

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

INITIAL STATEMENT OF REASONS

HEARING DATE: April 30, 2015

SUBJECT MATTER OF PROPOSED REGULATIONS: Definitions

SECTION(S) AFFECTED: Title 16, Division 11, California Code of Regulations, Section 1100

INTRODUCTION

The Dental Hygiene Committee of California (DHCC) proposes to adopt Section 1100 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. Some of these existing regulations were revised 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 clarify terminology used in the current statutes and regulations.

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 on probation.

Business and Professions Code Section 1906(a) authorizes the DHCC to adopt, amend and revoke such rules and regulations as may be reasonably necessary to enable the DHCC 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 1100 of Article 1 Division 11 of Title 16 of the California Code of Regulations (Definitions)

Since its creation July 1, 2009, the DHCC has used the Dental Board's regulations pending the adoption of its own regulations to define the practice of dental hygiene. This section mirrors the Dental Board's Section 1000, last amended in 2001, with some definitions included from Section 1067, last amended in 1998, pertaining to dental auxiliaries. Other terms specific to dental hygiene that required clarification have been included as new text. Therefore, adopting this section is necessary to define dental hygiene terms, clarify and specify dental hygiene definitions and scope of practice in line with current terminology.

Section 1100 language is taken from Chapter 1 Article 1 Section 1000 and Chapter 3 Article 1 Section 1067 of the California Code of Regulations, Title 16. Changes and additions were made to make this section consistent with current terminology in the practice of dental hygiene. The following subsections within 1100 are proposed:

Subsection 1100(a) This new text defines "administration of local anesthesia", one of the duties allowed under Section 1909 of the Business and Professions Code (Code), to specify that this refers to agents that are injected.

Problem: California RDHs, RDHEFs and RDHAPs question whether they may subgingivally place local anesthetic agents that are not injected under the general supervision of a licensed dentist.

Benefit: This text clarifies for licensees, staff, and dentists that only the injection of local anesthetic agents must be directly supervised by a dentist because of the small potential for patient harm through subgingival placement of local anesthetic agents.

Subsection 1100(b) This new text defines "administration of nitrous oxide and oxygen," one of the duties allowed under Section 1909 of the Code, to specify that this terminology refers to this type of analgesia only when used as an adjunct to dental treatment.

Problem: Licensees contact the DHCC asking if they may administer nitrous oxide-oxygen analgesia for facial procedures.

Benefit: This text clarifies that this analgesia may not be administered for any other purpose than for dental treatment.

Subsection 1100(c) This new text defines the term "assessment" in Code sections 1908(a) and 1915 as it is currently used in required educational programs and by the

Commission on Dental Accreditation (CODA), the accepted standard for dental professionals.

Problem: There is no definition in regulation for the commonly used dental hygiene term “assessment”, and it needs to be clearly defined in the DHCC’s regulations so that it is not subject to interpretation by users.

Benefit: Provides a clear definition within California regulations for all users so that the components of the dental hygiene assessment process are distinguished from diagnosis, a process which may only be performed by a dentist.

Subsection 1100(d) This text provides a definition of “basic supportive dental procedures” that mirrors the definition contained in the Dental Board’s regulations, with the addition of “dental hygienist” as a supervisor, since statute (Code Section 1929) allows an RDHAP to employ and supervise unlicensed dental assistants.

Problem: There is confusion as to what dental assistants may do under an RDHAP’s supervision.

Benefit: This regulation clarifies for all users what duties a dental assistant may perform while under the supervision of an RDHAP.

Subsection 1100(e) This text defines the term “Committee office”, mirrors CCR Section 1000(d) and renumbers this section.

Problem: This section is necessary to clarify that there is only one office of the DHCC, and its location is in Sacramento.

Benefit: This regulation informs licensees, dentists, and the public that there is a single office location of the DHCC for information and transactions.

Subsection 1100(f) This text defines the term “Executive Officer”, renumbers and mirrors CCR Section 1000(e) to define the person responsible for the administration and daily operations of the DHCC.

Problem: Individuals contact the DHCC and ask for the “director” or the “head”.

Benefit: This regulation benefits licensees and the public by identifying the person who holds responsibility for the DHCC’s functions so that correspondence may be correctly addressed and correct nomenclature used.

Subsection 1100(g) This text mirrors section 1067(b) to define the term “Dental Assistant”.

Problem: Dental assistants may be hired to perform intraoral retraction and suctioning by RDHAPs according to sections 1750.1(d) and 1929(b) of the Code. This text clarifies what is meant by the term.

Benefit: This term is defined within DHCC’s regulations for consistency and ease of use by staff and licensees.

Subsection 1100(h) This new text defines the term “dental hygiene care plan” as used in section 1908 of the Code using the definition adopted by the American Dental Education Association (ADEA), which is currently taught in all dental hygiene educational programs in the United States.

Problem: The Dental Practice Act contains no definition for dental hygiene care plan, which consists of services that a dental hygienist provides to patients, causing confusion on the part of dentists, insurance carriers, licensees who may have completed an educational program before this definition was generally accepted, and the public.

Benefit: This definition benefits staff, licensees, dentists and the public by providing a clear explanation of the components of a dental hygiene care plan so that all parties

understand the services that a dental hygienist performs in assessing the need for dental hygiene care and the distinction from a dental care plan which is developed by a dentist.

Subsection 1100(i) This new text defines the term “dental hygiene preventive services”, as used in statute, Sections 1910(a) and 1911(c) of the Code.

Problem: There is currently no definition of what constitutes dental hygiene preventive services, causing confusion to dentists, insurance carriers, licensees, and the public.

Benefit: This definition clarifies the nature of services provided by the licensed dental hygienist, as distinguished from “therapeutic interventions,” for the information of licensees, staff and the public. This text assists dental offices in coding procedures for insurance purposes and benefits consumers by clarifying dental hygiene procedures that may be covered by their insurance carrier.

Subsection 1100(j) This new text defines the term “dental hygiene therapeutic interventions” as used in Section 1910(a) of the Code.

Problem: There is no definition for this term used in Section 1910(a) of the Code, leading to confusion on the part of licensees, dentists, the public and insurance carriers.

Benefit: Provides a clear and consistent definition within California regulations for the benefit of licensees, dentists, staff and the public who may not be knowledgeable of what constitutes dental hygiene therapeutic interventions, and distinguishes them from preventive services. This text assists dental offices in coding procedures for insurance purposes and benefits consumers by clarifying dental hygiene procedures that may be covered by insurers.

Subsection 1100(k) This new text defines the term “dental hygiene treatment plan”, a term used in Section 1915 of the Code, which describes the process of identification of oral health problems that a hygienist is educated and licensed to treat.

Problem: A dental hygiene treatment plan is within the scope of practice of a dental hygienist in alternative practice (RDHAP). Dentists, insurers and the public many times do not understand the services that may be provided under this category of license. No definition of this term exists in current regulations, and is needed so that the term is not subject to interpretation by users.

Benefit: This text provides dentists, licensees, insurers and the public with a definition that is used in current dental hygiene education and has been adopted by ADEA. This section defines a term found in statute and clarifies dental hygiene procedures that may be performed by RDHAPs and may be covered by consumers’ insurance carriers.

Subsection 1100(l) This new text defines the term “ethics” for the benefit of applicants, licensees, staff and the public.

Problem: There is currently no definition in regulation for ethics, which is the subject of statutorily required testing according to Code Section 1917(d) before a dental hygiene license of any category can be issued by the DHCC.

Benefit: This text provides applicants with sources for study materials that were used in developing the mandatory law and ethics examination.

Subsection 1100(m) This new text defines the term “Gross trauma” so that applicants, staff and the public are clearly informed of what constitutes grounds for failure of the dental hygiene clinical examination according to the provisions of Business and Professions Code Section 1917.3, and requires the applicant to complete remedial education.

Problem: Applicants need to know that one instance of gross trauma on a patient during

their required clinical exam will result in automatic failure and the requirement for remedial education before he or she is eligible to retake the examination.

Benefit: This text benefits applicants by clearly defining what constitutes gross trauma, referring to a serious injury that may occur to a patient during dental hygiene services, and will result in failure of the examination and a requirement for remedial education.

Subsection 1100(n) This text defines the terms “Licentiate” or “Licensee”, and renumbers and mirrors CCR Section 1000(p), replacing the term “board” with “committee.”

Problem: Users need to know that either of these terms means an individual who is licensed by the DHCC, and therefore subject to these regulations.

Benefit: This text benefits licensees, staff and the public by providing a clear definition of who is regulated by the DHCC.

Subsection 1100(o) This new text defines the term “periodontal debridement,” a current dental hygiene term for the removal of hard and soft deposits from supra and sub gingival surfaces.

Problem: This term is not defined in regulation and needs to be clarified as a process that is distinct from periodontal scaling for purposes of a dental cleaning.

Benefit: Consumers benefit by having a clear distinction between the terms “periodontal debridement” and “periodontal scaling” so that consumers understand and are billed correctly for dental hygiene procedures.

Subsection 1100(p) This new text defines “periodontal evaluation record” using current, widely accepted terminology that is used in educational programs to define and specify the terms and processes that comprise the documentation of a complete periodontal evaluation that is entered in the patient’s record by an RDH, RDHEF or RDHAP.

Problem: This term is not defined in regulation and therefore subject to interpretation.

Benefit: Users need to know what information should be included in this type of record and this definition will assist DHCC staff in enforcement of Code Section 1955(a).

Subsection 1100(q) This text mirrors section 1067(h) by defining the terms “Polishing the coronal surfaces of teeth” or “Coronal polishing” as these terms are used in dental hygiene treatment and clarifies Code Section 1915(c)(1).

Problem: This procedure may be performed by either a Registered Dental Hygienist (RDH) as part of a dental cleaning or by a Registered Dental Assistant (RDA) after a cleaning is done by an RDH or a dentist, and is often confused with a complete dental cleaning. It is only the final step in the dental cleaning, which may only be performed by a Registered Dental Hygienist. Terms relating to the practice of dental hygiene as overseen by the DHCC need to be defined within its own regulations.

Benefit: Clearly defining the process of coronal polishing benefits RDH and RDA licensees, staff, dentists and the public so that consumers are not incorrectly billed for a dental cleaning when only coronal polishing has been done.

Subsection 1100(r) This new text defines the term “refer”, as used in Section 1911(b), to clarify when a licensee needs to refer a patient, and the process by which it is done.

Problem: Licensees may not know the appropriate occasion that requires referral.

Benefit: This text clarifies what a referral is for all users.

Subsection 1100(s) This text redefines the term “root planing” to the current, widely used definition used in dental hygiene.

Problem: Licensees need to be provided with the most current and accurate description of the procedures that they are allowed to perform.

Benefit: This text benefits licensees, staff and the public by providing this information clearly and in written form for reference.

Subsection 1100(t) This text defines the term “Scaling” as used in Section 1910(a).

Problem: There is confusion as to whether periodontal scaling includes both supra and sub gingival scaling.

Benefit: This text clarifies the term scaling for the benefit of consumers, staff and the public.

Subsection 1100(u) This text defines the term “soft tissue curettage” to reflect the current, widely used definition in dental hygiene, and more accurately describe the procedure.

Problem: There is currently no definition in regulation of what constitutes “soft tissue curettage” for the statutory term used in Section 1909(a).

Benefit: This text specifies the components of the process of soft tissue curettage for licensees, staff and the public and defines the statutory term.

Subsection 1100(v) This new text defines the term “treatment facility” for the benefit of the public, staff and licensees.

Problem: There is currently no clear definition of the term “treatment facility” which causes questions to DHCC staff and confusion on the part of the public and licensees as to whether this means the dental operator, the dental office, or the building in which treatment takes place.

Benefit: This text clarifies that wherever dental hygiene treatment is given, which may be in a dental office, the home of a homebound patient, or in a public clinic.

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.

Existing law, Business and Professions Code section 1906(a) authorizes the DHCC to “adopt, amend and revoke regulations to implement the requirements” of Article 9.

Existing law, 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.”

Pursuant to Business and Professions Code section 1905.2, a copy of the draft regulations was sent to the Dental Board of California for consideration on December 11, 2014. The Dental Board of California will have 90 days, or until March 11, 2015 to submit input on these draft regulations.

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 1000 and 1067.
8. American Dental Education Association – ADEA Competencies for Entry into the Allied Dental Professions (As approved by the 2011 ADEA House of Delegates)
9. Commission on Dental Accreditation standards for accreditation of dental hygiene programs

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 dental hygiene terms used in current practice and educational programs.
- It would not create new businesses or eliminate existing businesses within the State of California because the proposal specifies definitions that are currently being used in dental hygiene practice and education.
- 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 definitions for dental hygiene terms used in statute.
- This regulatory proposal would benefit California consumers by clarifying terminology used in statute and in dental hygiene practice.
- This regulatory proposal would enhance worker safety in places where dental hygiene is performed by ensuring that all California licensed dental hygienists have clear and current definitions for terminology used in the practice of dental hygiene.
- This regulatory proposal would benefit the state's environment by clarifying and specifying definitions used in California dental hygiene practice.

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 it does not change existing processes or requirements and specifies definitions that are currently used in dental hygiene practice and education.

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, the terminology of dental hygiene practice will not be current nor will it provide the authority the DHCC's enforcement staff needs in order to protect consumers. Using outdated regulations will not provide maximum protection to the DHCC's licensees and consumers. DHCC will be required to use the Dental Board of California's Dental Practice Act which does not reflect current statutes and definitions.