

Dental Hygiene Committee of California  
**FINAL STATEMENT OF REASONS**

Hearing Date: January 6, 2012

Subject Matter of Proposed Regulations: Sponsored Free Healthcare Events

Section(s) Affected: Title 16, Division 11, California Code of Regulations, Section 1149, 1150, 1151, 1152, and 1153.

Updated Information:

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

No comments were received at the regulatory hearing on January 6, 2012. In February 2012, the Department of Consumer Affairs (Department) contacted all healing arts boards that proposed regulations relevant to sponsored free health care events, advising that boards may need to further clarify the Department's role in receiving and registering sponsoring entities. The Medical Board of California (MBC), Board of Occupational Therapy (BOT), and the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) had all submitted their final rulemaking files to the Office of Administrative Law (OAL). On March 13, 2012, OAL issued a Decision of Disapproval of MBC's proposed regulations due to failure to comply with clarity and necessity standards, as well as procedural issues. OAL's primary clarity concern related to the specific content of MBC's Form 901-A in relation to the content of similar forms proposed by other healing arts boards within the Department. The BVNPT and BOT used similar forms incorporated into their regulations by reference and each form contained language similar to MBC's form indicating that only one registration form per event should be completed and submitted to the Department. The OAL was concerned that there was not one common form with a uniform set of regulatory requirements which would, with certainty, allow for the filing of a "single, common form" that meets the regulatory requirements of the three agencies. OAL could easily see that the "only one form per event" provision on each of the individual board's forms could not work if each individual board had its own form. The differing forms from each board would create confusion and uncertainty among sponsoring entities that are legally required to comply with the regulations.

The Department determined that it would develop the "single, common form" that OAL had recommended, later designated Form 901-A DCA/2011), as the uniform tool to be used by all affected boards for registration of sponsoring entities. The Department also offered to act as the entity that will accept and process this form for all affected boards, and to that end, requested that boards delegate their authority to the Department to receive and process the new registration forms and to register the sponsoring entities.

At its April 17, 2012 meeting, the Dental Hygiene Committee of California (Committee) voted to adopt a Resolution to formally delegate authority to the Department to receive and process entity registration forms and to register sponsoring entities for sponsored free

health care events that utilize the services of dental hygienists and to direct staff to add the adopted Resolution to the rulemaking file.

Because the Committee delegated authority to the Department, sponsoring entities will clearly understand that they should submit a single, common form that meets the regulatory requirements of multiple boards, rather than filing registration forms with each individual healing arts board.

At its April 17, 2012 meeting, the Committee voted to adopt modified text that incorporated by reference the "Registration of Sponsoring Entity Under Business and Professions Code Section 901" Form 901-A(DCA/2011) created by the Department, to replace the originally proposed "Form DHCC-901-A (02/2011)", and other modifications for the purpose of consistency and technical clean-up.

The regulatory text in Section 1150 was modified to incorporate by reference the single form (Form 901-A (DCA/2011)) that meets the regulatory requirements for registration of their sponsoring entity and event. The form clearly indicates that it is the single form to be submitted to the Department, rather than the entity having to file multiple registration forms with each individual healing arts board participating in the event, and was noticed to the public for a 15-day comment period. The new Form 901-A (DCA/2011) is streamlined for ease of use and contains all essential information for the Department to easily process the request within the short timeframe specified within the provisions of AB 2699.

As a result of the 15-day Notice of Modified Text and Forms, in May, 2012, the Department's Legislation and Regulations Unit expressed concerns that the application fee that must accompany Form DHCC 901-B, the form for individuals to register to provide voluntary services at free healthcare events, did not reflect the actual projected costs for processing the application as calculated and shown in the Committee's Std. 399 Economic and Fiscal Impact Statement Attachment. Additionally, legal counsel noted that this form allowed for submission of fingerprint cards, which the DHCC does not accept due to processing delays and statutory and regulatory requirements for electronic fingerprint processing of applicants.

The regulatory language and Form DHCC 901-B were modified and approved by the Committee at its July 9, 2012 teleconference to address these concerns through deletion of all references to fingerprint cards and changing the application fee to reflect the actual projected costs for processing the application as calculated and contained in the Committee's Std. 399 Economic and Fiscal Impact Statement Attachment. Electronic fingerprinting instructions were modified for clarity and grammatical corrections. The text and form were noticed for public comment for 15 days beginning July 13<sup>th</sup> with no comments received.

Updated Specific Purpose of Each Adoption or Amendment:

The Committee's proposed changes are updated as follows:

Changes made during the 45-day public comment period and hearing: None

Changes made after the public hearing pursuant to the Committee's April 17, 2012 meeting:

- Section 1149(b) to read “Out-of-state practitioner means a person who is not licensed in California to practice dental hygiene but who holds a current ~~valid and active~~ and valid license or certificate of good standing in another state, district or territory of the United States to practice dental hygiene. The Committee adopted this change for consistency with the Dental Board’s proposed regulatory text for CCR Section 1023.15(b) and for purposes of clarity, to emphasize that the licensee must be in active practice on patients to be qualified to perform procedures on California patients.
- Section 1150(a) replaced the originally proposed “Form DHCC-901-A (02/2011)” with the new “Registration of Sponsoring Entity Under Business and Professions Code Section 901, Form 901-A (DCA/2011)” to allow sponsoring entities to use one form in compliance with the statutory requirement for a “single, common form”, to register events which often include many different types of health care practitioners, as recommended by OAL.
- Section 1150(b) added the name, new revision date and creator of the form “Registration of Sponsoring Entity Under Business and Professions Code Section 901, Form 901-A (DCA/2011)” to specify the exact form that sponsoring entities must complete in order to register an event, and deleted the prior DHCC-901-A form.
- Section 1151(c)(1)(B) to read “The applicant does not possess a current ~~valid and active~~ and valid license in good standing” to conform the text with Section 1149(b), for the same reasons as listed for the above change to Section 1149(b).
- Form-901-A (DCA/2011) was incorporated by reference in Section 1150(a), replacing DHCC 901-A. This form was developed by the Department to replace multiple boards’ individual forms and conforms to the statutory requirement for a “single, common form” for sponsoring entities to register sponsored free healthcare events.

Changes made as a result of comments received during the 15 day public notice period beginning May 11, 2012 and voted on at the Committee’s July 9, 2012 teleconference:

- Section 1150(a) added the letter “e” to the word “delegate” after “A sponsoring entity shall register with the committee or its” for grammatical correctness. The Department would correctly be the delegatee.
- Section 1150(a) added quotation marks, a comma and the word “Form” after the words “Section 901” and deleted the word “Form” before “901-A” in order to correct the positioning of the word and punctuation of the text.
- Section 1150(b) added an “e” to the words “delegate” throughout for grammatical correctness.
- Section 1151(a) deleted the former revision date of 04/2012 on Form 901-B “Request for Authorization to Practice Without a License at a Registered Free Health Care Event”, and added the updated revision date of 07/2012 to specify the current updated version of the form that was adopted by the Committee at its July 9, 2012 teleconference, so that applicants know the correct form to submit when applying to practice dental hygiene at a sponsored free event.

- In response to a comment from the Department of Consumer Affairs' Legislation and Regulations Unit, the \$55 fee specified in Section 1151(a) was deleted and replaced with an \$86.00 fee, which reflects the actual costs that the Committee calculated that it will incur in processing the form in its Std. 399 Economic and Fiscal Impact Statement Attachment.
- Section 1151(c)(1)(A) added the current revision date of 07/2012 of Form 901-B "Request for Authorization to Practice Without a License at a Registered Free Health Care Event" to specify that the Committee will deny the application if this version of the form is not completed or the applicant has not timely responded to staff requests for additional information regarding this version of the form.
- In response to a comment from Legal Counsel, Form DHCC 901-B (07/2012) was modified to remove all references to fingerprint cards, which take several weeks or months for processing through the Department of Justice and which the Committee no longer accepts due to statutory and regulatory requirements for applicants to submit electronic fingerprints. Corresponding clarifying and grammatical changes were made to the electronic fingerprinting instructions.

Due to the short turnaround times mandated by Business and Professions Code Section 901(b), the Committee would be unable to timely authorize applicants' participation in sponsored free healthcare events if fingerprint cards were submitted by applicants.

- In response to a comment from the Department of Consumer Affairs' Legislation and Regulations Unit, Form DHCC 901-B (07/2012) was updated to adjust the application fee from \$55 to \$86 to reflect the actual costs that the Committee will incur in processing the form, as calculated in its Std. 399 Economic and Fiscal Impact Statement Attachment.
- In response to a comment from Legal Counsel, Form DHCC 901-B was updated to specify that only Live Scan electronic fingerprinting can be submitted and the Live Scan instructions were updated to remove all references to fingerprint cards and clarify the electronic fingerprinting process for the benefit of out-of-state applicants who are unfamiliar with the process.

#### Local Mandate

A mandate is not imposed on local agencies or school districts.

#### Small Business Impact:

This action will not have a significant adverse economic impact on small businesses.

#### Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the committee would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Objections or Recommendations/Responses:

The following recommendations were made regarding the proposed action:

**45-day Notice:**

No Comments were received during the 45 day Notice period.

**15-day Notice:**

Comment

The Department's Legislative and Regulations Unit expressed concerns that the proposed regulatory language in Section 1151(a) contained a fee that did not reflect the actual cost of processing Form 901-B "Request for Authorization to Practice Without a License at a Registered Free Health Care Events". The proposed \$55 application fee was \$31.06 less than actual projected processing costs, as calculated in its Std. 399 Economic and Fiscal Impact Statement Attachment, raising the concern that the Committee may have difficulty in absorbing the additional costs involved in processing these applications within its current budget.

Response

This recommendation was accepted and the proposed action was modified as follows to accommodate it: At its July 9, 2012 teleconference, the Committee voted that the text of the form be modified to increase the application fee listed in Section 1151(a) and on DHCC Form 901-B (04/2012), "Request for Authorization to Practice Without a License at a Registered Free Health Care Event", to \$86.00 as allowed in statute to cover the actual projected processing costs of the application.

Comment

Legal counsel pointed out that the "Request for Authorization to Practice without a License at a Registered Free Health Care Event", DHCC Form 901-B (04/2012) included a hard-card fingerprint option, which is not allowed under Business and Professions Code Section 1916(a) and California Code of Regulations (CCR) Section 1132, as well as the proposed CCR Section 1151 of this regulation package. The Committee no longer accepts fingerprint cards due to the lengthy processing times through the Department of Justice for these cards and the high rate of rejection, resulting in additional processing delays for applicants.

Response

This recommendation was accepted and the proposed action was modified as follows to accommodate it: At its July 9, 2012 teleconference, the Committee voted to modify the text of the form as presented to eliminate all references to fingerprint cards and clarify electronic fingerprinting instructions for users.

**Second 15-day Notice:**

No Comments were received during the second 15-day Notice period.

**Incorporation by Reference:**

Forms were incorporated by reference as it would be cumbersome, expensive and impractical to publish the required forms in the California Code of Regulations (CCR).

Form 901-A is a four-page form that was developed by the Department of Consumer Affairs as a single tool to implement the requirements of Business and Professions Code Section 901 for review of entities that sponsor free healthcare events. The form collects information from the sponsoring entities, and provides detailed information to applicant entities regarding requirements for obtaining and maintaining registration. Certification and disclosure requirements ensure that information being provided is accurate. This information is necessary to assist the Committee's delegate in its decision to register or deny registration to a sponsoring entity.

Form DHCC-901-B is a six-page form that was developed by the Committee as a mechanism by which out-of-state dental hygienists may request authorization to participate in a sponsored event. The form collects information from out-of-state licensed dental hygienists and provides detailed information to applicants regarding requirements for obtaining authorization to participate in a particular sponsored event.

If these forms were published in the CCR, it would be more cumbersome and increase the size of Division 11. The forms were made available to the public and posted on the Committee's website as part of this rulemaking, and will be posted on the Committee's website so that users may easily access and download them.