



Title 16, Division 11, Sections 1135, 1136, and 1137
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 on March 2, 2020.

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 481, 482, 493, 1905 and 1906 of the Business and Professions Code (B & PC), and to implement, interpret or make specific sections 141, 475, 480, 481, 482, 488, 490, 492, and 493 of said Code, the Board is considering changes to Division 11 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended 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 sections 1900 through 1967.4 of the B & PC. Section 1906 (a) of the B & PC 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 Dental Practice Act (Chapter 4 of Division 2 of the B & PC) related to RDHs.

Effective July 1, 2020, Assembly Bill (AB) 2138 (Chapter 995, Statutes of 2018) requires boards within the Department of Consumer Affairs to amend their existing regulations governing substantially-related crimes

or acts and rehabilitation criteria. Section 480 of the B & PC presently authorizes boards to deny an application for licensure based on a conviction for a crime or act substantially related to the licensed business or profession. Likewise, section 490 of the B & PC authorizes boards to suspend or revoke a license on the basis that the licensee was convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession. AB 2138 amended section 480 of the B & PC to restrict the ability of boards to use prior convictions or acts when denying licenses. Boards may not deny a license to an applicant because the applicant was convicted of a crime, or due to the acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged.

As required by AB 2138, the primary purpose of this proposal is to implement, interpret, and make specific the provisions of B & PC sections 141, 475, 480, 481, 482, 488, 490, 492, and 493 relative to substantial relationship and rehabilitation criteria. The Board is proposing the following changes:

Add CCR section 1135 of Article 10 of Division 11 of Title 16 of the CCR (Substantial Relationship Criteria)

The proposed regulation, for purposes of denial, suspension, or revocation of a license, would add professional misconduct and out-of-state discipline as grounds requiring the Board to consider the substantially related criteria, and require the Board, in making the substantial relationship determination for a crime, to consider the following criteria: (1) the nature and gravity of the offense; (2) the number of years elapsed since the date of the offense; and (3) the nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed. The proposal would add that substantially related crimes, professional misconduct, or acts would include violating other state or federal laws governing the practice of dental hygiene.

Add CCR sections 1136 and 1137 of Article 10 of Division 11 of Title 16 of the CCR (Criteria for Rehabilitation)

The proposed regulations would clarify that the Board, when considering a license denial or discipline on the ground that the applicant or licensee was convicted of a crime, would have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making that determination, the proposal would require the Board to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened, and the reasons thereof, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The proposal would require a broader set of rehabilitation criteria to be considered for applicants and licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial or discipline was based on something other than a conviction.

Policy Statement Overview/Anticipated Benefits of the Proposed Regulation:

This proposal would satisfy the provisions mandated by AB 2138, including the legislation's clear intent to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the regulatory proposal seeks to improve clarity, transparency, and consistency for applicants and licensees in the Board's use of their criminal histories. Further, by reducing barriers to licensure, the Board anticipates benefits to consumers who may have greater access to licensed professionals.

Determination of Inconsistency and Incompatibility with Existing State Regulations:

During the process of developing this regulation, 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 PROPOSED ACTION

FISCAL IMPACT ESTIMATES

The DHBC 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 that there may be an increased cost to the state as a result of adopting the sections identified in the regulatory proposal. By defining the substantial relationship and rehabilitation criteria for criminal convictions, Board staff may see an increased workload to research convictions and to substantiate that rehabilitation has been achieved. Although the increase in workload to the Board is anticipated to be absorbable within existing resources, the Board may request additional resources through the annual budget process for additional staff should the workload prove to be greater than anticipated.

Cost or 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 through 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. This initial determination is based on the following facts:

The Board has determined that this regulatory proposal will not have any significant impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California. The proposed regulations may have an impact on businesses within California, specifically dental and dental hygiene practices, to the extent individual applicants are able to be licensed under the proposal.

The Board issues approximately 800 licenses per year. In the Board's history, it has reviewed seventeen (17) applications in which the applicants had criminal convictions, and in these cases, issued probationary licenses to these applicants. Accordingly, the Board does not expect that the proposed regulations will significantly impact the number of licensees who are able to obtain licensure.

Cost Impacts on a Representative Private Person or Businesses: The Board estimates that there will be no increased costs for businesses or individuals to comply with the proposed regulations, as there would be fewer restrictions for individuals with criminal convictions to obtain licensure. The Board is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Effect on Housing Costs: None

Effect on Small Business: The Board has determined that this regulatory action may affect small businesses, who would have a greater pool of licensed professionals from which to hire.

Business Reporting Requirement

The regulatory action does not require businesses to file a report with the Board.

Results of the Economic Impact Analysis/Assessment

Impact on Jobs/Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

Benefits of the Proposed Action: The Board anticipates that this proposed regulatory action may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed professionals, which may benefit the health and welfare of the citizens of California. Additionally, these proposed regulations would allow for appropriate vetting of applicants to ensure protection of the public.

This regulatory proposal would not affect worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (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.

The following alternatives were considered:

- Option 1: To pursue a regulatory change that requires the Board to find rehabilitation if the applicant completed their terms of their criminal probation or parole. Courts give little weight to the fact that an applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the Board believes that reviewing each individual on the basis of multiple criteria is the better indicator whether individuals are rehabilitated and not a danger to the public's health, safety, and welfare. For these reasons, the Board rejected this option.
- Option 2: Take no action. The Board opted not to pursue this option because AB 2138 mandates the Board to adopt proposed regulations by July 1, 2020.

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.

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 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. Adina A. Pineschi- Petty at the address below.

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. Adina A. Pineschi-Petty at the address below.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to Dr. Adina A. 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 www.dhbc.ca.gov.

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: Adina A. Pineschi-Petty DDS
2005 Evergreen St, Ste. 2050
Sacramento, CA 95815
Email: adina.petty@dca.ca.gov

Backup Contact Person:

Attn: Anthony Lum
2005 Evergreen St, Ste. 2050
Sacramento, CA 95815
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. Adina A. Pineschi-Petty at the above address. In her absence, please contact the designated back-up contact person.

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 www.dhbc.ca.gov.