

ARTICLE 11. CITATIONS AND FINES

The proposed text is new language underline is for formatting purposes only.

Adopt Section 1039-1144 of Division 11 of Title 16 of the California Code of Regulations, to read as follows:

ARTICLE 11. CITATIONS AND FINES

§1139. Issuance of Citations and Fines.

(a) The Executive Officer of the DHCC or his or her designee may issue a citation containing an 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 governing the practice of dental hygiene. A citation may be issued without the assessment of a fine, when determined by the Executive Officer or his or her designee.

(b) Each citation shall be in writing and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the law or regulation alleged to have been violated.

(c) The citation shall be served upon the cited person either personally or by certified United States mail.

§1140. Criteria to be Considered.

In the issuance of any citation, the following factors shall be considered:

(a) Nature and severity of the violation.

(b) Length of time that has passed since the date of the violation.

(c) Consequences of the violation, including potential or actual patient harm.

(d) History of previous violations of the same or similar nature.

(e) Evidence that the violation was willful.

(f) Gravity of the violation.

(g) The extent to which the cited person has remediated any knowledge or skill deficiencies which could have injured a patient.

§1141. Citations for Unlicensed Practice.

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. Each citation may contain an order of abatement fixing a reasonable period of time for an abatement and an order to pay a fine not to exceed \$5,000 for occurrence of a violation. Any sanction authorized for activity under this section shall be separate from and in addition to any other administrative, civil or criminal remedies.

§1142. Contested Citations.

(a) The citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that a hearing shall be requested by written notice to the DHCC within 30 calendar days of the date of issuance of the citation. 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.

(b) In addition to requesting a hearing as provided for in subdivision (a) of this section, the cited person may, within 14 calendar days after service of the citation, submit a written request for an informal conference with the Executive Officer.

(c) The Executive Officer or his/her designee shall, within 30 calendar days from receipt of the written request, hold an informal conference with the person cited and/or his/her legal counsel or authorized representative.

(d) The Executive Officer or his/her designee may affirm, modify or dismiss the citation, at the conclusion of the informal conference. A written decision stating the reasons for the decision shall be mailed to the cited person and his/her legal counsel, if any, within 14 calendar days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the citation issued.

(e) If the citation is dismissed, the request for a hearing shall be deemed withdrawn. If the citation is affirmed or modified, the cited person may, at his/her discretion, withdraw the request for a hearing or proceed with the administrative hearing process.

(f) If a cited person wishes to contest an affirmed or modified citation, the cited person shall, within 30 days after service of the citation, contest the affirmed or modified citation by submitting a written request for an administrative hearing, as provided for in subdivision (b)(4) of Section 125.9 of the Code, to the executive officer or his or her designee. An informal citation conference shall not be held on affirmed or modified citations.

§1143. Compliance with Citation/Order of Abatement.

(a) 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/her control after the exercise of reasonable diligence, the person cited may request an extension of time from the Executive Officer or his/her designee in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) When a citation or order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation within the time allowed or pay the fine that is imposed, if one was, shall constitute a violation and a failure to comply with the citation or order of abatement.

(c) Failure to timely comply with an order of abatement or pay a fine that is imposed is unprofessional conduct and may result in disciplinary action being taken by the DHCC.

§1144. Disclosure.

The issuance and disposition of a citation shall be reported to other professional regulatory agencies. A licensee's 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.

Note: Authority cited: Section 1906, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.