

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

NOTICE IS HEREBY GIVEN that the Dental Hygiene Committee of California is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the:

Department of Consumer Affairs
1st Floor Hearing Room
2005 Evergreen Street
Sacramento, California on

January 6, 2012

10:00 a.m.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact in this Notice, must be received by the Dental Hygiene Committee of California (hereinafter "Committee") at its office not later than 5:00 p.m. on January 6, 2012, or must be received by the Committee at the hearing. The Committee, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals 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 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 Section 1906 of the Business and Professions Code, and to implement, interpret or make specific Sections 144,480, and 901 of said Code, the Committee is considering changes to Division 11 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code Section 1906 authorizes the Committee to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Article 13 of the Business and Professions Code. The Committee is proposing the following changes:

The Committee currently regulates a total of 30,011 licensees; consisting of 26,525 Register 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.

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.

Adopt Section 1149 of Division 11 of Title 16 of the California Code of Regulations (Sponsored Free Health Care Events – Requirements for Exemption):

This proposal adopts a new Article 13, Section 1149 to define the terms “community based organization”, “out-of-state practitioner”, and “in good standing: for the purposes of this Section. These terms are either not currently defined in the statute or require further clarification.

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

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 (DHCC-901-A)(04/2011). The form includes space for all of the required information to be submitted under the statute. Form DHCC-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 DHCC-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.

Adopt Sections 1151, Article 13, Division 11 of Title 16 of the California Code of Regulations (Out-of-State Practitioner Authorization to Participate in Sponsored Event).

This proposed section provides the mechanism by which and out-of-state practitioner may request authorization to participate in a sponsored event: completion of Form 901-B (4/2011). Form 901-B would include the following:

Part 1 – Requires the applicant to provide: a completed application, a \$55 processing fee to the committee (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 of 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 is 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.

This proposal would also set forth the standard 20-day time frame from the receipt of the completed application in which the committee shall grant or deny the authorization request. This section would set forth the criteria under which the committee must or may deny a request for authorization to participate and would provide an appeal procedure for an applicant who has had a request for authorization to participate denied by the committee.

Adopt Sections 1152, Article 13, Division 11 of Title 16 of the California Code of Regulations Termination of Authorization and Appeal

This proposed section provides the grounds upon which the committee may terminate the authorization to participate previously granted to an out-of-state practitioner, specifies that written notice of termination, including the basis for the termination shall be given to both the sponsoring entity and the out-of-state practitioner. If the written notice is provided during the sponsored event, then this proposal would permit the committee to provide notice to any representative of the sponsored event on the premises of the event, this provision would also set forth the consequences of a termination of authorization to participate and how the committee will report the fact of such termination to the NPDB and the applicable out-of-state licensing entity, and provides the procedure for appealing denials of authorization and terminations of authorizations to participate, including an informal hearing under the Administrative Procedures Act (APA) for appeals submitted by out-of-state practitioners.

Adopt section 1153 of Division 11 of Title 16 of the California Code of Regulations (Additional Practice Requirements for Out of State Practitioners Authorized to Participate in Sponsored Free Health Care Events of Authorization)

This section would specify that each out-of-state practitioner authorized to participate in a sponsored event must provide written notification regarding the practitioner's license status and a disclosure about the scope of authorization to practice in California to each prospective patient prior to performing any services, on the form of 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.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: It is unknown to the Committee as to how many sponsors of free health care events and how many volunteer out-of-state licensees may apply to the Committee as a result of this regulation. The Committee estimates that at least 200 applications per year from out-of-state hygienist seeking authorization to provide services at sponsored free health care events. In order for the Committee to absorb the workload associated with processing the request for authorization from the out-of-state hygienist, the Committee will need to charge a non-refundable fee of \$55, (\$106 for individuals who have to submit fingerprints on cards and not Live Scan forms). The fee will offset the cost associated with staff's processing of the application.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Requires Reimbursement: None

Business Impact:

This regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. 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.

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

The proposed regulations impact those out-of-state health care practitioners applying to the Dental Hygiene Committee of California to participate in community-based organizations that provide sponsored free health care events in California.

The proposed regulations may provide an opportunity of out-of-state licensed volunteers to participate in community sponsored free health care events.

Cost Impact on Representative Private Person or Business:

The Committee is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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

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Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Committee has determined that the proposed regulation would not have a significant economic impact on small businesses. Instead, the impact of this rulemaking is to offer free health care to uninsured or under-insured Californians by volunteer health care practitioners coming from out of state to provide dental hygiene services. These services may benefit small businesses that do not provide dental hygiene care to their employees.

CONSIDERATION OF ALTERNATIVES

The Committee must determine that no reasonable alternative is considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Committee has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Dental Hygiene Committee of California at 2005 Evergreen Street, Suite 1050, Sacramento, California 95815.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Traci Napper, Legislative Analyst
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The backup contact person is:

Name: Lori Hubble, Executive Officer
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Website Access: Materials regarding this proposal can be found at the Committee's website:
www.dhcc.ca.gov.