

**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
Tuesday, April 14, 2020
10:00 AM**

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 Monday, April 13, 2020 or must be received by the Board at the hearing. The Board upon its own motion or at the request 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 of the Business and Professions Code, and to implement, interpret or make specific sections 125.9 and 148 of the Code, the Board is considering changes to Division 10 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST:

A. Informative Digest

The Dental Board of California (Board) regulates approximately 82,000 licensees; consisting of 35,000 dentists (DDS), 30,000 registered dental assistants (RDA), and 1,500 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 (DPA); 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's Executive Officer is authorized to issue a citation and administrative fine to any person who holds a license or permit, or certificate issued by the Board for a violation of any provision of the Dental Practice Act or other law enforced by the Board.

Existing regulation at California Code of Regulations, title 16, section 1023.2 (16 CCR 1023.2) defines the penalties applicable to Class "A" and Class "B" violations. The regulation provides that a Class "A" violation is subject to an administrative fine in an amount not less than \$1,000 and not exceeding \$2,500 for each violation, and a Class "B" violation is subject to an administrative fine in an amount not less than \$50 and not exceeding \$2,500.

This proposal would increase the maximum fines for each violation to \$5,000 for each violation.

Existing regulation at 16 CCR section 1023.7 provides for an administrative fine between \$50 to \$2,500 for unlicensed practice.

This proposal would increase the maximum fine for each violation to \$5,000 for each violation.

B. Policy Statement Overview/Anticipated Benefits of Proposal

Existing law, Business and Professions Code section 1614, specifies that 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.

Existing law, Business and Professions Code section 1601.2, establishes the Board's highest priority, which is the protection of the public when the Board exercises its licensing, regulatory, and disciplinary functions.

The Board has determined that the current fine maximum fine amounts of \$2,500 are insufficient to properly function as deterrents against violations of statutes and regulations or unlicensed practice of dentistry. Therefore, this proposal seeks to increase the maximum fine the Executive Officer may issue for a violation of any provision of the Dental Practice Act or other law enforced by the Board to \$5,000.

It is necessary to increase the maximum amount of a fine that the Board may assess when it issues citations for the protection of the public's health and wellbeing. When a licensee is found to have violated the DPA or the Board's regulations, disciplinary proceedings may be initiated by the Board, which would require the case to be referred to the Office of the Attorney General (OAG) for prosecution. This can be costly for not only the licensee to obtain legal representation, but for the Board as well because it would be required to pay to the OAG all costs associated with prosecuting the case. The Board would also incur costs to have the case investigated. Although the Board might be

reimbursed for its costs when a disciplinary decision is rendered in its favor pursuant to Business and Professions Code section 125.3, many licensees cannot afford to reimburse the Board. In many cases, licensees surrender their license, or if a decision revokes their license, the Board is not reimbursed until a licensee seeks to have a license reinstated. This greatly impacts the Board's enforcement program.

Citations may be used when patient harm is not found (i.e., in a Class "B" violation), but the quality of care provided to the consumer is substandard. When issuing citations, the Board's goal is not to be punitive. Rather, the Board seeks to protect California consumers by getting the subject dentist's attention, re-educating him/her as to the DPA or the Board's regulations, and emphasizing the importance of following dental practices that fall within the community's standard of care.

When deciding whether to issue a citation, California Code of Regulations section 1023.4 requires that the executive officer consider the following factors when assessing the amount of an administrative fine:

- The good or bad faith exhibited by the cited person
- The nature and severity of the violation
- Evidence that the violation was willful
- History of violations of the same or similar nature
- The extent to which the cited person has cooperated with the Board
- The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation
- Such other matters as justice may require.

The Board has expanded its use of cite and fine to address a wider range of violations that can be more efficiently and effectively addressed through a cite and fine process with abatement and/or remedial education outcomes.

Examples of "lesser" violations of the DPA that may not warrant referral to the OAG, but where a citation and fine may be more appropriate, include documentation issues, e.g., recordkeeping, advertising violations, failure to keep up with continuing education requirements, unprofessional conduct for the failure to disclose or report convictions, e.g., driving under the influence, and disciplinary actions taken by another professional licensing entity. In addition, citations are a tool to address less egregious violations that would not otherwise result in discipline. Moreover, citations can address skills and training concerns promptly.

The average number of days to complete a case that has been referred to the OAG for disciplinary action has continued to increase from 1645 days in 2015/16 to 1863 days in 2017/18 (over 13%). By issuing a citation and fine, the Board is providing the licensee with an easier path to resolution and obtaining swift compliance. The Board has determined that the fine amount plays an important role in deterring future violations of the DPA and the Board's regulations and the unlicensed practice of dentistry. In the most egregious of cases that do not

warrant formal discipline, or in the case of unlicensed practice, a citation with a fine amount of \$5,000 would carry with it a deterrent factor that would far exceed that of a fine in the amount of \$2,500. This assists the Board in meeting its obligation to protect consumers when citations with a fine are issued.

ANTICIPATED BENEFITS:

The Board's highest priority is the protection of the public while exercising its licensing, regulatory, and disciplinary functions. The Board has determined that the current fine maximum fine amounts of \$2,500 are insufficient to properly function as deterrents against violations of statutes and regulations. Therefore, the Board seeks to increase the maximum fine the Executive Officer may issue for a violation of any provision of the Dental Practice Act or other law enforced by the Board. This regulatory change will better enable the Board to perform its duty to protect the public. Additionally, this proposal will provide the Board with an enforcement tool that is able to act as a deterrent against licensees that violate the Dental Practice Act.

CONSISTENCY AND 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 and is the only authority that can issue citations & fines on a licensed dentist within the state.

FISCAL IMPACT ESTIMATES:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Assuming the administrative fine collection will double, this proposal would result in the Board receiving an additional \$36,000 per year from citations and fines.

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 ability of California businesses to compete with businesses in other states, because the regulations pertain to the Board's enforcement of the Dental Practice Act and its regulations. This determination is based on the fact that the proposal only affects persons found to be in violation of the Board's statutes and regulations. For example, a person may be issued a citation and administratively fined for violations which the executive officer has determined involves a person who has violated a statute or regulation relating to the practice of dentistry which does not present a substantial probability that either death or serious physical harm to a patient will result therefrom.

A business owned by a licensee who is facing a citation due to a violation of the DPA or the Board's regulations may incur a fiscal impact as it relates to costs associated with payment of the fine. 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 the authority to issue a citation that includes a fine for unlicensed practice or to a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is facing a citation with a fine cannot be projected. Businesses operated by licensees who are in compliance with the DPA and the Board's regulations will not incur any fiscal impact.

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:

This proposal would have a minor fiscal impact on individual licensees of the Board who have been issued a citation with an administrative fine. Though these regulations pertain to the Board's internal enforcement procedures, a citation against a licensee or person for unlicensed practice will result in costs associated with payment. The average salary of a DDS in California is approximately \$150,000 per year and the annual salary of a registered dental assistant in California is approximately \$35,000 per year. Licensees who are in compliance with the Board's statutes and regulations will not incur any fiscal impact. With respect to persons who are issued a citation with a fine for unlicensed practice, the Board is unable to speculate who might engage in such practice. Therefore, the fiscal impact on such persons is unknown.

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.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has made the initial determination that the proposed regulation would not have a significant, statewide adverse economic impact directly affecting business. The proposal will not create or eliminate jobs in the State. It will not cause an expansion of businesses currently operating in the state. The proposal will not affect the ability of California businesses to compete with businesses in other states, because the regulations pertain to the Board's enforcement of the Dental Practice Act and its regulations.

Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and state's environment:

The proposed increase in the maximum amount for citations & fines helps the Board fulfill its highest priority: protection of the public when exercising its licensing, regulatory, and disciplinary functions so this will promote the health and welfare of California residents.

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/laws/regqs/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: Gabriel Nevin, Legislative & Regulatory Analyst

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The backup contact person is:

Name: Steve Long, Budget Analyst
Dental Board of California
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Website Access Materials regarding this proposal can be found at the Board's Website at <http://www.dbc.ca.gov/lawsregs/index.shtml>