

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

INITIAL STATEMENT OF REASONS

HEARING DATE: March 18, 2015

SUBJECT MATTER OF PROPOSED REGULATIONS: Administration, Examinations and Infection Control

SECTION(S) AFFECTED: Title 16, Division 11, California Code of Regulations, Sections 1101, 1121, 1122, 1124, 1126, 1127 and 1133

INTRODUCTION

The Dental Hygiene Committee of California (DHCC) proposes to adopt Sections 1101, 1121, 1122, 1124, 1126, 1127 and 1133 of Division 11 of Title 16 of the California Code of Regulations.

Senate Bill 853 created the Dental Hygiene Committee of California which was established July 1, 2009. Section 1905(a)(9) gives the DHCC statutory authority to “adopt, amend and revoke rules and regulations to implement the provisions of this article.” The DHCC statutes, specifically Business and Professions Code Section 1906(d) authorize the DHCC to use the Dental Board of California’s regulations as they pertain to the practice of dental hygiene until DHCC adopts its own regulations.

The DHCC has incorporated into these regulations current sections of the Dental Practice Act that are pertinent to the practice of dental hygiene. Revisions have been made to some of these existing regulations to make them current to dental hygiene practice and to add clarity.

In addition to moving existing regulations pertaining to dental hygiene, the DHCC has added new sections to further specify the Committee’s examination and appeals process.

The purpose of adopting these regulations is to establish the necessary structure that will allow the DHCC to carry out its responsibilities and duties allowable under the statutes.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

The DHCC currently regulates over 30,000 licensees: 30,208 registered dental hygienists, 555 registered dental hygienists in alternative practice and 38 registered dental hygienists in extended functions. The DHCC’s highest priority is the protection of the public when exercising its licensing, regulatory and disciplinary functions. The DHCC issues licenses to eligible applicants; investigates complaints against licensees, disciplines licensees for violations of Business and Professions Codes Sections 1900-1966.6, and monitors licensees who are on probation.

Business and Professions Code Section 1906(a) authorizes the Committee to adopt, amend and revoke such rules and regulations as may be reasonably necessary to enable the Committee to carry into effect the provisions of Business and Professions Code 1900-1966.6.

The proposed regulations would implement, interpret and make specific the provisions of Business and Professions Code sections 1900-1966.6 in a manner that will provide protection for the people of California and guidance for dental hygiene applicants, licensees, educational programs and staff in matters relating to definitions within the practice of dental hygiene.

Since its creation in 2009, the DHCC has not had its own regulations and has used the Dental Board of California's regulations in the interim, as provided in Business and Professions Code Section 1906(d). Due to staff shortages, the hiring freeze, and budget cuts, the DHCC has only recently had staff available to work on undertaking the project of promulgating its own regulations for its dental hygienist applicants and licensees. The DHCC needs regulations specific to the population it serves, regulations that reflect recent developments in dental hygiene care, and regulations that dental hygiene applicants and licensees can easily understand, locate and reference.

Specifically, the DHCC is proposing the following:

**Adopt Section 1101 of Article 2: Administration
Delegation to the Committee's Executive Officer**

This proposed section is necessary to allow the DHCC to delegate its authority to perform specific functions to its Executive Officer.

Section 1101 language is taken from Chapter 1, Article 1, Section 1001 of the California Code of Regulations, Title 16.

Existing language is from the Dental Practice Act as it pertains to the delegation of authority to the executive officer of the Dental Board. The proposed language allows the executive officer of the DHCC to perform all the functions required by statute. Changes were made as appropriate to the DHCC and its delegated functions, and text from Section 1001 that exists in Business and Professions Code Section 1903(i) was eliminated as duplicative. The following subsections within Section 1101 are proposed:

Subsection 1101(a) This proposed text captures the intent of Section 1001(b) of the Dental Practice Act that is currently used by the DHCC in the interim of implementing its own regulations.

Problem: There is currently no language in regulation that specifies the duties and responsibilities of the DHCC's Executive Officer (EO). The DHCC is required to meet only twice yearly, and if this delegation to the EO is not specified in regulation, meetings must be scheduled and planned for the Committee to consider settlement agreements and orders for medical examination in cases where a licensee may be incompetent to practice. This takes valuable staff time and resources and could prove hazardous to the public, when it has been proven that delegation of these duties to the EO is as effective and more efficient. Settlement agreements have been voted on previously by the Committee, and, if agreed to by the licensee, need to be approved timely in order to be effective.

Benefit: The text has been revised from Section 1001(b) toward more current language, and would specifically allow the Executive Officer to order a medical examination under Section 820 of the Code and to approve settlement agreements for disciplined licenses. Consumers are protected earlier than would be possible if a full Committee meeting had to be scheduled, noticed and conducted before such action can take place.

Subsection 1101(b) This proposed text mirrors Section 1001(b) of the Dental Practice Act

that is currently used by the DHCC in the interim of implementing its own regulations. This subsection specifies that the DHCC may delegate and confer its power to initiate, review and prosecute accusations and statements of issues pursuant to Sections 11500 through 11528 of the Government Code relative to adjudicative proceedings against an applicant or licensee to the EO or his or her designee. The term “designee” replaces “Assistant Executive Officer” used in Section 1001(b) because the DHCC does not have an Assistant Executive Officer.

Problem: There The DHCC needs its own regulatory structure specifying that its EO or designee has the power to initiate, review and prosecute adjudicative proceedings on the Committee’s behalf.

Benefit: This text provides that in case of the Executive Officer’s absence, he or she may designate an agent. This is so that the DHCC may act timely to protect the public.

Adopt Section 1121 of Article 2: Examinations

Dental Hygiene Written Examinations

This proposed section specifies the written examination in law and ethics that is required for all categories of dental hygiene licensure in California pursuant to Sections 1917(d) and 1922 of the Business and Professions Code, and that the examination must be successfully completed prior to the issuance of a license. Existing language is from the Dental Practice Act, Chapter 3, Article 4, Section 1082.3 and was revised to be made specific to the license types under the jurisdiction of the DHCC. Language relative to the National Dental Hygiene Board Exam was stricken as duplicative of Sections 1917(c) and 1917.1(a)(7). The following subsections within Section 1121 are proposed:

Subsection 1121(a) This proposed text specifies that the written law and ethics examination required for each license category be relevant and directed toward the particular license category.

Problem: Applicants need to know that the required examination will not be generic, but specialized to the license category.

Benefit: This text assists applicants by informing them that the subject matter of the examination will be focused on the category of license for which they are applying.

Subsection 1121(b) This proposed text specifies that the examination will test applicants’ knowledge of California law as it relates to the particular dental hygiene practice and will test applicants’ ability to apply ethical principles.

Problem: Applicants need to know what they will be tested on so they may study.

Benefit: This text assists applicants by informing them of the subject matter of the examination.

Subsection 1121(c) This proposed text specifies that the minimum passing score that must be achieved for licensure is 75%. This is the pass score as is currently in Section 1083 of the California Code of Regulations, Title 16, Division 10, Chapter 3, Article 4 and has been proven as the benchmark of minimum competency.

Problem: Applicants need to be informed of the passing score for the examination they are taking.

Benefit: This section benefits applicants, staff and the public by specifically stating the pass score, so there is no confusion.

Adopt Section 1122 of Article 2: Examinations

General Procedures for the Dental Hygiene Committee of California Written Examinations

This proposed section is similar to language in the Dental Practice Act, Chapter 3, Article 4,

Section 1080 which specifies that the applicant must exhibit the ability to read and interpret instructions and examination materials and the reasons that an applicant may be dismissed from an examination. To avoid duplication of Section 123 of the Code, those reasons are referenced by the Code section.

Subsection 1122(a) This proposed subsection assists applicants by informing them that the ability to read and interpret instructions and examination materials is necessary to successfully complete the written examinations required for licensure.

Problem: This is necessary to test the applicant's knowledge.

Benefit: Informs applicants of the requirements for successful completion of the exam.

Subsection 1121(b) This proposed subsection states that the applicant may be dismissed from the entire examination for engaging in conduct listed in Section 123 of the Business and Professions Code relating to conduct constituting subversion of licensing examinations.

Problem: Section 1080(c) lists these provisions as subsections; however, the DHCC felt this to be duplicative, instead referencing Section 123 directly.

Benefit: Applicants need to be aware of actions that constitute exam subversion and the consequence that they may be dismissed from the examination for any such actions.

Adopt Section 1124 of Article 2: Examinations **Dental Hygiene Committee of California Clinical Examination**

This proposed section mirrors language in the Dental Practice Act, Chapter 3, Article 4, Section 1080.1 which specifies the criteria for the patient that applicants are required to provide in order to take the California clinical dental hygiene examination, allowance of an interpreter, requirement for an identification badge, and reasons for dismissal. Minor clarifying changes were made and the reasons for dismissal from the clinical examination were referenced by Section 123 of the Code rather than listing them to avoid duplication. The following subsections within Section 1124 are proposed:

Subsection 1124(a) This proposed subsection assists applicants by informing them of the things that they are expected to furnish for the clinical examination.

Problem: Otherwise, applicants would not know what they are responsible for bringing to the exam.

Benefit: This benefits applicants by informing them what they are responsible for bringing to the exam.

Subsection 1124(b) This proposed subsection assists applicants and staff by specifying patient criteria and the patient conditions that would require medical clearance or evidence of premedication. This text informs applicants that at least two examiners will inspect a patient before rejecting the patient, the conditions which would lead to such a patient rejection, and the process by which the rejection will be documented on the examination record. The text informs applicants that a patient must be at least 18 years of age to be approved for the examination.

Problem: Otherwise, applicants would not know that minor patients are not accepted. This policy is set into regulation because minors may lack permanent teeth, are likely to carry communicable diseases such as cold or flu, and require parental consent for treatment, necessitating a parent or guardian be at the exam site. Applicants would not know that their patient will be inspected by two examiners to ensure fairness in the examination process, and if rejected, the reasons for rejection will be documented.

Benefit: This assists applicants in selecting an appropriate adult patient which does not

have conditions that could prove hazardous to the patient's health, or may be communicable to others in the examination area.

Subsection 1124(c) This proposed subsection assists applicants and staff by clarifying that if their patient does not speak English, it is the applicant's responsibility to provide an interpreter, if necessary, to complete the patient's medical history and consent form. This section further clarifies that the interpreter will not be allowed into the separate grading area unless requested by an examiner.

Problem: This text is necessary so that applicants do not expect the DHCC to provide interpreters at the examination, and informs them that an interpreter cannot accompany the patient into the grading area unless requested by an examiner. Applicants are never allowed in the grading area to preserve anonymity.

Benefit: Applicants are clearly informed regarding their responsibilities for non-English speaking patients.

Subsection 1124(d) This proposed subsection assists applicants and exam staff by specifying that the examination badge issued to them must be worn in order to be admitted into the exam clinic.

Problem: Unauthorized individuals could enter into and impact the examination. Badges are worn by staff, supervising dentists, examiners, applicants, patients, and dental assistants, so that the only individuals in the exam clinic area are those who are necessary to the examination process.

Benefit: Applicants are clearly informed that they will not be admitted into the exam clinic area unless wearing the badge issued to them. This clarity benefits exam staff as well, so there is no doubt or confusion regarding an applicant's requirement to wear the badge.

Subsection 1124(e) This proposed subsection states that the applicant may be dismissed from the entire examination for engaging in conduct listed in Section 123 of the Business and Professions Code relating to conduct constituting subversion of licensing examinations.

Problem: Section 1080.1(d) lists these provisions as subsections; however, the DHCC felt this to be duplicative, instead referencing Section 123 directly. Applicants need to be aware of actions that constitute exam subversion and the consequence that they may be dismissed from the examination for any such actions.

Benefit: Applicants and exam staff benefit through having the potential reasons for dismissal from the examination clearly referenced.

Adopt Section 1126 of Article 6: Examinations

Conduct of Dental Hygiene Committee of California Clinical Examination

This proposed section mirrors language in the Dental Practice Act, Chapter 3, Article 4, Section 1080.2 which specifies the conduct of dental auxiliary clinical examinations. This proposed text specifies that examinations must be anonymous, and the following subsections within Section 1126 are proposed in order to preserve and ensure anonymity of applicants. If applicants are not anonymous to examiners, which are licensed dentists and registered dental hygienists themselves, an applicant may be known by one or more examiners which may cause prejudice either on behalf of or against the applicant during the exam. The following subsections within Section 1126 are proposed:

Subsection 1126(a) This proposed text specifies that the Committee shall assign each applicant an identification number to be used throughout the entire examination.

Problem: The exam process must be anonymous in order to be legally defensible.

Benefit: This text ensures that applicants' names are protected during the examination process since they are known only by their number.

Subsection 1126(b) This proposed text specifies that grading examiners cannot watch or see applicants while they are performing procedures, mirroring Section 1080.2(b). New text further specifies the criteria for a grading examiner as a minimum of five years of licensure as a California RDH, RDHEF or RDHAP.

Problem: Applicants need assurance that their exam anonymity will not be breached.

Benefit: This assists in strengthening exam security and establishes the qualifications of a grading examiner as an individual who is very familiar with the practice of dental hygiene and the procedures being performed by applicants.

Subsection 1126(c) This proposed text mirrors Section 1080.2(c) by specifying that grading examiners and floor examiners may not communicate with each other unless in the presence of board staff. The proposed text further specifies that there is to be no communication between grading examiners and applicants other than in writing.

Problem: Examiners must not break the anonymity of individual applicants, or compromise an applicant's identity.

Benefit: This text assists exam anonymity and security.

Adopt Section 1127 of Article 6: Examinations

Dental Hygiene Committee of California Clinical Examination Review Procedures;

Appeals

This proposed section mirrors language in the Dental Practice Act, Chapter 3, Article 4, Section 1080.3 which specifies the appeals process for examinations. The following subsections within Section 1127 are proposed:

Subsection 1127(a) This proposed text specifies that an applicant who has failed an examination will receive notification of the areas of deficiency upon the applicant's written request. This proposed text informs the applicant that he or she will be provided with the specific areas of deficiency upon his or her written request.

Problem: Applicants need to know their areas of deficiency in order to concentrate on those areas rather than guess at the area or procedure that resulted in failure.

Benefit: Applicants who have failed a clinical examination may successfully complete the examination in the future.

Subsection 1127(b) This proposed text specifies the criteria for an allowable appeal of the examination results due to error, and the timeframe in which such an appeal is allowed.

Problem: Individuals need to know the criteria and timeframe in which to file an appeal.

Benefit: This provides reasonable and justifiable criteria for an appeal and gives the applicant two months to prepare the appeal, while specifying that an appeal must be made timely. Two months is enough time to prepare an appeal, and recent enough to the examination at issue so that information about the exam is still relevant and fresh.

Subsection 1127(c) This proposed text specifies the process for an appeal of a failed examination and allows the Executive Officer of the DHCC to respond to the appeal and request the applicant to appear.

Problem: Since the Committee is required to meet only twice yearly, a mechanism for timely response to appeals is needed.

Benefit: Review of the appeal by the Executive Officer is necessary, so as not to taint the Committee members if the matter later comes before them as a Statement of Issues for

license denial or a license discipline case.

Adopt Section 1133 of Article 8: Minimum Standards for Infection Control

This proposed section references language in the Dental Practice Act, Chapter 1, Article 1, Section 1005, governing the minimum standards for infection control relative to dental treatment. The majority of California's Registered Dental Hygienists (RDHs) work in dental offices, therefore the same standards for infection control apply to all practitioners. This text informs licensees, staff and the public that they must maintain the same minimum standards of infection control as specified in Section 1005 of the California Code of Regulations (CCR).

FACTUAL BASIS/RATIONALE

Since its creation on July 1, 2009, the DHCC is the regulatory entity responsible for the licensing and regulation of the dental hygiene profession in California. In the absence of its own regulatory framework, the DHCC has operated on statute and by utilizing some of the existing regulations in the Dental Board of California's Dental Practice Act that pertain to dental hygienists, however many of those regulations no longer reflect current statute. The DHCC needs to have its own regulatory framework to govern its licensees according to current statutory provisions.

The Committee currently regulates a total of 31,154 licensees; consisting of 30,636 registered dental hygienists, 480 registered dental hygienists in alternative practice and 38 registered dental hygienists 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, disciplines licensees for violation of the Business and Professions Code Sections 1900-1966.6 and monitors licensees who are on probation.

Business and Professions Code section 1906(d) allows the DHCC to use the Dental Board's regulations "until other regulations are adopted by the committee."

UNDERLYING DATA

1. Approved December 5, 2010 Dental Hygiene Legislation and Regulation Subcommittee Meeting Minutes.
2. Approved December 5-6, 2010 Dental Hygiene Committee Meeting Minutes.
3. Approved December 12, 2011 Dental Hygiene Legislation and Regulation Subcommittee Meeting Minutes.
4. Approved December 13, 2011 Dental Hygiene Committee Meeting Minutes.
5. Approved December 3, 2012 Dental Hygiene Legislation and Regulation Subcommittee Meeting Minutes.
6. Draft September 6, 2013 Dental Hygiene Committee Meeting Minutes.
7. Dental Practice Act, California Code of Regulations, Title 16, Division 10, Sections 1001, 1080, 1080.1, 1080.2, and 1080.3.

ECONOMIC IMPACT ASSESSMENT

This regulatory proposal will have the following effects:

- It would not create or eliminate jobs within the State of California because this proposed regulation clarifies and specifies delegations allowed to the DHCC's existing Executive Officer, current requirements, procedures, conduct and appeals

process for exams, and clarifies that existing infection control standards apply to dental hygienists.

- It would not create new businesses or eliminate existing businesses within the State of California because the proposal specifies processes that are currently being used by the DHCC.
- It would not affect the expansion of businesses currently doing business within the State of California because this proposal does not change existing processes or requirements.
- This regulatory proposal would benefit the health and welfare of California residents by having clear regulatory language specifying the requirements and processes currently used by the DHCC.
- This regulatory proposal would benefit California consumers by ensuring that timely enforcement action is taken against medically or mentally compromised licensees, allowing accusations and statements of issues to move forward and allowing stipulated settlement agreements to be approved without waiting for a meeting.
- This regulatory proposal would enhance worker safety in places where dental hygiene is performed by ensuring that all California licensed dental hygienists use existing infection control standards contained in Section 1005 of the CCR.
- This regulatory proposal would benefit the state's environment by ensuring that all California licensed dental hygienists use existing infection control standards contained in Section 1005 of the CCR.

BUSINESS IMPACT

The Board has made the initial determination that the proposed regulation would not have a significant, statewide adverse economic impact directly affecting business, including the inability of California businesses to compete with businesses in other States because the proposed regulation does not change existing processes or requirements.

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 regulations. Many new laws have been enacted that affect the practice of dentistry and dental hygiene.

If rejected as a result of not passing this regulation, certain of the DHCC's enforcement actions may be delayed until the Committee meets, applicants will be unsure of the requirements, process, conduct and appeals of examinations, and licensees and the public may be uncertain whether the same infection control standards apply to dental hygienists and dentists. DHCC will be required to use the Dental Board of California's Dental Practice Act which does not reflect current statutes and definitions.