another professional licensing entity or other specified agency within 30 days.

Amend Section 1020 of Division 10 of Title 16 of the California Code of Regulations (Application Review and Criteria for Evaluating Rehabilitation)

This proposal also amends Section 1020 to provide the Board the authority to require an examination of an applicant by a physician and surgeon, or psychologist if it appears the applicant may be unable to safely practice due to a mental illness or a physical illness that affects competency.

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 an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Board currently regulates a total of 72,866 licensees, including 37,508 dentists, 34,084 registered dental assistants, and 1,277 registered dental assistants in extended functions. The Board only regulates activities that appear to affect small businesses as defined in California Government Code Section 14837.

Licensees may incur a nominal fee for the copying and mailing of records requested by the Board. However, current statute requires licensees to comply with the Board's records request or they risk being fined. Since current statute previously required the copying and submission of records, there should be no additional fiscal impact to the licensee or their business as a result of this regulation.

Licensees will be considered to have committed unprofessional conduct if they fail to provide records requested by the Board within 15 days. As a result, licensees may face disciplinary action against their license.

Licensees may incur a nominal fee when reporting an indictment, felony charge, conviction, or disciplinary action by another professional licensing entity to the Board. This regulation does not specifically state the manner of how a licensee is to report to the Board. Licensees may choose from a variety of methods to notify the Board, including email, or mailing a letter. A licensee may incur nominal costs associated with mailing their notification to the Board. Licensees will be considered to have committed unprofessional conduct if they fail to report an indictment, felony charge, conviction, or disciplinary action by another professional licensing entity to

the Board within 30 days. As a result, licensees may face disciplinary action against their license.

A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. 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 licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Applicants required by the Board to be examined by a physician and surgeon or psychologist will not incur a fiscal impact. The Board is responsible for the full cost of the examination. Existing law, Section 820 of the Code, authorizes the Board to examine licensees for mental illness or physical illness that may affect competency. Since licensees may already be subject to such an examination, the Board has determined that the proposed regulation will not have a significant statewide adverse economic impact on the businesses of the physicians and surgeons or psychologist designated to perform the examination. The physicians and surgeons or the psychologist designated to perform the examination have the necessary equipment to perform the examination and will not experience additional costs as a result of this regulation. However, the physician and surgeons or psychologist may incur more revenue as a result of this regulation, depending on how many applicants are required to be examined.

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal would 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.

Licensees who have committed unprofessional conduct may face disciplinary action against their license. A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant

fiscal impact depending on the nature and severity of the violation. Licensees who are in compliance with the law will not incur any fiscal impact.

Applicants required by the Board to be examined by a physician and surgeon or psychologist will not incur a fiscal impact. The Board is responsible for the full cost of the examination. If an examination finds that the applicant is unable to safely practice, their application may be denied by the Board.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Licensees who have committed unprofessional conduct may face disciplinary action against their license. A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. 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 licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Applicants required by the Board to be examined by a physician and surgeon or psychologist will not incur a fiscal impact. The Board is responsible for the full cost of the examination. Existing law, Section 820 of the Code, authorizes the Board to examine licensees for mental illness or physical illness that may affect competency. Since licensees may already be subject to such an examination, the Board has determined that the proposed regulation will not have a significant statewide adverse economic impact on the businesses of the physicians and surgeons or psychologists designated to perform the examination. The physicians and surgeons or the psychologists designated to perform the examination have the necessary equipment to perform the examination and will not experience additional costs as a result of this regulation. However, the physician and surgeons or psychologist may incur more revenue as a result of this regulation, depending on how many applicants are required to be examined.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not have a significant economic impact on small businesses. The Board only regulates activities that appear to affect small businesses as defined in California Government Code Section 14837.

Small businesses owned by licensees may incur a nominal fee for the copying and mailing of records requested by the Board. However, current statute requires licensees to comply with the Board's records request or they risk being fined. Since current statute previously required the copying and submission of records, there should be no additional fiscal impact to the licensee's small business as a result of this regulation.

Licensees found to have committed unprofessional conduct may face disciplinary action against their license. A license that has been revoked, suspended, reprimanded or placed on probation may cause a significant fiscal impact on the small business where the licensee works depending on the nature and severity of the violation. A small business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore the number or percentage of small businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a small business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Small businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Existing law, Section 820 of the Code, authorizes the Board to examine licensees for mental illness or physical illness that may affect competency. Since licensees may already be subject to such an examination, the Board has determined that the proposed regulation will not have a significant statewide adverse economic impact on the small businesses of the physicians and surgeons or psychologists designated to perform the examination. The physicians and surgeons or the psychologists designated to perform the examination have the necessary equipment to perform the examination and will not experience additional costs as a result of this regulation. However, the physician and surgeons or psychologist may incur more revenue as a result of this regulation, depending on how many applicants are required to be examined.

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 either be 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 proposal described in this Notice.

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 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 Dental Board of California at 2005 Evergreen Street, Suite 1550, Sacramento, California 95815.

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:	Sarah Wallace, Legislative and Regulatory Analyst
Address:	2005 Evergreen Street, Suite 1550 Sacramento, CA 95815
Telephone No.:	(916) 263-2187
Fax No.:	(916) 263-2140
E-Mail Address:	Sarah.Wallace@dca.ca.gov

The backup contact person is:

Name: Richard DeCuir, Executive Officer
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone No.: (916) 263-2300
Fax No.: (916) 263-2140
E-Mail Address: Richard.DeCuir@dca.ca.gov

Website Access: Materials regarding this proposal can be found at the Board's Web site at: <http://www.dbc.ca.gov/lawsregs/index.shtml>.