

DENTAL HYGIENE BOARD
FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Retired Licensure.

Section(s) Affected: Section 1115 (renumbered as 1119) of Title 16 of the California Code of Regulations (CCR).

Updated Information

The Informative Digest and Initial Statement of Reasons are included in the rulemaking file and incorporated as though set forth herein. In the Initial Statement of Reasons, there is an incorrect statement that there is an “area to indicate if license was retired due to permanent disability” in form DHBC RLC-02. A previous version of the form included this field, but the Board decided not to include it in the final version.

Board staff noticed the proposed rulemaking on June 10, 2021, with a 45-day comment period ending on July 27, 2021. The Board received thirteen comments which are summarized below.

The Board reviewed the comments at its January 22, 2022 meeting. The Board approved the responses to the comments.

The Board approved modified text at its January 22, 2022, meeting. The Board provided 15 days’ notice of the modified text on January 27, 2022, which concluded on February 14, 2022. The Board received one letter of support regarding the modified text and one letter mistaking the Board for another organization. The letters are summarized below as well.

At its March 19, 2022 Board meeting, the Board considered and approved non-substantive edits to the forms to prevent duplication and provide consistency among forms utilized by the Board and directed staff to take all steps necessary to complete the rulemaking process.

During the review by the Office of Administrative Law (OAL), OAL found the changes made to the forms [DHBC RLC-01 (New 11/2020) and DHBC RLC-02 (New 10/2020)] at the March 19, 2022 Board meeting substantive and recommended the Board revert the language in the forms to the version previously adopted by the Board at its January 22, 2022 meeting.

The Board withdrew OAL rulemaking file number 2022-0411-03S on September 19, 2022.

The Board reviewed OAL's determination at its October 8, 2022 meeting, and approved reversion to the modified version forms [DHBC RLC-01 (New 11/2020) and DHBC RLC-02 (New 10/2020)] previously adopted by the Board at its January 22, 2022 meeting.

The modified text included the following amendments:

A. Addition of "Article 4. Licensing"

Prior to this regulatory package, Board regulations did not have an article or regulations pertaining to licensing. As section 1115 pertains to a licensing regulatory section "Retired Licensure," the Board determined to add a new article ("Article 4. Licensing") to allow section 1115 to be placed within the correct article.

B. Deletion of subdivision (e)(1) "Request to restore his or her license to active status within three (3) years of issuance of the retired license; and."

Business and Professions Code (BPC) section 1940(b) allows an inactive licensee to restore their license to active status, regardless of the time the license has been in inactive status, provided the licensee 1) submits an application to the Board on a form provided by the Board; and 2) provides evidence that the licensee has completed the required number of hours of approved continuing education within the last two years preceding the date of the application.

The Board acknowledges within both the "retired" and "inactive" licensure categories, the RDH is not practicing and not required to take continuing education, and therefore, reactivation of both licensure categories should be subject to the same requirements.

C. Renumbering in subdivision (e) of "subdivision (e)(2) to subdivision (e)(1)" "subdivision (e)(3) to subdivision (e)(2)," "subdivision (e)(4) to subdivision (e)(3)," and "subdivision (e)(5) to subdivision (e)(4)."

Based on amendments to the text, the Board re-numbered sections (e)(2) through (e)(5) to (e)(1) through (e)(4) in subdivision (e).

D. Deletion in subdivision (f) of "Should a licensee seek to restore their license more than three (3) years after issuance of the retired license, the licensee must file a new application for licensure."

The Board incorporates by reference its response to Amendment A.

- E. Addition in subdivision (f) of “The holder of a retired license shall be allowed to provide to the public, without supervision, dental hygiene educational services, oral health training programs, oral health screenings, and application of fluoride varnish free of charge in any oral health public health program created by federal, state, or local law or administered by a federal, state, county, or local governmental entity, at a sponsored event by a sponsoring entity. The retired licensee shall refer any screened individuals with possible oral abnormalities to a dentist for a comprehensive examination, diagnosis, and treatment plan. For purposes of this section, the following shall apply:”

BPC section 464(b)(2) provides that the holder of a retired license shall not engage in any activity for which a license is required, unless the board, by regulation, specifies the criteria for a retired licensee to practice his or her profession or vocation.

The Board acknowledges the valuable resources that a retired RDH may provide to promote oral health in limited form on a volunteer basis. Therefore, the Board looked to BPC section 1911 which provides duties an RDH may provide without supervision. This subdivision is necessary to allow retired RDHs to volunteer their time to provide dental hygiene educational services, oral health training programs, oral health screenings, and application of fluoride varnish to persons in need of these services at public oral health programs.

BPC section 1911(a) allows an RDH to provide, without supervision, educational services, oral health training programs, and oral health screenings.

Additionally, BPC section 1911(c) allows, in any public health program created by federal, state, or local law or administered by a federal, state, county, or local governmental entity, or at a sponsored event by a sponsoring entity or at a nonprofit organization, an RDH to provide, without supervision, dental hygiene preventive services in addition to oral screenings and the application of fluoride.

Furthermore, BPC section 1911(b) requires an RDH to refer any screened patients with possible oral abnormalities to a dentist for a comprehensive examination, diagnosis, and treatment plan.

Therefore, the Board determined to add new subdivision (f) in the interest of promoting public health while maintaining public safety.

- F. Addition in subdivision (f)(1) of ““Sponsored event” shall be defined as in paragraph (4) of subdivision (b) of Section 1626.6 of the Code.”

As BPC section 1911(d)(2) defines “sponsored event,” the Board determined to maintain continuity among definitions of “sponsored event” and define it verbatim within the regulation. This subdivision is necessary for clarity as to the definition of “sponsored

event” to ensure the uniform application of the definition.

G. Addition in subdivision (f)(2) of “Sponsoring entity” shall be defined as in paragraph (6) of subdivision (b) of Section 1626.6 of the Code.”

As BPC section 1911(d)(3) defines “sponsoring entity,” the Board determined to maintain continuity among definitions of “sponsoring entity” and define it verbatim within the regulation. This subdivision is necessary for clarity as to the definition of “sponsoring entity” to ensure the uniform application of the definition.

Lastly, two sets of non-substantive changes were made to the final regulation text. First, Section 1117 (adopted in OAL Matter No. 2022-0216-03S) was displayed to show its placement in Title 16, Division 11, Article 4. Second, Section 1115 adopted in this rulemaking was renumbered to 1119 so that it appears at the end of Article 4.

Local Mandate

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

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board 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 regulations or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Board incorporates by reference the alternatives identified in its Initial Statement of Reasons and did not receive any comments that altered its findings.

Incorporation of Documents by Reference

All forms incorporated by reference in this rulemaking would be cumbersome, unduly expensive and otherwise impractical to publish in the CCR. All forms incorporated by reference that are being adopted, amended, or repealed in this rulemaking were available on the Board’s website and hardcopies will be available from the Board upon request.

Objections or Recommendations/Responses

The Board received comments (Comments) during the 45-day comment period on the Board’s proposed language of section 1115. Below are the Board’s responses to the comments made therein.

A. June 11, 2021 email from Patricia Maruko.

Comment A-1

Comment Summary:

This comment questions as to why the Board has taken years to decide on a retired license status for registered dental hygienists (RDHs). Additionally, Ms. Maruko states she has been retired for three years, already paid for an inactive status license, and does not wish to pay for a retired status license.

Response:

The Board acknowledges the comment, and makes no revisions to the text based thereon.

The Board has actively been pursuing a regulatory package to establish a retired license category and acknowledges that the regulatory process is lengthy.

Additionally, BPC section 464(b)(4) authorizes the Board to establish an appropriate application fee to cover the reasonable cost of issuing a retired license. BPC section 1944(a)(14) provides for the establishment of a fee (\$80) at not more than half the license renewal fee (\$160) to cover administrative and processing procedures.

Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

B. July 13, 2021 letter from Heidi Coggan, RDHAP, BS, President of the California Dental Hygienists' Association (CDHA).

Comment B-1

Comment Summary:

Ms. Coggan requests the Board include language to allow RDHs with an expired license to volunteer their services at community and nonprofit events and health fairs. She states they firmly believe the valuable services volunteer retirees could provide would benefit the public by increasing access to care, and to exclude the retiree population would unnecessarily reduce the number of volunteer RDHs available for such events.

Response:

The Board acknowledges the comment and has prepared modified text to address the concern.

BPC section 464(b)(2) provides the holder of a retired license issued shall not engage in any activity for which a license is required, unless the board, by regulation, specifies the criteria for a retired licensee to practice his or her profession or vocation.

The Board acknowledges the valuable resources that a retired RDH may provide to promote oral health in limited form on a volunteer basis. Accordingly, the Board amends section 1115 in response to this comment as follows:

- (f) The holder of a retired license shall be allowed to provide to the public, without supervision, dental hygiene educational services, oral health training programs, oral health screenings, and application of fluoride varnish free of charge in any oral health public health program created by federal, state, or local law or administered by a federal, state, county, or local governmental entity, at a sponsored event by a sponsoring entity. The retired licensee shall refer any screened individuals with possible oral abnormalities to a dentist for a comprehensive examination, diagnosis, and treatment plan. For purposes of this section, the following shall apply:
- (g) “Sponsored event” shall be defined as in paragraph (4) of subdivision (b) of Section 1626.6 of the Code.
- (h) “Sponsoring entity” shall be defined as in paragraph (6) of subdivision (b) of Section 1626.6 of the Code.

Comment B-2

Comment Summary:

Ms. Coggan questions the need for a three-year restriction on reinstatement of a retired license. She states RDHs are currently able to place their licenses on inactive status, which does not include any limitations as to the number of years the RDHs could remain inactive before reactivating their licenses, nor does it require a continuing education requirement. She states in both cases the RDH is not practicing and not required to take continuing education, therefore, reactivation of both licensure categories should be subject to the same requirements. She states a three-year restriction for reactivation of the retired license placed upon retirees is discriminatory and requests the elimination of the three-year reinstatement limit.

Response:

The Board acknowledges the comment and has prepared modified text to address the concern.

The Board acknowledges within both the “retired” and “inactive” licensure categories, the RDH is not practicing and not required to take continuing education, and therefore, reactivation of both licensure categories should be subject to the same requirements.

Accordingly, the Board amends section 1115 to strike (e)(1) and (f) in the proposed text in response to this comment.

C. June 16, 2021 letter from Barbara Briley.

Comment C-1

Comment Summary:

Ms. Briley questions why the Board has only allowed three years to convert the retired license back to active status. Ms. Briley stated that she has practiced as a clinical instructor, in dental offices, and internationally for 24 years and was forced to retire due to health concerns. She stated to be denied renewal after a 3-year period is disheartening and a disservice to RDHs.

Response:

The Board incorporates by reference its response to Comment B-2 above.

D. July 12, 2021 letter from Susan McLearn.

Comment D-1

Comment Summary:

Ms. McLearn questions why the Board is requiring the display of the “retired” designation alongside their credentials. Ms. McLearn states she was unsure of the intention and questioned if the designation was to deter illegal practice. She states the designation seems demeaning, and that she and most others would never practice illegally. Ms. McLearn stated that if concern was due to consumer protection, that the Board should include an example of how one would legally display their credentials.

Response:

The Board acknowledges the comment, and makes no revisions to the text based thereon.

The Board determined that, as the holder of a retired license is prohibited from practicing, it is imperative that the retired licensee make clear that he or she is no longer a practicing RDH when using his or her earned professional title to prevent misleading the public that they are able to provide dental hygiene care. Additionally, the regulation

makes clear how to display one's credentials. Subdivision (b)(3) states: "Utilize his or her professional title only with the unabbreviated word "retired" preceding or after the professional designation."

Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

Comment D-2

Comment Summary:

Ms. McLearan questions why the Board will not allow retired RDHs to volunteer their services as this would be a disservice to the consumer. Ms. McLearan states if an RDH retires after many years of practice, they do not lose their skills, and requiring CE to reactivate one's license seems fair, equitable, and protective of the public. Additionally, Ms. McLearan requested for the Board to consider a reduced rate for those on a fixed income or to acknowledge 50 years of practice. Furthermore, she stated she would like to participate in volunteer opportunities and for the Board to "make it clear" within the regulation.

Response:

The Board incorporates by reference its response to Comment B-1 above regarding volunteering.

The Board acknowledges the comment regarding a reduced rate, and makes no revisions to the text based thereon.

As noted in the response to Comment A-1 above, BPC section 464(b)(4) authorizes the Board to establish an appropriate application fee to cover the reasonable regulatory cost of issuing a retired license. BPC section 1944(a)(14) provides for the establishment of a fee (\$80) at not more than half the license renewal fee (\$160) to cover administrative and processing procedures.

Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

E. June 15, 2021 letter from Maureen Titus, RDHAP, BS.

Comment E-1

Comment Summary:

Ms. Titus expresses her concerns regarding subdivision (c) and its restriction of practice. Ms. Titus states that without retired volunteers, many clinics and public health

events will cease to exist and create an even greater need for the underserved in California. Ms. Titus requests the Board to consider amending the language to allow retired RDHs to be part of a critical oral health team at volunteer events and free clinics that provide dental care to the underserved and uninsured people in California. Ms. Titus attached the Dental Board of California's (DBC) "Reduced Fee/ Retired Status Information" document and requests the Board to consider what the DBC has in place for retired dentists.

Response:

The Board incorporates by reference its response to Comment B-1 above.

F. July 14, 2021 letter from Lisa Okamoto, RDH.

Comment F-1

Comment Summary:

Ms. Okamoto requests the Board remove the three-year time requirement to reactivate a retired license.

Response:

The Board incorporates by reference its response to Comment B-2 above.

Comment F-2

Comment Summary:

Ms. Okamoto requests the Board to allow retired hygienists to provide preventive dental hygiene services at public health, community and non-profit events.

Response:

The Board incorporates by reference its response to Comment B-1 above.

G. June 11, 2021 letter from Catherine Lynn Taylor, RDH.

Ms. Taylor extends her strong support of the retired license category and states the provisions of this regulatory package would allow her to end her career with dignity.

Response:

The Board acknowledges and appreciates the support for the regulation.

H. June 13, 2021 letter from Stephany A. Skenderian, RDH.

Ms. Skenderian states that she approves of and has no comments on the regulation.

Response:

The Board acknowledges and appreciates the support for the regulation.

I. June 18, 2021 letter from Karen Olson, RDH.

Ms. Olson states she has been retired for nearly three years, currently holds a current license, and is in favor of the proposed regulations establishing a retired license for RDHs. She states she would choose the retired option when available and thanks the Board for looking into this need for RDHs and finding a solution.

Response:

The Board acknowledges and appreciates the support for the regulation.

J. June 26, 2021 letter from Claudia Segó, RDH.

Ms. Segó strongly urges the Board to approve retired licensure status. She states the word “delinquent” has negative meaning and after working more than fifty years would like to be “retired” rather than “delinquent.”

Response:

The Board acknowledges and appreciates the support for the regulation.

K. July 22, 2021 letter from Beth Mudie, RDH.

Ms. Mudie encourages the Board to allow dental hygienists to retire their licenses. She has been licensed in six states since 1967 due to being a military wife and has been able to retire her licenses in the other states. Ms. Mudie is 74 and feels it is time to retire her California license (where she lives), but she would either have to continue to pay a fee or let her license “go into arrears”. She states both of the choices are unreasonable as she has maintained a “clean slate” over her career.

Response:

The Board acknowledges and appreciates the support for the regulation.

L. July 27, 2021 letter from Cristy T. Sturgis, RDH.

Ms. Sturgis states she is in favor of the Board adopting a “retired” Registered Dental

Hygienist status. She stated after 42 years of maintaining her RDH license in good standing in California, it was insulting when deciding whether to renew her license the only options were “Active,” “Inactive,” or to be considered “delinquent,” “cancelled” or “expired.” Ms. Sturgis stated that dedicating 42 years to her profession deserves the respect of a “retired” RDH status.

Response:

The Board acknowledges and appreciates the support for the regulation.

M. September 23, 2021 letter from Pat Bianchi, RDH.

Ms. Bianchi states she recently put her license on an inactive status and agrees that the option to put her license on retired status would be much better. She believes the most important consideration is to respect the license holder's time, energy, commitment and expense to have received the license in the first place. Ms. Bianchi states her license is one of the biggest achievements in her life and trusts that the Board will respect and always keep in mind that each and every licensed dental professional committed themselves to many years of schooling and sacrifice to earn their license and that always needs to be respected and nurtured. She asked the Board to never lose sight of the person behind each license.

Response:

The Board acknowledges and appreciates the support for the regulation.

Comments and Responses to 15-Day Amended Language Comment Period

The Board received comments during the 15-day comment period on the Board’s amended language of section 1115. Below are the Board’s responses to the comments made therein.

N. January 28, 2022 letter from Catherine Lynn Taylor, RDH.

Ms. Taylor states she commented on this regulatory package earlier and fully supported it then, and now, with the current modifications.

Response:

The Board acknowledges and appreciates the support for the regulation.

O. January 30, 2022 letter from Kathryn Smith-Marcum

Ms. Smith-Marcum states she is retired, and was previously a staunch supporter of the American Dental Hygienists’ Association (ADHA). She states she supported the ADHA

until they no longer offered a reduced annual fee for retired members. Ms. Smith-Marcum states she would like to support this worthwhile organization even though she is not working and requests the ADHA to reinstate this type of membership.

Response:

The Board acknowledges the letter and clarifies the Board has no relation to the ADHA, and the modifications under review relate to placing a California dental hygiene license into retired status.