

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

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, August 8, 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, August 8, 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 Sections 1614, 1724, and 1725 of the Business and Professions Code, to implement, interpret or make specific Sections 1724 and 1725 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 regulates approximately 101,500 licensees; consisting of 45,400 dentists (DDS), 54,500 registered dental assistants (RDA), and 1,600 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.

Existing law, Business and Professions Code Section 1724, authorizes the Board to charge various fees for dentists licensed and permitted by the Board as is necessary for the purpose of carrying out the responsibilities required by the Act. Business and Professions Code Section 1724 also establishes the maximum fee amount the Board may assess its dentist licensees by regulation.

Existing law, Business and Professions Code Section 1725, authorizes the Board to charge various fees for dental assistants licensed and permitted by the Board as is necessary for the purpose of carrying out the responsibilities required by the Act. Code Section 1725 also establishes the maximum fee amount the Board may assess its dental assistant licensees by regulation.

The Dental Board is a self-supporting, special fund agency that obtains its revenues from licensing and permits fees of dentists and dental assistants. The revenues are deposited and maintained in two separate funds which are not comingled. The Dentistry Fund (0741) supports operations for dentists and related ancillary services, and the Dental Assisting Fund (3142) supports operations for dental assistants and related ancillary services. Although there is no statutory requirement, the Board's objective is to maintain a three-month reserve of funds for economic uncertainties and to operate with a prudent reserve in each fund.

According to the State Dentistry Fund Condition for the Governor's Budget 2016-17, the Board is projecting a fund balance deficit of \$2.24 million in Budget Year (BY) 2017-18 as well as an ongoing fund balance deficit thereafter. According to the State Dental Assistant Fund Condition for the Governor's Budget 2016-17, the Board is projecting a fund balance deficit of \$158,000 in BY 2017-18 as well as an ongoing fund balance deficit thereafter.

The Dentistry Fund is maintained by the Board and includes the revenues and expenditures related to licensing for dentists. For sixteen years, the license fee for dentists was set at \$365. In 2013, for the first time in 16 years, the Board increased its license fee for dentists from \$365 to its statutory cap at the time of \$450. These regulations went into effect on July 1, 2014. During that time, the Board also pursued an increase in statute from \$450 to \$525. SB 1416 (Block, Chapter 73, Statutes of 2014) raised the Board's fee for initial and renewal licenses for dentists from \$450 to \$525, and set fees at that level. During that time, an analysis conducted by the DCA's Budget Office determined that the license fees should be raised to \$525 to ensure solvency into the foreseeable future. While fees increased have generated additional revenue, the Board expenditures, projected to be over \$12M per year, continue to outpace its revenue, projected to be less than \$11M per year, thus perpetuating a structural imbalance.

Part of the reason for the increase in projected and actual expenditures in recent years has been due to funding 12.5 CPEI positions; funding the diversion program; increased expenses associated with BreEZe; unexpected litigation expenses; and the general increase in the cost of doing business over the past 16 years. While the Board has

expended less than what it has been authorized by the budget due to some cost savings and reimbursements, the Board emphasizes that its fund should be able to sustain expenditures without relying on estimated savings or reimbursements.

As part of its effort to manage its financial resources wisely, the Board contracted with a consultant to prepare a detailed cost analysis of its fees. The Board's objectives for the study were to ensure that the Board is fully accounting for all of its costs and recovering adequate revenues to be reimbursed for its expenses. The Board's only sources of revenues are fees charged for each of the various licenses and permits. The Board also has a mandate to be fully self-supporting so it is vital that the fees charged to dentists and dental assistants for permits and licenses fully recover the costs of the program. The scope of this study included the following objectives: calculate full cost of fee based services; determine allocation methodology for enforcement activities; develop revenue projections for 5-10 years; and pass high level audits. The process used for collecting and analyzing the data required active participation by the Board's management and staff.

As a result of the fee audit, the Board was able to pursue increases in the statutorily authorized maximum fee amounts. Assembly Bill 179 (Chapter 510, Statutes of 2015) increased the maximum fee amounts that the Board may assess so that it may establish increase licensure and ancillary fees for dentists and dental assistants to ensure a healthy program budget.

The main purpose of this proposal is to amend Sections 1021 and 1022 of Article 6 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations. This proposal seeks an increase in the fees assessed dentists and dental assistants.

The Board is proposing the following changes:

- Amend Section 1021(a) to raise the application fee for those dental applicants qualifying for licensure pursuant to Business and Professions Code Section 1632(c)(2) from \$100 to \$400 and delete the provision pertaining to the application fee for those qualifying pursuant to Business and Professions Code Section 1634.1.
- Amend Section 1021(b) to replace the current language pertaining to the initial application fee for the restorative technique examination with proposed language to increase the initial application fee for those qualifying pursuant to Business and Professions Code Section 1634.1 from \$100 to \$400. The initial application fee for those qualifying pursuant to Business and Professions Code Section 1634.1 was originally found in Section 1021(a). The Board no longer administers the restorative technique examination and does not currently have statutory authority to assess the \$250 fee.
- Amend Section 1021(c) to replace the current language pertaining to applications for re-examination with proposed language to establish the initial

application fee of \$800 for those applicants qualifying pursuant to Business and Professions Code Section 1634.1. The Board no longer administers its own clinical examination for dental licensure; therefore, the re-examination fee is obsolete and the Board does not currently have statutory authority to assess the \$75 fee.

- Delete Section 1021(d) to delete the \$250 fee associated with the restorative technique examination or re-examination. The Board no longer administers the restorative technique examination and does not currently have statutory authority to assess the \$250 fee.
- Amend Section 1021(e) to increase the application fee for those applicants applying pursuant to Business and Professions Code Section 1635.5 from \$283 to \$525. This section also contains technical amendments to correct the lettering of the subsections and to clearly cite the Business and Professions Code Section associated with the "Licensure by Credential" pathway to dental licensure.
- Amend Section 1021(f) to increase the initial licensure fee for dentists from \$450 to \$650. This section also contains a technical amendment to correct the lettering of the subsection.
- Amend Section 1021(g) to increase the biennial license renewal fee for dentists from \$450 to \$650. This section also contains a technical amendment to correct the lettering of the subsection.
- Amend Section 1021(h) to correct the lettering of the subsection.
- Amend Section 1021(i) to correct the lettering of the subsection and correct the reference to Code Section 1724(f).
- Amend Section 1021(j) to correct the lettering of the subsection.
- Amend Section 1021(k) to correct the lettering of the subsection and increase the application fee for an additional office permit from \$100 to \$350.
- Amend Section 1021(l) to correct the lettering of the subsection and increase the biennial renewal fee for an additional office permit from \$100 to \$250.
- Amend Section 1021(m) to correct the lettering of the subsection.
- Amend Section 1021(n) to correct the lettering of the subsection.
- Amend Section 1021(o) to correct the lettering of the subsection and increase the fictitious name permit renewal fee from \$150 to \$650.

- Amend Section 1021(p) to correct the lettering of the subsection.
- Amend Section 1021(q) to correct the lettering of the subsection and increase the application fee to be a continuing education registered provider from \$250 to \$410.
- Amend Section 1021(r) to correct the lettering of the subsection and increase the fee for an application for a general anesthesia or conscious sedation permit or adult or minor oral conscious sedation permit from \$200 to \$500.
- Amend Section 1021(s) to correct the lettering of the subsection and increase the fee for an oral conscious sedation permit renewal from \$75 to \$500.
- Amend Section 1021(t) to correct the lettering of the subsection and increase the fee for the renewal of a general anesthesia or conscious sedation permit from \$200 to \$325.
- Amend Section 1021(u) to correct the lettering of the subsection and increase the fee for the on-site inspection and evaluation of general anesthesia and conscious sedation permit holders from \$250 to \$2,000.
- Add Section 1021(u) to establish the fee for an application for a special permit to be \$1,000.
- Add Section 1021(v) to establish the fee for the renewal of a special permit to be \$125.
- Add Section 1021(w) to establish the fee for the initial application for an elective facial cosmetic surgery permit to be \$850.
- Add Section 1021(x) to establish the fee for the renewal of an elective facial cosmetic surgery permit to be \$800.
- Add section 1021(y) to establish the fee for the application for an oral and maxillofacial surgery permit to be \$500.
- Add Section 1021(z) to establish the fee for the renewal of an oral and maxillofacial surgery permit to be \$650.
- Add Section 1021(aa) to establish the renewal fee for a continuing education registered provider to be \$325.

- Add Section 1021(ab) to establish the fee for a dental license certification to be \$50.
- Add Section 1021(ac) to establish the fee for the application to take the dental law and ethics examination to be \$125.
- Amend Section 1022(a) to increase the application fee for registered dental assistant and registered dental assistant in extended functions licensure from \$20 to \$120.
- Add new Section 1022(b) to establish the application fee for the Dental Sedation Assistant Permit at \$120.
- Add new Section 1022(c) to establish the application fee for the Orthodontic Assistant Permit at \$120.
- Amend existing Section 1022(b) to correct the lettering of the subsection and increase the fee for the registered dental assistant examination or re-examination from \$30 to \$100.
- Amend existing Section 1022(c) to correct the lettering of the subsection and increase the fee for the registered dental assistant examination and re-examination from \$50 to \$500.
- Amend existing Section 1022(d) to correct the lettering of the subsection and increase the registered dental assistant biennial renewal fee from \$12 to \$100.
- Amend existing Section 1022(e) to correct the lettering of the subsection and increase the registered dental assistant in extended functions biennial renewal fee from \$10 to \$100.
- Amend existing Section 1022(f) to correct the lettering of the subsection, delete the renewal fee for registered dental hygienist licensees, and establish the biennial renewal fee for dental sedation assistant permit holders at \$100.
- Amend existing Section 1022(g) to correct the lettering of the subsection, delete the renewal fee for registered dental hygienist in extended functions licensees, and establish the biennial renewal fee for orthodontic assistant permit holders at \$100.
- Amend existing Section 1022(h) to correct the lettering of the subsection and to increase the delinquency fee for late registered dental assistant licensure renewals from \$6 to \$50.

- Amend existing Section 1022(i) to correct the lettering of the subsection and to increase the delinquency fee for late registered dental assistant in extended functions renewals from \$5 to \$50.
- Amend existing Section 1022(j) to correct the lettering of the subsection, delete the delinquency fee for late registered dental hygienist licensure renewal, and establish the delinquency fee for late dental sedation assistant permit renewals at \$50.
- Amend existing Section 1022(k) to correct the lettering of the subsection, delete the delinquency fee for late registered dental hygienist in extended functions licensure renewal, and establish the delinquency fee for late orthodontic assistant permit renewals at \$50.
- Add new Section 1022(n) to establish the application fee for Registered Dental Assistant Educational Programs at \$1,400.
- Add new Section 1022(o) to establish the application fee for registered dental assistant in extended functions educational programs at \$1,400.
- Add new Section 1022(p) to establish the application fee for orthodontic assistant permit educational courses at \$300.
- Add new Section 1022(q) to establish the application fee for dental sedation assistant permit educational courses at \$300.
- Add new Section 1022(r) to establish the application fee for infection control educational courses at \$300.
- Add new Section 1022(s) to establish the application fee for coronal polishing educational courses at \$300.
- Add new Section 1022(t) to establish the application fee for pit and fissure sealants educational courses at \$300.
- Add new Section 1022(u) to establish the application fee for radiation safety educational courses at \$300.
- Add new Section 1022(v) to establish the application fee for ultrasonic scaling educational courses at \$300.
- Amend existing Section 1022(l) to correct the lettering of the subsection, increase the fee for a duplicate license from \$25 to \$50, and establish the fee for a license certification at \$50.

As a result of raising the initial licensure fee and the biennial renewal fee, the following fees assessed by the Board will be impacted; this is because these fees are determined by the fee amounts assessed by the Board for initial licensure and biennial renewal as specified in statute:

- Inactive Licenses;
- Licenses on Retirement Status;
- Licenses on Disability Status;

The proposed increase in fees is necessary to enable the Board to sustain operations to effectively protect consumers through its licensing and enforcement functions.

If the Board does not increase fees for dentists and dental assistants, the Board's operations will suffer and it would become necessary for the Board to reduce expenditures, including the reduction of staffing and reduction of operating resources and equipment. The Board's licensing program would suffer from reductions in staffing and would result in delayed response times to licensing inquiries and application approvals. Such delays would create a barrier to licensure for those applicants graduating dental school and seeking licensure and employment and a timely-manner. Students must gain licensure and employment as soon as possible after graduation to begin paying down debt accumulated during school. Additionally, the Board's enforcement program would suffer from reductions in staffing and resources. Such reductions would lead to delays in processing consumer complaints, conducting investigations, and referring egregious cases to the Office of the Attorney General for prosecution. Those types of delays ultimately would prevent the Board from being able to protect the public efficiently and effectively.

ANTICIPATED BENEFITS:

The proposed fee increase will correct the structural imbalance between the Board's revenue and expenditures and will allow it to maintain its current operating structure to provide consumer protection. The proposed fee increases will support the Board's licensing program so that it may continue to license qualified applicants to provide dental health care services to consumers. Additionally, the proposed fee increase will support the Board's enforcement program so that it may continue to process and investigate consumer complaints efficiently and effectively in the interest of patient protection within the timelines established by the Department of Consumer Affairs.

CONSISTENCY & COMPATIBILITY WITH EXISTING STATE REGULATIONS:

After conducting a review for any regulations that would relate to or affect this area, the Board has evaluated this regulatory proposal and it is not inconsistent or incompatible with existing state regulations. The Board is the only state entity that regulates the

practice of dentistry through a licensure process in the interest of public protection; therefore, the Board is the only entity that assesses a fee for initial licensure and biennial renewal.

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.

The Board has determined that the following types of businesses may be affected by the proposed fee increase:

- Businesses owned by licensees of the Board that pay for the licensure and renewal fees of its owners or dentist employees.

Although businesses owned by licensees of the Board and businesses that employ licensees of the Board may be impacted, the Board estimates that the fiscal impact would be minor and absorbable. 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. Accordingly, the initial or ongoing costs for a business owned by a licensee that pays for the licensure and renewal fees of its owners or employees cannot be projected. The proposed fee increase would impact individual licensees. The Board estimates that: the average salary of a dentist in California is approximately \$150,000 per year; the average salary of an oral and maxillofacial surgeon is \$250,000 per year; the average salary of a registered dental assistant in California is approximately \$35,000 per year; and, the average salary of a registered dental assistant in expanded functions in California is approximately \$48,000 per year.

The Board has not considered proposed alternatives that would lessen any adverse economic impact on businesses and invites you to submit such proposals. Submissions may include the following considerations:

- (A) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (B) Consolidation or simplification of compliance and reporting requirements for businesses.
- (C) The use of performance standards rather than prescriptive standards.
- (D) Exemption or partial exemption from the regulatory requirements for businesses.

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 cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are:

- Although businesses owned by licensees of the Board and businesses that employ licensees of the Board may be impacted, the Board estimates that the fiscal impact would be minor and absorbable. 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. Accordingly, the initial or ongoing costs for a business owned by a licensee that pays for the licensure and renewal fees of its owners or employees cannot be projected. The proposed fee increase would impact individual licensees.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses.

Although small businesses owned by licensees of the Board and small businesses that employ licensees of the Board may be impacted, the Board estimates that the fiscal impact would be minor and absorbable. 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. Accordingly, the initial or ongoing costs for a small business owned by a licensee that pays for the licensure and renewal fees of its owners or employees cannot be projected. The proposed fee increase would impact only individual licensees.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have a significant 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 is 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 fee increase will correct the structural imbalance between the Board's revenue and expenditures and will allow it to maintain its current operating structure to provide consumer protection. The proposed fee increases will support the Board's licensing program so that it may continue to license qualified applicants to provide dental health care services to consumers. Additionally, the proposed fee increase will support the Board's enforcement program so that it may continue to process and investigate consumer complaints efficiently and effectively in the interest of patient protection within the timelines established by the Department of Consumer Affairs.

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.

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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law 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 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 Sarkisyan, Legislative & Regulatory Analyst
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E-Mail Address: Lusine.Sarkisyan@dca.ca.gov

The backup contact person is:

Name: Sarah Wallace, Assistant Executive Officer
Dental Board of California
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Sacramento, CA 95815
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Fax No.: (916) 263-2140
E-Mail Address: Sarah.Wallace@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>