

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

INITIAL STATEMENT OF REASONS

HEARING DATE:

SUBJECT MATTER OF PROPOSED REGULATIONS: Retroactive Fingerprinting

SECTION(S) AFFECTED: Title 16, Division 11, California Code of Regulation, Section, 1106, 1107 and 1112.2.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

The main purpose of the proposed language is to establish requirements that a licensee must furnish a full set of fingerprints to the Department of Justice ("DOJ") as a condition of renewal with the Dental Hygiene Committee of California if the licensee was initially licensed prior to 1994 or if an electronic record of the fingerprint submission no longer exists. Generally, this proposal would:

- (1) set requirements and time frames for when the licensee would be required to submit criminal history information and other related records to the Committee;
- (2) specify the conditions and the purpose for which a full set of fingerprints would be required;
- (3) establish that the licensee would be responsible for paying the costs associated with furnishing fingerprints and conducting criminal offender record searches;
- (4) require a licensee to certify compliance with this new fingerprinting requirement on his or her renewal form and maintain records of his or her compliance for at least 3 years;
- (5) authorize a waiver of these new fingerprinting requirements for licensees who are actively serving in the military outside of the country;
- (6) mandate that licensees disclose on the renewal form whether the licensee has been convicted of a crime, as defined, or had any disciplinary actions taken against any other license he or she holds;
- (7) specify that failure to comply these requirements or submit a full set of fingerprints to DOJ renders any application for renewal incomplete and is grounds for discipline by the Committee; and,

Proposed changes, by section, are more specifically identified as follows.

Add Section 1106. Response to Committee Inquiry.

This Section heading and text would provide that if the Committee asks a licensee to provide criminal history information, the licensee must respond to the request within 30 days by making available all documents and other records requested, and specifies that the information provided must be accurate. This Section would establish the timeframe for a licensee's compliance with such Committee inquiries and would ensure that accurate information is received from the licensee. This Section would protect consumers by assisting the Committee's Enforcement staff in its enforcement program. Article 9 of Business and Professions Code

Section 1107. Fingerprint and Disclosure Requirements for Renewal of License title and new Section.

This heading text would inform licensees that the Sections that follow relate to fingerprinting and disclosure requirements for the renewal of a license.

Add Section 1107 9a)

This Section would establish requirements that a licensee must furnish a full set of fingerprints to the Department of Justice ("DOJ") as a condition of renewal with the Dental Hygiene ("Committee") if the licensee was initially licensed prior to 1994 or if an electronic record of the fingerprint submission no longer exists. Licensees need to be made aware that certain groups of licensees will be required to be fingerprinted as a condition of license renewal, and this regulation would authorize the Committee to require fingerprinting of these licensees. This Section would protect consumers by giving the Committee access to currently available DOJ information relative to criminal arrests and convictions and would enable the Committee to determine if violations of the Article 9 of the Business and Professions Code have occurred.

Add Section 1107(a)(1)

This Section would clarify that the cost of fingerprinting and conducting the criminal history record check must be paid by the licensee.

Add Section 1107(a)(2)

This Section would establish that as part of the renewal process, each licensee will be asked to certify on his or her renewal form whether or not they have submitted fingerprints to the Department of Justice as required.

Add Section 1107(a)(3)

This Section would establish an exemption from or waiver of the fingerprinting requirement if the license is or if the licensee is actively serving in the military outside the country.

Add Section 1107(a)(4)

This Section would require affected licensees to retain a receipt, as specified, of compliance with the fingerprinting requirement for a period of at least three years. This requirement is necessary to provide evidence that a licensee has complied with the fingerprinting requirement.

Add Section 1107(b)

This Section would mandate that if a licensee is convicted of any violation of the law during the prior renewal cycle, the licensee must disclose that fact to the Committee with infractions specified that may be omitted, and requires that any disciplinary action against another license that the licensee may hold must be reported. This reporting requirement is necessary for consumer protection and enforcement of the Article 9 of the Business and Profession Code. Many licensees hold other licenses either in California or in other states. This language would assist the Committee in obtaining information relative to discipline taken by other corresponding state or government licensing entities. This information is necessary to determine if disciplinary

action is warranted pursuant to the Committee's authority (e.g., Sections 141 and 1950.50 of the Business and Professions Code).

Add Section 1107(c)

This Section would establish that failure to comply with these requirements would result in non-renewal of the license until the licensee complies with all of the requirements of this Section (e.g., fingerprinting, disclosure or record-keeping requirements). This requirement is needed to ensure compliance with the unprofessional conduct statutes of the Article 9 of the Business and Profession Code and prevents possible renewal of a license for a licensee who has violated the law.

Add Section 1107(d)

This Section would provide that failure to furnish a full set of fingerprints as required is grounds for discipline by the Committee. The Committee must have the ability to enforce the requirements of the section by disciplining the license of a licensee who refuses to comply with the requirements for fingerprinting. The licensee could be in violation of the law or potentially cause patient harm if the Committee does not have the ability to verify the criminal history of its licensees through the DOJ or take action for non-compliance.

FACTUAL BASIS/RATIONALE

Proposed Adoption of Section 1106 of Division 11 of Title 16 of the California Code of Regulations

This proposal would require a licensee to provide timely and accurate responses to inquiries and provide necessary documents needed by the Committee to investigate and take appropriate actions against a licensee convicted of a criminal offense that is substantially related to the practice of hygiene.

To conduct an investigation on whether a conviction is substantially related to a licensee's scope of practice, the Committee must review "certified" police reports, "certified" court documents and review documentation that substantiates compliance with probationary terms and rehabilitation efforts. Without this information the Committee cannot make a final determination as to the appropriate action. This proposed language would enable the Committee to issue a citation and fine for failure to provide the necessary documentation in a timely manner. Due to the enormous volume of conviction documents that must be obtained from the various court houses throughout California and other states, it is critical that the licensee provide accurate court and case number information to the Committee. This regulatory proposal would assist in ensuring that such information is provided.

Proposed Adoption of Section 1107 of Division 11 of Title 16 of the California Code of Regulations

Business and Professions Code Section 1916(a) provides that every applicant for licensure shall furnish fingerprint cards for submission to state and federal criminal justice agencies to establish the identity of the applicant and to determine if the applicant has a record of any criminal convictions in California or in any other jurisdiction. This proposed regulation would also require a licensee who was never fingerprinted by the Committee or for whom a fingerprint record no longer exists, as a condition of renewal, to furnish to the Department of Justice a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a

state and federal criminal offender record information search conducted through the Department of Justice.

Currently, the Dental Hygiene Committee, along with other committees, boards and bureaus, requires applicants to provide fingerprints for a background check before issuance of a license. When implemented, this requirement was not retroactive, so licensees who obtained their licenses prior to that requirement have not been fingerprinted. As a result, the committee has no criminal history or subsequent arrest reports on any Registered Dental Hygienist licensed prior to 1999 or for any Registered Dental Hygienist in Extended Functions who received an initial license prior to 1994.

Recently, the Board of Registered Nursing has been the subject of a Los Angeles Times article regarding nurses who have a criminal background or are incarcerated and continue to hold a California license. This report has made the Dental Hygiene Committee of California aware that there may be Dental Hygiene licensees who have committed criminal acts that have not come to the attention of the Committee because the Committee did not require fingerprinting of dental hygiene licensees prior to 1994 and the Committee on Dental Auxiliaries did not require fingerprinting of its dental hygiene licensees until 1194. The Committee believes that this places consumers at risk and that this rulemaking is required to enable the Committee to fingerprint all licensees for which no fingerprinting record exists.

(Business and Professions Code section 1906)

UNDERLYING DATA

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

BUSINESS IMPACT

The Committee does not believe that this regulation will have a significant adverse economic impact on businesses. There are approximately 750 vendors statewide, including small businesses that provide fingerprinting services. There should be no initial or ongoing cost impact upon the vendors because they are already equipped to provide the service and the fingerprinting of the approximate 16,500 licensees will be extended over a two-year period. Additionally, this proposed regulation would only affect individuals for whom an electronic record of his or her fingerprints does not exist in the DOJ criminal offender record identification database and those licensees that do not comply with the proposed regulation. An individual licensee would pay an average of \$65.00 to comply with the fingerprinting requirement over its lifetime, since it is a one-time requirement.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The regulatory proposal indirectly requires the use of Live Scan because the Department of Justice requires it for those submitting prints living in California. Live Scan is a well-established and readily available technology for the submission of fingerprints.

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 regulations.