

**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
Tuesday, November 22, 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 Monday, November 21, 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 144, 480 and 901 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 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 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.

Business and Professions Code Section 901 provides an exemption for a health care practitioner, licensed or certified in another state, from the licensing and regulatory requirements of the applicable California healing arts board. To be exempted from California licensure requirements, a health care practitioner may provide services at a sponsored healthcare event to uninsured or underinsured people on a short-term, voluntary basis. Section 901 requires the out-of-state health care provider to seek authorization from the applicable healing arts board in California. Section 901 provides the regulatory framework for the approval of an out-of-state health care practitioner and a sponsoring entity to seek approval from the applicable healing arts boards. However, each individual healing arts board is responsible for promulgating regulations to prescribe the specific requirements for the approval of an out-of-state practitioner and a sponsoring entity.

The primary purpose of these proposed regulations is to implement, interpret and make specific the provisions of Section 901, as it pertains to licensed dentists, including the application and registration requirements, disciplinary actions, recordkeeping requirements and provisions for termination for the exemption of an out-of-state licensed dentist who wishes to participate in a sponsored free health care event. The Registration of Sponsoring Entity Form DBC-901-A (02/2011) and the Request for Authorization to Practice without a License Form DBC-901-B (02/2011) are incorporated by reference. The board's highest priority is the protection of the public and these proposed regulations are intended to implement section 901 in a manner that will provide the greatest protection for the people of California.

The Board is proposing the following changes:

Adopt Section 1023.15 of Chapter 1, Article 8 of Division 10 of Title 16 of the California Code of Regulations (Sponsored Free Health Care Events – Requirements for Exemption):

This proposal adopts a new Article 8, Section 1023.15 to define the terms “community based organization”, “out-of-state practitioner”, and “in good standing” for the purposes of this Section. These terms are either not currently defined in the statute or require further clarification.

Adopt Section 1023.16 of Chapter 1, Article 8 of Division 10 of Title 16 of the California Code of Regulations (Sponsoring Entity Registration and Recordkeeping Requirements):

This proposed section establishes a timeframe for submission of a sponsoring entity's registration form, which is 90 days prior to the event, prescribes the registration form (DBC-901-A) (02/2011) to be used, and incorporates the form by reference. Form DBC-901-A would include the following:

- Provide filing requirements and disclosures regarding qualifications for registration as well as deadlines for filing a completed application 90 days in advance of the event.
- Part 1 – Requires the applicant to disclose organization name, organization contact information, type of organization, the organization's tax identification number and if the organization is community-based, disclose its mission, goals and activities.
- Part 2 – Requires the applicant to provide a list of responsible organization officials that includes the name, address, title, phone number and email address of each responsible official.
- Part 3 – Requires the applicant to disclose event details including: name of the event, date(s) of the event, location(s) of the event, a description of the intended event, a list of all out-of-state health care practitioners the organization currently intends to apply for the event (name, profession and state of licensure required), and disclose each licensing authority that will have jurisdiction over an out-of-state licensed health care practitioner.
- Provide a notice regarding collection and use of personal information given on the application.
- Provide notice regarding requirements for each out-of-state practitioner practicing at the event, including submission of the required Form DBC-901-B in advance of the event.
- Provide notice of the requirements for the maintenance of records for 5 years in California and for filing a report with the Board within 15 calendar days of the completion of the event.
- Require the applicant to certify their statements under penalty of perjury and attest that the individual is authorized to sign on behalf of the organization.

This section would also allow the board to, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process Form DBC-901-A on behalf of the board and specify that the board shall inform the sponsoring entity within 15 days of receipt that the form is either complete and the entity is registered or that the form is deficient and what specific information or documentation is required to complete the form and be registered. The proposed section allows the board or its delegates to reject the form if all of the identified deficiencies have not been corrected at least 30 days prior to the event. This proposed section implements and makes specific the recordkeeping requirements of sponsoring entities set forth in Section 901(g) and clarifies that authorization must be provided before a sponsoring entity may allow an out-of-state practitioner to participate in a sponsored event. This proposed section specifies the information to be provided in the report required under Section 901(f).

Adopt Section 1023.17 of Chapter 1, Article 8 of Division 10 of Title 16 of the California Code of Regulations (Out-of-State Practitioner Authorization to Participate in Sponsored Event)

This proposed section provides the mechanism by which an out-of-state practitioner may request authorization to participate in a sponsored event: completion of Form DBC-901-B (02/2011). Form DBC-901-B would include the following:

- Part 1 – Requires the applicant to provide: a completed application, a \$100 processing fee to the board (or \$151 fee if using “ink on cards” to have fingerprints made), a copy of each current license authorizing the applicant to engage in the practice of dentistry in another jurisdiction, a copy of a valid photo identification issued from another jurisdiction, copies of certificates of completion of at least 50 units of continuing education, any documents or statements requested on the application, and fingerprints.
- Part 2 – Requires the applicant to disclose: name, social security number, contact information, employer, and employer’s contact information.
- Part 3 – Requires the applicant to respond regarding: current licensure in another state, district or territory of the United States; continuing education; any pending investigations by any governmental entity; any past or pending charges against a dental license; disciplinary actions taken against any healing arts license; surrender of a dental license; malpractice settlements or judgments; criminal convictions; permits to prescribe controlled substances from the federal Drug Enforcement Agency (DEA); current physical or mental impairment related to drugs or alcohol; and, mental incompetency or conservatorship.
- Part 4 – Requires the applicant to provide: name of non-profit or community-based organization hosting the event, name of event, date(s) and location(s)

of the event, date(s) and location(s) applicant will be performing healthcare services, the healthcare services the applicant intends to provide, and the name and phone number of the contact person with the sponsoring entity.

- Part 5 – Requires the applicant to acknowledge and certify the following: (1) agree to comply with applicable practice requirements and regulations of the board; (2) agree to practice only within the scope of his/her licensure; (3) agree to provide services only to uninsured or underinsured persons at no cost; (4) agree to provide services only in association with the sponsoring entity and the event(s); (5) agree to be responsible for knowing and complying with California law and practice standards; (6) agree to permit the board to notify the licensing authority of the applicant's home jurisdiction of any potential grounds for discipline associated with the event; (7) acknowledge that practice without proper licensure may subject the applicant to administrative, civil and/or criminal penalties; and, (8) certify that the applicant has read the questions in the application and that all information is true and complete to the best of the applicant's knowledge.
- Notification that completion and submission of the application grants permission to the board to verify and investigate any information provided.
- Notification regarding collection and use of personal information given on the application.
- Notification that the applicant's signature on the application authorizes the National Practitioner Data Bank (NPDB) and the DEA to release any and all information required by the board.
- Notification that authorization will not be issued until clearance has been received from the California Department of Justice and the Federal Bureau of Investigation.

This proposal would also set forth the standard 20-day timeframe from the receipt of a completed application in which the board shall grant or deny the authorization request. This section would set forth the criteria under which the board must or may deny a request for authorization to participate and would provide an appeal procedure for an applicant who has had a request for authorization to participate denied by the board.

Adopt Section 1023.18 of Chapter 1, Article 8 of Division 10 of Title 16 of the California Code of Regulations (Termination of Authorization and Appeal)

This proposed section provides the grounds upon which the board may terminate the authorization to participate previously granted to an out-of-state practitioner, specifies that written notice of termination, including the basis for the termination, shall be given to both the sponsoring entity and the out-of-state practitioner. If the written notice is

provided during the sponsoring event, then this proposal would permit the board to provide notice to any representative of the sponsored event on the premises of the event. This provision would also set forth the consequences of a termination of authorization to participate and how the board will report the fact of such termination to the NPDB and the applicable out-of-state licensing entity, and provides the procedure for appealing denials of authorization and terminations of authorizations to participate, including an informal hearing under the Administrative Procedure Act (APA) for appeals submitted by out-of-state practitioners.

Adopt Section 1023.19 of Chapter 1, Article 8 of Division 10 of Title 16 of the California Code of Regulations (Additional Practice Requirements for Out of State Practitioners Authorized to Participate in Sponsored Free Health Care Events)

This section would specify that each out-of-state practitioner authorized to participate in a sponsored event must provide written notification regarding the practitioner's license status and a disclosure about the scope of authorization to practice in California to each prospective patient prior to performing any services, and the form of the notification. This proposal would require each out-of-state practitioner to provide this notice separate and apart from all other notices given to the patient and would require that the notice be retained by the patient.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: It is unknown how many sponsors of free healthcare events and how many volunteer out-of-state licensees may apply to the Board as a result of these regulations. However, the Board estimates that it will receive at least 250 applications per year from out-of-state dentists seeking authorization to provide services at sponsored free health care events. In order for the Board to absorb the workload associated with processing the requests for authorization from the out-of-state dentists, the Board will need to charge a \$100 non-refundable processing fee (\$151 for individuals who have to submit fingerprints on cards and not via Live Scan). This fee will offset the costs associated with staff's processing of the application.

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/Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete:

These proposed regulations will provide the Dental Board of California (Board) with the means to implement, interpret, and make specific Business and Professions Code (Code) Section 901, as it pertains to licensed dentists, including application and registration requirements, disciplinary actions, recordkeeping requirements and provisions for termination of authorization for an out-of-state licensed dentist who wishes to participate in a sponsored free health care event. The Board has estimated that this proposed regulation will not have a significant economic impact on the private sector.

Sponsoring entities may incur nominal expenses associated with submitting the registration form to the Board, and complying with recordkeeping requirements, and reporting requirements. Sponsoring entities shall be responsible for submitting the registration Form DBC-901-A (02/2011) to the Board. Expenses associated with submitting the registration form include printing and mailing; these expenses are minimal and should not have a significant fiscal impact on sponsoring entities. Additionally, sponsoring entities shall be responsible for maintaining copies of all records required by Code Section 901, as well as the copy of the authorization for participation issued by the Board to an out-of-state practitioner at a physical location in California. The records must be maintained for a period of at least five years after the date the sponsored event ended; the records may be kept in electronic or paper form. The sponsoring entity shall also be responsible for maintaining copies of all records required by Code Section 901(g) at the physical location of the sponsored event. Expenses associated with these recordkeeping requirements are nominal and include storage and transportation of the required records; these expenses are minimal and should not have a significant fiscal impact on sponsoring entities. Finally, the sponsoring entity shall be responsible for providing a report to the Board summarizing the details of the sponsored event within fifteen days after the conclusion of such event. The report may be provided to the Board on a form of the sponsoring entity's choosing. Expenses associated with these reporting requirements are nominal and include printing and postage; these expenses are minimal and should not have a significant fiscal impact on sponsoring entities.

Out-of-state dentists seeking authorization from the Board to participate in a sponsored event will incur a \$100 fee for application processing. Additionally, applicants will incur costs associated with furnishing fingerprints for the purpose of the Board conducting a criminal history check. These costs are necessary for the protection of the public and to provide staff time and resources for registration of sponsored events and volunteer out-of-state practitioners in the short timeframes set in the statute.

This regulation will have a positive impact on the health of uninsured or under-insured Californians that are currently unable to receive dental care due to lack of funding and resources.

There may also be benefits to private businesses that are not able to provide dental care to employees. Many small businesses are legally required to provide health care, but are not required to provide dental care. Poor oral health can impact the total health of an individual. These regulations will benefit the health of Californians who attend sponsored events, in addition to providing public protection through registration of out-of-state volunteer dentists.

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.

The proposed regulations impact those out-of-state health care practitioners applying to the Dental Board of California to participate in community-based organizations that provide sponsored free health care events in California.

The proposed regulations may provide an opportunity for out-of-state licensed volunteers to participate in community sponsored free health care events.

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.

Sponsors of free health care events and out-of-state practitioners will incur minimal costs to apply and register with the board in compliance with the statute and these regulations. Out-of-state dentists seeking authorization from the Board to participate in a sponsored event will incur a \$100 fee for application processing. Additionally, applicants will incur costs associated with furnishing fingerprints for the purpose of the Board conducting a criminal history check. The cost for a person to get fingerprinted is approximately \$70.00. Of this fee, \$56.00 goes to the Department of Justice for conducting the background check and providing criminal record reports to the Board; an average of \$14.00 goes to the vendor for fingerprinting the individual. The vendor's fee ranges from \$5.00 to \$45.00 with the average fee being \$14.00. For those who are not able to submit fingerprints electronically via Live Scan, the fee for the board to process "ink on cards" is \$51. These fees will have to be factored into the cost of the individual's volunteered services. The fees may be

covered by sponsoring entities, who will also incur minor costs with respect to maintaining records for their volunteers, reporting to the board after the events and filing a registration.

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. Instead, the impact of this rulemaking is to offer free health care to uninsured or under-insured Californians by volunteer health care practitioners coming from out of state to provide dental services. These services may benefit small businesses that do not provide dental care to their employees.

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 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:

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The backup contact person is:

Name: Richard DeCuir, Executive Officer
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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>.