

Dental Hygiene Committee of California

**UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND
DISCIPLINARY GUIDELINES**

Section 1138 Division 11 of Title 16, Article 10 entitled “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” of the California Code of Regulations is added to read:

Article 10. Disciplinary Guidelines

Section 1138. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Section 11400 et seq. of the Government Code) the Committee shall comply with the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” Dated September 28, 2010 that are hereby incorporated by reference. Deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Committee, in its sole discretion, determines that the facts of the particular case warrant such a deviation. However, neither the Committee nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.

Note: Authority cited: Sections 1950 and 1950.5, Business and Professions Code; and Sections 11400.20, Government Code. Reference 1950 Business and Professions Code and Sections 11400.20 and 11425.50(e), Government Code



Dental Hygiene Committee of California



Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

(September 2010)

Table of Contents

	Page No.
Introduction	3
Uniform Standards Related to Substance Abuse and Disciplinary Guidelines	4
Worksite Monitor Requirements	6
Major and Minor Violations	7
Drug Testing Standards	8
Disciplinary Guidelines	9
Situations in which Revocation Shall be Imposed	9
Recommended Action Violations	10
Probationary Terms and Conditions	10
Model Language for Probation Orders	11
List of Probation Conditions	12
Standard Probation Conditions	13
Additional Probation Conditions	17
Accusations and Decisions	22
Recommended Language for Cost Recovery for Revocations and Surrenders	23
Denial of Licensure	23
Demonstration of Rehabilitation	24
Evidence of Mitigation	25
Petition for Penalty Relief and Reinstatements	25
Dental Hygiene Licensure Act	27
Business and Professions Code Provisions	33
Index of Violations	36

Introduction

The Dental Hygiene Committee of California is a consumer protection agency with the primary mission of protecting consumers of dental hygiene services from potentially harmful licensees. In keeping with its obligation to protect the consumer, the Committee has adopted the following Disciplinary Guidelines for disciplinary orders and conditions of probation for violations of the laws governing the practice of dental hygienist as well as Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

The Committee carefully considers all facts and circumstances associated with each case in its efforts to protect consumers. Subsequently, an Administrative Law Judge (“ALJ”) shall provide in all proposed decisions a detailed basis of his or her decision in the “Findings of Fact” particularly when there is a deviation from the Disciplinary Guidelines. Justification for the deviation shall be clearly outlined in the decision to enable the Committee to understand the reasons and to evaluate the suitability of the decision. However, an ALJ is prohibited from deviating from the Uniform Standards Related to Substance Abuse.

If at the time of hearing the ALJ finds that the Respondent, for any reason, is not capable of safe practice, the ALJ shall order outright revocation of the license. This is particularly important in cases of patient sexual abuse or bodily harm.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the dental hygienist is suspended in order to correct deficiencies in skills, education or rehabilitation.

Dental Hygiene Committee of California

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Note: Authority cited: Sections 1950 and 1950.50 Business and Professions Code; and Sections 11400.20, Government Code. Reference: 1950 of Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE

The following standards shall be adhered to in all cases in which a license is placed on probation due to a substance abuse problem. These standards are not guidelines and shall be followed in all instances, except that the Committee may impose more restrictive conditions if necessary to protect the public.

Clinical Diagnostic Evaluations:

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has 3 years experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Committee. The evaluations shall be conducted in accordance with accepted professional standards for conducting substance abuse clinical diagnostic evaluations.

Clinical Diagnostic Evaluation Report:

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial, personal, familial or business relationship with the licensee within the last 5 years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the Committee within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the Committee no later than 10 days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

The Committee shall review the clinical diagnostic evaluation to determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee based on the application of the following criteria:

License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Committee shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

Worksite Monitor Requirements:

If a Committee determines that a worksite monitor is necessary for a particular licensee, the worksite monitor must meet the following requirements to be considered for approval by the Committee:

The worksite monitor shall not have any current or former financial, personal, familial or business relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Committee. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Committee. However, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another health care professional if no monitor with like scope of practice is available.

The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last 5 years.

The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Committee.

The worksite monitor must adhere to the following required methods of monitoring the licensee:

- a) Have face-to-face contact with the licensee at least once per week in the work environment or more frequently if required by the Committee;
- b) Interview other staff in the office regarding the licensee's behavior, if applicable; and
- c) Review the licensee's work attendance.

Reporting by the worksite monitor to the Committee shall be as follows:

Any suspected substance abuse must be orally reported to the Committee and the licensee's employer within 1 business day of occurrence. If occurrence is not during the Committee's normal business hours the oral report must be within the first hour of the next business day. A written report shall be submitted to the Committee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Committee. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; staff interviewed if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Committee to allow the Committee to communicate with the worksite monitor.

If a licensee tests positive for a banned substance, the Committee shall order the licensee to cease practice. The Committee shall also immediately notify the licensee's employer that the licensee has been ordered to cease practice and he or she may not resume work until the suspension is lifted.

Major and Minor Violations

Major Violations include, but are not limited to, the following:

1. Failure to complete a Committee ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive for a banned substance; and
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee commits a major violation, the Committee shall automatically suspend the licensee's license and refer the matter for disciplinary action or other action as determined by the Committee.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation as required;
2. Unexcused absence at required meetings;
3. Failure to contact a monitor as required; and
4. Any other violations that do not present an immediate threat to the licensee or to the public.

Drug Testing Standards

If a licensee commits a minor violation, the Committee shall determine what action is appropriate.

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the Committee. After the first year, licensee shall be randomly drug tested at least 50 times per year, and at any time as directed by the Committee;
2. Drug testing may be required on any day, including weekends and holidays;
3. The scheduling of drug tests shall be done on a random basis, preferably by a computer program;
4. Licensees shall be required to make daily contact to determine if drug testing is required;
5. Licensees shall be drug tested on the date of notification as directed by the Committee;
6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation;
7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines;
8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered;
9. Collection of specimens shall be observed;
10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the Committee; and
11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within 1 business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within 7 days of receipt of the specimen. The Committee will be notified of non-negative test results within 1 business day and will be notified of negative test results within 7 business days.

Disciplinary Guidelines

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration;
2. Actual or potential harm to the public;
3. Actual or potential harm to any patient;
4. Prior disciplinary record;
5. Number and/or variety of current violations;
6. Mitigation evidence;
7. Rehabilitation evidence;
8. In case of a criminal conviction, compliance with conditions of sentence or court-ordered probation;
9. Overall criminal record;
10. Time passed since the act(s) or offense(s) occurred; and
11. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

Situations in which Revocation Shall Be Imposed

In addition to violation of the laws governing dental hygienist, there are other circumstances that necessitate outright revocation as the recommended penalty:

1. Failure to file a notice of defense or to appear at a disciplinary hearing, where the Committee has requested revocation;
2. Violation of the conditions of a Respondent's probation order;
3. Substantiated evidence or convictions of physical or sexual abuse offenses; and
4. Second offenses, unless the Respondent can demonstrate that he or she has been fully rehabilitated.

Recommended Action by Violation

The Business and Professions Code Section 1900, and general provision sections of the Business and Professions Code specify the offenses for which the Committee may take disciplinary action. Below are the code sections with the recommended disciplinary actions listed by the degree of the offense.

When filing an Accusation, the Office of the Attorney General may also cite additional related statutes and regulations.

*Note: Under conditions of probation you will find the applicable numbered conditions to include in a decision and order.

Probationary Terms and Conditions

As part of the Committee's mission to protect the consumer, any disciplinary order in which probation is imposed should include conditions that ensure consumer protection.

For purposes of implementation of these conditions of probation, any reference to the Committee also means staff working for the Dental Hygiene Committee of California.

Probationary Term

The Committee generally recommends a minimum probation term of 3 years. The term may be increased depending upon the severity of the violation(s).

Probationary Conditions

Conditions of probation are divided into 2 categories:

1. **Standard** conditions that are included in all probation orders; and
2. **Additional** conditions which are applicable to the nature of the violation(s).

Model Language for Probation Orders

When a stipulated settlement or proposed decision contains probationary terms and conditions, the following language shall be included:

- **Licensees:** Registered Dental Hygiene (RDH), Registered Dental Hygienist in Alternative Practice (RDHAP), Registered Dental Hygienist in Extended Functions (RDHEF) license no. _____ issued to Respondent _____ is hereby revoked; however, the revocation is stayed and Respondent's license is placed on probation for _____ years on the following terms and conditions.
- **Applicants:** The application of Respondent _____ for licensure is hereby granted; however, the license shall be immediately revoked, the order of revocation stayed, and Respondent's license placed on probation for a period of _____ years on the following conditions:
- **Reinstatements:** The petition of _____ for reinstatement of the RDH, RDHAP, RDHEF license is hereby GRANTED, as follows.

RDH, RDHAP, RDHEF number _____ is reinstated. The license will be immediately revoked; however, the revocation is stayed for _____ years on the following terms and conditions:

In cases in which a petitioner for reinstatement has not practiced dental hygiene for an extended amount of time, he or she must retake the licensing exam before reinstatement. This information must be provided to the Administrative Law Judge so that the following can be included in the purposed decision the condition (number 13): "Upon successful completion of the licensure examination, a license shall be issued to Respondent."

NOTE: If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by petitioner, a probation condition requiring payment of original cost recovery on a payment plan shall be included in the decision.

List of Probation Conditions

STANDARD PROBATION CONDITIONS

Introductory Language and Conditions 1-14 are required as follows:

- | | |
|---|---|
| 1) Severability Clause | 8) Notification to Employer |
| 2) Obey all Laws | 9) Cost Recovery (Does not apply to Applicants) |
| 3) Quarterly Reports | 10) Probation Monitoring Costs |
| 4) Probation Program | 11) Violation of Probation |
| 5) Interview with the Committee | 12) License Surrender |
| 6) Changes of Name, Address of Record or Employment | 13) Completion of Probation |
| 7) Tolling Provisions | 14) Law and Ethics Supplemental Exam |

ADDITIONAL PROBATION CONDITIONS

In addition to the standard conditions (1-14), conditions (15-25) are required if the offense involves one of the following: sexual misconduct, alcohol/drug abuse, mental/physical disabilities, fraudulent conduct, or lack of knowledge or skills. Any of these additional conditions may be included if relevant to the violation:

- | | |
|-------------------------------------|--|
| 15) Actual Suspension | 23) RDH Clinical Examination |
| 16) Psychological Evaluation | 24) Abstain from Alcohol |
| 17) Physical Examination | 25) Abstain from Controlled Substances |
| 18) Billing Monitor | |
| 19) Clinical Diagnostic Evaluation | |
| 20) Submit Biological Fluid Samples | |
| 21) Worksite Monitor | |
| 22) Restriction of Practice | |

Standard Probation Conditions

1. Severability Clause

Each condition of probation is a separate and distinct condition. If any condition of this Decision and Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all other applications thereof, shall not be affected. Each condition of this Decision and Order shall separately be valid and enforceable to the fullest extent permitted by law.

Rationale: *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

Respondent shall obey all federal, state, US Military and local laws and all regulations. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Committee in writing within 72 hours of occurrence.

Rationale: *If there has been a violation of any law or regulation that is substantially related to the qualifications, functions, or duties of an RDH, RDHAP, and/or RDHEF, this would constitute a violation of Respondent's probation and allow the Committee to carry out the disciplinary order.*

3. Quarterly Reports

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Committee, stating whether there has been compliance with all the conditions of probation.

Rationale: *By the Respondent making declarations under penalty of perjury, this assures the Committee that the Respondent is making true statements to the Committee. Receiving these reports quarterly allows the Committee to track the Respondent's compliance, and provides 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

Respondent shall comply with the Committee's probation program and shall, upon notice, report to the Committee's staff. Respondent shall contact enforcement staff regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with victims or complainants associated with the case or persons serving the Committee as expert consultants.

Rationale: *Comply with the probation monitoring program to ensure consumer protection and the Respondent cannot use the excuse they didn't understand. In addition, to protect the victims, complainants and witnesses from harassment by the Respondent.*

5. Interview with the Committee

Respondent shall appear in person for interviews with the Committee upon request at various intervals and with reasonable notice. In addition, Respondent shall participate in telephonic interviews upon request by the Committee.

Rationale: *This condition allows the Committee 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 Committee.*

6. Changes of Name, Address of Record or Employment

Respondent shall notify the Committee in writing of any and all changes of address of record or employment including location and address within 30 days of such change. Respondent shall notify Committee of a legal name change within 10 days of such change.

Rationale: *This condition allows the Committee 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 the Committee needs to locate the Respondent or communicate with his or her employer.*

7. Tolling Provisions

In the event Respondent should leave California to practice outside the state, Respondent must provide written notification to the Committee of the dates of departure and anticipated return to the state. Respondent's probation is tolled, if and when he or she ceases practicing in California. Period of practice outside of California will not apply to the reduction of the probationary period.

Respondent shall provide a list of all states, United States territories, and elsewhere in the world where he or she has ever been licensed as a dental hygienist or held any health-care related professional license or certificate. Respondent shall further provide information regarding the status of each license and certificate and any changes in the license or certificate status during the term of probation. Respondent shall inform the Committee if he or she applies for or obtains a license outside of California during the term of probation.

For purposes of this condition, non-practice due to Committee ordered suspension or in compliance with any other condition of probation, shall be considered a period of non-practice and the time period will be tolled.

Rationale: *Ensures that Respondent may not complete probation without being fully monitored for his or her period of probation in California. This further ensures that the Committee 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

If Respondent is currently employed, in the process of applying for employment, or contracted to provide services as a dental hygienist, he or she shall provide a copy of the Committee's Decision to his or her employer, supervisor or contractor no later than the effective date of the Committee's Decision. The Respondent shall notify any future employers, supervisors or contractors of his or her probationary status with the Committee prior to accepting such employment. The Respondent shall provide to the Committee the names, physical addresses, and telephone numbers of all employers, supervisors and contractors.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Committee to allow the Committee to communicate with the employer and supervisor or contractor.

Respondent shall cause each employer and supervisor or contractor to submit quarterly written declarations to the Committee. These declarations shall include a performance evaluation.

Respondent shall notify the Committee, in writing, of any change in his or her employment status, within 10 days of such change.

Rationale: Respondent's license being placed on probation shows the Committee that his or her conduct is in need of rehabilitation, subsequently, Respondent's deficiencies should be noted to the employer as to protect the health and welfare of the public.

9. Cost Recovery

Respondent shall pay to the Committee its costs of investigation and enforcement in the amount of \$_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Committee, with payments to be completed no later than 6 months prior to the end of the probationary term.

Rationale: The Committee incurs costs associated with the investigation and disciplinary process; this condition requires the Respondent to reimburse the Committee for those expenditures.

10. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Committee, which may be adjusted on an annual basis. Such costs shall be made payable to the Committee and mailed to the Committee. Failure to pay costs within 30 days of the due date is a violation of probation.

Rationale: Periodically, the Committee incurs expenditures associated with the necessary travel to meet with Respondent in order to monitor his or her probation compliance; this condition requires the Respondent to reimburse the Committee for those costs.

11. Violation of Probation

If Respondent violates probation in any respect, the Committee may, after giving Respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is filed against Respondent during probation, the Committee shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against Respondent.

Rationale: *This condition allows the Committee to carry out the disciplinary order stated in the decision when a Respondent fails to comply with any of his or her probation conditions.*

12. License Surrender

During Respondent's term of probation, if he or she wishes to cease practice, Respondent may request in writing to surrender the license(s) to the Committee. The Committee shall evaluate the request and notify Respondent in writing whether to grant the request. Upon formal acceptance of the license surrender, Respondent's license will no longer be subject to the conditions of probation. Respondent shall return the pocket license(s) and wall certificate(s) to Committee within 10 days of the effective date of the surrender.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Committee. A dental hygienist whose license has been surrendered may petition the Committee for reinstatement of his or her license no sooner than 3 years from the effective date of the surrender decision.

Rationale: *If 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

Upon successful completion of probation, Respondent's license will be fully restored.

Rationale: *When the Respondent has completed his or her term of probation by successfully fulfilling all of the conditions, he or she has demonstrated his or her ability to practice unrestricted.*

14. Law and Ethics Supplemental Exam

Respondent shall take a continuing education course in California Dental Practice Act (2 Units) approved by the Dental Hygiene Committee of California or Committee and successfully complete the Committee Law and Ethics supplemental exam within 60 days of the effective date of the decision.

Rationale: *In cases of fraudulent behavior, improper record keeping, or a deficiency of knowledge or skills, this condition should be included.*

Additional Probation Conditions

15. Actual Suspension

Respondent is suspended from the practice of RDH, RDHAP, RDHEF for ____ days beginning with the effective date of this Decision.

Rationale: Restricting Respondent's practice of dental hygiene for a limited amount of time offers an additional penalty and an opportunity for Respondent to satisfy other conditions that are primary.

16. Psychological Evaluation

Within 90 days of the effective date of this Decision and on a periodic basis thereafter as may be required by the Committee, Respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Committee appointed California licensed psychologist. Respondent shall execute a release authorizing the evaluator to release all information to the Committee.

If the Committee concludes from the results of the evaluation that Respondent is unable to practice independently and or safely, he or she shall immediately cease practice and shall not resume practice until notified by the Committee. If the Committee concludes from the results of the evaluation that Respondent would benefit from ongoing psychotherapy, Respondent shall comply with the Committee's directives in that regard.

Respondent shall pay all costs associated with the psychological evaluation. Failure to pay costs will be considered a violation of the probation order.

Rationale: 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 of 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 Committee has accepted and approved the evaluation.

17. Physical Examination

Within 90 days of the effective date of this Decision, Respondent shall undergo a physical examination by a California licensed physician and surgeon approved by the Committee. Respondent shall bear all costs of such an examination. Respondent shall comply with any treatment recommendations contained in the evaluation report submitted to the Committee by the physician and surgeon. Respondent shall ensure that the physician and surgeon provides the initial evaluation report and all written progress reports to the Committee on a quarterly basis or as otherwise determined by the Committee.

Rationale: *This condition permits the Committee 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/substance abuse.*

18. Billing Monitor

Within 30 days of the effective date of this Decision, Respondent shall submit to the Committee for prior approval, billing monitor(s), the name and qualifications of one or more Committee licensees whose license is valid and in good standing. A monitor shall have no prior or current business or personal relationship with the Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Committee, and shall agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Committee shall provide the approved monitor with copies of the Committee Decision and a proposed monitoring plan. Within 15 days of receipt of the Decision and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 days of the effective date of this Decision, and continuing throughout probation, Respondent's _____ billing shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor(s) shall submit a quarterly written report to the Committee that includes an evaluation of Respondent's billing practices indicating whether Respondent's are billing appropriately. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Committee.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Committee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 days. If Respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, Respondent shall be suspended from the practice until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of RDHAP within 3 days after being so notified by the Committee.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

Rationale: *Monitoring shall be utilized when Respondent's ability to appropriately bill, or as a result of questionable judgment in billing.*

19. Clinical Diagnostic Evaluation

Within 20 days of the effective date of the Decision and at any time upon order of the Committee, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Committee's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, his or her license shall cease practice for minimum of 1 month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least 2 times per week.

Respondent shall cause the evaluator to submit to the Committee a written clinical diagnostic evaluation report within 10 days from the date the evaluation was completed, unless an extension, not to exceed 30 days, is granted to the evaluator by the Committee. Cost of such evaluation shall be paid by the Respondent.

Respondent's license shall remain suspended until the Committee determines that he or she is able to safely practice either full-time or part-time and has had at least 1 month of negative drug test results. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

Rationale: *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

Respondent shall immediately submit to random and directed biological fluid testing paid for by Respondent, at the request of the Committee. The Respondent shall be subject to a minimum of 104 random tests per year within the first year of probation and at minimum of 50 random tests per year thereafter for the duration of the probationary term. If Respondent tests positive for a banned substance, Respondent shall cease practice.

Respondent shall make daily contact as directed by the Committee to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Committee prior to the vacation or travel.

Rationale: *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 banned substances or alcohol.*

21. Worksite Monitor

Respondent shall submit the name of the proposed worksite monitor within 20 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Committee regarding the Respondent and the worksite monitor's requirements and reporting responsibilities. Once a worksite monitor is approved, Respondent may not practice unless the monitor is present at the worksite. If the worksite monitor terminates the agreement with the Committee and the Respondent, the Respondent shall not resume practice until another worksite monitor is approved by the Committee.

Rationale: *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

During probation Respondent is prohibited from (insert restriction).

Rationale: *In cases wherein some factor of the patient population at large (e.g. age, gender) may put a patient at risk if treatment by the Respondent, this condition should be utilized. Additional language can be added for clarification.*

23. RDH Clinical Examination

Respondent shall cease practice until he or she successfully passes the Dental Hygiene Clinical Licensing Exam or Western Regional Examination Board (WREB). Respondent shall pay the established examination fees. Failure to pass the exam within 2 years of the effective date of the Decision shall be a violation of probation and be sufficient cause for revoking probation and imposing an order of revocation.

Rationale: *In cases involving practice deficiencies, it may be appropriate to require the Respondent to take and pass the clinical 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

Respondent shall completely abstain from the intake of alcohol during the period of probation.

Rationale: *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

Respondent shall completely abstain from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act and dangerous drugs as defined in Section 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

Rationale: *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.*

Accusations and Decisions

To provide a foundation for consistency and clarity in each disciplinary action, the Committee asks that the below guidelines be followed.

ACCUSATIONS

The Committee has the authority, pursuant to Section 125.3 of the Business and Professions Code, to recover costs of investigation and prosecution of its cases. The Committee requests that this fact be included in the pleading and made part of the Accusation.

STIPULATED SETTLEMENTS & PROPOSED DECISIONS

The Committee will consider agreeing to stipulated settlements to promote consumer protection. All stipulations must be accompanied by a memo from the Deputy Attorney General addressed to Committee members explaining the background of the case, defining the allegations, mitigating and aggravating circumstances, admissions and proposed penalty along with a recommendation.

Proposed Decisions and Stipulation should include, at a minimum, the following:

1. Names and addresses of the Respondent;
2. Specific code section(s) violated with the definition of the code section(s) in the Determination of Issues;
3. Clear description of the acts or omissions that caused the violation to occur;
4. Explanation of mitigating and aggravating factors;
5. Explanation of discipline imposed from Committee's Disciplinary Guidelines;
6. Detailed explanation if Committee's guidelines not imposed.

Recommended Language for Cost Recovery for Revocations and Surrenders

When the Decision and Order results in revocation or surrender of the license, cost recovery should be included as follows:

“If and when Respondent’s license is reinstated, he or she shall pay to the Committee costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$_____. Respondent shall be permitted to pay these costs in a payment plan approved by the Committee. Nothing in this provision shall be construed to prohibit the Committee from reducing the amount of cost recovery upon reinstatement of the license.”

Denial of Licensure

Pursuant to Business and Professions Code 480, the has authority to protect the public in denying licensure to any applicant whose misconduct or criminal history is substantially related to the qualifications, functions, or duties of a dental hygienist.

The Committee may deny licensure on the basis of:

- Conviction of a crime substantially related to the practice of dental hygiene;
- Any act involving dishonesty, fraud, or deceit with intent to substantially benefit self or another or to substantially injure another;
- Any act which is grounds for revocation of a license;
- Making a false statement on the application

Any person, whose application for a license has been denied by the Committee, may reapply to the Committee for a license after a period of 1 year has elapsed from the date of the denial.

Demonstrations of Rehabilitation

- In evaluating the rehabilitation of an applicant or licensee, the Committee considers the following:
 1. The nature and severity of the crime(s) under consideration;
 2. Evidence of any acts committed subsequent to the crime(s) under consideration as grounds for disciplinary action or denial of license;
 3. The time that has elapsed since the commission of the crime(s);
 4. The extent to which the applicant or licensee has complied with any terms of probation or any other sanctions lawfully imposed against the applicant or licensee;
 5. Evidence, if any, of rehabilitation by the applicant or licensee.

- The following is a list of items the Committee will consider in determining whether or not the applicant or licensee has been rehabilitated:
 1. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction;
 2. Letter from applicant or licensee describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems;
 3. Letters of reference from professors or colleagues within the field of dental hygiene;
 4. Letters of reference from past and/or current employers;
 5. Letters from recognized recovery programs attesting to current sobriety and length of time of sobriety if there has been a history of alcohol or drug abuse;
 6. A current mental status examination by a clinical psychologist or psychiatrist approved by the Committee. The evaluation should address the likelihood of similar acts or convictions in the future, and should speak to the suitability of the dental hygiene profession for the applicant;
 7. Letters of reference from other knowledgeable professionals, such as probation or parole officers;
 8. Copy of certificate of rehabilitation or evidence of expungement proceedings;
 9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.

Evidence of Mitigation

The Respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the Respondent may submit to demonstrate his or her rehabilitative efforts and competency in dental hygiene:

1. Recent, dated letters from counselors regarding Respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the Respondent has attended, the counselor's diagnosis of Respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor;
2. Recent letters describing Respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, etc., where appropriate, and sobriety date;
3. Recent, dated laboratory analyses or drug screen reports, where appropriate;
4. Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner, or physician assistant;
5. Certificates or transcripts of courses related to dental hygiene which Respondent may have completed since the date of the violation.

Petition for Penalty Relief and Reinstatements

Pursuant to Business and Professions Code Section 1957 (a), an individual whose license has been revoked, suspended, or surrendered, or whose license has been placed on probation must wait a specified minimum amount of time before petitioning the Committee for penalty relief or reinstatement.

- A person with a revoked or surrendered license must wait at least 3 years from the effective date of his or her Decision to petition for reinstatement;
- A person with a term of probation of 3 years or more must wait at least 2 years from the effective date of his or her Decision to petition for early termination;
- A person with whose license is placed on probation must wait at least 2 years from the effective date of his or her Decision to petition for modification of a condition;
- A person with a term of probation of less than 3 years must wait at least 1 year from the effective date of his or her Decision to petition for early termination.

PETITION HEARINGS

The primary concerns of the Committee at reinstatement or penalty relief hearings are that the evidence presented by the Petitioner that demonstrates his or her rehabilitation to ensure consumer protection.

The Committee will consider the following criteria:

1. Nature and severity of the act(s) or offense(s);
2. Total criminal record;
3. The time that has elapsed since commission of the act(s) or offense(s);
4. Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person;
5. If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code;
6. Evidence, if any, of rehabilitation submitted by the licensee or registration holder.

The Petition Decision should include a summary of the offense and the specific codes violated which resulted in the revocation, surrender or probation of the license.

The Committee requires that comprehensive information be elicited from the Petitioner regarding his/her rehabilitation. The Petitioner should provide details that include:

- A. Continuing education pertaining to the offense and its effect on the practice of dental hygiene;
- B. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts;
- C. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions;
- D. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings;
- E. If applicable, evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions;
- F. A culpability or non-culpability statement.

If the Committee should deny a request for reinstatement of licensure or penalty relief, the Committee requests that the ALJ-provide technical assistance in the formulation of language clearly setting forth the reasons for denial. Such language would include methodologies or approaches which would demonstrate rehabilitation.

If a petitioner fails to appear for his or her scheduled reinstatement or penalty relief hearing, such action shall result in a default decision to deny reinstatement of the license or reduction of penalty.

Dental Hygiene Practice Act

Conviction of a Crime

Section 1950 (a)

Conviction of a Crime.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3–5 years probation depending on nature and severity of crime.*

1. *Standard Conditions 1-14*
2. *Actual Suspension (15)*

Unprofessional Conduct

Section 1950.5 (a)

Obtaining of Any Fee by Fraud or Misrepresentation.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3-5 years probation.*

1. *Standard Conditions 1-14*
2. *Monitoring – Practice Billing (18)*
Worksite Monitor (21)

Section 1950.5 (b)

Aiding or Abetting of Any Unlicensed Person to Practice Dentistry.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

Standard terms 1-14

Section 1950.5 (c)

Aiding or Abetting of Any Unlicensed Person to Practice Dentistry Unlawfully.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

Standard terms 1- 14

Section 1950.5 (d)

Sexual Abuse, Sexual Misconduct or Relations with a Patient.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation*

Section 1950.5 (e)

Use of Any False, Assumed or Fictitious Name Other Than Licensed to Practice.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation.*

Standard Conditions 1-14

Section 1950.5 (f)

Accepting or Receiving a Commission.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3 – 5 years probation.*

Standard Conditions 1-14

Section 1950.5 (g)

False or Misleading Advertising.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

Standard Conditions 1–14

Section 1950.5 (h)

Advertising Superiority.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

Standard Conditions 1–14.

Section 1950.5 (i)

Employing or Using Solicitors.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

Standard Conditions 1–14

Section 1950.5 (j)

Advertising in Violation of Section 651.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

Standard terms 1- 14

Section 1950.5 (k)

Advertising to Perform Painless Service.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

Standard terms 1–14

Section 1950.5 (l)

Violation of Any Provisions of This Division.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

1. *Standard terms 1–14*
2. *Any additional conditions warranted by nature and severity of action or conduct.*

Section 1950.5 (m) **Permitting of Any Person to Operate Dental Radiographic Equipment Who Has Not Met The Requirements of Section 1656.**

Maximum Penalty: *Revocation*
Minimum Penalty: *Revocation stayed with 3 years probation*

Standard terms 1- 14

Section 1950.5 (n) **Excessive Administration of Drugs or Treatment.**

Maximum Penalty: *Revocation*
Minimum Penalty: *Revocation stayed with 3 years probation*

1. *Standard terms 1–14*
2. *Restriction of Practice (22)*

Section 1950.5 (o) **Threats or Harassment Against an Employee or Patient.**

Maximum Penalty: *Revocation*
Minimum Penalty: *Revocation stayed 3–5 years probation.*

Standard Conditions 1-14

Section 1950.5 (p) **Suspension or Revocation of a License Issued by Another Agency or State That Would be Grounds in This State.**

Maximum Penalty: *Revocation*
Minimum Penalty: *Revocation stayed*

1. *Standard Conditions 1-14*
2. *Any additional conditions warranted by nature and severity of action or conduct.*

Section 1950.5 (q) **Alteration of Patient Record with Intent to Deceive.**

Maximum Penalty: *Revocation*
Minimum Penalty: *Revocation stayed 3–5 years probation depending on nature and severity of violation.*

1. *Standard Conditions 1-14*
2. *Monitoring –Billing (18)*
3. *Worksite Monitor (21)*

Section 1950.5 (r) **Unsafe or Unsanitary Office Conditions.**

Maximum Penalty: *Revocation*
Minimum Penalty: *Revocation stayed 3 years probation.*

Standard Conditions 1-14

Section 1950.5 (s) (u)

Securing a License by Fraud or Deceit.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

1. *Standard terms 1–14*
2. *Actual Suspension (15)*
3. *Restriction of Practice(22)*

Section 1950.5 (t)

Willful Misrepresentation of Facts Relating to Discipline to Patients.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

Standard terms 1 – 14

Section 1950.5 (v)

Any Action or Conduct That Would Have Warranted the Denial of a License.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation.*

1. *Standard Conditions 1-14*
2. *Any additional conditions warranted by nature and severity of action or conduct.*

Section 1950.5 (w)

Aiding or Abetting Licensee to Practice in a Negligent Manner.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation.*

Standard Conditions 1-14

Section 1950.5 (x)(y)

Failure to Report the Death of a Patient to Committee .

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation.*

1. *Standard Conditions 1-14*
2. *Any additional condition warranted by nature and severity of action or conduct.*

Section 1952(a)

Obtain or Possess Any Controlled Substance.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation depending on nature and severity of violation.*

1. *Standard Conditions 1-14*
2. *Abstain from Alcohol (24)*
3. *Abstain from Control Substance (25)*
4. *Submit to Biological Fluid Samples (20)*

Section 1952 (b)

Use of a Controlled Substance.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation depending on nature and severity of violation.*

1. *Standard Conditions 1-14*
2. *Abstain from Alcohol (24)*
3. *Abstain from Controlled Substances (25)*
4. *Submit to Biological Fluid Samples (20)*

Section 1952 (c)

Conviction Involving Controlled Substance.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation depending on nature and severity of violation.*

1. *Standard Conditions 1-14*
2. *Abstain from Alcohol (24)*
3. *Abstain from Controlled Substance (25)*
4. *Submit to Biological fluid testing (20)*

Section 1953 (b)

Failure to Identify In Patient Record (Repeated Acts).

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation depending on nature and severity of violation.*

Standard Conditions 1-14

Section 1956

Negligence/Gross Negligence.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation depending on nature and severity of violation.*

1. *Standard Conditions 1-14*
2. *Actual Suspension (15)*
3. *Billing Monitor (18)*
4. *Worksite Monitor (21)*

General Business and Professions Code Provisions

Section 125

Misdemeanor Offenses by Licensees.

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 years probation.*

1. *Standard Conditions 1-14*
2. *Actual Suspension (15)*

Section 125.6

Refusal to Treat Patient.

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 years probation.*

Standard Conditions 1-14

Section 125.9

Failure to Comply with Citation.

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 years probation.*

1. *Standard Conditions 1-14*
2. *Compliance with citation, if applicable*

Section 480

Denial of a License.

- Maximum Penalty: *Denial of license*
- Minimum Penalty: *Revocation stayed with 3–5 years probation depending on nature and severity of violation.*

Standard Conditions 1-14

Section 493

Evidentiary Effect of Record of Conviction of Crime Substantially Related to Licensee's Qualifications, Functions, and Duties.

Section 496

Subversion of Licensing Examinations.

- Maximum Penalty: *Denial of license or Suspension*

Minimum Penalty: *Revocation stayed with 3–5 years probation depending on nature and severity of violation.*

Standard Conditions 1-14

Section 498

Securing License by Fraud, Deceit, or Misrepresentation.

- Maximum Penalty: *Denial of license, Suspension, or Revocation*
- Minimum Penalty: *Revocation stayed with 3–5 years probation depending on nature and severity of violation.*

Standard Conditions 1-14

Section 650

Accepting or Receiving Rebates.

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 years probation.*

Standard Conditions 1-14

Section 651

False, Misleading or Deceptive Public Communications.

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 years probation.*

Standard Conditions 1-14

Section 654.2

Charges, Billings, Solicitations or Referrals without Disclosure of Beneficial Interest Prohibited.

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 years probation.*

Standard Conditions 1-14

Section 726

Commission of Act of Sexual Abuse or Misconduct with Patient.

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation*

Section 810

Insurance Fraud

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 5 years probation.*

1. *Standard Conditions 1-14*
2. *Actual Suspension (15)*
3. *Billing Monitor (18)*
4. *Worksite Monitor (21)*

Section 822

Psychological or Physical Illness.

- Maximum Penalty: *Revocation or Suspension*
- Minimum Penalty: *Revocation stayed with 3–5 years probation depending on nature and severity of violation.*

1. *Standard Conditions 1-14*
2. *Actual Suspension (15)*
3. *Psychological Evaluation (16)*
4. *Physical Examination (17)*

Index of Violations

<u>Business and Professions Code</u>	<u>Page No.</u>
Section 1950 (a) – Conviction of a Crime	27
Section 1950.5 (a) – Obtaining of Any Fee by Fraud or Misrepresentation	27
Section 1950.5 (b) – Aiding or Abetting of Any Unlicensed Person to Practice Dentistry	27
Section 1950.5 (c) – Aiding or Abetting of Any Unlicensed Person to Practice Dentistry Unlawfully	27
Section 1950.5 (d) – Sexual Abuse, Sexual Misconduct or Relations with a Patient	27
Section 1950.5 (e) – The Use of Any False, Assumed or Fictitious Name Other Than Licensed to Practice	27
Section 1950.5 (f) – Accepting or Receiving a Commission	28
Section 1950.5 (g) – False or Misleading Advertising	28
Section 1950.5 (h) – Advertising Superiority	28
Section 1950.5 (i) – Employing or Using Solicitors	28
Section 1950.5 (j) – Advertising in Violation of Section 651	28
Section 1950.5 (k) – Advertising to Perform Painless Service	28
Section 1950.5 (l) – Violation of Any Provision of This Division	28
Section 1950.5 (m) – Permitting of Any Person to Operate Dental Radiographic Equipment Who Has Not Met The Requirements of Section 1656	29
Section 1950.5 (n) – Excessive Administration of Drugs or Treatment	29
Section 1950.5 (o) – Threats or Harassment Against an Employee or Patient	29
Section 1950.5 (p) – Suspension or Revocation of a License Issued by Another Agency or State That Would be Grounds in This State	29

Section 1950.5 (q)	– Alteration of Patient Record with Intent to Deceive	29
Section 1950.5 (r)	– Unsafe or Unsanitary Office Conditions	29
Section 1950.5 (s)(u)	– Securing a License by Fraud or Deceit	30
Section 1950.5 (t)	– Willful Misrepresentation of Facts Relating to Discipline to Patients	30
Section 1950.5 (v)	– Any Action or Conduct that Would Warrant the Denial of a License	30
Section 1950.5 (w)	– Aiding or Abetting a Licensee to Practice in a Negligent Manner	30
Section 1950.5 (x)(y)	– Failure to Report the Death of a Patient to Committee.	30
Section 1952 (a)	– Obtain or Possess Any Controlled Substance	31
Section 1952 (b)	– Use of a Control Substance	31
Section 1952 (c)	– Conviction Involving Controlled Substance	31
Section 1953 (b)	– Failure to Identify In Patient Record, Repeated Acts	31
Section 1956	– Negligence/Gross Negligence	32
Section 125	– Misdemeanor Offenses by Licensees	33
Section 125.6	– Refusal to Treat Patient	33
Section 125.9	– Failure to Comply with Citation	33
Section 480	– Denial of a License	33
Section 493	– Evidentiary Effect of Record of Conviction of Crime Substantially Related to Licensee’s Qualifications, Functions, and Duties	33
Section 496	– Subversion of Licensing Examinations	33
Section 498	– Securing License by Fraud, Deceit, or Misrepresentation	34
Section 650	– Accepting or Receiving Rebates	34

Section 654.2	– Charges, Billings, Solicitations or Referrals without Disclosure of Beneficial Interest Prohibited	34
Section 726	– Commission of Act of Sexual Abuse or Misconduct with Patient	34
Section 810	– Insurance Fraud	34
Section 822	– Psychological or Physical Illness	35
Section 651	– False, Misleading or Deceptive Public Communications	34