

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

INITIAL STATEMENT OF REASONS

HEARING DATE:

SUBJECT MATTER OF PROPOSED REGULATIONS: Citations and Fines

SECTIONS AFFECTED: Title 16, Division 11, California Code of Regulations, Sections, 1139, 1140, 1141, 1142, 1143, and 1144

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

The specific purpose for the adoption of the proposed regulations is to establish citation and fine criteria and procedural practices that the Dental Hygiene Committee of California will use for issuance of citations, fines, and orders of abatement. A citation and fine program is a valuable consumer protection tool. Such a program assists in addressing certain violations of the law in a more expedient fashion than other disciplinary options currently available to the Committee. Further, a citation and fine program puts individuals on notice of violations and allows for remedial action without exposing those individuals to the burden and cost of other disciplinary options. Specifically the regulations will:

1. Allow the Executive Officer of the Committee or his or her designee to issue a citation that could include a fine, order of abatement against a licensee or a combination of citation, fine and order of abatement.
2. Establish that citations be in writing and describe the facts of violations including reference to the law or regulation alleged to have been violated
3. Prescribe how the citation shall be served upon the cited person
4. Establish that the nature and severity of the violation be taken into consideration when determining the appropriate citation/order, including the following: length of time that has passed since the date of the violation; consequence of the violation (including potential or actual patient harm); history of previous violations of the same or similar nature; evidence that the violation was willful; gravity of the violation; and the extent to which the cited person has remediated any knowledge or skill deficiencies which could have injured a patient , before the issuance of any citation

5. Allow that the Executive Officer or his or her designee may issue a citation against any unlicensed person who is acting in the capacity of a licensee and who is not otherwise exempt from licensure
6. Allow that each citation for unlicensed activity may contain an order of abatement and an order to pay a fine
7. Allow that the payment of a fine and compliance with an order of abatement does not preclude additional administrative, civil or criminal remedies
8. Establish procedures and timelines for a licensee to contest citations through a hearing as required by law
9. Allow the cited person to request a hearing or informal conference in writing as required by law
10. Sets forth a timeline for holding of a hearing or informal conference
11. Establishes that the Executive Officer or his or her designee may affirm, modify, or dismiss a citation with a written decision
12. Establishes that a dismissed citation shall be deemed as withdrawn
13. Sets forth requirements for a cited person to contest the decision of an affirmed or modified citation
14. Sets forth conditions that allow for extension of compliance with citation/orders of abatement to for situations in which compliance cannot be obtained through no fault of the cited person after exercise of reasonable diligence
15. Allows that failure to comply in a timely manner with an order of abatement or order to pay a fine may result in disciplinary action
16. Requires that when a licensee complies with the terms of a citation on the finding of a violation the violation may only be disclosed to the public as the satisfactory resolution of the matter

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

Add Section 1139. Issuance of Citations and Fines

This section heading and text would provide that the Executive Officer or his or her designee may issue a citation and order to pay a fine between \$100 and \$5,000 and an order of abatement against a licensee for any violation of Article 11 of the Business and

professions Code or any laws or regulations governing the practice of dental hygiene. The section allows for the issuance of a citation without the assessment of a fine. The section specifies that a citation shall be in writing and shall describe with particularity the nature and facts of each violation. The section specifies that the person cited shall be either personally served or served by certified mail.

Add Section 1140. Criteria to be Considered.

This section heading and text would provide that the nature and severity of the violation, length of time that has passed since the date of the violation, consequences of the violation (including potential or actual patient harm), history of previous violations of the same or similar nature, evidence that the violation was willful, gravity of the violation, the extent to which the cited person has remediated any knowledge or skill deficiencies which could have injured a patient be considered in the issuance of a citation.

Add Section 1141. Citations for Unlicensed Practice.

This section heading and text would provide that the Executive Officer or his or her designee may issue a citation against any unlicensed person who is acting in the capacity of a licensee in the practice of dental hygiene. It allows for the issuance of an order of abatement fixing a reasonable period of time for abatement and the paying of a fine not exceeding \$5,000 for each occurrence of a violation. It allows that the citation and order of abatement does not preclude other administrative, civil or criminal remedies.

Add Section 1142. Contested Citations.

This section heading and text would provide that the citation inform the licensee that if he or she desires a hearing to contest the finding of a violation a hearing shall be requested in writing to the committee within 30 calendar days of the issuance of the citation. It provides that that the citation inform the licensee that the hearing shall be held pursuant to the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code. It provides that in additions to requesting a hearing the person cited within 14 calendar days of the service of the citation can submit a written request for an informal conference with the Executive Officer. It provides that the Executive Officer or his or her designee hold an informal conference within 30 calendar days for the receipt of the request for an informal conference. It provides that the Executive Officer or his or her designee may affirm, modify or dismiss the citation at the conclusion of an informal conference and that the decision be mailed within 14 days of the decision. It provides that if the citation is dismissed the request for formal hearing will be deemed withdrawn and if the citation is upheld the cited person may withdraw their request the formal hearing. It provides that if the cited persons wishes to contest an affirmed or modified citation he or she shall within 30 days submit a written request for administrative hearing to the Executive Office or his or her designee. It provides that information citations conferences shall not be held on affirmed or modified citations.

Add Section 1143. Compliance wit Citation/Order of Abatement.

This section heading and text would provide that if a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time to complete the correction in writing. It provides that non contested orders of abatement or when a cited person does not prevail in appeal that failure to abate the violation within the time allow or pay the fine imposed (if imposed) constitutes a violation and a failure to comply with the citation or order of abatement. It provides that failure to comply with and order of abatement or pay a fine is unprofessional conduct and may result in disciplinary action.

Add Section 1144. Disclosure.

This heading and text would provide that a licensees compliance with an order of abatement or payment of a fine based on the finding of a violation may only be disclosed to the public as satisfactory resolution of the matter.

Factual Basis/Rationale

Business and Professions Code section 1955(e) states that imposition of civil penalties as authorized by the section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

Rationale: In order to utilize the consumer protection benefits of a citation and fine program and assess civil penalties, guidelines and procedures must be in place by regulation to assure consistent and equitable application of the Committee's citation and fine program. Each of the proposed regulations clarifies the requirements necessary to carry out the citation and fine program. Further, these proposed regulations provide for appropriate notice to cited individuals and an opportunity to be heard, thereby affording protection to cited individuals.

Underlying Data

No technical, theoretical or empirical studies or reports were relied upon.

Business Impact

There will be no financial impact on businesses..

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipmen

Description of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Fiscal Impact

There is no fiscal impact regarding the promulgation, implementation, or carrying out of the proposed regulation to the industry.