

Title 16, Division 11, New Article 4, Section 1115 Dental Hygiene Board of California

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Dental Hygiene Board of California (Board) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments relevant to the action proposed in writing. 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 Tuesday, July 27, 2021**.

The Board has not scheduled a public hearing on this proposed action. The Board will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

The Board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice, or may modify the proposed regulations 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 the 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 464, 1905 and 1906 of the Business and Professions Code (BPC), and to implement, interpret, and/or make specific sections 464 of the Code, the Board is considering changes to Division 11 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in expanded functions (collectively, RDHs) are licensed dental health care professionals that perform authorized dental hygiene services. The Dental Hygiene Board of California (Board) licenses and regulates RDHs pursuant to Business and Professions Code (BPC) sections 1900 through 1967.4. BPC section 1906(a) authorizes the Board to adopt, amend and revoke such rules and regulations as

may be reasonably necessary to enable it to carry into effect the provisions of the Dental Practice Act related to RDHs.

The Board has received inquiries regarding options for RDHs who wish to retire from practice. Currently, RDHs can only allow their licenses to lapse (become delinquent, expire, or cancel), or be placed in an inactive status, which requires payment of a fee. Assembly Bill (AB) 2859 (Low, Ch. 473, Stats of 2016) enacted BPC section 464, which authorized the Board to establish by regulation, a retired category of licensure for its licensees who are not actively engaged in the practice of their profession.

The Board proposes to address the lack of a means to obtain a retired status. The Board believes that some retired RDHs request inactive status rather than having a “delinquent” or “cancelled” status because of a possible negative connotation associated with those license statuses. While an inactive status alleviates the need to complete continuing dental education, BPC section 1940(c) requires the holder of an inactive license to continue to pay the required biennial renewal fee. Licenses are placed in a “delinquent” status when the licensee fails to pay his or her renewal fee and/or fails to complete the renewal requirements. By providing a means to obtain a retired status, RDHs who are no longer practicing can avoid the possible stigma in their professional community from having a license placed in a “delinquent” or “cancelled status.” RDHs would also be relieved from the expense of renewal fees and continuing dental education for a license they are no longer using.

- **Add Section 1115 to Title 16 of the CCR.**

The purpose of the proposal is to establish a regulation for the placement of an RDH license on a retired status, upon application, using proposed form DHBC RLC-01 (01/19), which is incorporated by reference at proposed section 1115. Proposed section 1115 would: (1) implement minimum eligibility requirements for obtaining and maintaining a retired license, including ineligibility criteria if the license is currently expired, suspended, revoked, or otherwise punitively restricted; (2) establish exemptions from continuing education and renewal requirements for the holder of a retired license; (3) prohibit a retired licensee from engaging in activity requiring a license; (4) provide that the Board is not prevented from investigating or taking actions against a retired license; and (5) establish criteria for the restoration of a retired license to active status. It will also adopt application forms for applying for inactive status and reactivating a retired license.

Anticipated Benefits of the Proposed Regulation:

This proposal would establish a consistent and simple process for obtaining a retired status license and would eliminate barriers for those RDHs who wish to retire and have the option of placing their license in a retired status. It would also save costs for those selecting this status by not requiring payment of biennial renewal fees and continuing education expenses. Specifically, adoption of the proposed regulation will benefit licensees who retire by charging a one-time fee equal to half of the current biennial renewal fee.

This proposal would also alleviate confusion for the public regarding the true status of an individual who does not wish to abandon his or her license, but rather simply retire from practice. This would promote transparency in policies that the Board establishes pertaining to the practice of dental hygiene and the representations licensees make regarding their license status. This will promote and protect public safety.

Finally, this regulation would elevate the morale of the profession by creating a reasonable method by which retired RDHs can maintain a license that demonstrates their contribution to the profession.

The regulatory proposal incorporates by reference the following forms:

- Form: DHBC RLC-01 (11/20), Application for a Retired RDH, RDHAP, or RDHEF License
- Form: DHBC RLC-02 (10/20), Application for Reactivation of a Retired RDH, RDHAP, or RDHEF License

Determination of Inconsistency and Incompatibility with Existing State Regulations:

During the process of developing this regulatory proposal, the Board has conducted a search of any similar regulations on this topic and has concluded that the proposed regulatory action is not inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

FISCAL IMPACT ESTIMATES

The Board has made the following initial determinations:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The Board anticipates demand for the new retired status license type to be greatest in the first two years of implementation as inactive and active licensees opt to retire and

apply for the new status with lower demand annually thereafter. The Board anticipates approximately 862 licensees will retire in the first two years of implementation and 382 licensees per year thereafter.

The Board estimates retired license type fee revenues of approximately \$69,000 per year in the first two years of implementation (862 x \$80) and \$31,000 per year thereafter and up to \$386,000 over a ten-year period.

The Board estimates workload licensing workload and approximate costs as follows:

- Year One and Two (862 licenses issued per year):
 - Licensing workload* (45 min. @ \$88/hr.) - \$57,000
 - Materials and postage (\$15 per) - \$13,000
 - Total: \$70,000

- Annually thereafter (376 licenses issued per year):
 - Licensing workload* (45 min. @ \$88/hr.) - \$25,000
 - Materials and postage (\$15 per) - \$ 5,500
 - Total: \$30,500

*Staff Services Analyst (approximately \$88/hr. - includes Department of Consumer Affairs' pro rata)

The Board does not have an estimate of the number of retired licensees who may opt to re-activate their license to active status and be required to pay the reactivation fee of \$160. As a result, the Board does not have an estimate of workload, costs, or revenues at this time.

This regulatory proposal does not result in any costs or savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to any Local Agency or School District for which Government Code Sections 17500 through 17630 Require Reimbursement: None

Business Impact

The Board has made an 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.

The Board currently provides licensure to approximately 19,000 RDHs operating in the state. The proposed regulations establish a new retired license type status for RDHs not

actively engaged in practice as a dental hygienist or any activity that requires them to be licensed by the Board. The Board indicates these individuals would be exiting the profession notwithstanding the establishment of a retired license status. As a result, the proposed regulations will have no impact on businesses in the state.

The Board does not track the number or type (small or large business) of dental practices operating in the state. As a result, the Board does not have an estimate of the number of businesses impacted nor the percentage of small business impacted.

Cost Impacts on a Representative Private Person or Businesses

This regulatory proposal would benefit RDHs who no longer intend to practice their profession by exempting the retired population of licensees from having to pay biennial renewal fees. In addition, retired licensees would also be exempt from compliance with ongoing continuing education requirements. This would result in an added cost benefit because retired licensees would no longer have to pay for continuing education courses as a condition of their biennial renewal. For these reasons, the Board anticipates a positive economic impact on private persons.

RDHs will have the option to apply for a retired license for a one-time fee of \$80. The Board estimates approximately 1,723 licensees may choose to retire their licenses within the first two years following implementation of this regulation. This is based on approximately 80 percent of 461 licensees (369) who are of age 65 years or older currently in the inactive license status, and approximately 80 percent of 1,692 current active licensees (1,354) who are eligible and at least 65 years of age.

The regulations are anticipated to cost retiring licensees approximately \$138,000 (1,723 x \$80) during the first two years (approximately \$69,000 per year) of implementation. The Board estimates 382 licensees will opt for the retired license status annually thereafter, which would generate revenues of approximately \$31,000 per year ongoing and up to approximately \$386,000 over a ten-year period.

Significant Effect on Housing Costs: None

Results of the Economic Impact Analysis/Assessment

Impact on Jobs/Businesses

The Board has determined that this regulatory action will not create or eliminate jobs, will not create new business or eliminate existing businesses, and will not affect the expansion of businesses currently doing business within the State of California because it will allow individuals already retired from working as an RDH or considering retirement the opportunity to place a license on a retired status. Since RDHs currently choose to go inactive or allow their licenses to lapse or cancel when they retire, there would be no effect on the workforce related to a mere change in title to “retired.”

This regulation would neither incentivize nor discourage retirement. It would only affect licensees who have made the decision to retire from the workforce. Since these individuals would no longer participate in the workforce regardless of this regulation, there would be no impact on the state’s workforce that would affect businesses.

Effect on Small Business

The Board has determined that this regulatory action would not affect small businesses because it would only affect those licensees who wish to retire.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered 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 or would be as effective and less burdensome to affected private persons than the proposed regulatory action or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of the law.

Interested persons are invited to present statements or arguments orally or in writing relevant to the above determinations at the above scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries or comments concerning the proposed regulatory action may be directed to the following designated agency contact persons:

Dental Hygiene Board of California
Attn: Dr. Adina A. Pineschi-Petty DDS
2005 Evergreen St, Ste. 2050
Sacramento, CA 95815
Phone: (916) 576-5002
Email: adina.petty@dca.ca.gov

Backup Contact Person:

Attn: Anthony Lum
2005 Evergreen St, Ste. 2050
Sacramento, CA 95815
Phone: (916) 576-5004
Email: anthony.lum@dca.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Dr. Pineschi-Petty at the above address. In her absence, please contact the designated back-up contact person.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, the Board may adopt the amendments as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that was noticed to the public. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for review and or written comment at least 15 days before it is adopted. The public may request a copy of the modified regulatory text by contacting Dr. Petty at the address above.

AVAILABILITY OF FINAL STATEMENT OF REASONS

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting Dr. Pineschi-Petty at the address above.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to Dr. Pineschi-Petty at the address above or by accessing the website listed below.

TEXT OF THE PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the ISOR, and all of the information on 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 2050, Sacramento, California 95815, or by accessing the Board's website at <https://www.dhbc.ca.gov/lawsregs/index.shtml>.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Actions the Initial Statement of Reasons, and the text of the regulations can be accessed through the Board's website at <https://www.dhbc.ca.gov/lawsregs/index.shtml>.