

**TITLE 16. DENTAL HYGIENE COMMITTEE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

HEARING DATE: January 6, 2012

Subject Matter of Proposed Regulations: Sponsored Free Health Care Events

Section(s) Affected: Title 16, Division 11, Article 13, Adopt Sections 1149,1150,1151,1152, and 1153.

Introduction

Health care practitioners, including physicians and surgeons, osteopathic physicians, dentist, nurses and dental hygienist must be licensed in the State of California in order to practice and provide health care services to patients. Existing law, Business and Professions Code (Code) Section 900, provides an exemption to this rule when health care practitioners provide care during a state of emergency upon request by the Director of the Emergency Medical Services Authority. The Business and Professions Codes, Section 1900-1966.6 governing the practice of dental hygiene does not provide for any additional exemption from the licensure requirements to practice dental hygiene in the State of California.

On September 23, 2010, Governor Arnold Schwarzenegger signed AB 2699 (Bass, Chapter 270, Statutes of 2010), enacting Business and Professions Code Section 901 (“§ 901”), which takes effect January 1, 2011. This statute provides a regulatory framework for certain health care events at which free care is offered to uninsured or under-insured individuals by volunteer health care practitioners where those practitioners may include individuals who may be licensed in one or more states but are not licensed in California. Prior to this enactment, licensing laws precluded the participation of volunteers licensed outside of California. § 901 defines “sponsoring entities,” “sponsored events,” and “health care practitioners,” and sets forth requirements for registration of sponsoring entities and authorization for participation by practitioners licensed in other states by the various boards responsible for licensure and regulation of healing arts.

Specific Purpose of each adoption, amendment:

The Committee currently regulates a total of 30,011 licensees; consisting of 26,525 Registered Dental Hygienist, 389 registered dental hygienist in alternative practice and 38 registered dental hygienist with extended function. The Committee's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The Committee issues licenses to eligible applicants; investigates complaints against licensees and discipline licensees for violation of The Business and Professions Codes Section 1900-1966.6 and monitors licensees who are on probation.

These proposed regulations would implement, interpret, and make specific the provisions of § 901 by specifying procedures and forms to be used by sponsoring entities and out-of-state practitioners who desire to participate in sponsored events. The board's highest priority is the protection of the public and these proposed regulations are intended to implement § 901 in a manner that will provide the greatest protection for the people of California.

Adopt section 1149 of Article 13 Division 11 of Title 16 of the California Code of Regulations(Definitions) – This proposal would add a new section 1149 of Article 13 of Division 11 of Title 16 of the California Code of Regulations. This needed to clarify the language of the statute.

This proposal adds subsection 1149(a) to define a “community-based organization” This term has not been previously defined in statute.

1149(a)“Community-based organization” is listed in the statute as one type of sponsoring entity. There is no definition of such an entity in state statute. The proposed definition of this term therefore is derived from a federal law (Title 20 USC section 7801(6) related to education law) that contain a definition of “community-based organization.” This definition provides much-needed clarity to the term and guidance to applicants regarding qualification for registration.

Section 1149(b):

This proposal adds subsection 1149(b) to define “out-of-state practitioner” for the purposes of these regulations to provide clarification as to which practitioners the proposed regulations are intended to affect.

Factual Basis/ Rationale:

Section 901 defines “health care practitioner” as any person who engages in acts subject to licensure under Division 2 of the Code. The proposed regulations, along with the operative provisions of Section 901, however, specifically relate to health care practitioners licensed to practice dental hygiene in other states and territories. To provide notice regarding the intended purpose and scope of these regulations, “out-of-state practitioner” is specifically defined according to the criteria set in Section 901.

Section 1149(c):

This proposal adds subsection 1149(c) to specifically define “in good standing”, which is listed as a requirement in Section 901(b).

Factual Basis/ Rationale:

Section 901 requires that a practitioner be licensed or certified “in good standing” in another state or territory to qualify for an exemption from the licensing requirements, but does not provide a definition or specifics as to what is meant by this term. This section provides specificity regarding eligibility criteria for authorizations granted by the committee per Section 901 for both applicants and staff affected by the proposed regulations.

Section 1149(c)(1):

This proposal adds subsection 1149(c)(1) to specify that “in good standing” means that a practitioner is not currently the subject of any investigation by a governmental entity or has not been charged with an offense for any act substantially related to the practice of dental hygiene by any public agency.

Factual Basis/ Rationale:

Section 901(b) requires that a practitioner be licensed or certified “in good standing,” but provides no definition or specifics as to what is intended by these terms. This proposed section provides that specificity which is lacking as well as public protection from practitioners who may be under investigation but not yet charged with an offense. This provision is also consistent with the Committee’s current authority in Section 480 of the Business and Professions Code to deny an applicant for licensure who has committed any act substantially related to the qualifications or functions of a dental hygienist.

Section 1149(c)(2):

This proposal adds subsection 1149(c)(2) to specify that a practitioner may not have entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon the person’s professional conduct or practice in order to be considered “in good standing”. This text provides specificity for applicants, sponsors of events governed by Section 901, and staff regarding eligibility criteria for authorizations granted by the committee per Section 901.

Factual Basis/ Rationale:

Section 901(b) requires that a practitioner be licensed or certified “in good standing,” but provides no definition or specifics as to what these terms mean. This proposed subdivision further defines the meaning of “in good standing” to include a requirement that the applicant may not have been subject to an administrative decision or any consent agreement that would place conditions upon the applicant’s professional conduct or practice. An applicant may hold a current and active license that contains restrictions or conditions that might place patients at risk or limit the care that they may receive. This text provides public protection by stating that those conditions or restrictions would preclude the applicant from volunteering to practice upon patients at sponsored events.

Section 1149(c)(3):

This proposal adds subsection 1149(c) to specify that to be considered “in good standing”, an applicant may not have been the subject of an adverse judgment resulting from the practice of hygiene that constitutes evidence of a pattern of incompetence or negligence, as determined by the board. This proposed text provides public protection against practitioners who may have numerous incidents resulting in an adverse judgment that do not result in disciplinary action against the dental license.

Factual Basis/ Rationale:

Section 901(b) requires that a practitioner be licensed or certified “in good standing,” but provides no definition or specifics as to what these terms mean. This proposed subdivision further defines the meaning of “in good standing” to include a requirement that the applicant may not have been the subject of an adverse judgment resulting from the practice of dental hygiene that the committee determines constitutes evidence of a pattern of incompetence or negligence. A practitioner may hold a license “in good standing”, however be the subject of an adverse judgment or judgments that reflect a pattern of practice that the committee determines to be incompetent or negligent. The committee intends to protect the public from these practitioners by including this prohibition in the regulatory proposal.

Adopt Section 1150 of Division 11 of Title 16 of the California Code of Regulations
(Sponsoring Entity Registration and Recordkeeping Requirements)

This proposal would add a new section 1150 of Article 13 of Division 11 of Title 16 of the California Code of Regulations to specify the registration and recordkeeping requirements of sponsoring entities.

Section 1150(a) - Registration:

This proposed subsection establishes a timeframe for submission of a sponsoring entity’s registration form and prescribes the registration form to be used and incorporates the form by reference.

Factual Basis/Rationale:

Sponsoring entities are required under Section 901(d) to register with the committee if they will have out-of-state practitioners participating in their sponsored event. The proposed regulation implements the statute by providing a form that a sponsoring entity can use to meet this requirement (DBC-901-A)(04/2011). The form includes space for all of the required information to be submitted under the statute. 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 Committee 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.

The foregoing form is necessary to create a process for the Committee for review of sponsoring entities, to implement the requirements of Section 901, and to assist with providing detailed information to sponsoring entity applicants regarding the requirements for seeking and maintaining registration. The certification and disclosure requirements also assist in ensuring accurate, timely and complete information is being provided to the committee prior to making a decision to grant or deny registration.

The proposed text also requires that sponsoring entities submit the registration form no later than 90 days prior to the date of the sponsored event. This will allow for sufficient time for staff review of the registration information and to have the registration in place prior to receipt of participation authorization requests from out-of-state practitioners.

Section 1023.16(b) – Determination of Completeness of Form:

This proposed subsection allows the Committee to, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process Form DBC-901-A on behalf of the committee. This proposed text also specifies that the committee 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 committee 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.

Factual Basis/Rationale:

Sponsoring entities are required under Section 901(d) to register with the committee. The proposed regulation will allow delegation to the Department of Consumer Affairs, which will avoid duplication of effort for healing arts boards when a sponsoring entity wishes to conduct a health fair with practitioners of various health care fields. The regulation will streamline the process for approval of such health fairs under the Department of Consumer Affairs, the umbrella agency over all healing arts boards.

The proposed regulation also sets out specific timelines for written notification to the sponsoring entity that their application was received and whether the application is deemed complete and the entity registered, or of the specific deficiencies and means of correction. This provides the sponsoring entity with clear timelines and requires that the Department or the committee give adequate notice to the entity and specific information as to how to correct any deficiencies in a timely manner. The proposed regulation specifies 30 days prior to the event as the date of rejection if all identified deficiencies have not been corrected, so the event sponsor is informed of the final date that deficiencies must be corrected before rejection of the application. The regulation allows for staff time to process completed applications, while giving event sponsors written notification of deficiencies and a deadline.

Section 1150(c) – Recordkeeping Requirements:

This proposed subsection implements and makes specific the recordkeeping requirements of sponsoring entities set forth in Section 901(g).

Factual Basis/Rationale:

Section 901(g) specifies certain records that sponsoring entities must maintain and requires entities to furnish these records upon request to the committee. In order to implement these requirements, the proposed regulation specifies that these records must be kept both at the physical premises of the sponsoring event and at a location in California for the statutorily required five-year period. Having these records available at the event and thereafter, at a location in California, is necessary in order to provide the committee with the ability to inspect and have easier access to the records. The proposed regulation specifies that the records may be kept in either paper or electronic form and that the sponsoring entity shall notify the committee upon registration of the form of its records. This provision makes it clear that the committee will accept either form of records.

Section 1150(d) – Requirement for Prior Board Approval of Out-of-State Practitioner:

This proposed subsection clarifies that the committee's authorization must be provided before a sponsoring entity may allow an out-of-state practitioner to participate in a sponsored event.

Factual Basis/Rationale:

Section 901 provides for authorization requirements for out-of-state practitioners and for registration requirements of sponsoring entities. This proposed regulation connects the two requirements by clarifying that a sponsoring entity may not permit an out-of-state practitioner to participate in its event unless and until it receives authorization from the committee.

Adopt section 1150(e) Post-event Report – This section specifies the information to be provided in the report required under § 901(f)

Factual Basis/Rationale:

Section 901(f) requires a report to be filed with the board by a sponsoring entity within 15 days after a sponsored event and sets forth the minimum information to be included. The statute provides no information as to the form of the report. The proposed regulation makes clear that the report may be in a form of the entity's choosing, however must contain certain specific information to ensure compliance with registration requirements. This information would include: the date(s) of the sponsored event, the location(s) of the sponsored event, the type(s) and general description of all health care services provided at the sponsored event; and a list of each out-of-state practitioner granted authorization who participated in the sponsored event. The proposed regulation would also include a requirement that the license number for each participating out-of-state practitioner be included in the report. This information is necessary for the board to identify the participants involved and verify compliance with the minimum standards adopted by the committee.

Adopt section 1151(a) (Request for Authorization to Participate) – This section provides the mechanism by which an out-of-state practitioner may request authorization to participate in a sponsored event, which includes submission of fingerprint clearance, a completed application and \$55 processing fee to the committee.

Factual Basis/Rationale:

Code Section 901(b) requires an out-of-state practitioner to request authorization from the committee in order to participate in a sponsored event. The statute specifically requires the committee to prescribe a form and set a processing fee for this purpose. The proposed regulations implements Section 901(b) by incorporating proposed FORM DBC-901-B (02/2011) to be submitted by the out-of-state practitioner to the board to request authorization to participate in a sponsored event. The form provides space for the applicant to include all of the information required by the statute.

Require the applicant to provide; a completed application; a \$55 processing fee to the committee. The applicant shall pay any cost for furnishing the electronic fingerprints.

Additionally, the regulation requires the applicant to submit additional material not specifically listed in the statute. First, the applicant must submit personal identifying information including contact information, the individual's social security number,

employer's contact information and either a full set of fingerprints or a Live Scan inquiry. These requirements are reasonably necessary in order for the committee to verify the requirement of § 901(b)(1)(B)(i) that the applicant has, "not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under Business and Professions Code Section 480." Section 480 authorizes a committee to deny licensure based on an applicant's conviction of a crime. A criminal background check is more easily effective if the committee has as much personal identifying information as possible. The committee is authorized to require applicants to furnish fingerprints for criminal background checks under Business and Professions Code section 144.

§ 901(b) also provides that applicants seeking authorization to participate must meet the educational and experience requirements determined by the committee. The committee has determined that the applicant must have a current valid license to engage in the practice of dental hygiene issued by a state, district or territory of the United States and submit Certifications of Completion showing at least 25 units of continuing education within two years of the date of application. The committee believes that these are the minimum requirements necessary to protect the public from inexperienced or unqualified practitioners who have not met the committee's full requirements for licensure.

Part 1 – Requires the applicant to provide: a completed application, a \$55 processing fee to the board (or \$106 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 dental hygiene in another jurisdiction, a copy of a valid photo identification issued from another jurisdiction, copies of certificates of completion of at least 25 units of continuing education, a copy of proof of passing Dental Hygiene Committee of California approved courses in (1) soft tissue curettage, (2) nitrous oxide/oxygen analgesia and (3) the administration of local anesthetic agents, copy of proof of certification of acceptable radiation safety instruction is required to expose dental radiographs, and any documents or statements requested on the application.

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 hygiene license; disciplinary actions taken against any healing arts license; surrender of a dental hygiene license; malpractice settlements or judgments; criminal convictions; 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 committee; (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 committee 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 committee 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) to release any and all information required by the committee.

Notification that authorization will not be issued until clearance has been received from the California Department of Justice and the Federal Bureau of Investigation.

Adopt section 1151(b) (Response to Request for Authorization to Participate) – This section sets forth the standard timeframe in which the committee shall grant or deny the authorization request.

Factual Basis/Rationale:

§901(b)(1)(A) provides that the committee shall notify the sponsoring entity within 20 calendar days of receiving a request for authorization to participate whether that request is approved or denied. The proposed regulation sets forth this statutory requirement and is necessary in order to restate the standard timeframe for response by the committee within the context of the regulations.

Adopt section 1151(c) (Denial of Request to Participate) – This section sets forth the criteria under which the committee must or may deny a request for authorization to participate.

Factual Basis/Rationale:

The statute provides that the committee must authorize the participation of out-of-state practitioners in sponsored events, but it does not list specific criteria for denial of authorization other than if a practitioner “fails to comply with the requirements of this section or for any act that would be grounds for denial of an application for licensure.” Therefore, it is necessary to provide at least some specific detail as to the criteria the committee will use beyond the general authorization to deny an application.

The committee has determined that the failure of an applicant to respond within seven days to a request for additional information will result in an automatic denial of a request. Because the committee only has 20 days in which to grant or deny a request, timing is critical and the committee’s opinion is that failure of an applicant to respond within seven calendar days will sufficiently jeopardize the committee’s ability to effectively review a complete application within the allotted time.

Further, a failure to meet any of the specified educational and experience requirements determined by the committee and discussed under section 1151(a) of these proposed regulations will constitute an automatic denial of the application. The Committee has determined that these criteria are necessary to protect the public from inexperienced or unqualified practitioners that have not met the committees’s full requirements for licensure.

The proposed regulation also sets forth discretionary reasons for denying a request. The first of these is that the application is not received within 20 days prior to the event. § 901(b)(1)(A) provides that the committee shall use reasonable efforts to notify the sponsoring entity within this time. The proposed regulation, however, provides needed clarity to the statute that, in the event that the statutorily required reasonable efforts are insufficient to review the application in advance of the event, the board may then deny the request. It would be counter to the committee’s consumer protection mandate to require it to grant authorization to an individual whose request is submitted in so short a time before the scheduled event that it cannot adequately be reviewed.

The other discretionary reasons for denial are based upon the past actions of the committee with respect to that particular individual. The committee is of the opinion that if an applicant has previously had a request denied or an authorization terminated, this alone may be cause for a subsequent denial. Because the time for review of the authorization is only 20 days, the committee may not have time to revisit the case of an individual who has already been determined by the committee as unfit to participate. The committee feels that it is reasonable, however, to consider this a discretionary decision so that, on a case-by-case basis, the board can reevaluate a particular individual’s circumstances as appropriate if sufficient time exists to do so without compromising public protection.

Finally, the committee feels that it is reasonable and necessary to include discretionary

denial authority in the event that an applicant has participated in 3 or more sponsored events within the 12-month period immediately preceding the current application. The committee feels that, in an effort to maintain the integrity of the state's licensing laws and, thus, protect the public, it should have discretion to deny permission to applicants when the committee recognizes that a particular applicant practices in California without a license on multiple occasions within the span of one year. Such a situation would frustrate the purpose of the "temporary" nature of the exemption from licensure permitted under § 901.

Adopt section 1151(d) (Appeal of Denial) – This section provides an appeal procedure for an applicant who has had a request for authorization to participate denied by the committee.

Factual Basis/Rationale:

§ 901 allows for the denial of a request for authorization to participate, but it does not provide any appeal procedure for the denied individual. In order to ensure some measure of due process, the committee feels that applicants should have access to the same appeal procedure available for an out-of-state practitioner who has had his or her authorization terminated. Therefore, the proposed regulation references the appeal procedure in section 1152 of these proposed regulations, discussed below. This will provide consistency in the two appeal processes.

Adopt section 1152(a) (Grounds for Termination of Authorization) – This section provides the grounds upon which the committee may terminate the authorization to participate previously granted to an out-of-state practitioner.

Factual Basis/Rationale:

The first two grounds for termination listed in the proposed regulation are consistent with § 901(j)(1). As an additional ground for termination, this proposed regulation adds the receipt of a credible complaint indicating that the practitioner is unfit to practice or is endangering the public. This provision is necessary in order for the committee to act consistently with its mandate that protection of the public is its highest priority. Because of the permissive and temporary nature of the licensure exemption granted under § 901, and the limited time which the board has to review and verify the qualifications of the out-of-state practitioner, the committee feels that it is essential that it may act immediately to terminate the authorization to participate granted to the non-California licensed individual when a credible complaint of endangerment is received.

Adopt section 1152(b) (Notice of Termination) – This section specifies written notice of a termination may be given during a sponsored event.

Factual Basis/Rationale:

The statute provides that written notice of a termination shall be given to both the sponsoring entity as well as the individual practitioner. This proposed regulation is necessary to clarify that in the event a termination is issued during the course of a sponsored event, the committee may provide the written termination notice to any representative of the sponsoring entity on the premises of the event. The most expeditious way to notify the entity is at the event itself so that the practitioner will be instructed to cease practice immediately.

Adopt section 1152(c) (Consequences of Termination) – This section sets forth the consequences of a termination of an authorization to participate and how the committee will report the fact of the termination.

Factual Basis/Rationale:

§ 901(j)(3) provides that out-of-state practitioners shall not provide services under this statute following a termination of authorization. The proposed regulation specifies that the practitioner shall “immediately” cease their participation in the event. The committee feels that this clarification is necessary in the event that a termination is issued during the course of an event. In case there is any confusion as to when the termination becomes effective, this proposed provision would be necessary to remove any doubt that the practitioner must immediately desist from participation as soon as the termination notice is received.

The proposed regulation also provides that the committee will consider a termination of authorization a disciplinary measure that is reportable to the national practitioner data banks and the individual’s out-of-state licensing authority(ies). The committee views these provisions as reasonably necessary and logical in order to protect the public. The grounds for termination are criteria that the committee itself would consider as disciplinary measures for its own licensees Business and Professions Code 475, 480 and 1900-1966.6. Therefore, because the committee does not have licensing authority over the out-of-state practitioner, its only disciplinary remedy is to report the conduct to the individual’s home jurisdiction and applicable national practitioner data bases. If the conduct is such that it would lead to action against the practitioner’s out-of-state license, then the committee would have that information available to it in the event that the individual applied for either a subsequent authorization to participate in a future sponsored event or a license to practice in California.

Adopt section 1152(d) (Appeal of Termination) – This section provides the procedure for appealing denials of authorization and terminations of authorizations to participate.

Factual Basis/Rationale:

The statute allows for an out-of-state practitioner who has had his or her authorization to participate terminated by the board to file a written appeal to the board within 30 days of receipt of the termination notice. The proposed regulation specifies that this request for appeal shall be considered a request for an informal hearing under the Administrative Procedure Act (APA). This is potentially a less costly system than the formal hearing procedure and is warranted for removal of this type of authorization.

Adopt section 1152(e) (Informal Conference Option) – This section provides an alternative to a hearing under the APA for appeals submitted by out-of-state practitioners.

Factual Basis/Rationale:

§ 901(j) allows for the filing of an appeal by an out-of-state practitioner. In addition to the APA procedure set forth in proposed section 1152d above, this proposed regulation also offers the appealing out-of-state practitioner the option of an informal conference with the committee's executive officer to try and resolve the appeal. This proposed regulation is consistent with the committee's practice for its own licensees who have been issued a citation Business and Professions Code 125.9,148 and California Code of Regulations 1142 and provides an inexpensive option to ensure the efficient resolution of appeals when possible. The informal conference option proposed does not affect the appellant's right to a hearing under the APA.

Adopt section 1153 of Division 11 of Title 16 of the California Code of Regulations (Termination of Authorization and Appeal) This proposal would add a new section 1153 of Article 13 of Title 16 of the California Code of Regulations to specify the additional practice requirements for the out-of-state practitioners authorized to participate in sponsored free health care events.

Section 1153:

This proposed subsection specifies that each out-of-state practitioner authorized to participate in a sponsored event must provide written notification to each prospective patient regarding the practitioner's license status and a disclosure about the scope of authorization to practice in California 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.

Factual Basis/Rationale:

Statutory law makes no provision for notifying the affected public that out-of-state practitioners are not California licensed dentists in good standing. A member of the public would assume, unless this notice is provided, that hygienist providing dental hygiene services in California would be duly licensed and regulated by the Dental Hygiene Committee of California. The requirement of written notification provides transparency to the

public that individuals performing dentistry at the sponsored event are licensed in good standing by another state, district or territory, the license numbers, effective dates of each license and issuing agency, and the dates that the out-of-state practitioner is authorized to practice by the committee. This proposed regulation further specifies a statement of disclosure that the Dental Hygiene Committee of California has only authorized the practitioner to provide services at the sponsored event and for a period not to exceed 10 days.

This proposed section provides disclosure to the public that practitioners are licensed by another governmental agency, provides specific information regarding those licenses, and informs the public that practitioners may only practice pursuant to the specific provisions of Section 901.

Underlying Data

Assembly Bill 2699

Form 901-A

Form 901- B

April 29, 2011 Dental Hygiene Committee of California Meeting Minutes

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This regulation will impact non-profit organizations sponsoring free health care events and practitioners licensed out-of-state who wish to volunteer at such events.

The sponsoring entities may incur nominal expenses associated with submitting the registration form to the Committee, and complying with recordkeeping requirements, and reporting requirements. Sponsoring entities shall be responsible for submitting the registration Form 901-A (04/2011) to the Committee. 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 Committee 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 Committee summarizing

the details of the sponsored event within fifteen days after the conclusion of such event. The report may be provided to the Committee 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 hygienist seeking authorization from the Committee to participate in a sponsored event will incur a \$55 fee for application processing. Additionally, applicants will incur costs associated with furnishing fingerprints for the purpose of the Committee 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 Committee; 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 committee to process "ink on cards" fingerprints 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. 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 hygiene care to employees. Many small businesses are legally required to provide health care, but are not required to provide dental hygiene 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 dental hygienist.

Businesses operated by licensees would not be affected by these regulations, as these businesses do not normally provide services at no cost. Businesses owned by small business owners may benefit from these regulations if their employees attend sponsored events and are thus provided dental hygiene care at no cost.

This proposed regulation may affect a federally funded State agency or program if that State agency or program is a nonprofit who conducts health fairs in California.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either 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 regulation. The committee is directed by statute to develop these regulations and there is, thus, no other method of developing the forms and procedure for registering sponsoring entities and granting authorization for requests by out-of-state practitioners to participate in sponsored events.

One possible alternative is to delay or refrain from promulgating any regulations – i.e., maintain the status quo. This is not reasonable because the statute contemplates a registration and fee process to be developed by the committee to implement the statute. By not creating a procedure, the committee would frustrate the purpose of the statute, which is intended to provide an opportunity for out-of-state licensed volunteers to participate in certain free health care events. Also, it is not reasonable to delay because the statute has a sunset date of January 1, 2014. Because the statute is only effective for three years, it is incumbent on the committee to implement the required processes as soon as possible.