

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

**INITIAL STATEMENT OF REASONS**

**HEARING DATE:**

**SUBJECT MATTER OF PROPOSED REGULATIONS:** Uniform Standards Related to Substance Abuse and Disciplinary Guidelines referenced in regulations Section 1138 of California Code of Regulations revised September 2010.

**SECTION(S) AFFECTED:** Title 16, Division 11, California Code of Regulation, Section, 1138

**SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:**

The Dental Hygiene Committee of California proposes to adopt Section 1138 of Division 11 of Title 16 of the California Code of Regulations. The purpose of adopting the regulation is to establish Uniform Standards Related to Substance Abuse and Disciplinary Guidelines and incorporate them by reference in section 1138 revised September 2010.

The Committee uses disciplinary guidelines when taking action to suspend, revoke, or place a license on probation. The proposed changes to the Uniform Standards Related to Substance Abuse and Disciplinary Guidelines are necessary to incorporate numerous statutory and regulatory changes that have occurred in dental hygiene law, to ensure the consistent use of titles and terms between the Uniform Standards Related to Substance Abuse and California Business and Professions Codes, to remove outdated and unnecessary terms and conditions of probation and to incorporate the new changes necessary to ensure the Committee's ability to meet its consumer protection mandate.

A summary of the proposed changes is below. Please note that the term "Committee" is used in the Initial Statement of Reasons, but the actual Uniform Standards Related to Substance Abuse and Disciplinary Guidelines uses the term "DHCC".

**TITLE PAGE**

"Dental Hygiene Committee of California "DHCC" Uniform Standards Related to Substance Abuse and Disciplinary Guidelines"

**INTRODUCTION**

**New introduction for clarification and allow for easier reading and consistency.**

**FACTUAL BASIS/RATIONALE**

This language specifies the factors the Committee has determined should be considered when either the administrative law judge or the Committee members are considering the appropriate penalty.

**OTHER SITUATIONS IN WHICH REVOCATION IS THE RECOMMENDATION PENALTY**

This language provides direction to administrative law judges and committee members as to situations where revocation is the appropriate penalty.

### **PROBATION TERMS AND CONDITIONS**

Language has been added providing a list of standards and additional probationary terms and conditions to provide for a user friendly document.

### **MODEL INTRODUCTORY LANGUAGE TO BE USED FOR ALL PROBATIONARY ORDERS**

This language provides model language so that there is consistency and accuracy in decisions reflective of what type of license or permit is being disciplined.

### **STANDARD PROBATION CONDITIONS FOR ALL DECISIONS AND ORDERS**

This language provides amendments to the standard conditions that should be in all decisions and orders.

The following provides the necessity for each probation condition and term:

- (1) **Severability Clause:** The severability clause is required for all decisions and orders and stipulated agreements where there are conditions of probation, to avoid the possibility of all probation conditions being invalidated upon a successful appeal.
- (2) **Obey all laws:** Respondents are responsible for abiding with all federal, state, U.S. Military and local laws. If there has been a violation of any law or regulation that is substantially related to the qualifications, functions, or duties of an Registered Dental Hygienist (RDH) , Registered Dental Hygienist in Alternative Practice (RDHAP) and Registered Dental Hygienist with Extended Function (RDHEF), this would constitute a violation of Respondents probation and allow the DHCC to carry out the disciplinary order
- (3) **Quarterly Reports:** By the Respondent making declarations under penalty of perjury, this assures the DHCC that the Respondent is making true statements to the DHCC. Receiving these reports quarterly allows the DHCC to track the Respondents' compliance, and offers a process for review in determining whether or not his or her license should be restored at the completion of his or her probation.
- (4) **Probation Program:** Comply with probation monitoring to ensure consumer protection, and the Respondent cannot use the excuse that they did not understand. In addition, victims, complainants and witnesses would be protected from harassment by the Respondent.
- (5) **Interview with the DHCC:** This condition allows the DHCC to schedule in-person interviews to monitor Respondent's compliance with the probation order to ensure public protection, In addition, Respondent shall participate in telephone interviews upon the request of the DHCC.
- (6) **Changes of Name, Address of Record or Employment:** This condition allows the DHCC to be informed of Respondent's current name, address of record, employment information, including his or her business address phone number, and employer (if applicable) in the event DHCC needs to locate the Respondent or communicate with his or her employer.

- (7) **Tolling Provisions:** This ensures that a Respondent may not complete probation without being fully monitored for his or her period of probation in California. This further ensures that the DHCC is aware of all licensure outside of California as an RDH, RDHAP, or RDHEF or in any health care related capacity.
- (8) **Notification to Employer:** Respondent's license being placed on probation shows the DHCC that his or her conduct is in need of rehabilitation, subsequently, a Respondent's deficiencies should be noted to the employer in order to protect the health and welfare of the public
- (9) **Cost Recovery:** The DHCC incurs costs associated with the investigation and disciplinary process; this condition requires the Respondent to reimburse the DHCC for those expenditures.
- (10) **Probation Monitoring Costs:** Periodically, the DHCC incurs expenditures associated with the necessary travel to meet with Respondents to monitor his or her probation compliance; this condition requires the Respondent to reimburse the DHCC for those costs.
- (11) **Violation of Probation:** This condition allows the DHCC to carry out the disciplinary orders stated in the decision when a Respondent fails to comply with any of his or her probation conditions.
- (12) **License Surrender:** If a Respondent feels he or she cannot follow any one of the conditions of the probation order due to a discontinuance of practice, this condition gives him or her the option to voluntarily surrender his or her license.
- (13) **Completion of Probation:** When the Respondent has completed his or her probation by successfully fulfilling all of the conditions, he or she has demonstrated his or her ability to practice unrestricted.
- (14) **Law and Ethics Course and Supplemental Exam:** In cases of fraudulent behavior, improper record keeping, or deficiency of knowledge or skills, this condition should be included.

#### **ADDITIONAL CONDITIONS OF PROBATION MODEL LANGUAGE**

This language contains clarifying amendments as well as additional terms that have been added.

- (15) **Actual Suspension:** Restricting Respondent's practice of dental hygiene for a limited amount of time offers an additional penalty and an opportunity for the Respondent to satisfy other conditions that are primary.

- (16) **Psychological Evaluation:** Psychological evaluations shall be utilized when an offense calls into question the judgment and /or emotional and/or mental condition of the Respondent or where there has been a history or abuse or dependency of alcohol or controlled substances. When appropriate, Respondent shall be barred from rendering Dental Hygiene services under the terms of probation until he or she has undergone an evaluation, the evaluator has recommended resumption of practice, and the DHCC has accepted and approved the evaluation.
- (17) **Physical Examination:** This condition permits the DHCC to require the probationer to obtain appropriate treatment for physical problems/disabilities, which could affect safe practice of Dental Hygiene. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse.
- (18) **Billing Monitor:** Monitoring shall be utilized when Respondent's ability to appropriately bill, or as a result of questionable judgment in billing.
- (19) **Clinical Diagnostic Evaluation:** This provision should be included when a Respondent's license is placed on probation for a substance or alcohol abuse problem so that the Committee has the ability to order at any time during the probation period a Respondent to undergo an evaluation to determine if he or she is currently safe to practice.
- (20) **Submit Biological Fluid Samples:** This provision should be included when a Respondent's license is placed on probation for a substance or alcohol abuse problem so that the committee can monitor whether or not the Respondent is abstaining from the use of a banned substance or alcohol.
- (21) **Worksite Monitor:** This provision should be included when a Respondent's license is placed on probation for substance or alcohol abuse so that the Committee becomes aware of potential problems a probationer may have before any patient harm occurs.
- (22) **Restriction of Practice:** In cases wherein some factor of the patient population at large (e.g. age, gender) may put a patient at risk if in treatment with the Respondent, this condition should be utilized. Additional language can be added for clarification.
- (23) **RDH Clinical Examination:** In cases involving evidence of severe deficiencies in the body of knowledge required to be minimally competent to practice, it may be appropriate to require the Respondent to take and pass the Hygiene Examination or equivalent during the course of the probation period. In some instances, it may be appropriate for practice to be suspended until the examination is passed (condition precedent).

(24) **Abstain from Alcohol:** This provision should be included when a Respondent has an alcohol problem so that the Committee can monitor whether the Respondent is in violation of probation.

(25) **Abstain from Controlled Substances:** This provision should be included when a Respondent has a substance abuse problem so that the Committee can monitor whether the Respondent is in violation of probation.

#### RECOMMENDED PENALTIES:

The Committee made the following changes to the recommended penalties:

- Included a specific listing of appropriate conditions and terms for each type of violation.
- Included more specific recommendations for violations that could range from mild or quite serious depending on the specific facts in the case.
- Made consistent penalties for similar offenses.

#### Factual Basis/Rationale

Business and Professions Code Section 1905 generally authorizes the Committee to amend rules and regulations pertaining to the manner of issuance and reissuance of licenses and the administration/enforcement of Chapter 4, Division 2.

Business and Professions Code Section 1950 authorizes the Committee to take action against a licensee for unprofessional conduct as defined.

Business and Professions Code Section 1950.5 defines additional acts constituting unprofessional conduct by a person licensed under Business and Professions Section 1900-1966.6.

Government Code Section 11400.20 authorizes the Committee to adopt regulations to govern an adjunctive proceeding.

Government Code Section 11425.50(e) prohibits a penalty from being based upon a guideline unless the guideline has been adopted as a regulation.

California Code of Regulations Section 1138 incorporates by reference the Uniform Standards Related to Substance Abuse and Disciplinary Guidelines revised September 2010.

The Dental Hygiene Committee of California regulates the practice of dental hygiene and the protection of the public is the priority for exercising its licensing, regulatory, and disciplinary functions. The Committee conducts its own inspections and investigations of licensees and applicants.

The Uniform Standards Related to Substance Abuse and Disciplinary Guidelines are necessary to assist the committee, deputy attorney generals and administrative law judges to identify and impose appropriate disciplinary action against a licensee or applicant who violates the laws governing the practice of dental hygiene.

The "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" is a 38 page document and is available on the Committee's website and from the Committee upon request.

It would be cumbersome, unduly expensive, and otherwise impractical to publish the documents in the California Code of Regulations.

#### **UNDERLYING DATA**

1. Memorandum from the DCA Deputy Director of Legal Affairs, Doreathea Johnson, regarding retroactive fingerprinting dated on January 16, 2009.
2. Draft of December 10, 2009 Dental Hygiene Committee Minutes.

#### **BUSINESS IMPACT**

The Committee does not believe that this regulation will have a significant adverse economic impact on businesses as it only affects individuals and those businesses that are disciplined for serious violations of the California Code Regulation or California Business and Professions Code.

#### **SPECIFIC TECHNOLOGIES OR EQUIPMENT**

This regulation does not mandate the use of specific technologies or equipment.

#### **CONSIDERATION OF ALTERNATIVES**

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations. Many new laws have been enacted since 1996 that affect the practice of dentistry and dental hygiene. In addition, it would be contrary to the Committee's public protection mandate to not include proposed changes designed to allow the Committee better monitoring of licensees on probation with the Committee.

If rejected as a result of not passing this regulation, the DHCC, the Office of the Attorney General, and the Office of Administrative Law will be making disciplinary decisions against licensees using outdated disciplinary guidelines which do not reflect current law. Using these outdated guidelines would not maximize protection for the consumers of California.