

**DENTAL HYGIENE COMMITTEE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

HEARING DATE: September 12, 2012

SUBJECT MATTER OF PROPOSED REGULATIONS: Retroactive Fingerprinting

SECTION(S) AFFECTED: 1132(a)(3), Article 7 in Division 11 of Title 16 of the California Code of Regulations

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

This proposal would exempt inactive licensees from the electronic fingerprinting requirement until the license is activated.

Existing law requires that as a condition of license renewal, a licensee who was initially licensed prior to January 1, 1994, or for whom an electronic record of the submission of fingerprints no longer exists, shall furnish the Department of Justice a full set of electronic fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice.

Existing law also provides for both an active license (which allows a registered dental hygienist to practice in California) and an inactive license (which allows a registered dental hygienist to maintain the use of the title but not physically treat dental hygiene patients). Existing law does not differentiate fingerprinting requirements between individuals who hold an active or inactive license. Consequently, even individuals who hold an inactive license and do not practice in California must also meet the fingerprinting license renewal requirement.

The Committee is proposing the following language:

Amend 1132(a)(3), Article 7 in Division 11 of Title 16 of the California Code of Regulations

(a) As a condition of renewal for a license that expires on or after July 1, 2011, a licensee who was initially licensed prior to January 1, 1994, or for whom an electronic record of the submission of fingerprints no longer exists, shall furnish to the Department of Justice a full set of electronic fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice.

- (1) The licensee shall pay any costs for furnishing the fingerprints and conducting the searches.
- (2) As a condition of renewal, a licensee shall certify whether his or her fingerprints have been furnished to the Department of Justice in compliance with this section.
- (3) This requirement is waived if the licensee has an inactive license or is actively serving in the military outside the country.
- (4) A licensee shall retain, for at least three years from the renewal date, either a receipt showing the electronic transmission of his or her fingerprints to the

Department of Justice or a receipt evidencing that the licensee's fingerprints were taken...

Problem

The requirement has created an unintended hardship on licensees who hold an inactive license (18,203 active licensees ÷ 3541 inactive licensees = approximately 20% of active registered dental hygiene licensees). These individuals cannot treat California dental patients. Those who live outside of California, and want to maintain their California dental hygiene license, must travel to California to have their fingerprints taken electronically. The costs that these out-of-state licensees must incur (for airfare, lodging, meals, etc.) are not insignificant as they must often remain in the state for at least 3-4 days to ensure that their fingerprints have been received. In many cases, these licensees must also take time off from work to physically travel to California to have their fingerprints taken.

It is important to note that individuals who hold an inactive dental hygiene license either in California or outside California may not physically practice, but wish to hold the license even in an inactive status, as a matter of professional pride. These individuals may be too frail to travel, and thus requires the Committee to cancel a license that has been maintained for, in some cases, 40 years.

Committee staff has also received telephone calls from inactive licensees who have stated that they have the money to renew their license, but do not have the money to pay for fingerprinting, as they are unemployed.

Benefit

Exempting individuals who hold an inactive license from this requirement is one of fairness. As these individuals cannot treat California dental hygiene patients until they obtain an active license (thus requiring fingerprints be taken), it makes little sense to impose this requirement on inactive licensees. Given the California Department of Justice requirement to submit electronic fingerprint images inside the State of California, these licensees will not be required to incur financial hardship such as travel expenses, lodging expenses, and lose work time to physically come to California to meet this licensure requirement.

Factual Basis/Rationale

The proposed language would require an inactive licensee as a condition of the activation of their license to provide electronic fingerprints. This will allow the Department of Justice to conduct a criminal history check and a state and federal criminal offender record information search before a licensee can actively practice dental hygiene in California, thus maintaining the patient protection provisions of the law.

UNDERLYING DATA

Technical, theoretical or empirical studies or reports relied upon:

1. Memorandum from the DCA Deputy Director of Legal Affairs, Doreathea Johnson, regarding retroactive fingerprinting dated on January 16, 2009.
2. Approved December 10, 2009 Dental Hygiene Committee Minutes.

3. Draft April 16, 2012 Dental Hygiene Committee, Licensing and Examination Sub-Committee's Licensure statistics.
4. Draft April 17, 2012 Dental Hygiene Committee Minutes.

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

Fingerprints are required of people working in hundreds of fields (teachers, janitors, security guards, nurses, doctors, state workers, etc.). As there are over 750 fingerprinting vendors registered with the Department of Justice (DOJ) to provide fingerprinting services, it is unlikely that not fingerprinting inactive dental hygienist (n=3541) would significantly impact these vendors' revenue.

Even if only one-half of the registered dental hygienists, approximately 1770, were to use the services of a DOJ registered fingerprint vendor, the revenue realized by this action would only amount to a one-time payment of \$165 per vendor ($1770 \times \$70 (\$32 \text{ DOJ} = \$17 \text{ FBI} + \$21 \text{ rolling fee} = \$70) = \$123,900 \div 750 = \165.20).

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because this proposed regulation only waives a current regulatory requirement for inactive licensees who cannot work in California due to their license status. These licensees must meet the requirement when reactivating the license to be able to work in California.
- It will not create new business or eliminate existing businesses within the State of California because the proposal simply defers a requirement for electronic fingerprinting of inactive licensees until the license is reactivated. Approximately 750 California vendors statewide currently provide the service for all types of occupations.
- It will not affect the expansion of businesses currently doing business within the State of California because the number of affected licensees is 3,541, or approximately four individuals per authorized vendor providing electronic services.
- This regulatory proposal benefits the health and welfare of California residents who are inactive licensees because they will not be forced to meet a mandatory requirement of the law for a license that is not being used due to disability, unemployment or retirement.
- This regulatory proposal does not affect worker safety because it applies only to inactive licensees, who are prohibited from practice unless the license is active.
- This regulatory proposal benefits the state's environment because it does not force out-of-state inactive licensees to travel to California to meet the requirement in order to retain the license. The only vendors who are able to provide the electronic fingerprinting services and transmit the results to the Department of Justice are located in California.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment. However, the regulatory proposal requires the use of electronic fingerprinting equipment because the Department of Justice requires that this method be used by those submitting electronic fingerprints.

Consideration of Alternatives

No reasonable alternative to the regulatory, proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

One alternative is to maintain the status quo. This is not reasonable because it fails to consider the unintended hardship of traveling expenses, lodging and the loss of time from employment for inactive licensees currently practicing in other states or countries. Regulation Section 1132(a) also penalizes inactive California hygiene licensees who are unemployed by requiring that they incur these additional fingerprinting expenses when simply paying the license renewal fees is difficult.

Fiscal Impact

There is no fiscal impact regarding the promulgation, implementation, or carrying out of the proposed regulation to the industry.