



## **NOTICE OF PUBLIC MEETING - TELECONFERENCE**

**December 5, 2015**

**9:00 a.m. - Adjournment**

Department of Consumer Affairs  
2005 Evergreen Street, 2<sup>nd</sup> Floor, Donner Lake Room  
Sacramento, CA 95815  
916-263-1978

### **DENTAL HYGIENE COMMITTEE OF CALIFORNIA TELECONFERENCE AGENDA**

1. Call to Order – Roll Call and Establishment of a Quorum
2. Public Comment for Items Not on the Meeting Agenda  

*The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code, sections 11125, 11125.7(a).)*
3. Review and Approval of the May 2-3, 2015 Full Committee Meeting Minutes
4. Review and Approval the September 25, 2015 Committee Meeting Minutes
5. President's Report
6. Executive Officer's Report
  - Update on DHCC Staff
  - Board Member Required Training
  - Form 700 Filing
  - Update on BreEZe
  - Update on the RDH Educational Course Applications reviewed and approved by DHCC
  - Update on Status of the Administration of DHCC Clinical Examinations
  - DHCC Newsletter and Law Book
7. Update from the Dental Board of California
8. Update from Central Regional Dental Testing Service, Inc. (CRDTS) Regarding Testing in California – Kim Laudenslager
9. Update from Western Regional Examining Board (WREB) Regarding Adding Intraoral and Extraoral Component to the Dental Hygiene Clinical Examination
10. Budget Update
11. 2015 - End of Year Legislative Report

12. Update on Regulations:
  - a. Remedial Education, California Code of Regulations (CCR), Title 16, Division 11, §1108
  - b. Educational Programs, CCR, Title 16, Division 11, §§1103, 1105, 1105.1, 1105.2, 1105.3, 1105.4 and 1106
  - c. Administration and Examinations, CCR, Title 16, Division 11, §§1101, 1121, 1122, 1124, 1126, 1127, and 1133
13. Discussion and Possible Action to Amend Proposed Regulatory Language as a Result of The Office of Administrative Law's Disapproval of DHCC's Rulemaking Relevant to Feasibility Study - CCR, Title 16, Division 11, §§ 1104, 1104.1, 1104.2
14. Discussion and Possible Action Regarding Proposed Regulatory Language as a Result of Comments Received During the 15-day Public Comment Period for DHCC's Rulemaking to Add CCR, Title 16, Division 11, §1100 regarding Definitions
15. Election of Officers
16. Proposed 2016 Meeting Dates and Locations
17. Future Agenda Items
18. **CLOSED SESSION:** Pursuant to subdivision (c)(3) of section 11126 of the Government Code, the Committee will meet in closed session to deliberate on disciplinary matters.

***Return to Open Session***

19. Adjournment

**TELECONFERENCE LOCATIONS:**

Dental Hygiene Committee Headquarters 2005 Evergreen Street, 2 <sup>nd</sup> Floor Donner Lake Room Sacramento, CA 95815	University of New England College of Dental Medicine 716 Stevens Avenue Goddard Hall, Suite 113 Portland, Maine 04103
931 Blanco Circle, Annex Salinas, 93901	West Coast University 3 <sup>rd</sup> Floor Conference Room 1477 S. Manchester Avenue, Rm. 313 Anaheim, CA 92802

One or more Dental Hygiene Committee of California (DHCC) Member(s) will participate in this meeting at the teleconference sites listed above. Each teleconference location is accessible to the public and the public will be given opportunity to address the DHCC at each teleconference location. The public teleconference sites are noticed on the agenda. Public comments will be taken on the agenda items at the time the specified item is raised. The DHCC may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, contact Anthony Lum at 916-576-5004, or access the DHCC Web Site at: [www.dhcc.ca.gov](http://www.dhcc.ca.gov)

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)).

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Anthony Lum at 916-576-5004, or email [Anthony.lum@dca.ca.gov](mailto:Anthony.lum@dca.ca.gov) or send a written request to the DHCC at: 2005 Evergreen Street, Suite 2050, Sacramento, CA 95815. Providing your request at least five business days prior to the meeting will help to ensure availability of the requested accommodation.



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Teleconference Meeting**

**Agenda Item 1**

Call to Order – Roll Call and Establishment of Quorum



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Teleconference**

**Agenda Item 2**

**Public Comment for Items Not on the Meeting Agenda**

*The Board may not discuss or take any action on any item raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code, sections 11125, 11125.7(a).)*



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 3**

Review and Approval of the May 2-3, 2015

Full Committee Meeting Minutes



**DRAFT - DENTAL HYGIENE COMMITTEE MEETING MINUTES**

**Saturday, May 2, 2015**  
**Embassy Suites Anaheim - Orange**  
**400 N. State College Blvd.**  
**Orange, CA 92868**

**Roll Call** – Nicolette Moultrie, the Dental Hygiene Committee of California (DHCC) President, called the meeting to order with a roll call at: 9:12 a.m. With five (5) DHCC members present, a quorum was established.

DHCC members present:

Susan Good, Public Member  
Michelle Hurlbutt, Registered Dental Hygienist (RDH) Educator  
Joyce Noel Kelsch, Vice President, Registered Dental Hygienist in  
Alternative Practice (RDHAP) (arrived at 9:25 a.m.),  
Timothy Martinez, DMD  
Nicolette Moultrie, President, RDH  
Evangeline Ward, RDH

DHCC members absent:

Garry Shay, Public Member

DHCC Staff present:

Lori Hubble, Executive Officer (EO)  
Anthony Lum, Assistant Executive Officer  
Guadalupe Castillo, Legislative and Regulatory Analyst  
Nancy Gaytan, Enforcement Analyst  
Donna Kantner, Retired Annuitant  
Kurt Heppler, Department of Consumer Affairs (DCA) Legal Counsel  
Kelsey Pruden, DCA Legal Counsel

Public present:

Marlene Areola, West Coast University  
Laurel Bleak, California Dental Hygienists' Association (CDHA)  
Fran Burton, President, Dental Board of California (DBC)  
Karen Fischer, Executive Officer, DBC  
JoAnn Galliano, Program Director, Chabot College  
Lygia Jolley, CDHA  
Vickie Kimbrough, Southwestern College  
Nadine Lavell, CDHA  
Gayle Mathe, California Dental Association (CDA)  
Lin Sarfaraz, CDHA

Karine Strickland, President, CDHA  
Maureen Titus, CDHA

**President’s Announcements:**

President Moultrie announced a change to the Bagley-Keene Open Meeting Act that was effective as of January 1, 2015. She stated that for all action items at Board meetings and meetings of committees with 3 or more participants, the law now requires boards to report the vote or abstention of each member present for that action item. She explained that the meeting minutes must include each member listed under the appropriate vote category (i.e., yes, no, or abstention) for each action item. She stated that this is the first meeting to implement the new rule and that staff has prepared voting outlines for both the full and subcommittee chairs. She continued that since this is the first time in using this process, it may slow the meeting and asked for everyone’s patience.

**FULL 1 – Public Comment for Items Not on the Agenda**

President Moultrie asked for any public comment for items not on the agenda. There was no public comment.

**FULL 2 – Approval of the December 5, 2014 and December 6, 2014 Meeting Minutes**

- **Motion: Evangeline Ward moved to approve the minutes of the December 5, 2014 and December 6, 2014 meetings.**

**Michelle Hurlbutt seconded the motion.**

**Vote: The motion passed 5-0-1 (Noel Kelsch was absent for the vote).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch			Absent
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

**FULL 3 – Approval of the March 2, 2015 DHCC Teleconference Meeting Minutes**

- **Motion: Evangeline Ward moved to approve the minutes of the March 2, 2015 Teleconference.**

**Michelle Hurlbutt seconded the motion.**

**Vote: The motion passed 5-0-1 (Noel Kelsch was absent for the vote).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch			Absent
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

**FULL 4 – President’s Report**

President Moultrie reported that since the DHCC’s last meeting in December 2014, she had attended multiple meetings. She reported that she observed the administration of a Central Regional Dental Testing Services (CRDTS) examination on December 13, 2014 at Carrington College; on January 22, 2015, she met with Eunie Linden of Assembly Member Bonilla’s office; participated in a February 17, 2015 Department of Consumer Affairs (DCA) Director’s Meeting via Teleconference; and also represented the Committee at the Dental Board of California’s February 26, 2015 meetings in Los Angeles.

President Moultrie indicated that the immediate past president created an ad-hoc committee at the Committee’s December 2014 meetings to investigate alternative pathways to licensure and that she attended the first two meetings held on February 27, 2015, and March 20, 2015. She stated that at the February 27<sup>th</sup> meeting, there was a focus group meeting with Dr. Paul Glassman regarding the implementation of the mandates in Assembly Bill (AB) 1174 (Ch. 662, Statutes of 2014).

**FULL 5 – Executive Officer’s Report**

Executive Officer Lori Hubble reported on the following:

- The Committee currently has 2 vacant positions that staff are actively pursuing to fulfill;
- Due to the new BreEZe computer system workload, staffing has been spread very thin to the extent that she will need to perform some programmatic tasks to maintain the operational workload flow;
- Reported that there is a new travel computer system that now makes all of the reservations for air and rental car and it’s called Concur;
- Committee member responsibilities on the completion of the Sexual Harassment Training and Ethics Training for this compliance year;
- Acknowledged the legislative and regulatory efforts of retired annuitant Donna Kantner over the past couple of years and that this will be her last meeting she participates in as she will fully retire afterward.
- Member Sherrie-Ann Gordon has resigned from the Committee due to health issues.

EO Activities since December 2014:

- Observed the CRDTS examination administration as well;

- Performed student outreach in speaking with the dental hygiene students at Sacramento City College, University of Southern California, and will soon be visiting Loma Linda University.

She explained that when going to the schools for student outreach, she frequently teams with the Dental Board's Enforcement staff to inform the students of the investigation process, too. She stated that at some of the schools, the presentation is given to both dental students as well as dental hygiene students.

**RECESS – Recess of the Full Committee until 9:00 a.m. Sunday, May 3, 2015.**

President Moulire announced that the May 2, 2015 Full DHCC meeting recessed at 9:53 a.m. and would resume the next day, Sunday, May 3, 2015, at 9:00 a.m.



**DRAFT - DENTAL HYGIENE COMMITTEE MEETING MINUTES**

**Sunday, May 3, 2015**  
**Embassy Suites Anaheim - Orange**  
**400 N. State College Blvd.**  
**Orange, CA 92868**

**Roll Call** – Nicolette Moultrie, the Dental Hygiene Committee of California (Committee) President, called the meeting to order with roll call at: 9:05 a.m. With six (6) DHCC members present, a quorum was established.

DHCC Members present:

Susan Good, Secretary, Public Member  
Michelle Hurlbutt, Registered Dental Hygienist (RDH) Educator  
Noel Kelsch, Vice President, Registered Dental Hygienist in Alternative Practice (RDHAP),  
Timothy Martinez, DMD  
Nicolette Moultrie, President, RDH  
Evangeline Ward, RDH

DHCC Members absent:

Garry Shay, Public Member

DHCC Staff present:

Lori Hubble, Executive Officer (EO)  
Anthony Lum, Assistant Executive Officer  
Guadalupe Castillo, Legislative and Regulatory Analyst  
Nancy Gaytan, Enforcement Analyst  
Donna Kantner, Retired Annuitant  
Kurt Heppler, Department of Consumer Affairs (DCA) Legal Counsel  
Kelsey Pruden, DCA Legal Counsel

Public present:

Karen Andrews, West Coast University  
Fran Burton, President, Dental Board of California (DBC)  
Karen Fischer, Executive Officer, DBC  
JoAnn Galliano, Chabot College  
Lygia Jolley, California Dental Hygienists' Association (CDHA)  
Vickie Kimbrough, Southwestern College  
Shawn Leetch, Concorde College, San Bernardino campus  
Gayle Mathe, California Dental Association (CDA)  
Karine Strickland, President, CDHA  
Maureen Titus, CDHA

*President's Announcements:*

President Nicolette Moultrie announced that Member Michelle Hurlbutt recently obtained her doctorate degree and congratulated her on the accomplishment.

**FULL 1 – Public Comment for Items Not on the Agenda**

President Moultrie asked for any public comment for items not on the agenda.

Maureen Titus, CDHA, stated that within the last 30 days, RDHAPs have received notice from Denti-Cal that policy changes would take effect as of June 1, 2015 that will affect RDHAPs. She indicated that RDHAPs provide dental services to over 500,000 consumers in the state, and that 50% of those are Denti-Cal patients. Their concern is that if the RDHAPs are restricted by Denti-Cal with these new provisions from performing certain dental hygiene services, they are decreasing the access to care for these patients.

Karine Strictland, CDHA President, stated that they are concerned with the new Denti-Cal restrictions due to a potential abandonment of patient issue if RDHAPs cannot perform certain dental services (and be reimbursed for them). She explained that Denti-Cal is implementing policy that will require RDHAPs to submit X-rays in order to authorize and continue treatment for patients. She said that for many of these patients, she cannot obtain X-rays due to either the mental or physical state of the patient with certain conditions (i.e., Alzheimer's disease, mental, physical, and/or developmental disabilities, and individuals with dementia or other similar diagnosis) that make it impossible to obtain X-rays. She stated that 99% of her practice is these types of patients and with the new Denti-Cal restrictions implemented, she would be out of business. She believed that RDHAPs will not be able to obtain the required X-rays to see these patients, so they will not receive any treatment. She continued that for the developmentally disabled individuals with cognitive impairments and lower level functioning, they are usually treated in the hospital under general anesthesia in order to obtain X-rays.

Ms. Strictland requested that the Committee assemble an ad-hoc committee or other administrative procedure to review the issue to determine whether the Committee should be involved, to show support for RDHAPs in terms of patient abandonment, and the fact that many will be out of business and losing their ability to earn a living.

**FULL 2 – Update from the Dental Board of California (DBC)**

Fran Burton, President of the DBC, said that the Board has been heavily involved with the sunset review process and has already had the first legislative hearing where some additional issues were presented. She indicated that the Board would also be reviewing legislation at their upcoming meetings, as there has been a lot of legislation proposed during the new legislative session. She stated that the Board has been working on legislation and that they have many rulemaking packages at various stages of review. She said that the regulatory packages they are working on are:

- Abandonment of applications;
- The delegation to the Executive Officer for stipulated settlements to revoke or surrender a license;
- Dental Assistant Education – the program and education requirements
- Elective Facial Cosmetic Surgery permit application and renewal requirements;
- Licensure By Credential – the application requirements; and
- Continuing Education requirements.

She requested that when the Committee participates in the DBC meeting in a couple of weeks that information regarding the Alternative Pathway to Licensure could be shared with the DBC particularly since they had gone through the Portfolio process and offered any assistance with the Committee's process of looking at different pathways to licensure. She stated that she fully believes in cooperation and looks forward to working with the Committee in the future on every opportunity for dental issues.

**FULL 3 – Update on the BreEZe Computer System**

Executive Officer Lori Hubble reported that staff has been very busy with this project. She said that Tom Jurach has been a tremendous help to assist staff and ensures that we are meeting deadlines and goals. She indicated that the tentative date to implement the new computer system is sometime around December 2015.

**FULL 4 – Budget Report**

Anthony Lum, Assistant Executive Officer, reviewed the expenditure projection report and clarified that it is a non-issue for line items that use the budgeted amount designated for that particular line item so long as there are other line items that have a surplus to cover the deficiency. He indicated that the current year's expenditures are below the amount budgeted, so there are no issues of overspending.

Mr. Lum proceeded to review the Committee's revenue history including the current year through March 2015 and explained that the revenue generation may exceed the amount that is projected to be received and also exceed the amount the Committee has been budgeted to spend; however, the extra revenue generated cannot be spent without approval from the Legislature and the Governor through a budget change proposal (BCP) contained in the annual Governor's Budget.

Mr. Lum then reviewed the Committee's fund condition where he said that the upper portion of the document listed the Committee's resources and the lower half showed the Committee's anticipated expenditures not only for the current year, but for the prior year actuals and projecting for the next fiscal year. He said that for the first time, the BreEZe computer system costs were indicated on the fund condition, as the numbers were approved for release toward the end of February. He reported that the cost for the BreEZe project is higher than the Committee anticipated based upon the initial \$30 million cost when the project was proposed; however, the cost has increase since that time to where it's roughly \$100 million but only through Release 2 of the project. He continued that with the increase in

the cost of the project, the cost for the Committee's share increased as well.

Ms. Hurlbutt inquired as to why there were no outlying costs associated with the BreZE project after fiscal year 2017/18 and whether the Committee has any recourse as to the cost of the project. Mr. Lum stated that the Legislature has been heavily scrutinizing the BreZE project recently with all of the cost overruns, so they are having DCA submit BCPs periodically for any increase in expenditure authority for the project as a method to monitor the project costs. Kelsey Pruden, DCA Legal Counsel, stated that she is unaware of any method for a program to resist the implementation of a system like this since it is decided at the agency and department levels.

Ms. Hurlbutt inquired as to whether a separate line item could be provided in future budget expenditure reports to show what the cost of the BreZE project is costing the Committee. Mr. Lum stated that he could add a line item to the report and will inquire with DCA to see if they can provide the BreZE cost information separately so that it could be reported to the Committee in the expenditure report on the appropriate line item.

Public Comment: Vickie Kimbrough requested that when there is a need for a licensing fee increase, she recommended the Committee to begin to educate the public, licentiates, and possibly the students through the newsletter as to the cost of operations and self-regulation so that there is a better understanding of why the fees are charged so they are prepared for the change. She believed that these entities really do not understand what the cost is to be a self-regulated profession.

#### **FULL 5 – Discussion and Possible Action to Increase the DHCC Application and Original Licensure Fees**

Mr. Lum stated that the Application Fee has been at its current level since the Committee's inception and no longer covers the cost to review applications. He stated that over time, the cost of doing business including the application review process has become more expensive, but the fee was never raised. He recommended for the Committee to approve a fee increase of \$50 to the level of \$100 to help capture more of the true costs to review applications. Noel Kelsch asked whether the proposed \$100 fee would be a more accurate reflection of how much the Committee's cost is to review an application. Mr. Lum said that the newly proposed fee would cover the expenses that are incurred by the Committee to review an application.

- **Motion: Susan Good moved to approve the increase of \$50 to the DHCC Application Fee to \$100 by Resolution to cover the increasing administrative costs to process applications effective January 1, 2016.**

**Noel Kelsch seconded the motion.**

Public Comment: JoAnn Galliano suggested to send the fee increase information to each of the dental hygiene program directors so that

they can share the information with their students and know why the fee is increased.

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Mr. Lum stated that the Original Licensure Fee is the one that is currently in legislation to be prorated (AB 483 – Patterson) and has not passed yet. He recommended to table the agenda item of a fee increase to the Original Licensure Fee until the bill has run its course, as there may not be a need to increase it if the proration of the fee is not realized.

Ms. Hurlbutt inquired whether tabling the fee increase would impact the Committee's revenue if the bill passes and the Committee is mandated to prorate the Original Licensure Fee. Mr. Lum stated that the Committee would lose about 6 months of revenue from the fee if it is prorated, as the Committee would not be able to vote on the issue and implement it until the earliest date of July 1, 2016, but the bill to prorate the fee would go into effect as of January 1, 2016. She also asked whether the Committee would need to raise the fee higher if the bill passes to recoup the potential loss in revenue compared to if the bill did not pass. Mr. Lum stated that the fee would need to be increased to a higher level to recoup the loss in revenue.

The Committee did not vote to table the Original Licensure Fee increase issue, but elected not to proceed on the agenda item as a choice provided by legal counsel.

**Full 6 – Update on Approval of RDH Educational Programs (Feasibility Study), California Code of Regulations (CCR), Title 16, Division 11, §§1104, 1104.1, and 1104.2.**

Ms. Castillo reported that the regulatory packet has been submitted to DCA for review and it is currently in the Budget Office. She stated that the file expire date is July 25, 2015, so she will monitor its progress through DCA so that it can be forwarded over to the Office of Administrative Law (OAL) in time for their review.

Ms. Hurlbutt inquired on the review process when the regulatory packet is forwarded to DCA. Ms. Castillo indicated that all of the divisions within DCA (i.e., Legislative and Regulatory Review, Budgets, Legal, and Executive) obtain a copy of the regulatory packet at the same time so they can complete their individual reviews simultaneously. However, one

division may take longer for their review than others. Ms. Hurlbutt asked whether there was a specific timeline for DCA to complete their reviews. Ms. Castillo stated that there is no specific timeline for the DCA divisions to complete their reviews; they just need to complete them so there is ample time prior to the expiration date for OAL to conduct their review.

**Full 7 – Discussion and Possible Action to Amend Proposed Regulatory Language as a Result of Comments Received During the 90-day Public Comment Period for DHCC’s Rulemaking to Add CCR, Title 16, Division 11, §1100 Relevant to Definitions.**

Donna Kantner reported that the Committee allowed for an extended public comment period for this regulatory packet because it was anticipated that there would be a number of comments received and to allow the DBC the ability to respond that accommodated their timeframe for review according to Business and Professions Code section 1905.2. She stated that the Committee did receive a number of comments on the regulatory proposal from individuals, dental hygiene educators, CDA, and the DBC. The comments received were reviewed as follows:

*(Note: Comment numbers as listed correspond to the numbering in the meeting materials.)*

**1) Comments from the Dental Board of California (DBC):**

- a) Comment #1 regarding CCR, Title 16, Division 11, §1100(c) defining *assessment*.
  - **Motion: Michelle Hurlbutt moved to remove BPC section 1910.5 and amend the regulatory language to end after the word *practice* in the last sentence prior to “...and pursuant to BPC section 1910.5.”**

Noel Kelsch seconded the motion.

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: *Assessments* are stated as a part of dental hygiene duties in other BPC sections and not only limited to the specifics in BPC section 1910.5. The amended language should read as follows:

*(c) “Assessment” means the systematic collection, analysis, and documentation of the oral and general health status and patient*

*needs through a variety of methods, including choice of radiographs, diagnostic tools, and instruments utilized within the scope of dental hygiene practice.*

b) Comment #2 regarding CCR, Title 16, Division 11, §1100(h) defining *diagnosis*.

- **Motion: Susan Good moved to accept the DBC’s comment #2 without any definition on the word *diagnosis*, and reject staff’s recommendation.**

**Timothy Martinez seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: Because the word *diagnosis* has not been clearly defined in statute, it was part of the reason the Office of Administrative Law (OAL) rejected the regulatory packet because statute [BPC section 1908(b)(1)] currently states that a dental hygienist cannot diagnose without further definition. With the second comment from the DBC suggesting additional clarity for diagnosis and recommendation from DCA Legal counsel, the Committee will pursue a statutory change in the future to further define *diagnosis* for clarity for users and the public.

c) Comment #3 regarding CCR, Title 16, Division 11, §1100(j) defining *dental hygiene therapeutic interventions*.

- **Motion: Michelle Hurlbutt moved to accept staff’s recommendation and the DBC’s comment to amend the language in this section.**

**Evangeline Ward seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good			Pass
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: The Committee approved staff’s recommendation to accept the DBC’s comment and suggestion to amend the text suggested by DBC for clarity and consistency. The amended language should read as follows:

*“Dental Hygiene therapeutic interventions means specific procedure or set of procedures, provided within the scope of dental hygiene practice, designed to intervene in the disease process to produce a therapeutic benefit.”*

d) Comment #4 regarding CCR, Title 16, Division 11, §1100(r) defining *refer*.

- **Motion: Noel Kelsch moved to reject the DBC’s comment and reject staff’s recommendation to accept the DBC’s comment and amend the text.**

**Evangeline Ward seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: Because the current definition for the word *refer* as presented is too limiting, the Committee has decided to accept an alternative proposed definition of *refer* for clarity to users and the public and will amend the regulatory language to reflect the change. The amended language should read as follows:

*“Refer means the action taken after determining that services are needed beyond the dental hygienist’s scope of practice to provide and ensure that the patient is directed to a healthcare provider who can provide that care.”*

**2) Comments from Vickie Kimbrough representing CDHA & CDHEA:**

a) Comment #5 regarding CCR, Title 16, Division 11, §1100(b) defining the *administration of nitrous oxide and oxygen used as an analgesic*.

- **Motion: Michelle Hurlbutt moved to reject the comment and accept staff’s recommendation.**

**Noel Kelsch seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: The comment requested to replace 'dental' with 'dental hygiene' for this function which can only be performed under the direct supervision of a dentist. By replacing the words 'dental' with 'dental hygiene,' it could prohibit the dental hygienist from assisting the dentist in the area of analgesia by limiting the allowed area of treatment to dental hygiene.

b) Comment #6 regarding CCR, Title 16, Division 11, §1100(i) defining *dental hygiene preventative services*.

- **Motion: Michelle Hurlbutt moved to accept the comment with the following amendment to the language:**

“Dental hygiene preventative services means those services provided by the dental hygienist that prevent oral disease or pathology and promote oral health and overall health.”

**Evangeline Ward seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: Accept comment with amendment to the language as stated above.

c) Comment #7 regarding CCR, Title 16, Division 11, §1100(j) defining *dental hygiene therapeutic interventions*.

- **Motion: Michelle Hurlbutt moved to reject the comment based upon the acceptance of the DBC's comments on the same issue (DBC Comment #3 above).**

**Evangeline Ward seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: Because the Committee had previously discussed and accepted the comments submitted by the DBC (Comment #3) to amend the language in this section, the comment was rejected.

- d) Comment #8 regarding CCR, Title 16, Division 11, §1100(s) defining *root planing*.
- **Motion: Michelle Hurlbutt moved to accept the comment and staff's recommendation to amend the text.**

**Susan Good seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: Comment and staff's recommendation to amend the text was accepted. The amended language should read as follows:

*"Root planing" means the process of instrumentation which removes residual calculus and toxic materials from the root to produce a clean, smooth surface."*

**3) Comments from Carrie Gordon representing the California Dental Association (CDA):**

- a) Comment #9 regarding CCR, Title 16, Division 11, §1100(c) defining *assessment*.
- **Motion: Michelle Hurlbutt moved to accept the comment and to amend the text as recommended by the DBC in Comment #1 and add in 'dental hygiene' prior to assessment for clarity.**

Noel Kelsch seconded the motion.

Vote: The motion passed 6-0 (Garry Shay was absent).

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: Comment and amendment to the text was approved. The amended language should read as follows:

*(c) "Dental hygiene assessment" means the systematic collection, analysis, and documentation of the oral and general health status and patient needs through a variety of methods, including choice of radiographs, diagnostic tools, and instruments utilized within the scope of dental hygiene practice.*

b) Comment #10 regarding CCR, Title 16, Division 11, §1100(h) defining *Dental hygiene care plan* and the use of the term *dental hygiene diagnosis*.

- **Motion: Michelle Hurlbutt moved to accept CDA's comments and amend the definition to read, "The Dental hygiene care plan means an organized presentation or list of interventions to promote health or prevent disease of the patient's oral condition; plan is designed by the dental hygienist and consists of services within the scope of dental hygiene practice."**

Noel Kelsch seconded the motion.

Vote: The motion passed 6-0 (Garry Shay was absent).

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: CDA's comments were accepted with an amendment to the definition of the Dental Hygiene care plan. The amended language should read as follows:

*“The Dental hygiene care plan means an organized presentation or list of interventions to promote health or prevent disease of the patient’s oral condition; plan is designed by the dental hygienist and consists of services within the scope of dental hygiene practice.”*

c) Comment #11 regarding CCR, Title 16, Division 11, §1100(i) defining dental hygiene preventive services.

- **Motion: Michelle Hurlbutt moved to reject CDA’s comment based upon the acceptance of Comment #6 that addressed the same issue above with an amendment to the text and the limiting factor to only include BPC sections 1910(a) and 1910(b) and does not encompass the provisions as stated in BPC section 1908(a).**

**Evangeline Ward seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

- **Rationale: Comment was rejected based upon the acceptance of Comment #6 that addressed the same issue above with an amendment to the text and the limiting factor to only include BPC sections 1910(a) and 1910(b) and does not encompass the provisions as stated in BPC section 1908(a).**

d) Comment #12 regarding CCR, Title 16, Division 11, §1100(r) defining refer.

- **Motion: Michelle Hurlbutt moved to accept CDA’s comments with an amendment to the language as follows:**

**“Refer means the action taken after determining that services are needed beyond the dental hygienist’s scope of practice to provide and ensure that the patient is directed to a healthcare provider who can provide that care.”**

**Susan Good seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: The Committee accepted CDA's comment with an amendment to the language. The amended language should read as follows:

*“Refer means the action taken after determining that services are needed beyond the dental hygienist’s scope of practice to provide and ensure that the patient is directed to a healthcare provider who can provide that care.”*

The Committee acted to accept all of the actions decided upon for this regulatory packet as per Committee Action Requested and made the following motion:

- **Motion: Michelle Hurlbutt moved to direct staff to notice the proposed changes to the rulemaking file for a 15-day public comment period and delegate to the Executive Officer the authority to adopt the final text and make any nonsubstantive changes necessary to complete the rulemaking file if no adverse comments are received.**

**Noel Kelsch seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

**Full 8 – Discussion and Possible Action to Amend Proposed Regulatory Language as a Result of Comments Received During the 45-day Public Comment Period for DHCC’s Rulemaking to Add CCR, Title 16, Division 11, §§1101, 1121, 1122, 1124, 1126, 1127, and 1133 Relevant to Administration and Examinations.**

**a) Comments from Ms. Kimbrough-Walls and multiple dental hygiene educational program directors.**

1) Comment #1 regarding §1126(b).

- **Motion: Michelle Hurlbutt moved to accept the comment as presented for clarification.**

**Noel Kelsch seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: The comment was accepted to enhance clarity. Further amendments to the language were agreed upon by the Committee at this meeting for clarity [see b(2) below].

2) Comment #2 regarding §1127(a).

- **Motion: Michelle Hurlbutt moved to reject the comment because the Committee does not have the capability to notify an applicant immediately.**

**Evangeline Ward seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: The Committee does not have the capability to notify an applicant immediately of an examination failure.

3) Comment #3 regarding §1127(b).

- **Motion: Noel Kelsch moved to reject the comment because the Committee already responds to any inquiries in a timely manner and, based upon the information provided by the Executive Officer, since the Committee's inception in 2009, the Committee**

has not received any examination appeals and that there is a high probability that the California Clinical Examination will be eliminated.

Evangeline Ward seconded the motion.

Vote: The motion passed 6-0 (Garry Shay was absent).

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: The Committee already responds to any inquiries in a timely manner and, based upon the information provided by the Executive Officer, since the Committee's inception in 2009, the Committee has not received any examination appeals and that there is a high probability that the California Clinical Examination will be eliminated.

**b) Comments from Roberta Lawrence, RDH.**

1) Comment regarding BPC section 1124(d).

- **Motion: Noel Kelsch moved to reject the comment because the regulation as written is all inclusive and anyone entering the examination clinic must have an identification badge.**

Evangeline Ward seconded the motion.

Vote: The motion passed 6-0 (Garry Shay was absent).

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: The Committee already identifies anyone entering the examination clinic with an identification badge, so the comment is duplicative to what the Committee already does.

2) Comment regarding BPC section 1126(b).

- **Motion: Susan Good moved to accept the comment and staff’s recommendation and to amend the language to add, “and has not been subject to discipline within the preceding 5 years,” immediately after “for a minimum of 5 years.”**

**Evangeline Ward seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Rationale: The Committee accepted the comment with an amendment to the language to read as follows:

*“(b) Grading examiners shall not view applicants during the performance of the examination assignments. To be considered for appointment as a grading examiner, a licensee shall be a California licensed RDH, RDHAP, or RDHEF with an active license for a minimum of five years and has not been subject to discipline within the preceding five years.”*

3) Comment regarding BPC section 1127(a) & 1127(b).

(Note: Comments #3 & 4 were voted upon together)

- **Motion: Michelle Hurlbutt moved to reject comments #3 & 4 because the Committee does respond to any inquiries in a timely manner and does not have the capability to notify an applicant of their examination results immediately.**

**Noel Kelsch seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

- Rationale: the Committee does respond to any inquiries in a timely manner and does not have the capability to notify an applicant of their examination results immediately.

The Committee acted to accept all of the actions decided upon for this regulatory packet as per the Committee Action Requested and made the following motion:

- **Motion: Michelle Hurlbutt moved to direct staff to notice the proposed changes to the rulemaking file for a 15-day public comment period and delegate to the Executive Officer the authority to adopt the final text and make any nonsubstantive changes necessary to complete the rulemaking file if no adverse comments are received.**

Susan Good seconded the motion.

Vote: The motion passed 6-0 (Garry Shay was absent).

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

**Full 9 – Discussion and Possible Action to Amend Proposed Regulatory Language as a Result of the Office of Administrative Law’s (OAL) Disapproval of DHCC’s Rulemaking Relevant to Educational Program Requirements - CCR, Title 16, Division 11, §§1103, 1105, 1105.1, 1105.2, 1105.3, 1105.4, and 1106.**

Ms. Kantner reviewed the listed reasons that OAL disapproved the regulatory file. She stated that OAL objected to the use of the word *diagnosis* in CCR section 1103(j) which defines the dental hygiene process of care. She said that OAL’s reason is that the language is inconsistent to the language in BPC section 1908(b)(1).

President Moultrie quoted the following from the CODA standards as the definition for a dental hygienist’s *process of care*:

**2-13 - Graduates must be competent in providing the dental hygiene process of care which includes:**

- a) **Comprehensive collection of patient data to identify the physical and oral health status;**
- b) **Analysis of assessment findings and use of critical thinking in order to address the patient’s dental hygiene treatment needs;**

- c) Establishment of a dental hygiene care plan that reflects the realistic goals and treatment strategies to facilitate optimal oral health;
- d) Provision of patient-centered treatment and evidence-based care in a manner minimizing risk and optimizing oral health;
- e) Measurement of the extent to which goals identified in the dental hygiene care plan are achieved;
- f) Complete and accurate recording of all documentation relevant to patient care.

Ms. Hurlbutt indicated that the entire definition for *process of care* as above (2-13: a – f) should be used with the addition of, “and will serve as the accepted professional standard for decision making.”

- **Motion: Michelle Hurlbutt moved to use the Commission on Dental Accreditation (CODA) standard language (Standard 2-13: a – f) for *process of care* and add, “and will serve as the accepted professional standard for decision making” and remove the term diagnosis to amend the regulatory language for the rulemaking file for a 15-day public comment period and delegate to the Executive Officer the authority to adopt the final text and make any nonsubstantive changes necessary to complete the rulemaking file if no adverse comments are received.**

Susan Good seconded the motion.

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Other changes to the rulemaking file that have been made, will be scheduled for a hearing, and still need to be approved by OAL are:

- Clarity for references to “approved accreditation standards” referenced throughout this article;
- Clarity to the phrase “reasonable period of time” in BPC section 1103(z) & (ac) and needs to be changed in sections that reference semester units;
- Clarity of the written plan “required by the Commission on Dental Accreditation (CODA);”
- No explanation what constitutes a “substantive or major change” as used in section 1105.3(a)(2)(B). The text was revised to eliminate these terms.

- Section 1105.2(d)(3)E(i), (ii), (iii) to be struck from text as per DCA legal counsel suggestion, as it is duplicative since section 1107 is already addresses the issue.
- **Motion: Noel Kelsch moved to approve the amended regulatory language as presented and the rulemaking file for a 15-day public comment period and delegate to the Executive Officer the authority to adopt the final text and make any nonsubstantive changes necessary to complete the rulemaking file if no adverse comments are received.**

**Evangeline Ward seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

**Full 10 – Discussion and Possible Action to Amend Proposed Regulatory Language as a Result of the Office of Administrative Law’s Disapproval of DHCC’s Rulemaking Relevant to Remedial Education - CCR, Title 16, Division 11, §1108.**

Ms. Kantner stated that the text was adopted, but was not posted on the DHCC website. She stated that regulatory text that omitted the requirement for an additional column on the form and the requirement that courses be in an approved dental hygiene educational program were not amended. She reported that the changes have been made to the text and the additional column on the form was added for out of state license status. She continued that there was also text adopted requiring remedial education faculty to possess only California licenses without any disciplinary action against them, but was unclear as to whether this language was omitted. She said that there was also a clarity issue for record keeping which amendments to the text and the Application for Approval of Course in Remedial Education have been provided for the Committee’s review.

- **Motion: Noel Kelsch moved to approve the amended regulatory language as presented and the rulemaking file, direct staff to draft an addendum to the initial statement of reasons, and notice the document and proposed changes for a 15-day public comment period and delegate to the Executive Officer the authority to adopt the final text and make any nonsubstantive changes necessary to complete the rulemaking file if no adverse comments are received.**

**Evangeline Ward seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

**Full 11 – California State Auditor Report Regarding Children’s Access to Dental Care – Informational Only**

Ms. Castillo included the audit report due to the interest in the Committee’s interest in access to care. She stated that the report was provided for the Committee’s review and would answer any questions presented.

**Full 12 – Legislative and Regulatory Subcommittee Report**

Subcommittee Chair Susan Good stated that the Legislative and Regulatory subcommittee reviewed 17 bills and has the following recommendations for the full committee:

- 1) Recommendation to take a watch position on the following legislation:
  - AB 12 (Cooley) – State Government: administrative regulations: review
  - AB 351 (Jones-Sawyer) – Public Contracts: small business participation
  - AB 366 (Bonta) – Medi-Cal Reimbursement Rates
  - AB 728 (Hadley) – State Government: financial report
  - AB 797 (Steinorth) – Regulations: effective dates and legislative review
  - AB 1060 (Bonilla) – Professions and Vocations: licensure
- **Motion: Michelle Hurlbutt moved to accept the Legislative and Regulatory Subcommittee’s recommendations to take a watch position on AB 12, AB 351, AB 366, AB 728, AB 797, and AB 1060.**

**Noel Kelsch seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

- 2) Recommendation to take a support and support, if amended positions on the following legislation:
- AB 41 (Chau) – Health Care Coverage: discrimination
  - AB 502 (Chau) – Dental Hygiene
  - AB 750 (Low) – Business and Professions: licenses
  - AB 880 (Ridley-Thomas) – Dentistry
  - SB 351 (Committee on Banking and Financial Institutions) – Corporations: management
  - SB 800 (Committee on Business, Professions and Economic Development) – Healing Arts
- **Motion: Michelle Hurlbutt moved to accept the Legislative and Regulatory Subcommittee’s recommendations to take a support position on AB 41, AB 750, AB 880, SB 351, SB 800, and a support, if amended position on AB 502.**

Evangeline Ward seconded the motion.

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

- 3) Recommendation to take an oppose position on the following legislation:
- AB 85 (Wilk) – Open Meetings
  - AB 483 (Patterson) – Healing Arts: initial license fees: proration
- **Motion: Michelle Hurlbutt moved to accept the Legislative and Regulatory Subcommittee’s recommendations to take an oppose position on AB 85 and AB 483.**

**Evangeline Ward seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

Ms. Castillo indicated that AB 611 (Dahle) did not make it out of legislative committee and, as such, died in committee, but could return as a 2-year bill.

Chair Good reported that there was no recommendation on the following legislation from the subcommittee, as the subcommittee members were in a deadlock.

- AB 179 (Assembly Committee on Business and Professions) - Dentistry
- AB 648 (Low) – Community-Based Services: Virtual Dental Home Program

For AB 179, the subcommittee was deadlocked on a vote between recommending a watch or support position to the full committee. Kurt Heppler, DCA Legal Counsel, indicated that the two issues that arose in the discussion of the bill was about the moratorium on the Registered Dental Assistant clinical examination and the exemption for a licensee to provide services to a significant other or the equivalent if sexual relations are involved or whether they should be referred to another licensee. The exemption already exists for physicians and surgeons and the bill expands the exemption to other classifications of health professionals. President Moultrie also indicated that there was a discussion that if AB 178 had an affect on AB 179 and possibly changing the Committee's position, that the Committee could conduct an emergency 10-day meeting to discuss the issues and the Committee's position.

- **Motion: Michelle Hurlbutt moved to take a watch position on AB 179.**

**Susan Good seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward		X	

Chair Good reported that the other legislation where the subcommittee was deadlocked and had no recommendation was AB 648 (Low) – Virtual Dental Homes (VDH). She stated that the bill did not directly impact the Committee; however, it would impact some licensees due to their participation in the VDH program. Ms. Castillo indicated that the discussion was primarily regarding the lack of specificity as to who would be receiving the grant funding for the VDH program and the issue of the Department of Public Health appointing a dentist as the head of the Department of Oral Health which caused a deadlock in the subcommittee voting to either support or watch the bill.

- **Motion: Susan Good moved to take a support position on AB 648.**

**Noel Kelsch seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt		X	
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward		X	

Any other legislation of interest to the Subcommittee:

- AB 178 (Bonilla) – Board of Vocational Nursing and Psychiatric Technicians of the State of California
- SB 467 (Hill) – Professions and Vocations

Chair Good reported that the subcommittee requested that staff monitor AB 178 & AB 179 and advise the subcommittee of any changes and to monitor SB 467 on the subject of Pro Rata. She also reported that for future legislation, a member of the public suggested that the subcommittee should review legislation that protects public interests such as AB 768 –

smokeless tobacco; baseball stadiums, and SB 203 – sugar sweetened beverages: safety warnings.

- **Motion: Chair Susan Good moved that the Full Committee receive and accept the recommendations and report from the Legislative and Regulatory Subcommittee.**

**Noel Kelsch seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

### **Full 13 – Licensing and Examination Subcommittee Report**

Chair Noel Kelsch reported that in the Licensing and Examination subcommittee meeting, the following was discussed to provide recommendation to the full committee:

- 1) Approved the subcommittee meeting minutes from December 5, 2014;
- 2) Discussed that there are only 4 applicants for the July 2015 California Dental Hygiene Examination which could possibly cause the exam to move to another location to save on the Committee's resources. The low numbers applying for the exam could also mean the elimination of it altogether if interest continues to decrease.
- 3) The recommendations from the subcommittee is for staff to research whether the examination needs to use a different location seeing that the applicant population has dwindled to conserve resources and when the elimination of the exam could occur.

- **Motion: Chair Noel Kelsch moved that the Committee receive and accept the recommendations and report from the Licensing and Education Subcommittee.**

**Evangeline Ward seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

#### Full 14 – Enforcement Subcommittee Report

Acting Chair Nicolette Moultrie substituted to oversee the Enforcement subcommittee meeting in Garry Shay's absence. She reported that the Enforcement subcommittee did the following to provide recommendation to the full committee:

- 1) Approved the December 5, 2014 subcommittee meeting minutes;
- 2) Reviewed the Committee's Enforcement Statistics; and
- 3) Reviewed the DCA Enforcement Performance Measures.

- **Motion: Acting Chair Nicolette Moultrie moved that the Committee receive and accept the recommendations and report from the Enforcement Subcommittee.**

**Michelle Hurlbutt seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

#### Full 15 – Education Subcommittee Report

Chair Michelle Hurlbutt reported that the Education Subcommittee did the following to provide recommendations to the full committee:

- 1) Approved the December 5, 2014 subcommittee meeting minutes;
- 2) Discussed possible action on approval and implementation on a course that originated from AB 1174 (Ch. 662, Statutes of 2014) and the subcommittee recommends to the full committee the approval of Dr. Glassman's course from the duties stated in AB 1174;
- 3) Discussed the Office of Statewide Health Planning and Development (OSHPD) workforce data for dental hygienists – a fact sheet. The subcommittee directed staff to obtain comments from Committee

members and the public regarding the OSHPD fact sheet and to have staff contact OSHPD for possible changes and report back to the subcommittee.

- 4) Discussed action on the Commission on Dental Accreditation (CODA) Standard 2-18 for dental hygiene programs and the subcommittee recommendation to the full committee is to direct staff to send a letter to CODA supporting the newly proposed educational standard 2-18.
  - 5) Future Agenda Items including staff to report back to the subcommittee on the OSHPD fact sheet.
- **Motion: Chair Michelle Hurlbutt moved that the Committee receive and accept the report and recommendations from the Education Subcommittee.**

**Noel Kelsch seconded the motion.**

**Vote: The motion passed 6-0 (Garry Shay was absent).**

NAME	Minutes VOTE:		OTHER
	Aye	Nay	
Susan Good	X		
Michelle Hurlbutt	X		
Noel Kelsch	X		
Timothy Martinez	X		
Nicolette Moultrie	X		
Evangeline Ward	X		

**Full 16 – Closed Session**

Closed Session was conducted on Saturday, May 2, 2015 after the subcommittees adjourned instead of Sunday, May 3, 2015 to conserve DHCC resources.

**Full 17 – Future Agenda Items**

Ms. Hubble stated that the following issues could be brought to a future meeting:

- The DHCC Clinical Examination elimination;
- Pursue legislation to increase the DHCC’s License Renewal Fee maximum (statutory) cap;
- AB 178 (Bonilla);
- Inactive License and associated fees;
- Denti-Cal requiring X-Rays for RDHAPs. President Moultrie directed staff to investigate this issue and report back to the Executive Officer as soon as possible; and
- Statutory changes for clarity regarding dental hygiene diagnosis.

**Full 18 – Adjournment**

The May 3, 2015 Full DHCC meeting adjourned at 3:45 p.m.



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 4**

The DHCC held a teleconference on September 25, 2015 to conduct business. This agenda item is to review and approve the September 25, 2015 Committee Meeting Minutes.



**DRAFT DENTAL HYGIENE COMMITTEE OF CALIFORNIA**  
**SEPTEMBER 25, 2015**  
**TELECONFERENCE MEETING MINUTES**

Department of Consumer Affairs  
2005 Evergreen Street, 1<sup>st</sup> Floor  
Silverwood Lake Room  
Sacramento, CA 95815  
Friday, September 25, 2015

**ITEM 1 – Roll Call and Establishment of a Quorum**

The Dental Hygiene Committee of California's (Committee) President, Nicolette Moultrie, called the meeting to order with roll call at 12:00 p.m. She asked Susan Good, Public Member, Secretary, to call the roll to establish a quorum. She also asked the members to identify their location for the teleconference record. With five Committee members present via teleconference, a quorum was established.

**Committee Members Present:**

Nicolette Moultrie, RDH,  
President  
Location: South Lake Tahoe, CA

Evangeline Ward, RDH  
Vacaville, CA

Noel Kelsch, RDHAP,  
Vice President  
Location: Edgewood, NY

Michelle Hurlbutt, RDH Educator  
Location: Anaheim, CA

Susan Good, Public Member,  
Secretary  
Location: Fresno, CA

**Committee Members Absent:**

Timothy Martinez, DMD  
Garry Shay, Public Member

**Staff Present (Sacramento):**

Lori Hubble, Executive Officer  
(EO)

Nancy Gaytan, Enforcement  
Analyst

Anthony Lum, Assistant Executive  
Officer

Sabina Knight, Department of  
Consumer Affairs (DCA)  
Legal Counsel

**Public Present (Anaheim):**

Shawn Leech – Program Director,  
Concorde Career College, San  
Bernardino

Dr. Bina – Concorde - Garden  
Grove

**ITEM 2 – Public Comment for Items Not on the Meeting Agenda**

President Moultrie asked if there was any public comment for the Committee for items not on the meeting agenda.

Anthony Lum, Assistant Executive Officer, stated that there was currently a 15-day comment period in progress that is to end on Saturday, October 3, 2015, for one of the many regulatory packages the Committee is requesting (Educational Programs). He informed the Committee that another teleconference could possibly be needed toward the end of October 2015 to address public comment(s) that was received in response to the changes in the regulatory package. He wanted to provide advance notification for a teleconference request so that the Committee members were aware and to possibly expect an availability email from him in the near-future.

***CLOSED SESSION:***

The Committee went into Closed Session to address an enforcement issue.

Pursuant to subdivision (c)(3) of section 11126 of the Government Code, the Committee will meet in closed session to deliberate on disciplinary matters.

***RETURN TO OPEN SESSION:***

The Committee returned to Open Session where member Hurlbutt mentioned that three public members were present at the Anaheim, California teleconference location. Shawn Leech, Program Director from Concorde Career College in San Bernardino, inquired about the next step after the completion of the Interim Therapeutic Restoration (ITR) course. Executive Officer Hubble stated that ITR information would be sent to the programs by the end of the month.

**ITEM 3 – Adjournment:**

The September 25, 2015 teleconference meeting adjourned at 1:00 P.M.



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 5**

President's Report:

A verbal report will be provided.



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 6**

Executive Officer's Report -

A verbal report will be provided regarding:

- Update on DHCC Staff
- Board Member Required Training
- Form 700 Filing
- Update on BreEZe
- Update on the RDH Educational Course Applications reviewed and approved by DHCC
- Update on Status of the Administration of DHCC Clinical Examinations
- DHCC Newsletter and Law Book



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 7**

Update from the Dental Board of California

A verbal report will be provided.



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 8**

Update from Central Regional Dental Testing  
Service, Inc. (CRDTS) regarding testing in  
California – Kim Laudenslager



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 9**

Update from Western Regional Examining Board  
(WREB) Regarding Adding Intraoral and Extraoral  
Component to the Dental Hygiene  
Clinical Examination



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 10**

**DHCC Budget Update**

**BUDGET REPORT**  
**FY 2015/16 Expenditure Projection**  
*For the Period Ending October 31, 2015*

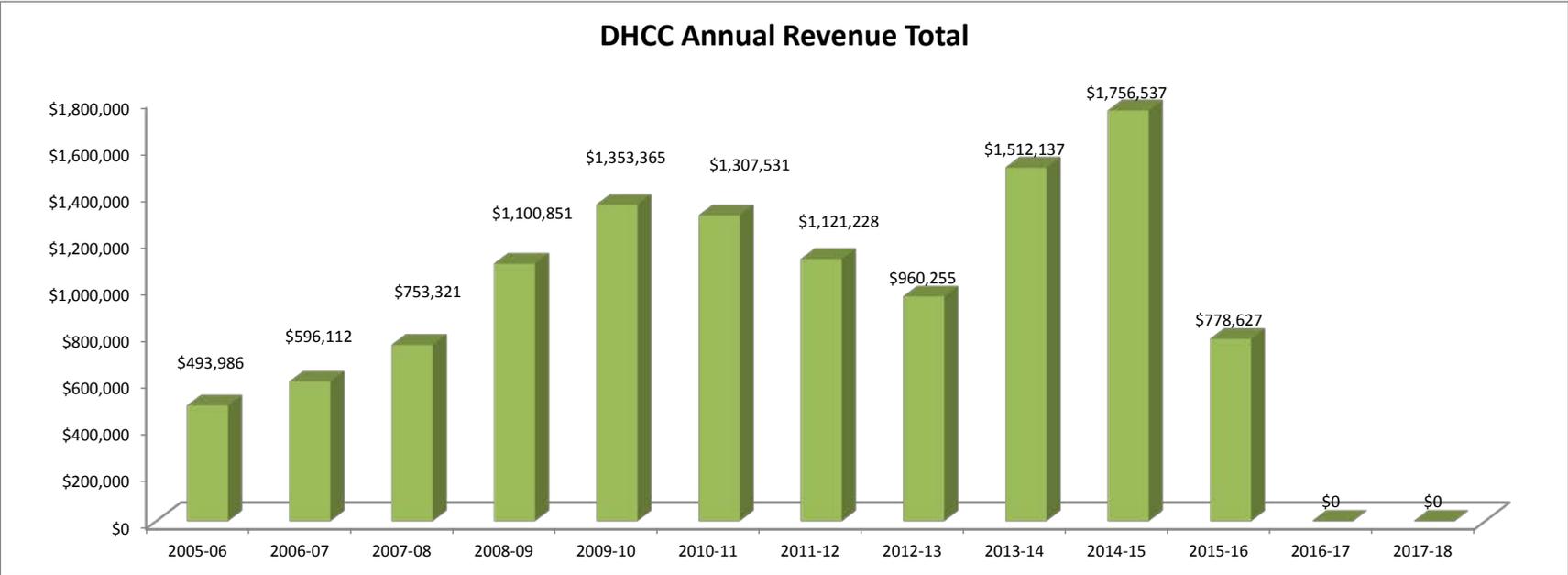
OBJECT DESCRIPTION	FY 2015-16				UNENCUMBERED BALANCE
	BUDGET ALLOTMENT	CY EXPENDITURES (MONTH 4)	PERCENT SPENT	Budget office PROJECTIONS TO YEAR END	
<b>PERSONNEL SERVICES</b>					
Salary & Wages	509,669	113,417	22%	450,000	59,669
Temp Help 907	57,000	16,095	28%	48,000	9,000
Proctors 915	1,881	0	0%	0	1,881
Allocated Proctor	0	0	0%	0	0
Committee/Bd members (901)	24,400	0	0%	5,000	19,400
Overtime	0	6,328	0%	14,000	(14,000)
Benefits	224,918	55,723	25%	210,000	14,918
Salary Savings	0	0	0%	0	0
<b>TOTAL PERS SVS</b>	<b>817,868</b>	<b>191,563</b>	<b>23%</b>	<b>727,000</b>	<b>90,868</b>
<b>OPERATING EXPENSES &amp; EQUIPMENT</b>					
General Expense	11,133	3,476	31%	10,000	1,133
Minor Equipment 226	0	2,298	0%	5,000	(5,000)
Fingerprint Reports	3,220	0	0%	0	3,220
Printing	5,358	9,541	178%	20,000	(14,642)
Communication	5,812	646	11%	2,500	3,312
Postage	15,063	9,301	62%	18,000	(2,937)
Insurance	0	0	0%	0	0
Travel In state	14,187	1,167	8%	10,000	4,187
Travel Out of state	0	0	0%	0	0
Training	2,800	0	0%	500	2,300
Facilities Ops	30,120	59,608	198%	60,000	(29,880)
Utilities	0	0	0%	0	0
C&P Serv. Internal	24,323	0	0%	0	24,323
**C&P Serv. External	18,984	12,000	63%	12,000	6,984
<b>Departmental Services:</b>					
OIS Pro Rata	343,924	145,000	42%	343,924	0
Indirect Distrib Cost	55,348	54,500	98%	55,348	0
Interagency Services	29,635	0	0%	5,000	24,635
IA with OPES (formerly OER)	0	5,651	0%	5,651	(5,651)
DOI - Pro Rata	2,821	1,500	53%	2,821	0
Public Affairs Pro Rata	2,754	1,500	54%	2,754	0
PCSD Pro Rata	4,016	2,000	50%	4,016	0
Consolidated Data Centers	2,594	86	3%	1,000	1,594
Data Processing	2,558	8	0%	1,000	1,558
Central Adm. Services (Pro Rata)	78,669	19,690	25%	78,669	0
<b>EXAMS</b>					
Exam supplies & freight	1,612	0	0%	0	1,612
Exam Site rental	18,567	0	0%	0	18,567
Exam Contracts	247,832	24	0%	100	247,732
Expert Examiners (SME)	19,392	0	0%	0	19,392
<b>ENFORCEMENT</b>					
Attorney General	75,137	7,535	10%	75,137	0
Off of Admin Hearings	3,120	0	0%	3,120	0
Evidence/Witness	36	0	0%	2,500	(2,464)
Court Reporter Services	0	0	0%	500	(500)
Div. of Investigations (DOI Pro Rata)	0	0	#DIV/0!	0	0
Major Equipment	8,000	0	0%	0	8,000
Other Items of Expense	117	0	0%	0	117
Vehicle op	0	0	#DIV/0!	0	0
Special Adj - OE&E	0	0	0%	0	0
<b>Total OE &amp; E</b>	<b>1,027,132</b>	<b>335,531</b>	<b>33%</b>	<b>719,540</b>	<b>307,592</b>
<b>TOTAL EXPENDITURES</b>	<b>1,845,000</b>	<b>527,094</b>	<b>29%</b>	<b>1,446,540</b>	<b>398,460</b>
Legislative Exam Appropriation	0	0		0	0
<b>NET APPROPRIATION</b>	<b>1,845,000</b>	<b>527,094</b>	<b>29%</b>	<b>1,446,540</b>	<b>398,460</b>
Scheduled, Other Reimbursement	(1,000)			(1,000)	0
Distributed Costs	(5,000)			(5,000)	0
Unscheduled Reimbursement					0
<b>NET, TOTAL EXPENDITURES</b>	<b>1,839,000</b>	<b>527,094</b>	<b>29%</b>	<b>1,440,540</b>	<b>398,460</b>
NOTES/ASSUMPTIONS					
	<b>Surplus/Deficit</b>				<b>21.7%</b>

**DHCC REVENUE TRACKING**

	COMDA				DHCC							
Fiscal Year (FY)	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
DHCC Revenue per FY	\$493,986	\$596,112	\$753,321	\$1,100,851	\$1,353,365	\$1,307,531	\$1,121,228	\$960,255	\$1,512,137	\$1,756,537	\$778,627	\$0

**Notes:**

- a) Revenue for FY 2015-16 is thru October 2015
- b) \$80 License Renewal Fee increase to \$160 effective 1/1/2014
- c) Exam Fees - \$220 for FY 2005/06 - 2008/09; increased to \$525 in FY 2009/10
- d) DHCC established in FY 2009/10



# 3140 - State Dental Hygiene Fund

## Analysis of Fund Condition

11/24/2015

(Dollars in Thousands)

### 2015 Budget Act

	ACTUAL 2014-15	Budget Act CY 2015-16	BY 2016-17	BY+1 2017-18
<b>BEGINNING BALANCE</b>	\$ 827	\$ 1,279	\$ 961	\$ 715
Prior Year Adjustment	\$ 16	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 843	\$ 1,279	\$ 961	\$ 715
<b>REVENUES AND TRANSFERS</b>				
Revenues:				
114300 Other Motor Vehicle Fees	\$ -	\$ -	\$ -	\$ -
125600 Other regulatory fees	\$ 12	\$ 13	\$ 13	\$ 13
125700 Other regulatory licenses and permits	\$ 157	\$ 142	\$ 165	\$ 165
125800 Renewal fees	\$ 1,540	\$ 1,340	\$ 1,391	\$ 1,391
125900 Delinquent fees	\$ 21	\$ 20	\$ 18	\$ 18
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 3	\$ 2	\$ 2	\$ 2
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ -	\$ -	\$ -	\$ -
161400 Miscellaneous revenues	\$ 24	\$ 4	\$ 4	\$ 4
164300 Penalty Assessments	\$ -	\$ -	\$ -	\$ -
Totals, Revenues	\$ 1,757	\$ 1,521	\$ 1,593	\$ 1,593
Totals, Revenues and Transfers	\$ 1,757	\$ 1,521	\$ 1,593	\$ 1,593
Totals, Resources	\$ 2,600	\$ 2,800	\$ 2,554	\$ 2,308
<b>EXPENDITURES</b>				
Disbursements:				
0840 State Controller (State Operations)	\$ -	\$ -	\$ -	\$ -
8880 Financial Information System for CA (State Operations)	\$ 1	\$ 3	\$ -	\$ -
<u>Budget Act</u>				
1110 Program Expenditures (State Operations)	\$ 1,320	\$ 1,629	\$ 1,629	\$ 1,662
2015-16 BreEZe Spring Finance Letter	\$ -	\$ 176	\$ 186	\$ -
2015-16 BreEZe BCP - Credit Card Funding	\$ -	\$ 12	\$ 24	\$ -
2015-16 BreEZe May Revise	\$ -	\$ 19	\$ -	\$ -
Total Disbursements	\$ 1,321	\$ 1,839	\$ 1,839	\$ 1,662
<b>FUND BALANCE</b>				
Reserve for economic uncertainties	\$ 1,279	\$ 961	\$ 715	\$ 646
Months in Reserve	8.3	6.3	5.2	4.6

NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1.
- C. ASSUMES INTEREST RATE AT 0.3%.



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 11**

**2015 – End of Year Legislative Report**

**DENTAL HYGIENE COMMITTEE OF CALIFORNIA  
TRACKED LEGISLATION (AGENDA ITEM 11)**

Bill No.	Author	Subject	Date of Introduction	Last Amended	Committee Location	Status	Committee Position	Notes
AB 12	Cooley	State Government: administrative regulations: review	12/1/2014	4/22/2015	Senate Committee on Governmental Organization	Held in Senate Appropriations Committee on 8/27/15	WATCH (Introduced )	Repeal duplicative regulations
AB 85	Wilk	Open Meetings (URGENCY)	1/6/2015	4/15/2015	Senate Committee on Governmental Organization	9/28/2015 Vetoed by Governor	OPPOSE (as amended 4/15/15)	Committees of less than 3 subject to Open Mtgs Act
AB 178	Bonilla	Board of Vocational Nursing and Psychiatric Technicians of the State of California (URGENCY)	1/26/2015	6/24/2015	Senate Committee on Appropriations	10/2/2015 Approved by Governor; Ch. 429	add to tracking list (05/03/15)	repeal of DBC RDA practical exam until January 1, 2017
AB 179	Bonilla	Healing arts	1/26/2015	6/30/2015	Senate Committee on Appropriations	10/6/2015 Approved by Governor; Ch. 510	SUPPORT (as amended on 4/27/15)	DBC sunset bill and increase statutory fee maximums
AB 483	Patterson	Healing Arts: initial license fees: proration	2/23/2015	6/22/2015	Senate Committee on Appropriations	10/10/2015 Vetoed by Governor	OPPOSE (as amended 4/9/15)	Prorate initial license fees; 6/22 version removes hearing aid dispensers
AB 502	Chau	Dental Hygiene	2/23/2015	6/29/2015	Senate Committee on Appropriations	10/6/2015 Approved by Governor; Ch. 516	SUPPORT IF AMENDED (as amended on 4/22/15); submitted a SUPPORT letter on 6/29 version (after they accepted amendments)	CDHA's RDHAP bill - SIA to incorporate DHCC technical amends on corporations;
AB 648	Low	Community-based Services: Virtual Dental Home program	2/24/2015	6/29/2015	Senate Committee on Appropriations	9/9/2015 Ordered to Inactive File	SUPPORT (as introduced)	Funding for Virtual Dental Home
AB 750	Low	Business and Professions: retired category: licenses	2/25/2015	4/16/2015	Assembly Committee on Appropriations (SUSPENSE)	2-YEAR: Assembly Appropriations Committee	SUPPORT (as amended 4/16/15)	Authorizes a retired license type
AB 1060	Bonilla	Professions and Vocations: licensure	2/26/2015	3/26/2015	Senate Business, Professions and Economic Development Committee	10/5/2015 Vetoed by Governor	WATCH (as amended 3/26/2015)	Sending documents to revoked licensees by mail/email
SB 467	Hill	Professions and vocations	2/25/2015	7/1/2015	Assembly Appropriations Committee	10/8/2015 Governor Approved; Ch. 656	add to tracking list (05/03/15)	Prorate approval by Legislature and AGO performance measures; CPEI prioritization for DCA programs

**DENTAL HYGIENE COMMITTEE OF CALIFORNIA  
TRACKED LEGISLATION (AGENDA ITEM 11)**

Bill No.	Author	Subject	Date of Introduction	Last Amended	Committee Location	Status	Committee Position	Notes
SB 800	Senate B&PED Committee	Healing Arts	3/18/2015	6/8/2015	10/1/2015 Governor Approved; Ch. 426	10/1/2015 Governor Approved; Ch. 426	SUPPORT (as amended 4/20/15)	B&P Committee omnibus bill



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 12**

Update on Regulations:

- a. Remedial Education, California Code of Regulations (CCR), Title 16, Division 11, §1108
- b. Educational Programs, CCR, Title 16, Division 11, §§1103, 1105, 1105.1, 1105.2, 1105.3, 1105.4 and 1106
- c. Administration and Examinations, CCR, Title 16, Division 11, §§1101, 1121, 1122, 1124, 1126, 1127, and 1133



## MEMORANDUM

<b>DATE</b>	December 5, 2015
<b>TO</b>	Dental Hygiene Committee of California
<b>FROM</b>	Anthony Lum, Assistant Executive Officer
<b>SUBJECT</b>	<b>Agenda Item 12 – Update on Regulations</b>

Following is a status of the following regulations:

- a. Remedial Education, California Code of Regulations (CCR), Title 16, Division 11, §1108

This regulatory package was due back to the Office of Administrative Law (OAL) for their review by November 24, 2015; however, with the DHCC's current workload and the BreEZe project stretching staff resources, and the recent resignation of our Legislative and Regulatory Analyst, we requested a second extension to submit the package back to OAL. OAL granted a 90-day extension to allow us to submit the package back to them by February 22, 2016 for their review. The package is currently at DCA undergoing review because of the substantive changes.

- b. Educational Programs, CCR, Title 16, Division 11, §§1103, 1105, 1105.1, 1105.2, 1105.3, 1105.4 and 1106

The same work and staffing issues affected the continued processing of this regulatory package as well. As such, we requested an extension from OAL and they graciously granted an additional 90 days to submit it to them for review. The new due date is March 10, 2016 for DHCC to complete its processes.

- c. Administration and Examinations, CCR, Title 16, Division 11, §§1101, 1121, 1122, 1124, 1126, 1127, and 1133

This regulatory package just concluded its fiscal review from the DCA Budget Office and is now under review by the DCA Legislative and Regulatory Division. They have 30 days to complete their review to forward to the DCA Executive Office for review and sign off. Once DCA has concluded its review, it will be submitted to OAL. This must be done prior to January 30, 2016 deadline if no extension is requested.



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 13**

Discussion and Possible Action to Amend  
Proposed Regulatory Language as a Result of  
The Office of Administrative Law's Disapproval of  
DHCC's Rulemaking Relevant to  
**Feasibility Study** - CCR, Title 16, Division 11,  
§§ 1104, 1104.1, 1104.2



# MEMORANDUM

<b>DATE</b>	December 5, 2015
<b>TO</b>	Dental Hygiene Committee of California
<b>FROM</b>	Lori Hubble, Executive Officer
<b>SUBJECT</b>	<b>1. Agenda Item 13</b> – Discussion and Possible Action to Amend Proposed Regulatory Language as a Result of The Office of Administrative Law’s Disapproval of DHCC’s Rulemaking Relevant to Feasibility Study - CCR, Title 16, Division 11, §§ 1104, 1104.1, 1104.2

## Background

The completed rulemaking file was submitted to Department of Consumer Affairs on January 23, 2015 for review and approval, to the Department of Finance on June 10, 2015, and to the Office of Administrative Law (OAL) on July 22, 2015. On September 4, 2015, OAL notified us that the file would be disapproved due to clarity and necessity standards. We were given 120 days to make corrections to the language that will allow the regulation to achieve OAL approval.

## OAL DECISION OF DISAPPROVAL OF REGULATORY ACTION

- 1.1. Instructions for Institutions Seeking Approval of a new Educational program for “Registered Dental Hygienists”: One-Year Period to Complete the Process.

**Text: “The process shall be completed within one year of submission unless an extension is granted by the DHCC. If the one year period expires, the process ends and a new fee shall be required for re-submission.” [Section 1941]**

- 1) **OAL Comment:** It is not clear how the one-year period is calculated. Further clarification is needed as the statute delineates the fee as being for curriculum review and site visits.

### **Staff’s Recommended Change:**

**[Note:** Changes are shown in underline to indicate additions and ~~strike through~~ to indicate deletions and are shaded for ease of location]

The process shall be completed within one year of submission unless receipt of the application for the feasibility study and payment of the required fee, unless an extension is granted by the DHCC executive officer, or his/her designee.

- 2) **OAL Comment:** The committee does not list the criteria they will use to determine whether and extension to the one year requirement will be granted.

### **Staff’s Recommended Change:**

If the one year period expires, the process ends and a new fee shall be required for

re-submission. An extension maybe granted at the discretion of the executive officer or his/her designee for administrative purposes and/or requests for additional information.

## 1.2. The Instructions: CODA Accreditation

**A. Text: “(b) After approval of the feasibility study by the Committee, and at least twelve (12) months prior to the proposed date for enrollment of students, the educational program shall submit the CODA or equivalent accrediting body’s required documents to the Committee in accordance with the requirements specified in the "Instructions". [Section 1104.(b)]**

- 1) **OAL Comment:** There is a lack of clarity regarding whether the new RDH educational programs must obtain CODA accreditation, or whether accreditation by an equivalent accrediting body is sufficient. The instructions state “If the feasibility study is approved, the educational program may apply for initial accreditation from [CODA] or an approved equivalent accrediting body.”

However, the Initial Statement of Reasons (ISR) does not describe accreditation by an equivalent accrediting body as an option.

### **Staff’s Recommended Change:**

**ADD-**“or an approved equivalent accrediting body” to the ISR p.10 after “...initial accreditation from [CODA].”

**B. Text: “Upon DHCC approval of the feasibility study, the educational program shall prepare the Commission on Dental Accreditation of the American Dental Association self-study for the proposed program. At least twelve (12) months prior to the projected date of student enrollment the program must submit to the DHCC the self-study that delineates how the proposed program plans to comply with accreditation standards.” [Instructions page 6]**

- (2) **OAL Comment:** Internal inconsistency between the regulation text, the Instructions and the ISR leads to an ambiguity regarding whether accreditation by an accrediting body beside CODA is permitted.

### **Staff’s Recommended Change:**

Upon DHCC approval of the feasibility study, the educational program shall prepare the Commission on Dental Accreditation of the American Dental Association, or an equivalent accrediting body, self-study for the proposed program. At least twelve (12) months prior to the projected date of student enrollment the program must submit to the DHCC the self-study that delineates how the proposed program plans to comply with accreditation standards.

**C. Text: (c) All Committee-approved programs shall maintain current accreditation by CODA.[Section 1104(c)]**

- (3) **OAL Comment:** Gives the impression that CODA accreditation is the only option.

### **Staff’s Recommended Change:**

(c) All Committee-approved programs shall maintain current accreditation by CODA or an equivalent accrediting body.

### 1.3. The instructions: On-Site Review Criteria

**Text:** "...Once the DHCC staff has verified that the self-study addresses the applicable standards and regulations, an on-site visit shall be scheduled."  
[Instructions Step 6]

**OAL Comment:** The Instructions do not state the criteria Committee staff will use to evaluate the selected clinical sites during the on-site visit.

#### **Staff's Recommended Change:**

The DHCC staff shall review the report and notify the program director of any deficiencies, issues, or concerns with the self-study. Once the DHCC staff has verified that the self-study addresses the applicable standards and regulations, an on-site visit shall be scheduled. The DHCC staff will verify that the evidence presented in the Self-Study meets all applicable standards and regulations. The DHCC staff shall visit selected clinical sites the program plans to use as part of the on-site visit. The DHCC staff shall complete a written report of the findings. This report shall be submitted to the ES for action and recommendation to the full Committee.

### 1.4. The Instructions: Payment of the \$2,100 Fee

**Text: FEE REQUIRED:** A check in the amount of \$2,100 made payable to the "Dental Hygiene Committee of California or DHCC", must be submitted with the feasibility study. *This fee is non-refundable. Payment of the fee does not guarantee DHCC approval.*

**OAL Comment:** Under the proposed regulations, if an applicant's feasibility study is not approved, the Committee gets to keep the \$2,100 fee even though the committee never began the curriculum review or conducted the site visit. This possible scenario appears to be in direct conflict with BP Code Section 1944(a)(10) which states the fee is required only for curriculum review and site evaluation.

**DHCC Staff Comment:** Statutory change (SB 800) as of October 1, 2015 adds "feasibility study" to Section 1944(a)(9) chaptered October 1, 2015.

### 1.5. Section 1104.1(a)(2): Citation to Section 1941(b)

**Text: (2) Submit a feasibility study in accordance with the requirements specified in the "Instructions" for approval as referenced in section 1941(b);**

**OAL Comment:** Provide clarification of citation

#### **Staff's Recommended Change:**

(2) Submit a feasibility study in accordance with the requirements specified in the "Instructions" for approval as referenced in Business and Professions Code Section 1941(b);

### 1.6. The Instructions: Restatement of Business and Professions Code Section 1941.

**OAL Comment:** Page 1 of the Instructions does not accurately reflect the statute, Business and Professions Code section 1941 subdivisions (a) and (c).

**Staff's Recommended Changes:**

- (a) The committee shall grant or renew approval of only those educational programs for a registered dental hygienist, a registered dental hygienist in alternative practice, or a registered dental hygienist in extended functions that continuously maintain a high quality standard of instruction and, where appropriate, meet the minimum standards set by the Commission on Dental Accreditation of the American Dental Association or an equivalent body, as determined by the committee.
- (b) A new educational program for registered dental hygienists shall submit a feasibility study demonstrating a need for a new educational program and shall apply for approval from the committee prior to seeking approval for initial accreditation from the Commission on Dental Accreditation of the American Dental Association or an equivalent body, as determined by the committee. The committee may approve, provisionally approve, or deny approval of any such new educational program. **[Note: staff made this correction, however, OAL did not note this error in its disapproval notice]**
- (c) For purposes of this section, a new educational program for registered dental hygienists means a program provided by a college or institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education and that has as its primary purpose providing college level courses leading to an associate or higher degree, that is either affiliated with or conducted by a dental school approved by the dental board, or that is accredited to offer college level or college parallel programs by the Commission on Dental Accreditation of the American Dental Association or an equivalent body, as determined by the committee.

**1.7. The Instructions: Miscellaneous Grammatical and Punctuation Issues**

**OAL Comment:** Page 4 of Instructions need to delete comma and add parenthesis

**Staff's Recommended Change:**

- B. Equipment (for example):
  - 1. Dental Units
  - 2. Radiography (unit-)
  - 3. Laboratory
  - 4. Instructional equipment
  - 5. Other (specify)

**OAL Comment:** Page 6 of Instructions the third sentence under Step 4 needs be corrected on the version of the instructions attached to the original Form 400.

**Staff's Recommended Change:** Add to Final Statement of Reasons (FSR) correction of grammatical error under Step 4 third sentence.

**2.1. Necessity: The Fee Amount**

**OAL Comment:** Data needed to support the \$2,100 Fee

Recommended Addition to ISR: Costs to do curriculum review and site visits

**Staff will provide necessary documentation to support.**

## **2.2. Necessity: Non-refundable Fee**

**OAL Comment:** Explain why the fee is non-refundable especially since the existing language suggests that the fee is non-refundable once the feasibility report is submitted. In statute the fee is for curriculum review and site visits.

Recommended Addition to ISR: Documentation to support the fee being non-refundable.

**Staff will add information to ISR and provide cost analysis of the each step in the process and make available for public comment during the second 15-day notice comment period.**

## **2.3. Necessity: New fee for Re-Submission**

**OAL Comment:** Lack of necessity for the requirement that, if the process is not completed within one year of the applicant submitting the \$2,100 fee and the feasibility study to the committee, the applicant must submit another \$2,100 with their re-submission.

Recommended Addition to ISR: Documentation to support the fee being non-refundable after a year.

**Staff to add information to ISR and provide documentation, see 2.2.**

**Issues 2.1. – 2.3.** Must be resolved through an addendum to the ISR and be made available to the public for comment for at least 15 calendar days before the committee adopts the regulations and resubmits the regulatory language to OAL for review.

## **3. Failure to Follow Procedure:**

**1) Staff to make necessary editorial corrections to the two citations regarding Business and Professions Code section 1944(a)(10) in the FSR.**

**2) Staff will update the FSR to indicate that the corrections were made via the Second 15-Day notice, on page 6 of 7 of the “Instructions.”**

**(3) Staff will add to the FSR the following language to demonstrate that it would be cumbersome, unduly expensive, or otherwise impractical to publish the document in the California Code of Regulations (CCR) and that the document was made available upon request directly from the agency, or was reasonably available to the affected public from a commonly known or specified source. In cases where the document was not available from a commonly known source and could not be obtained from the agency, the regulation shall specify how a copy of the document may be obtained, as required by section 20, CCR, subdivisions (c)(1) and (2).**

### **“Incorporation by Reference:**

Forms were incorporated by reference as it would be cumbersome, expensive and impractical to publish the required forms in the California Code of Regulations (CCR) and the form is available on the Commission on Accreditation’s (CODA) website.”

## **4. Miscellaneous:**

**4.1. Reference:** Non-compliance with the reference standard

**4.1.1. Section 1104:** Remove Business and Professions Code section 125.9 as a source reference for Section 1104

**Staff's Recommended Changes:**

Correct the Authority and Reference citation in section 1104, as shown below:

Note: Authority cited: Sections 1905 and 1906, Business and Professions Code. Reference: Sections ~~125.9~~, 1905 and 1941, Business and Professions Code.

**4.1.2. Page 1 of Instructions:** Add Business and Professions Code Section 1944, subdivision (a)(10)

**Staff's Recommended Changes:**

Correct the Authority and Reference citation in section 1104.1, as shown below:

Note: Authority cited: Section 1905 and 1906, Business and Professions Code. Reference: Sections 1905, ~~and 1941, and 1944(a)(10)~~, Business and Professions Code.

**4.2. Incorporation by Reference:** The title of the document in Section 1104.1 reads "Instructions for Institutions seeking Approval of a New RDH Educational Program." The title for the Instructions reads "Instructions for Institutions Seeking Approval of a New RDH Education Program."

**Staff's Recommended Changes:**

Correct the title of the "Instructions" which is incorporated by Reference in § 1104.1, title 16, California Code of Regulations, and add "Title 16" for clarity purposes. The title of the "Instructions" is shown below:

**INSTRUCTIONS FOR INSTITUTIONS SEEKING APPROVAL OF A NEW RDH EDUCATIONAL PROGRAM FOR REGISTERED DENTAL HYGIENISTS**

(Business and Professions Code Sections 1941 and 1944(a)(10); California Code of Regulations, Title 16, Section 1104.1)

*Please note: In addition to the above, in order to comply with Title 1, California Code of Regulations, section 20(c)(4), Staff corrected Section 1104.1 to reflect the most recent version of the "instructions," as shown below:*

**§ 1104.1. Process for Approval of a New RDH Educational Program**

(a) A college or an institution of higher education applying for approval of a new educational program for registered dental hygienists shall comply with the requirements specified in the Committee's document entitled, "Instructions for Institutions Seeking Approval of a New RDH Educational Program", (EDP-I-01\_Rev 12/~~14~~15), ("Instructions"), which is hereby incorporated by reference, including:

**4.3. Table of Contents**  
**Staff to make necessary editorial changes.**

**Committee Action Requested**

- 1) Discuss and take action to accept the text as modified to OAL's comments.
- 2) If amendments are accepted, direct staff to make any necessary changes to the ISR and FSOR, notice the document and the proposed changes for a 15-day comment period and delegate the authority to the Executive Officer to adopt the changes and to make any nonsubstantive changes necessary to complete the rulemaking file.

Dental Hygiene Committee of California  
Department of Consumer Affairs

**Proposed Second 15-Day Modifications**

**[Note:** The originally proposed regulatory text is indicated by plain type. The first 15-day modifications to the originally proposed text are indicated by ~~double-strikeout~~ for deleted text and double underline for added text. The proposed second 15-day modifications are shown in underline to indicate additions and ~~strike through~~ to indicate deletions and are shaded for ease of location.]

Adopt Sections 1104, 1104.1 and 1104.2 of Division 11 of Title 16 of the California Code of Regulations to read as follows:

**§ 1104. Approval of New RDH Educational Programs and Continuation of Approval for Approved RDH Educational Programs.**

(a) A new educational program shall obtain Committee approval prior to admission of students.

(b) The Committee shall review the approval of all approved educational programs in accordance with accreditation renewal by the Commission on Dental Accreditation (CODA) or an equivalent accrediting body.

(1) All educational programs accredited by CODA shall submit to the Committee after each accreditation site visit an electronic copy of the self-study and a copy of the final report of the findings within thirty (30) days of the final report issuance.

(2) If the educational program is granted the CODA status of "Approval with Reporting Requirements", the program shall submit to the Committee copies of any and all correspondence received from or submitted to CODA until such time as the status of "Approval without Reporting Requirements" is granted.

(3) If the educational program is granted the status "Approval with Reporting Requirements with Intent to Withdraw", the program shall notify the Committee within 10 days and the Committee shall withdraw approval until such time as the status of "Approval without Reporting Requirements" is granted. Students enrolled in a program where approval has been withdrawn will not be considered graduates of an approved program and shall be ineligible for licensure. The program shall notify the students of the withdrawal of approval and the potential for ineligibility for licensure on the basis of not having graduated from an approved program. The program shall copy the Committee on the notification to students and any correspondence submitted to CODA regarding accreditation status.

(4) If the educational program is withdrawn from accredited status by CODA the program shall notify the Committee in writing of such status within 10 days and the Committee shall withdraw approval. The program shall submit copies of any and all correspondence received from or submitted to CODA. Students enrolled in a program

where accreditation has been withdrawn will not be considered graduates of an accredited program and shall be ineligible for licensure.

(5) Continuation of approval of all educational programs shall be contingent upon compliance with the requirements described in this Article. Written notification of continuation of approval shall be provided.

(c) All Committee-approved programs shall maintain current accreditation by CODA or an equivalent accrediting body.

(d) All Committee-approved sponsoring and affiliated institutions shall maintain current institutional accreditation by an accrediting agency recognized by the United States Department of Education.

(e) A material misrepresentation of fact by a new educational program or an approved educational program in any information required to be submitted to the Committee is grounds for denial of approval or revocation of the program's approval.

Note: Authority cited: Sections 1905 and 1906, Business and Professions Code. Reference: Sections ~~425.9~~, 1905 and 1941, Business and Professions Code.

#### **§ 1104.1. Process for Approval of a New RDH Educational Program**

(a) A college or an institution of higher education applying for approval of a new educational program for registered dental hygienists shall comply with the requirements specified in the Committee's document entitled, "Instructions for Institutions Seeking Approval of a New RDH Educational Program", (EDP-I-01\_Rev 12/~~44~~15), ("Instructions"), which is hereby incorporated by reference, including:

(1) Notify the Committee in writing of its intent to offer a new educational program that complies with Committee requirements;

(2) Submit a feasibility study in accordance with the requirements specified in the "Instructions" for approval as referenced in Business and Professions Code section 1941(b);

(3) The Committee shall review the feasibility study and approve or deny approval of the study as specified in the "Instructions".

(b) After approval of the feasibility study by the Committee, and at least twelve (12) months prior to the proposed date for enrollment of students, the educational program shall submit the CODA or equivalent accrediting body's required documents to the Committee in accordance with the requirements specified in the "Instructions".

(c) The required documents shall be reviewed by the Committee and site visit shall be scheduled in accordance with the requirements specified in the "Instructions".

(d) The Committee may approve, provisionally approve, or deny approval of the educational program in accordance with the requirements specified in the "Instructions".

(e) The educational program shall notify the Committee in writing of any substantive or major change in information contained in the required approval documents within 10 days of such change. A substantive or major change is one that affects the original submission, where without the submission of the new information the request for approval for a new educational program would be false, misleading, or incomplete.

Note: Authority cited: Section 1905 and 1906, Business and Professions Code. Reference: Sections 1905, ~~and 1941,~~ and ~~1944(a)(10),~~ Business and Professions Code.

## **§ 1104.2. Appeals Process for New RDH Programs**

(a) Any new educational program whose approval is denied may request an informal conference before the Executive Officer or his or her designee. The program shall be given at least ten days notice of the time and place of such informal conference.

(b) The education program may contest the denial of approval by either:

(1) Appearing at the informal conference. The Executive Officer shall notify the educational program of the final decision of the Executive Officer within ten days of the informal conference. Based on the outcome of the informal conference, the educational program may then request a hearing to contest the Executive Officer's final decision. An educational program shall request a hearing by written notice to the Committee within 30 calendar days of the postmark date of the letter of the Executive Officer's final decision after informal conference. Hearings shall be held pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. Or;

(2) Notifying the Committee in writing the educational program election to forego the informal conference and to proceed with a hearing pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. Such notification shall be made to the Committee before the date of the informal conference.

Note: Authority cited: Sections 1905 and 1906, Business and Professions Code. Reference: Sections 1905 and 1941, Business and Professions Code.

## Proposed Second 15-Day Modifications

**[Note:** The originally proposed form “Instructions for Institutions Seeking Approval of a New Education Program for Registered Dental Hygienists, EDP-I-01 Rev 04/14” is shown in plain type. The first 15-day modifications to the originally proposed form are indicated by ~~double~~ ~~strikeout~~ for deleted text and double underline for added text. The proposed second 15-day modifications to the form “Instructions for Institutions Seeking Approval of a New RDH Educational Program, EDP-I-01 Rev 12/15” are shown in underline to indicate additions and ~~strikethrough~~ to indicate deletions and are shaded for ease of location.]

### **INSTRUCTIONS FOR INSTITUTIONS SEEKING APPROVAL OF A NEW RDH EDUCATIONAL PROGRAM FOR REGISTERED DENTAL HYGIENISTS**

(Business and Professions Code Sections 1941 and 1944(a)(10); California Code of Regulations, Title 16, Section 1104.1)

The Dental Hygiene Committee of California (DHCC) is the agency authorized to approve all new educational programs for Registered Dental Hygienists (RDH). Representatives of institutions proposing development of a new RDH educational program are required by law to submit a feasibility study demonstrating a need for a new RDH educational program (Business and Professions Code Section 1941).

#### **§ 1941. Approval of educational programs; Need for new educational program**

- (a) The committee shall grant or renew approval of only those educational programs for a registered dental hygienist, a registered dental hygienist in alternative practice, or a registered dental hygienist in extended functions that continuously maintain a high quality standard of instruction and, where appropriate, meet the minimum standards set by the Commission on Dental Accreditation of the American Dental Association or an equivalent body, as determined by the committee.
- (b) A new educational al program for registered dental hygienists shall submit a feasibility study demonstrating a need for a new educational program and shall apply for approval from the committee prior to seeking approval for initial accreditation from the Commission on Dental Accreditation of the American Dental Association or an equivalent body, as determined by the committee. The committee may approve, provisionally approve, or deny approval of any such new educational program.
- (c) For purposes of this section, a new educational program for registered dental hygienists means a program provided by a college or institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education and that has as its primary purpose providing college level courses leading to an associate or higher degree, that is either affiliated with or conducted by a dental school approved by the dental board, or that is accredited to offer college level or college parallel programs by the Commission on Dental Accreditation of the American Dental Association or an equivalent body, as determined by the committee.

**FEE REQUIRED: A check in the amount of \$2,100, pursuant to Business and Professions Code Section 1944(a)(10), made payable to the "Dental Hygiene Committee of California or DHCC", must be submitted with the feasibility study. *This fee is non-refundable.* Payment of the fee does not guarantee DHCC approval.**

## Proposed Second 15-Day Modifications

The process shall be completed within one year of submission unless receipt of the application for the feasibility study and payment of the required fee, unless an extension is granted by the DHCC executive officer, or his/her designee. If the one year period expires, the process ends and a new fee shall be required for re-submission. An extension maybe granted at the discretion of the executive officer or his/her designee for administrative purposes and/or requests for additional information.

### **STEP 1 – Submit a Letter of Intent:**

Submit a letter of intent to the DHCC at least one year in advance of the anticipated date for admission of students. The letter shall include:

- Name and address of the institution seeking approval
- Contact information for the person responsible for the feasibility study
- Type of degree granted
- Length of proposed program
- Anticipated enrollment
- Proposed start date

The letter shall be addressed to:

Executive Officer  
Dental Hygiene Committee of California  
2005 Evergreen Street, Suite 1050  
Sacramento, CA 95815

The DHCC shall acknowledge receipt of the letter of intent. Upon receipt of the letter of acknowledgment from the DHCC, the institution shall have up to six (6) months to submit Step 2 - Feasibility Study.

### **STEP 2 – Submit Feasibility Study:**

Submit a feasibility study to the DHCC documenting the need for a new RDH educational program and the ability to develop, implement and sustain an educational program for registered dental hygienists. The feasibility study shall include the following:

A. The feasibility study shall contain a Table of Contents with the following required sections addressed in detail:

- 1) Rationale for Development of New Educational Program
- 2) Structure and Governance
- 3) Facilities and Resources
- 4) Cost-Revenue Projections with detailed 5-year budget
- 5) Students and Student Services

B. Pages in the body of the feasibility study shall be numbered consecutively to facilitate the review.

C. Attachments and appendices shall be tabbed and numbered consecutively.

D. Required Sections:

## Proposed Second 15-Day Modifications

### 1) Rationale for the Development of New Educational Program

Provide rationale for development of a new program, including statistical data and other relevant information that addresses:

- a. Regional labor statistics regarding projected need for this type of licensee
  - Provide summary comments and tables as necessary and cite original source of information from the California Employment Development Department – Labor Market Information or an equivalent State or County agency
- b. Potential local/regional industry employment statistics regarding current open positions and projected needs for additional licensees including any workforce shortage areas.
  - Copy of source data used
  - Summary of findings
  - Tabulated results
- c. Description of the characteristics of the population in the community being served by the program including oral health needs
- d. Impact on RDH educational programs within a 100 miles radius of the proposed program by contacting all approved existing educational programs in regard to:
  - Locale, region, or state(s) from which students are drawn
  - Whether there is a "waiting list" or more qualified applicants than admitted annually
  - Length of time it takes licensed graduates to obtain gainful employment (at least 3 days per week) in dental hygiene.
- e. Description of the length of the program, type of degree(s) granted, the intended start date, projected size of the first class, and enrollment projection for the first five years and method for determining the projected enrollment.
- f. Plans for promoting and marketing the proposed program.
- g. Projected timeline for planning and initiating program.

### 2) Structure and Governance

Description of the institution and the institution's experience providing dental hygiene or other health-related educational programs. The description must include:

- a. Institutional accreditation status and history such as date of initial accreditation, denials, revocations, warnings for the institution and any programs offered by the institution.
- b. History, organizational structure and programs (attach an organization chart).
- c. Geographic area (community) served by the institution and a description of the community and its population
- d. Institution's strategic plan
- e. Type of dental hygiene or other health-related programs including: number of students currently enrolled and graduates by program type; passage rate on any required certification or licensing examination for the past five years (as applicable); and status of the program with any state, regional, or federal agency
- f. If the educational program does not have a dental hygiene education program or other health-related programs, provide a statement related to the processes and resources it shall utilize to start and sustain a registered dental hygiene education program.

## Proposed Second 15-Day Modifications

### 3) Facilities and Resources

Describe physical location of proposed program.

- a. Describe space committed to the program and provide copies of floor plans to include faculty and staff offices, classrooms, laboratories, clinical facilities, and storage areas.
- b. Provide status report on construction or renovation of physical facilities.
- c. List educational resources, equipment, supplies purchased or to be purchased for the program.

### 4) Cost-Revenue Projections

Start-up Budget and Funding Sources

- a. Local, state, and federal support
- b. Projected student fees
- c. Grant support
- d. Support from other entities such as funding from corporate, private industry, professional associations, donations
- e. Projected clinic revenue

Include a 5-year capital and operational line item budget that includes projected costs for proposed program which includes:

- I. Capital Expenditures
  - A. Facilities (for example):
    1. Clinic
    2. Laboratory
    3. Locker Room
    4. Reception Room
    5. Faculty & staff offices
    6. Other (specify)
  - B. Equipment (for example):
    1. Dental Units
    2. Radiography (unit<sub>s</sub>)
    3. Laboratory
    4. Instructional equipment
    5. Other (specify)
- II. Non-capital Expenditures
  - A. Instructional materials, e.g., slides, films
  - B. Clinic supplies
  - C. Laboratory supplies
  - D. Office supplies
  - E. Program library collection
    1. Institutional
    2. Departmental
  - F. Equipment maintenance and replacement
  - G. Other (specify)

## Proposed Second 15-Day Modifications

- III. Faculty
  - A. Salaries
  - B. Benefits
  - C. Professional Development
  - D. Travel for Student Supervision
  - E. Other (specify)
- IV. Staff
  - A. Secretarial Support
  - B. Clinic Support Staff
  - C. Other (specify)
- V. Other Categories, if any (specify)

### 5) Students and Student Services

Admission and progression criteria:

- a. Admission criteria
  - Institutional policies
  - Educational program selection policies
- b. Progression and graduation criteria:
  - Institutional criteria for progression and graduation
  - Educational program's criteria for progression and graduation, including grading policies

Student policies:

- a. Provisions for student health and housing
- b. Provisions for counseling and guidance
- c. Financial aid policies, scholarship and grant opportunities
- d. Appeals Provisions

The Educational Program shall submit two hard copies and one electronic copy in pdf format to:  
Executive Officer  
Dental Hygiene Committee of California  
2005 Evergreen Street, Suite 1050  
Sacramento, CA 95815

### STEP 3 – Review of Feasibility Study

It is the responsibility of the proposed RDH educational program to have staff or a consultant(s) who possess the requisite knowledge and expertise to complete a feasibility study that conforms to the requirements specified in these instructions. Upon submission of the feasibility study, DHCC staff shall review the study and, if necessary, seek clarification of any areas in question.

- If DHCC staff determines the feasibility study is complete and complies with requirements specified in these Instructions, DHCC staff shall submit the feasibility study to the DHCC - Education Subcommittee (ES) for review and a recommendation shall be forwarded to the full Committee (Step 4).

## Proposed Second 15-Day Modifications

- If the feasibility study is incomplete, the educational program shall be notified in writing by DHCC staff of any deficiencies and a deadline for submission of a revised feasibility study.
- If DHCC staff determines the revised feasibility study is complete, it shall be forwarded to its ES.
- If staff deems the revised feasibility study incomplete, it shall be returned to the program with a written notice of the deficiencies, and shall not be forwarded to its ES.
- If the revised feasibility study is returned because it is incomplete and the educational program still wishes to seek approval, the educational program must restart at Step 1. The letter of intent must include a statement summarizing the DHCC reason(s) for not accepting the prior revised feasibility study and subsequent corrective action the educational program has taken.

### STEP 4 – Education Subcommittee (ES) Recommendation on the Feasibility Study

When the feasibility study is complete, it shall be submitted to the ES for discussion and action at a regularly scheduled meeting. The meeting is open to the public, and there are opportunities for public comment. The DHCC staff shall notify the educational program of the ES meeting date at which the ES shall discuss and may make a recommendation ~~on the~~ to take action on the feasibility study. A representative of the program shall be invited to the ES meeting to respond to any questions or concerns. The ES shall recommend to the Committee the acceptance or non-acceptance of the feasibility study, or may defer action on the study to permit the institution time to provide additional information at a subsequent ES meeting. If the ES defers action, the educational program shall be notified in writing within ten (10) days of the deferred action, reason(s) for the deferral, and the date for submission of any additional information and/or documents. The ES considers the following criteria in determining its recommendation to the full Committee:

- Evidence of a need for a new RDH educational program
- Evidence of ability to initiate and maintain a RDH educational program in compliance with all applicable Committee laws and regulations.
- Evidence of initial and sustainable budgetary provisions for the educational program.

### STEP 5 - DHCC Action on the Feasibility Study

The ES recommendation on the feasibility study shall be submitted to the full Committee for discussion and action at a regularly scheduled DHCC meeting. All DHCC meetings are open to the public with opportunities for public comment. The DHCC shall approve, or deny the study.

The following action shall be taken:

- Within ten (10) days after the Committee decision on the feasibility study, the DHCC staff shall notify the educational program in writing of its decision.
- If the feasibility study is denied, the notice shall include the basis for its decision.
- If the feasibility study is approved, the educational program may apply for initial accreditation from the Commission on Dental Accreditation of the American Dental

## Proposed Second 15-Day Modifications

Association or an equivalent accrediting body.

### STEP 6 - Self-Study Report and Site Visit

Upon DHCC approval of the feasibility study, the educational program shall prepare the Commission on Dental Accreditation of the American Dental Association, or an equivalent accrediting body, self-study for the proposed program. At least twelve (12) months prior to the projected date of student enrollment the program must submit to the DHCC the self-study that delineates how the proposed program plans to comply with accreditation standards.

The DHCC staff shall review the report and notify the program director of any deficiencies, issues, or concerns with the self-study. Once the DHCC staff has verified that the self-study addresses the applicable standards and regulations, an on-site visit shall be scheduled. The DHCC staff will verify that the evidence presented in the Self-Study meets all applicable standards and regulations. The DHCC staff shall visit selected clinical sites the program plans to use as part of the on-site visit. The DHCC staff shall complete a written report of the findings. This report shall be submitted to the ES for action and recommendation to the full Committee.

### STEP 7 – Education Subcommittee (ES) and Full Committee Actions

The ES recommendation on the self-study and site visit shall be submitted for full Committee discussion and action at a regularly scheduled DHCC Committee meeting. The full Committee may approve, provisionally approve or deny the new educational program. If provisionally approved, the full Committee may defer action on program approval with an opportunity for the educational program to provide additional information.

The following action shall be taken:

- Within ten (10) days after the Committee decision on the program, the DHCC shall notify the educational program in writing of its decision.
- If the program is denied, the notice shall include the basis for its decision. The program may request an informal conference as specified in 1104.2.
- If the program is provisionally approved, the notice shall specify what additional information and documents are needed from the program and a due date requested for submission of the materials. The revisions shall be considered at a regularly scheduled ES and DHCC full Committee meeting after the due date for submission of materials. If the educational program is not granted approval, the DHCC shall notify the program in writing within ten (10) days; the notice shall include the basis for the Committee's decision.
- A denied program shall restart with Step 1 of the approval process. The Letter of Intent must include a statement summarizing the Committee's reason(s) for not accepting the prior submissions and subsequent corrective action the educational program has taken.

A material misrepresentation of fact by a new educational program in any information required to be submitted to the Committee is grounds for denial of approval.

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SEP 09 2015

State of California  
Office of Administrative Law

DENTAL HYGIENE COMMITTEE OF CA

**In re:**  
Dental Hygiene Committee of California

**Regulatory Action:**

**Title 16, California Code of Regulations**

**Adopt sections: 1104, 1104.1, 1104.2**

**Amend sections:**

**Repeal sections:**

**DECISION OF DISAPPROVAL OF  
REGULATORY ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2015-0722-03S**

**OAL Matter Type: Regular (S)**

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**SUMMARY OF REGULATORY ACTION**

This regular rulemaking by the Dental Hygiene Committee of California (the "Committee") proposes to adopt sections 1104, 1104.1, and 1104.2 in title 16 of the California Code of Regulations (the "CCR"). Senate Bill 1202 (2011-2012 Reg. Sess.) gave the Committee permissive authority to approve any registered dental hygiene ("RDH") educational program accredited by the Commission on Dental Accreditation ("CODA"). The Committee proposes to adopt these regulations to clarify the approval process for both existing and new programs, including specifying the instructions for the feasibility study required for new RDH educational programs seeking approval.

On July 22, 2015, the Committee submitted the above-referenced rulemaking action to the Office of Administrative Law ("OAL") for review. On September 2, 2015, OAL notified the Committee of OAL's decision to disapprove the proposed rulemaking. This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

**DECISION**

OAL disapproved the above-referenced rulemaking action for the following reasons: the proposed regulations fail to comply with the clarity and necessity standards of Government Code section 11349.1, and the Committee failed to follow required Administrative Procedure Act ("APA") procedures. Additionally, there are several miscellaneous issues with the rulemaking record.

All APA issues must be resolved prior to OAL's approval of any resubmission.

**DISCUSSION**

The Committee's regulatory action must satisfy requirements established by the part of the APA that governs rulemaking by a state agency. (See Gov. Code, sec. 11340 et seq.) Any

regulation adopted, amended, or repealed by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, sec. 11346.)

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with the procedural requirements of the APA and for compliance with the standards for administrative regulations set forth in Government Code section 11349.1. (See Gov. Code, sec. 11340.1, subd. (a).) Generally, to satisfy the APA standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review, OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulation. (*Ibid.*) This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on regulations before they become effective.

### 1. Clarity

In adopting the APA, the Legislature found that the language of many regulations was unclear and confusing to persons who must comply with the regulations. (Gov. Code, sec. 11340, subd. (b).) Government Code section 11349.1, subdivision (a)(3) requires that OAL review all regulations for compliance with the clarity standard. Government Code section 11349, subdivision (c) defines “clarity” to mean that regulations are “written or displayed so that the meaning of the regulations will be easily understood by those persons directly affected by them.” The “clarity” standard is further defined in section 16 of title 1 of the CCR, OAL’s regulation on “clarity”, which provides the following:

In examining a regulation for compliance with the “clarity” requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:

- (a) A regulation shall be presumed not to comply with the “clarity” standard if any of the following conditions exist:

....

- (2) the language of the regulation conflicts with the agency’s description of the effect of the regulation; or

....

- (4) the regulation uses language incorrectly. This includes, but is not limited to, incorrect spelling, grammar or punctuation; or

....

- (6) the regulation does not use citation styles which clearly identify published material cited in the regulation.

Each instance of non-compliance with the clarity standard of the APA is set forth below:

**1.1. “Instructions for Institutions Seeking Approval of a New Education Program for Registered Dental Hygienists”: One-Year Period to Complete the Process**

“Incorporation by Reference” means “the method whereby a regulation printed in the [CCR] makes provisions of another document part of that regulation by reference to the other document.” (Cal. Code Regs., tit. 1, sec. 20, subd. (a).) “Material proposed for ‘incorporation by reference’ shall be reviewed in accordance with procedures and standards for a regulation published in the [CCR].” (*Id.* at subd. (b).) The Committee proposes to incorporate one document by reference through this rulemaking action: the “Instructions for Institutions Seeking Approval of a New RDH Educational Program” (EDP I-01 Rev. 12/14) (the “Instructions”). This form “shall be reviewed in accordance with the procedures and standards for a regulation published in the [CCR].” (See *ibid.*)

The Instructions state, “The process shall be completed within one year of submission unless an extension is granted by the [Committee].” There are two clarity issues with this regulatory provision. First, it is not clear how the one-year period is calculated. Does the one-year period begin when the applicant submits the \$2,100 fee and the feasibility study to the Committee, and end when the applicant submits the self-study described under Step 6 of the Instructions? Or, does the process end when the full Committee renders a decision on the self-study and site visit? If it is the latter milestone, must an appeal under the proposed Section 1104.2 also be completed within the one-year timeframe? As demonstrated by the multiple ways the one-year period can be interpreted, the Committee must clarify when the one-year period begins and ends, as the regulations must be “written . . . so that the meaning of the regulations will be easily understood by those persons directly affected by them.” (Gov. Code, sec. 11349, subd. (c).)

The second issue with the above-quoted regulatory provision from the Instructions is that the Committee does not list the criteria they will use to determine whether an extension to the one-year requirement shall be granted. Therefore, the Instructions are not easily understood by those persons directly affected because the applicant does not know the circumstances under which they may be granted an extension. The regulations must be “written . . . so that the meaning of the regulations will be easily understood by those persons directly affected by them.” (Gov. Code, sec. 11349, subd. (c).) To remedy this issue, the Committee must list the criteria they will use to determine whether or not an extension to this one-year requirement shall be granted.

**1.2. The Instructions: CODA Accreditation**

There is a lack of clarity regarding whether the new RDH educational programs must obtain CODA accreditation, or whether accreditation by an equivalent accrediting body is sufficient. Section 1104.1, subdivision (b) states, “After approval of the feasibility study by the Committee, and at least twelve (12) months prior to the proposed date for enrollment of students, the educational program shall submit the CODA or equivalent accrediting body’s required documents to the Committee in accordance with the requirements specified in the ‘Instructions’.” Additionally, the Instructions state, “If the feasibility study is approved, the educational program

may apply for initial accreditation from [CODA] or an approved, equivalent accrediting body.” These statements allow for accreditation from either CODA or an equivalent accrediting body. However, the ISR does not describe accreditation by an equivalent accrediting body as an option: “Step 5 clarifies that if the Committee takes action to approve the feasibility study, the new RDH educational program may then apply for the initial accreditation from [CODA], so the program is notified that this is the point at which CODA approval may be sought.” (ISR, p. 10.) Also, Section 1104, subdivision (c) states, “All Committee-approved programs shall maintain current accreditation by CODA.” Additionally, in regards to the self-study report, the Instructions state the following:

Upon [Committee] approval of the feasibility study, the educational program shall prepare the [CODA] self-study for the proposed program. At least twelve (12) months prior to the projected date of student enrollment the program must submit to the DHCC the self-study that delineates how the proposed program plans to comply with accreditation standards.

(Instructions, p. 6.) This internal inconsistency between the regulation text, the Instructions, and the ISR leads to ambiguity regarding whether accreditation by an accrediting body besides CODA is permitted. Additionally, the requirements that the applicant “prepare the [CODA] self-study” (Instructions, p. 6 [emphasis added]) and that educational programs “maintain current accreditation by CODA” (Section 1104, subd. (c) [emphasis added]) give the impression that the CODA accreditation is the only option, particularly since maintaining current accreditation by an equivalent accrediting body is not an option. As such, the regulations are not “written . . . so that the meaning of the regulations will be easily understood by those persons directly affected by them.” (Gov. Code, sec. 11349, subd. (c).) Also, given the conflicting statement in the ISR, “the language of the regulation conflicts with the agency’s description of the effect of the regulation[.]” (See Cal. Code Regs., tit. 1, sec. 16, subd. (a)(2).)

Due to the lack of clarity between the regulation text, the Instructions, and the ISR, the Committee must revise these documents as necessary to resolve this issue. The Committee must also make any revised documents available for at least 15 days pursuant to Government Code sections 11346.8, 11347.1, and 11347.3, as well as section 44 of title 1 of the CCR.

### **1.3. The Instructions: On-Site Visit Review Criteria**

Step 6 of the Instructions states, “Once the [Committee] staff has verified the self-study addresses the applicable standards and regulations, an on-site visit shall be scheduled. The [Committee] staff shall visit selected clinical sites the program plans to use as part of the on-site visit. The [Committee] staff shall complete a written report of the findings. This report shall be submitted to the [Educational Subcommittee] for action and recommendation to the full Committee.” The Instructions do not state the criteria Committee staff will use to evaluate the selected clinical sites during the on-site visit. Therefore, applicants do not know how to prepare for an on-site visit, nor do they know how they will be evaluated. The Committee must list the criteria regarding how RDH educational programs will be evaluated during the on-site visit so that the “meaning of the regulations will be easily understood by those persons directly affected by them.” (Gov. Code, sec. 11349, subd. (c).)

**1.4. The Instructions: Payment of the \$2,100 Fee**

The \$2,100 fee required to be submitted with the feasibility study is for the curriculum review and site evaluation. The Committee will not begin the curriculum review or conduct the site visit until the feasibility study is approved. (See Instructions, p. 6.) Under the proposed regulations, if an applicant's feasibility study is not approved, the Committee gets to keep the \$2,100 fee even though the Committee never began the curriculum review or conducted the site visit. This possible scenario appears to be in direct conflict with Business and Professions Code section 1944, subdivision (a)(10), which states that a fee not to exceed \$2,100 is required only for the curriculum review and site evaluation. The Committee must revise the regulatory provisions governing the submission of the fee so that it is clear that the \$2,100 fee is only earned by the Committee for the curriculum review and site evaluation.

**1.5. Section 1104.1, Subdivision (a)(2): Citation to Section 1941(b)**

Section 1104.1, subdivision (a)(2) contains a citation to "section 1941(b)". This appears to be a citation to Business and Professions Code section 1941, subdivision (b), which is included as a Reference citation in Section 1104.1. However, there is also a section 1941 in title 16 of the CCR. Since there is a "section 1941" in both the Business and Professions Code and title 16 of the CCR, "the regulation does not use citation styles which clearly identify published material cited in the regulation." (Cal. Code Regs., tit. 1, sec. 16, subd. (a)(6).) The Committee must revise Section 1104.1, subdivision (a)(2) to clarify whether the citation to "section 1941(b)" is to section 1941 in the Business and Professions Code or title 16 of the CCR.

**1.6. The Instructions: Restatement of Business and Professions Code section 1941**

Page 1 of the Instructions includes a quote of the entire Business and Professions Code section 1941. However, this statute is not accurately restated, as the title of section 1941 and subdivisions (a) and (c) are inaccurate. The Committee must resolve this issue prior to resubmitting this regulatory action to OAL.

**1.7. The Instructions: Miscellaneous Grammatical and Punctuation Issues**

On page 4 of the Instructions, there is a list of examples of types of equipment to be included in the five-year capital and operational line item budget required under Step 2 of the Instructions. The second item listed is "Radiography (unit,". Since the word "unit" is followed by a comma, it appears as though more items are supposed to follow. If so, the Committee must list these items. If not, then the Committee must include the proper punctuation after the word "unit", such as second parenthesis.

A sentence on page 6 of the Instructions is grammatically incorrect. The third sentence under Step 4 states, "The [Committee] staff shall notify the educational program of the [Educational Subcommittee] meeting date at which the [Educational Subcommittee] shall discuss and may make a recommendation *on the* take action on the feasibility study." (Emphasis added.) This error is identified in the final statement of reasons (the "FSR"), which states, "The first edit to the order of adoption can be found on page 6 of 7 of the form under the heading of Step 4: staff changed 'on the take action' phrase to 'to take action' in order to correct a grammatical error." Although this proposed change would resolve this issue, this change was not made to the

version of the Instructions attached to the original Form 400. The Committee must correct this grammatical error prior to resubmitting this regulatory action to OAL.

For the reasons discussed above, the Committee failed to comply with the clarity standard of the APA. The Committee must make all substantial regulatory text changes, which are sufficiently related to the original text, available to the public for comment for at least 15 days pursuant to Government Code section 11346.8, subdivision (c), and section 44 of title 1 of the CCR before the Committee adopts the regulations and resubmits this regulatory action to OAL for review. Additionally, any comments made in relation to these proposed modifications must be presented to the Committee for consideration and be summarized and responded to in the FSR. (Gov. Code, sec. 11346.8, subd. (c); see also Gov. Code, sec. 11346.9, subd. (a)(3).)

## **2. Necessity**

In addition to clarity, OAL also reviews proposed regulations for necessity. (Gov. Code, sec. 11349.1, subd. (a)(1).) “Necessity” is defined in Government Code section 11349, subdivision (a), as follows:

“Necessity” means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

This necessity must be provided in the initial statement of reasons (the “ISR”) for substantive changes proposed through the original regulation text. Specifically, the ISR must include “[a] statement of the specific purpose of each adoption, amendment, or repeal, . . . and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed.” (Gov. Code, sec. 11346.2, subd. (b)(1); see also Cal. Code Regs., tit. 1, sec. 10.)

All instances of non-compliance with the necessity standard of the APA relate to the \$2,100 fee set forth in the Instructions, and each instance of non-compliance is explained below:

### **2.1. The Fee Amount**

The first instance of non-compliance with the necessity standard relates to the fee amount established by the Committee. Business and Professions Code section 1944, subdivision (a) states that the Committee shall establish by resolution specified fees subject to certain limitations. The limitation for “[t]he fee for each curriculum review and site evaluation for educational programs for dental hygienists who are not accredited by a committee-approved agency” is that this fee shall not exceed \$2,100. As a change made to the modified regulation text, which was made available from December 31, 2014, to January 15, 2015, the Committee specified in the Instructions that the fee for each curriculum review and site evaluation is \$2,100. Since the underlying statute allows the Committee to set a fee amount up to \$2,100 (Bus. & Prof. Code, sec. 1944, subd. (a)(10)), the Committee has discretion to set a fee amount lower than \$2,100. Therefore, the rulemaking record must include a statement explaining why the

Committee chose the highest possible fee amount authorized by Business and Professions Code section 1944, subdivision (a)(10), and include supporting documentation. (See Gov. Code, sec. 11349, subdivision (a); see also Cal. Code. Regs., tit. 1, sec. 10.)

## **2.2. Non-Refundable Fee**

Secondly, the first page of the Instructions states that the \$2,100 fee must be submitted with the feasibility study, and that this fee is non-refundable. However, the Committee did not provide any necessity in the ISR explaining why the fee is non-refundable. It is especially important that the Committee provide necessity for this regulatory provision since the fee is not for review of the feasibility study, but, rather, for the curriculum review and site evaluation. (See Bus. & Prof. Code, sec. 1944, subd. (a)(10).) Additionally, the Committee will not begin the curriculum review or conduct the site visit until the feasibility study is approved. (See Instructions, p. 6.) Therefore, under the proposed regulations, if an applicant's feasibility study is not approved, the Committee may keep the \$2,100 fee even though the Committee never earned the fee by performing the curriculum review and conducting the site visit. This possible scenario also appears to be in direct conflict with Business and Professions Code section 1944, subdivision (a)(10). As such, the Committee must explain why the \$2,100 fee is non-refundable, especially considering the possible scenario described above.

## **2.3. New Fee Required for Re-Submission**

The third and final instance of non-compliance with the necessity standard is the lack of necessity for the requirement that, if the process is not completed within one year of the applicant submitting the \$2,100 fee and the feasibility study to the Committee, the applicant must submit another \$2,100 fee with their re-submission. Again, it is especially important that the Committee provide necessity for this regulatory provision considering the possible scenario described in Item #2.2, *supra*. Therefore, the Committee must explain why a new \$2,100 fee must be included with a re-submission when the one-year period has expired.

For the reasons discussed above, the Committee failed to comply with the necessity standard of the APA. The Committee must resolve these issues through an addendum to the ISR and make this document available to the public for comment for at least 15 calendar days pursuant to Government Code section 11347.1 before the Committee adopts the regulations and resubmits this regulatory action to OAL for review. Any comments made in relation to this addendum must be presented to the Committee for consideration and be summarized and responded to in the FSR. (Gov. Code, sec. 11346.8, subd. (c); see also Gov. Code, sec. 11346.9, subd. (a)(3).)

## **3. Failure to Follow Procedure**

OAL also notes the following procedural issues—which all concern deficiencies in the FSR—that must be addressed prior to any resubmission of this rulemaking action. First, two citations to Business and Professions Code “Section 1944(10)” appear incompatible, as subdivision (a) is missing from these citations. The Committee must revise these citations accordingly, and OAL also recommends clarifying that these citations are to section 1944 in the Business and Professions Code.

The second issue with the FSR is that two changes to the Instructions are described therein, but these changes were not made in the final version of the Instructions. The second change described in the FSR—which is described in Item #1.7, *supra*—is necessary to correct a grammatical error in the Instructions and must be made prior to the Committee resubmitting this regulatory action to OAL for review. Regarding the first change described in the FSR, the Committee must either remove the description of this change in the FSR or make the change to the Instructions prior to resubmitting this regulatory action to OAL for review. If the latter, the change to the Instructions should be made available to the public for at least 15 calendar days pursuant to Government Code section 11347.1 before the Committee adopts the regulations and resubmits this regulatory action to OAL for review.

The last issue with the FSR is that it does not include the demonstrations required by section 20, subdivision (c)(1) and (2) of title 1 of the CCR, which states the following:

- (c) An agency may “incorporate by reference” only if the following conditions are met:
  - (1) The agency demonstrates in the [FSR] that it would be cumbersome, unduly expensive, or otherwise impractical to publish the document in the [CCR].
  - (2) The agency demonstrates in the [FSR] that the document was made available upon request directly from the agency, or was reasonably available to the affected public from a commonly known or specified source. In cases where the document was not available from a commonly known source and could not be obtained from the agency, the regulation shall specify how a copy of the document may be obtained.

Since the Committee is incorporating a document by reference through this rulemaking—the Instructions—the demonstrations required by section 20, subdivision (c)(1) and (2) of title 1 of the CCR must be included in the FSR prior to resubmitting this rulemaking action to OAL for review.

#### **4. Miscellaneous**

OAL also notes the following miscellaneous issues that must be addressed prior to any resubmission of this rulemaking action:

##### **4.1. Reference**

In addition to clarity and necessity, OAL also reviews proposed regulations’ sources of “reference”. (Gov. Code, sec. 11349.1, subd. (a)(5).) “Reference” is defined in Government Code section 11349, subdivision (e), to mean “the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation.” The “reference” standard is further defined in section 14, subdivision (b), of title 1 of the CCR—OAL’s regulation on “reference”—which provides, “ ‘Reference’ shall be presumed to exist if an agency is empowered to implement, interpret or make specific a .

. . California statute[.]” Both instances of non-compliance with the reference standard of the APA are set forth below:

#### **4.1.1. Section 1104**

Section 1104 describes the approval process for new RDH educational programs, as well as the process for accredited RDH educational programs to maintain Committee approval. Subdivision (e) of this section states, “A material misrepresentation of fact by a new educational program or an approved educational program in any information required to be submitted to the Committee is grounds for denial of approval or revocation of the program’s approval.” Although there may be consequences when an educational program makes a material misrepresentation “in any information required to be submitted to the Committee[.]” the consequences listed in subdivision (e) do not including a fine being assessed against the educational program. Therefore, Business and Professions Code section 125.9, which establishes a citation issuance system, is inappropriate as a source of reference for Section 1104. As such, the Committee must remove Business and Professions Code section 125.9 as a source of reference for Section 1104 prior to resubmitting this rulemaking action to OAL.

#### **4.1.2. The Instructions**

Page 1 of the Instructions states that a check in the amount of \$2,100 made payable to the Committee must be submitted by the applicant with the feasibility study. The Committee requires this fee pursuant to Business and Professions Code section 1944, subdivision (a)(10), which states, “The fee for each curriculum review and site evaluation for educational programs for dental hygienists who are not accredited by a committee-approved agency shall not exceed two thousand one hundred dollars (\$2,100).” Therefore, the Committee “implements, interprets, or makes specific” Business and Professions Code section 1944, subdivision (a)(10) by adopting the \$2,100 fee in the Instructions. (See Gov. Code, sec. 11349.1, subd. (a)(5); see also Cal. Code. Regs., tit. 1, sec. 14, subd. (b).) As such, the Committee must add Business and Professions Code section 1944, subdivision (a)(10) as a source of reference prior to resubmitting revised regulations to OAL.

#### **4.2. Incorporation by Reference**

The title of the document incorporated by reference in Section 1104.1, subdivision (a) is not clearly set out in the text, as the two are not exactly the same. The title of the document in Section 1104.1, subdivision (a) is “Instructions for Institutions Seeking Approval of a New RDH Educational Program”. However, the actual title of the document is “Instructions for Institutions Seeking Approval of a New Education Program for Registered Dental Hygienists”. Prior to resubmitting this regulatory action to OAL, the Committee must revise either the regulation text or the document incorporated by reference so that the title of the document matches in both places. (See Cal. Code Regs., tit. 1, sec. 20, subd. (c)(4).)

#### **4.3. Table of Contents**

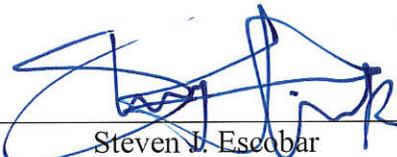
Each rulemaking file must include “[a]n index or table of contents that identifies each item contained in the rulemaking file.” (Gov. Code, sec. 11347.3, subd. (b)(12).) Two documents in the rulemaking file listed as “Materials Relied Upon” are not accurately identified

in the Table of Contents. First, the Table of Contents state that the meeting minutes are from the Committee's meetings on May 2-3, 2014. However, the minutes in the rulemaking file are only dated May 3, 2014. The other document not accurately identified in the Table of Contents is the Commission on Dental Accreditation's "Accreditation Standards for Dental Hygiene Education Programs". The word "Education" is omitted in the Table of Contents. Upon resubmitting this rulemaking action to OAL, the Committee must ensure that the Table of Contents accurately identifies each item in the rulemaking file.

**CONCLUSION**

OAL disapproved the above-referenced rulemaking action for the foregoing reasons. Pursuant to Government Code section 11349.4, subdivision (a), the Committee may resubmit revised regulations within 120 days of its receipt of this Decision of Disapproval. If you have any questions, please contact me at (916) 324-6948.

Date: September 8, 2015

  
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Steven J. Escobar  
Attorney

FOR: DEBRA M. CORNEZ  
Director

Original: Lori Hubble  
Copy: Anthony Lum



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 14**

Discussion and Possible Action to Amend  
Proposed Regulatory Language as a Result of  
Comments Received During the 90-day Public  
Comment Period for DHCC's Rulemaking to Add  
CCR, Title 16, Division 11, §1100  
regarding Definitions



## MEMORANDUM

<b>DATE</b>	December 5, 2015
<b>TO</b>	Dental Hygiene Committee of California
<b>FROM</b>	Lori Hubble, Executive Officer
<b>SUBJECT</b>	<b>Agenda Item 14</b> – Discussion and Possible Action Regarding Proposed Regulatory Language as a result of Comments Received During the 15-Day Public Comment Period for the DHCC’s Rulemaking to Add <i>CCR, Title 16, Division 11, §1100</i> Relevant to Definitions

### Background

At its May meeting, the Committee made some amendments to the proposed regulatory language relating to definitions as a result of comments received during the 90 day comment period. Staff modified the text and posted the amended language for a 15 day comment period that ended on June 25, 2015. During the 15 day comment period, we received the following comments:

### COMMENTS RECEIVED IN WRITING

The California Dental Association (CDA) provided the following response in accordance with the provisions of Business and Professions Code Section 1905.2, which requires the Board to approve, modify or reject recommendations regarding scope of practice to the Committee within 90 days of submission of the recommendation to the Board. In a letter dated June 23, 2015, CDA requested the Committee comments on the proposed regulations. Following is a summary of comments and staff’s recommendations:

1. Regarding proposed section 1100(f) dental hygiene assessment, CDA recommends that the definition of assessment be amended to add after the phrase “within the scope of dental hygiene practice,” the phrase “for the purpose of formulating a dental hygiene care plan.”

CDA states “...the proposed definition still describes the assessment functions that both dental hygienists and assistance perform on behalf of the dentist for the purpose of the dentist’s diagnosis and treatment planning. This is not the purpose of a ‘dental hygiene assessment.’ Per B&P Code Section 1908(a), the dental hygiene assessment is used to formulate a dental hygiene care plan. Further, as B&P Code Section 1915 restricts ‘dental hygiene assessment’ to dental hygienists, the proposed definition introduces confusion into the regulations with regard to who can perform this set of duties. To address these issues and provide accuracy and clarity, CDA believes the following amendment is necessary:

(f) “Dental hygiene assessment” means the systematic collection, analysis, and documentation of the oral and general health status and patient needs through a variety of methods, including choice of radiographs, diagnostic tools, and instruments utilized within the scope of dental hygiene practice, for the purpose of formulating a dental hygiene treatment plan.”

**Staff Recommendation:** Staff recommends acceptance of this comment and amendment of the text as recommended by CDA to read:

(f) “Dental hygiene assessment” means the systematic collection, analysis, and documentation of the oral and general health status and patient needs through a variety of methods, including choice of radiographs, diagnostic tools, and instruments utilized within the scope of dental hygiene practice, **for the purpose of formulating a dental hygiene treatment plan.**”

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2. Regarding proposed section 1100(h), CDA’s response stated that the Committee’s decision to amend the definition for Dental hygiene preventive services to include the phrase “and promote overall health” the amendment “loses site of the ISOR’s statement that the purpose of the definition is to *distinguish* ‘preventive services’ from ‘therapeutic services,’ in the range of services hygienists provide.”

“Further the Committee rejected suggestions to narrow the definition to reflect the relationship of preventative services to oral health, again with the rationale that hygienists provide preventative services that extend beyond oral health, such as nutritional counseling and tobacco cessation. On this point, CDA does not dispute that these services benefit overall health, but submits that they are provided to the patient through the lens of their oral health.”

**Staff Recommendation:** Staff recommends acceptance of amending the text to add “whose primary purpose is:”

Staff rejects the comment to strike “mean” and insert “are.” All of the definitions follow the same format with the term to be defined followed by “mean(s).” This change is not necessary and does not provide clarity to the proposed definition.

Staff rejects striking, “and promote oral health and overall health.”

According to the document “Oral Health in America: A Report of the Surgeon General-Executive Summary” published in 2000, “lifestyle behaviors that affect general health such as tobacco use, excessive alcohol use, and poor dietary choices affect oral and craniofacial health as well....All healthcare providers can play a role in promoting healthy lifestyles by incorporating tobacco cessation programs, nutritional counseling and other health related-promotion efforts into their practices.’

The dental hygienist, as a health care provider, therefore is called upon to focus preventive services on life style behaviors that affect general health from the perspective of how these behaviors influence overall health as well as oral health.

Staff recommends the text to read as follows:

(h) “Dental hygiene preventative services” means those services provided by the dental hygienist **that whose primary purpose is to** prevent oral disease or pathology, and promote oral health and overall health.

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3. Regarding proposed section 1100(h) defining dental hygiene “preventative” services. Upon review of the statutory language (1910 (a)) and the ISOR, the word “preventive” is used.

**Staff Recommendation:** Staff recommends striking “preventative” and inserting “preventive” for clarity and consistency with existing statutory language to read as follows:

(h) “Dental hygiene **preventive** services” means those services provided by the dental hygienist whose primary purpose is to prevent oral disease or pathology, and promote oral health and overall health.

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Lygia Jolley, President of the California Dental Hygienists’ Association, writing on behalf of herself provided a written comment regarding proposed section 1100(g) defining dental hygiene care plan.

Ms. Jolley requested that dental hygiene diagnosis not be struck from the definition of the dental hygiene care plan. Ms. Jolley stated that “Registered dental hygienists spend many hours in their educational program learning both of those skills and need to prove competency in these areas on clinical exams to receive a license. The American Dental Hygienists’ Association (ADHA) position paper on Dental Hygiene Diagnosis was attached and is provided for review.

**Staff Recommendation:** Staff recommends rejection of the recommendation.

OAL rejected the use of the definition for a dental hygiene diagnosis based on Section 1908(b)(1) which prohibits dental hygienists from diagnosing. Legal counsel concurred that since the phrase is not limiting. The statute does not state “dental diagnosis” or exclude “dental hygiene diagnosis.” In the opinion of legal counsel, a statutory change would be needed to amend Section 1908(b)(1) to allow for a dental hygiene diagnosis.

Use of the term “scope of practice” in the definition is inclusive of all of the services that a dental hygienist can provide. The Committee therefore deleted the term “based on assessment data” because assessment is part of the scope of dental hygiene practice. Therefore, it does not need to be included in the definition.

The definition accepted by the Committee at the May 3, 2015 meeting reads:

(g) “Dental hygiene care plan” means an organized presentation or list of interventions to promote health or prevent disease of the patient’s oral condition; plan is designed by the dental hygienist and consists of services within the scope of dental hygiene practice.

**Dental Hygiene Committee of California  
Department of Consumer Affairs**

Proposed Second Modified Text December 5, 2015

Changes based on comment received are underlined and **highlighted**.

Adopt Section 1100 of Article 1 of Division 11 of Title 16 of the California Code of Regulations to read as follows:

**§1100. Definitions.**

For purposes of this division:

- (a) "Administration of local anesthesia" means the administration of local anesthetic agents by infiltration injection or conductive injection.
- (b) "Administration of nitrous oxide and oxygen" means the administration of nitrous oxide and oxygen when used as an analgesic during dental treatment.
- (c) "Basic supportive dental procedures" means fundamental duties or functions as referenced in California Code of Regulations Section 1067(l).
- (d) "Committee office" means the Committee office located in Sacramento, California.
- (e) "Dental assistant" means an unlicensed person as referenced in California Code of Regulations (CCR) Section 1067(b).
- (f) "Dental hygiene assessment" means the systematic collection, analysis, and documentation of the oral and general health status and patient needs through a variety of methods, including choice of radiographs, diagnostic tools, and instruments utilized within the scope of dental hygiene practice, **for the purpose of formulating a dental hygiene care plan.**
- (g) "Dental hygiene care plan" means an organized presentation or list of interventions to promote health or prevent disease of the patient's oral condition; plan is designed by the dental hygienist and consists of services within the scope of dental hygiene practice.
- (h) "Dental hygiene ~~preventative~~ services" means those services provided by the dental hygienist **that whose primary purpose is to** prevent oral disease or pathology, and promote oral health and overall health.
- (i) "Dental hygiene therapeutic interventions" means specific procedure or set of procedures, provided within the scope of dental hygiene practice, designed to intervene in the disease process to produce a therapeutic benefit.
- (j) "Dental hygiene treatment plan" means an organized presentation or list of interventions to promote health or prevent disease of the patient's oral condition designed by the registered dental hygienist in alternative practice based on assessment data and consists of services within the scope of practice of the registered dental hygienist in alternative practice.
- (k) "Ethics" for the purposes of the examination required by Section 1917(d) of the Code, means an act or acts in accordance with the California Dental Hygienists' Association (CDHA) or the American Dental Hygienists Association (ADHA) Code of Ethics.
- (l) "Executive Officer" means the Executive Officer appointed by the Committee.

(m) "Gross trauma" means a burn, deep laceration, long laceration and/or puncture to soft tissue, hard tissue, and/or bone.

(n) "Licentiate" or "Licensee" means any individual licensed or registered by the Committee.

(o) "Periodontal debridement" means the process by which hard and soft deposits are removed from the supragingival and subgingival surfaces of the teeth, including the disruption of bacterial cell walls of nonadherent plaque.

(p) "Periodontal evaluation record" means that part of the dental hygiene assessment document pertaining to the clinical observations of the gingiva, periodontal pocket probe depths, measurement of the location of the free gingival margin/recession, calculation of attachment loss, measurement of keratinized/attached gingiva, detection of marginal and deep bleeding on probing, detection of suppuration, detection of furcation involvement, detection of fremitus and mobility, and assessment of plaque and calculus accumulations.

(q) "Polishing the coronal surfaces of teeth", or "coronal polishing" means a procedure limited to the removal of plaque on and stain from exposed tooth surfaces, utilizing an appropriate rotary instrument with rubber cup or brush and a polishing agent.

(r) "Refer" means the action taken after determining services are needed beyond the dental hygienist's scope of practice to provide and ensure that the patient is directed to a healthcare provider who can provide that care.

(s) "Root planing" means the process of instrumentation which removes residual calculus and toxic materials from the root to produce a clean, smooth surface.

(t) "Scaling" means the removal of calculus and dental biofilm from the supragingival and subgingival exposed tooth surfaces.

(u) "Soft tissue curettage" means the removal of the inflamed soft tissue lateral to the pocket wall, which is not subgingival curettage referring to the procedure that is performed apical to the epithelial attachment, severing the connective tissue attachment down to the osseous crest.

(v) "Treatment facility" for purposes of section 1902 of the Code means any place where oral health services are provided.

Note: Authority cited: Section 1905, Business and Professions Code. Reference: Sections 1902, 1903, 1905, 1908, 1909, 1910, 1911, 1915, 1917, 1917.3, 1927 and 1929, Business and Professions Code.



## Agenda Item 14 Definitions Regulation Comments

June 23, 2015

Ms. Guadalupe Castillo  
2005 Evergreen Street, Suite 2050  
Sacramento, CA 95815

RE: Proposed language for Title 16, Division 11, California Code of Regulation, Section, 1100

Dear Ms. Castillo:

The California Dental Association (CDA) appreciates the Dental Hygiene Committee of California's (Committee) work on this definitions package, noting substantial amendments made at the Committee's May 3 meeting. In particular, recognition that the term "dental hygiene diagnosis" conflicts with Business and Professions Code Section 1908 (b) (1) and the amendments the Committee proposed to conform to statute. CDA further appreciates the opportunity to address our remaining concerns with two definitions here.

Prior to addressing the remaining definitions, CDA wishes to take this opportunity to submit for the record our concerns with the process being utilized by the Committee (and the Dental Board) for promulgating these dental hygiene practice definitions. These concerns were first publically expressed when the Committee introduced this regulation package in January 2014. CDA submitted a letter from the law firm of Mayer-Brown (attached) articulating concerns that Business & Professions Code Sections 1905 (a) (8) and 1905.2 require the Committee to submit recommendations to the Dental Board (Board) on issues related to dental hygiene scope of practice, rather than promulgate these regulations themselves. As CDA submitted this letter to the Committee during deliberation on the previous, nearly identical package, which the Committee subsequently pulled and allowed to expire in 2014, we provide it again at this time for the record.

While CDA appreciates the Committee's work on these definitions, our primary objective in raising concerns about this process is to ensure that the Committee and the Board meet their statutory responsibilities per Business & Professions Code Sections 1905 (a) (8) and 1905.2, that the Board's jurisdiction on issues related to dental hygiene scope is exercised and respected, and there is clarity regarding the process for conforming to B & P Code Sections 1905 (a) (8) and 1905.2 moving forward. In particular, noting that the Committee rejected the Board's amendments at its May meeting, CDA believes this question is unresolved and any analysis of this definitions package must address this issue.

Regarding the definitions themselves, CDA's concern with the remaining definitions is that they be accurate, specific and meet the goals of the Initial Statement of Reasons (ISOR):

**California Dental Association**  
1201 K Street, 14th Floor  
Sacramento, CA 95814

916.443.0505  
800.232.7645  
916.443.2943 fax  
[cda.org](http://cda.org)

Subsection 1100 (c) "Dental Hygiene Assessment:" CDA appreciates that at its May meeting, the Committee accepted CDA's comment that the appropriate term to define is "dental hygiene assessment," as this is the term that appears in B & P code Sections 1908 (a) and 1915. However, the Committee did not amend the definition so that it accurately reflects a dental hygiene specific duty. This is important because the proposed definition still describes the assessment functions that both hygienists and assistants perform on behalf of the dentist for the purpose of the dentist's diagnosis and treatment planning. This is not the purpose of a "dental hygiene assessment." Per B & P code Section 1908 (a), the dental hygiene assessment is used to formulate a dental hygiene care plan. Further, as B & P Code Section 1915 restricts "dental hygiene assessment" to dental hygienists, the proposed definition introduces confusion into the regulations with regard to who can perform this set of duties. To address these issues and provide accuracy and clarity, CDA believes the following amendment is necessary:

"Dental Hygiene Assessment" means the systematic collection, analysis, and documentation of the oral and general health status and patient needs through a variety of methods, including ~~choice of~~ radiographs, diagnostic tools, and instruments utilized within the scope of dental hygiene practice, for the purpose of formulating a dental hygiene care plan.

Subsection 1100 (i) "Dental Hygiene preventative services:" CDA appreciates the significant discussion at the Committee's May meeting on the benefit to patient health afforded by dental hygiene care and the Committee's desire for the "preventative services" definition to reflect this benefit. This discussion led to the Committee's decision to amend its original definition by replacing the phrase "and improve the patient's quality of life," with the phrase "and promote overall health." CDA notes, however, that while the Committee's amendment is an accurate description of the impact of dental hygiene care broadly, it loses sight of the ISOR's statement that the purpose of the definition is to *distinguish* "preventive services" from "therapeutic services," in the range of services hygienists provide. As proposed, the definition fails to meet this ISOR requirement.

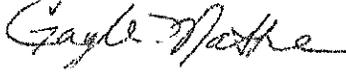
Further, the Committee rejected suggestions to narrow the definition to reflect the relationship of preventative services to oral health, again, with the rationale that hygienists provide preventative services that extend beyond oral health, such as nutritional counseling and tobacco cessation. On this point, CDA does not dispute that these services benefit overall health, but submits that they are provided to the patient through the lens of their oral health. To wit, a hygienist provides nutritional counseling to patients for the primary purpose of caries prevention and improved periodontal health, not to counsel the patient on weight management or cardiovascular disease prevention; and the primary purpose of tobacco cessation counseling in the dental environment is to ensure patients understand the impact of their use on oral/periodontal health and have the resources and understanding to improve these by reducing/ceasing tobacco use. While overall patient health no doubt benefits because of this counseling, this is not the *primary purpose* of the service.

With these considerations in mind, and to meet the regulatory necessity for clarity and accuracy in distinguishing dental hygiene preventative services from dental hygiene therapeutic services, CDA proposes the following definition:

"Dental Hygiene Preventative Services" are ~~mean~~ those services provided by the dental hygienist that whose primary purpose is to prevent oral disease or pathology.

CDA appreciates consideration of these issues and looks forward to their resolution. Please do not hesitate to contact us with questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Gayle Mathe".

Gayle Mathe

Liaison to the Dental Hygiene Committee of California

## MAYER • BROWN

Meyer Brown LLP  
350 South Grand Avenue  
25th Floor  
Los Angeles, California 90071-1503

Main Tel +1 213 229 9500  
Main Fax +1 213 625 0248  
www.mayerbrown.com

Andrew T. Kugler  
Direct Tel +1 213 621 9462  
Direct Fax +1 213 676 8126  
akugler@mayerbrown.com

March 5, 2014

Ms. Michelle Hurlbutt, President  
Dental Hygiene Committee of California  
2005 Evergreen Street, Suite 1050  
Sacramento, CA 95815

Re: Agenda Item No. 5 (March 5, 2014) – Proposed  
Dental Hygienist Regulations

Dear President Hurlbutt and Honorable Committee Members:

This firm represents the California Dental Association (“CDA”). We write today regarding our ongoing concerns about certain dental hygienist rules proposed by the Dental Hygiene Committee of California (“DHCC”). CDA previously articulated its concerns in comments submitted to DHCC on January 15, 2014, and through a letter to the Department of Consumer Affairs and Dental Board of California on February 21, 2014. (A copy of that second letter is attached. Please include all of CDA’s correspondence as part of the rulemaking record.)

As you know, in creating DHCC, the Legislature made clear that DHCC only had the authority to “make recommendations to the Dental Board” regarding dental hygienist scope of practice issues, not issue regulations itself. Cal. Bus. & Prof. Code § 1905(a)(8). And in our previous correspondence, CDA explained how some of the proposed definitional rules exceed DHCC’s authority by seeking to define, clarify and in some cases expand, statutory scope of practice. The staff memo flatly rejects this point. Yet in explaining this rejection, the memo proves our point.

For example, in its explanation of why DHCC has the authority to define the term “assessment” as used in Business and Professions Code section 1908, the memo states that this “definition does not expand the scope of practice, but clearly defines the practice of dental hygiene as it currently exists.” (DHCC Staff Memo, pg. 2) That is a distinction without a difference. DHCC does not have the authority to issue regulations that affect scope of practice, whether that regulation expands scope or merely tries to define existing practice. Those are areas reserved solely to the Legislature and the Dental Board.

Similarly, the staff memo defends its definitions of “dental hygiene care plan,” “dental hygiene preventive services” and dental hygiene therapeutic interventions” by arguing that they mirror ADEA definitions and reflect existing scope of practice, which “is to promote health.” (DHCC Staff Memo, pgs. 2-3.) Again, that proves CDA’s point. It does not matter whether these definitions mirror ADEA definitions, reflect existing practice, or as CDA contends, improperly expand existing practice. DHCC does not have the authority to issue regulations

Mayer Brown LLP

Ms. Michelle Hurlbutt

March 5, 2014

Page 2

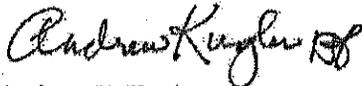
concerning scope of practice. At most, DHCC can make recommendations on these issues. Cal. Bus. & Prof. Code § 1905(a)(8).

As for the memo's suggestion that DHCC's authority to issue these definitions derives from Business & Professions Code sections 1905(a)(9), 1906(a) and 1906(c), that is simply not accurate. Sections 1905(a)(9) and 1906(a) merely confirm that DHCC has the power to adopt rules (in addition to other powers like issuing licenses). They do not obliterate the other substantive limitations on DHCC's authority, including section 1905(a)(8)'s limitations on scope of practice issues.

As for section 1906(c), that merely clarifies that to the extent there are existing regulations adopted by the Dental Board that deal with issues now entrusted to DHCC, those regulations are to remain in effect until DHCC issues its own regulations. Again, it does not obliterate any of the substantive limitations on DHCC's authority, including section 1905(a)(8).

Given the clear jurisdictional violations, these definitions will not withstand judicial scrutiny. *Mineral Assoc. Coalition v. State Mining and Geology Bd.* (2006) 138 Cal.App.4<sup>th</sup> 574, 582; *Western States Petroleum Ass'n v. Dept. of Health Services* (2002) 99 Cal.App.4<sup>th</sup> 999, 1006. We are concerned about steering the parties down a costly and timely course that will ultimately end in invalidation of the definitions. We urge DHCC to not move forward with this regulatory package or at the very least to take the time to reconsider its legality.

Sincerely,



Andrew T. Kugler

Enclosures

**Castillo, Guadalupe@DCA**

---

**From:** Mr. and Mrs. JOLLEY <jolleyfamily5@sbcglobal.net>  
**Sent:** Wednesday, June 24, 2015 10:47 PM  
**To:** Castillo, Guadalupe@DCA  
**Subject:** DHCC proposed changes to 1100 Definitions  
**Attachments:** Diagnosis-Position-Paper.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

To Whom it may Concern and members of the DHCC:

I am writing to voice my objection and concern to some proposed changes that are going to be considered by the Dental Hygiene Committee of California. In Section 1100 definitions there is proposed language changes that I object to in particular letter g- dental hygiene care plan and the removal of the words based on hygiene assessment, dental hygiene diagnosis. Registered dental hygienist spend many hours in their educational program learning both of these skills and need to prove competency in these areas on clinical exams to receive a license. In my years of practice as a registered dental hygienist I performed these treatments everyday. My patients appreciated all the services I performed and trusted my competency in this ability and the fact that I could explain their needs to them. My dentist felt I was the expert in this field and expected me to assess the patient's dental hygiene needs and communicate this diagnosis to him or her. In practice it was my responsibility to perform these duties. As a consumer my registered dental hygienist performs these duties on me and I feel safe and confident in her assessment and diagnosis of my needs. It would be a step backwards for the public to remove these terms from our definitions. The result would be possible misdiagnosis by a dentist who does not perfect the skill of probing, exploring, along with assessing the needs of the patients where dental hygiene treatment is concerned. Please do not remove these words from "g" and "r" where the words assessment and dental hygiene diagnosis are use. I am attaching a paper that was written by the American Dental Hygienists' Association that supports my request.

Lygia Jolley, RDH, BA  
CDHA President



American  
Dental  
Hygienists'  
Association

## Dental Hygiene Diagnosis

### Position

It is the position of the American Dental Hygienists' Association (ADHA) that dental hygiene diagnosis is a necessary and intrinsic element of dental hygiene education and scope of practice.<sup>1</sup>

ADHA supports dental hygiene curricula that lead to competency in the dental hygiene process of: assessment, dental hygiene diagnosis, planning, implementation, and evaluation.<sup>2</sup>

### Dental Hygiene Diagnosis:

The identification of an individual's health behaviors, attitudes, and oral health care needs for which a dental hygienist is educationally qualified and licensed to provide. The dental hygiene diagnosis requires evidence-based critical analysis and interpretation of assessments in order to reach conclusions about the patient's dental hygiene treatment needs. The dental hygiene diagnosis provides the basis for the dental hygiene care plan.<sup>3</sup>

### Background

The Commission on Dental Accreditation (CODA) was established in 1975 and is nationally recognized by the United States Department of Education as the sole agency to accredit dental and dental-related education programs conducted at the post-secondary level. CODA's mission is to serve the oral health care needs of the public through the development and administration of standards that foster continuous quality improvement of dental and dental related educational programs.

As a result of a resolution brought forth by the American Dental Association House of Delegates in 2007, on January 1, 2010 the CODA removed "dental hygiene treatment plan" and "dental hygiene diagnosis" from the CODA education accreditation standards for dental hygiene. These terms had been a part of the standards since 1998.

### Dental Hygiene Diagnosis in State Laws

In 2004 and 2009 respectively, **Oregon** and **Colorado** became the first states to specifically authorize the dental hygiene diagnosis as part of the dental hygienists' scope of practice. Oregon state statute specifically includes diagnosis within the definition of dental hygiene. Oregon state statute permits dental hygienists to "diagnose, treatment plan and provide dental hygiene services." Under Colorado state statute, "dental hygiene diagnosis" means the identification of an existing oral health problem that a dental hygienist is qualified and licensed to treat within the scope of dental hygiene practice.

### Dental Hygiene

The American Dental Hygienists' Association (ADHA) represents the professional interests of dental hygienists in the United States. Dental hygiene is the science and practice of recognition, prevention and treatment of oral diseases and conditions as an integral component of total health. This includes assessment, diagnosis, planning, implementation, evaluation and documentation and is the profession of dental hygienists.<sup>4</sup> A dental hygienist is a primary care oral health professional who has graduated from an accredited dental hygiene program in an institution of higher education, licensed in dental hygiene to provide education, assessment, research, administrative, diagnostic, preventive and therapeutic services that support overall health through the promotion of optimal oral health.<sup>5</sup>

1. ADHA Policy Manual [6-09]. Chicago, Ill. American Dental Hygienists' Association. [http://www.adha.org/resources-docs/7614\\_Policy\\_Manual.pdf](http://www.adha.org/resources-docs/7614_Policy_Manual.pdf)
2. ADHA Policy Manual [12-93/17-74]. Chicago, Ill. American Dental Hygienists' Association. [http://www.adha.org/resources-docs/7614\\_Policy\\_Manual.pdf](http://www.adha.org/resources-docs/7614_Policy_Manual.pdf)
3. ADHA Policy Manual [1-14/SCDHP/18-96]. Chicago, Ill. American Dental Hygienists' Association. [http://www.adha.org/resources-docs/7614\\_Policy\\_Manual.pdf](http://www.adha.org/resources-docs/7614_Policy_Manual.pdf)
4. ADHA Policy Manual [3-14/14-83]. Chicago, Ill. American Dental Hygienists' Association. [http://www.adha.org/resources-docs/7614\\_Policy\\_Manual.pdf](http://www.adha.org/resources-docs/7614_Policy_Manual.pdf)
5. ADHA Policy Manual [4-14/19-84]. Chicago, Ill. American Dental Hygienists' Association. [http://www.adha.org/resources-docs/7614\\_Policy\\_Manual.pdf](http://www.adha.org/resources-docs/7614_Policy_Manual.pdf)



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 15**

**Election of DHCC Officers**



# MEMORANDUM

<b>DATE</b>	December 5, 2015
<b>TO</b>	Dental Hygiene Committee of California Committee Members
<b>FROM</b>	Lori Hubble, Executive Officer
<b>SUBJECT</b>	<b>Agenda Item 15 - Election of Officers</b>

Section 1903 (c) of the Business and Professions Code requires the Committee to elect a president, vice president, and secretary from its membership. The election of officers typically takes place in December of each year.

Excerpt from the DHCC Member Guidelines and Procedure Manual regarding election of officers:

**OFFICERS**

The DHCC shall annually elect, from its members, a President, a Vice-President, and a Secretary each of whom shall hold office for a term of one year. An officer shall not serve in a particular office position for more than two consecutive terms unless extenuating circumstances prevail and it is the will of the majority of the members to do so.

Elections shall take place each year.

If the office of the President becomes vacant, the Vice President shall assume the office of the President. If the office of the Vice-President becomes vacant, an election shall be held at the next scheduled meeting. Elected officers shall then serve the remainder of the term.

The current officers are:

- President** – Nicolette Moultrie, RDH
- Vice President** – Noel Kelsch, RDHAP
- Secretary** – Susan Good, Public Member

**Committee Action Requested**

- Nomination of President
- Nomination of Vice President
- Nomination of Secretary

**2016 Officers**

- President \_\_\_\_\_
- Vice President \_\_\_\_\_
- Secretary \_\_\_\_\_



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 16**

Proposed 2016 Meeting Dates and Locations



## MEMORANDUM

<b>DATE</b>	December 5, 2015
<b>TO</b>	Dental Hygiene Committee of California Committee Members
<b>FROM</b>	Lori Hubble, Executive Officer
<b>SUBJECT</b>	<b>Agenda Item 16 – Proposed 2016 Meeting Dates and Locations</b>

Pursuant to Business and Professions Code, Section 1904, the Committee shall meet at least two times each calendar year and shall conduct additional meetings in appropriate locations that are necessary to transact its business.

Staff determined that the following proposed dates will meet the statutory requirements for conducting meetings. Teleconference meetings will be scheduled as needed in order to conduct necessary business.

Listed below are the proposed dates:

- **Friday , May 6, 2016**
- **Saturday, May 7, 2016 – *Southern California***
  
- **Saturday, December 3, 2016**
- **Sunday, December 4, 2016 – *Sacramento***

Attached is a calendar for your reference.

### **Committee Action Requested**

- Adopt dates and locations for meetings to be held in 2016.

# 2016

January						
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December						
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**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 17**

Future Agenda Items



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 18**

***CLOSED SESSION:***

Pursuant to subdivision (c)(3) of section 11126 of the Government Code, the Committee will meet in closed session to deliberate on disciplinary matters.

(Return to Open Session after Closed Session)



**Saturday, December 5, 2015**

**Dental Hygiene Committee of California**

**Full Committee**

**Agenda Item 19**

**Adjournment**