

**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 incorporated by reference into Section 1138 of the California Code of Regulations.

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

INTRODUCTION:

On September 28, 2008, Senate Bill 1441 (Ch. 548, Stats. 2008) was enacted and required the Department of Consumer Affairs (DCA) to establish a Substance Abuse Coordination Committee (SACC) comprised of the Executive Officers of the DCA's healing arts boards, a representative of the California Department of Alcohol and Drug Programs, and chaired by the Director of DCA. The SACC was charged with the task of developing uniform standards in sixteen specific areas for use in dealing with substance abusing licensees, whether or not a healing arts board chooses to have a formal diversion program. In April 2010, the SACC developed a document named "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" listing the sixteen uniform standards.

The Dental Hygiene Committee of California (Committee) was created by SB 853 (Ch. 31, Stats. 2008). Prior to its creation in July 2009, both dental hygienists and dental assistants were governed by the Dental Board of California (DBC) under its disciplinary guidelines. Since its inception in July 2009, the Committee has had other operational priorities and insufficient staff resources to implement its own disciplinary guidelines, and has continued to use the DBC's in the interim, as allowed in statute (Business and Professions Code Section 1906(d)). However, the Committee needs its own disciplinary guidelines that are directed specifically toward registered dental hygienists, registered dental hygienists in extended functions and registered dental hygienists in alternative practice according to their particular scopes of practice and the unique potential for public harm that comes from the practice of dental hygiene.

The Committee is proposing to implement the uniform standards adopted by the SACC relating to substance abuse and its own disciplinary guidelines that pertain to the practice of dental hygiene through the regulatory process.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

The Committee currently regulates a total of 30,154 licensees: 29,707 Registered Dental Hygienists (RDH), 409 Registered Dental Hygienists in Alternative Practice (RDHAP) and 38 Registered Dental Hygienists with Extended Functions (RDHEF). The Committee's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The Committee issues licenses to eligible applicants; investigates complaints against licensees, disciplines licensees for violations of Business and Professions Code Sections 1900-1966.6 and monitors licensees who are on probation.

Business and Professions Code Section 1906(a) authorizes the Committee to adopt, amend and revoke such rules and regulations as may be reasonably necessary to enable the Committee to carry into effect the provisions of Business and Professions Code 1900-1966.6.

The Committee proposes to adopt Section 1138 of Division 11 of Title 16 of the California Code of Regulations. The purpose of adopting the regulations is twofold: to place into law disciplinary guidelines for use by the Committee and administrative law judges (ALJs) in decisions regarding dental hygiene licenses' discipline, and to use the uniform standards for substance abuse as developed by the SACC according to the requirements of SB 1441(Ch. 548, Stats. 2008), by incorporating by reference the document which contains both into Section 1138. This will enable the Committee to utilize those standards for its disciplinary and enforcement actions for substance abusing licensees as required by SB 1441, as well as place into regulation terms, conditions, model orders and penalties for violations of law. The proposed regulations will aid the Committee in the discipline of licensees who have violated provisions of the law and thereby will improve public protection by providing the Committee with a mechanism by which those licensees' licenses may be revoked, suspended, or placed on probation and monitored.

The Committee will use these disciplinary guidelines when taking action to suspend, revoke, or place a license on probation. The proposed adoption of 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 clearly set terms and conditions of probation and to ensure the Committee's ability to meet its consumer protection mandate.

There are currently no regulations which provide clarity or direction for the Committee in considering a disciplinary action against a dental hygiene license or a licensee's substance abuse problems. When considering disciplinary action against a licensee, the Committee has no legal guidelines in place to assist in determining the appropriate action, other than those which pertain to dentists. The Committee has used the DBC's disciplinary guidelines as a guide since its formation in 2009 however, similar to the Physician Assistants Committee and the Medical Board of California, each of which has established its own disciplinary guidelines in regulation, the Committee needs disciplinary guidelines that are specifically designed for and directed toward its own licensees. Likewise, when a case goes to hearing, the ALJ has no guidance as to appropriate penalties to impose, other than those specified for dentists in the DBC's Disciplinary Guidelines. Additionally, the Committee is required by statute, Business and Professions Code Section 315, to implement the uniform standards developed according to the provisions of SB 1441(Ch. 548, Stat 2008). This regulatory action addresses these problems by placing both the disciplinary guidelines and the uniform standards into regulation, and meets the statutory requirement for implementation of the uniform standards related to substance abuse. Without these uniform standards and disciplinary guidelines in place, consumers will be at risk from dental hygiene licensees who violate laws of safe practice, the Committee will be out of compliance with the statutory requirements of Section 315, and dental hygienists will continue to be held to disciplinary guidelines that were developed for dentists, rather than for dental hygiene practitioners.

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".

The Committee is proposing the following changes:

Adopt Article 6 Section 1138 of Division 11, Title 16 of the California Code of Regulations (Uniform Standards Related to Substance Abuse and Disciplinary Guidelines)

SECTION 1138

The Committee proposes the following language:

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 April 2012 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. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards describe the consequences that apply to a substance abusing licensee. If a licensee has not been identified as a substance abusing licensee, for example, through stipulation, in a case involving drugs or alcohol, a clinical diagnostic evaluation shall be ordered and the remaining provisions of the uniform standards may be made contingent at the discretion of the Committee (DHCC) upon a clinical diagnostic evaluator's report that the licensee has a substance abuse problem. The clinical diagnostic evaluation report shall be submitted in its entirety to the Committee.

Proposed Change: The proposed text specifies the Committee's intent to use the uniform standards as developed by the SACC for decisions on disciplinary actions and incorporates by reference the document "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" (April 2012). This proposed text clarifies that the document incorporated by reference sets out specific guidelines for determining penalties to be imposed through disciplinary action and that the Committee has discretion to impose stricter conditions or terms of probation than specified in the Uniform Standards Related to Substance Abuse and Disciplinary Guidelines, but neither the Committee nor an ALJ may impose terms or conditions of probation that are less strict than the Uniform Standards. Three separate legal opinions from the Department of Consumer Affairs' Legislative Analyst Office, Legislative legal counsel and the Attorney General's Office determined that the uniform standards provide a "floor" of the minimum requirements for substance-abusing licensees. These decisions agreed that any proposed deviation may not fall below the requirements of the uniform standards.

The proposed text clarifies that these Disciplinary Guidelines apply to all disciplinary matters relative to dental hygienists and that the Uniform Standards apply only to substance-abusing licensees or applicants. Further, these regulations specify that in a case involving drugs or alcohol, if a licensee has not previously been determined to be a substance abusing licensee, the provisions of the Uniform Standards may be made contingent upon a mandatory clinical diagnostic evaluation and if the evaluator's report shows that the licensee has a substance abuse problem, those provisions would therefore become effective. The Committee considered the following approaches in how to determine whether a respondent is a substance abusing licensee:

- 1) If a licensee is found to have any underlying violations involving drugs or alcohol, even on a first time offense, that respondent will be presumed to be a substance abusing licensee and would have the opportunity to rebut this presumption.
- 2) All 16 uniform standards would apply contingent upon a clinical diagnostic evaluation finding that the Respondent is a substance abusing licensee.

The Committee voted to choose option 2, to have the uniform standards apply contingent upon the findings of a clinical diagnostic evaluation as the fairest option, so the licensee is provided with due process through a professional clinical diagnostic evaluation rather than be automatically assumed to have a substance abuse problem. Applying the uniform standards in

the interim protects the public, and if the licensee is found to have a substance abuse problem through the clinical diagnostic evaluation, it is more efficient and effective that they are in place.

Problem: The Committee currently has no specific guidelines or standards in regulation to use when considering disciplinary actions against dental hygiene licensees. When cases are transmitted to an ALJ, the judge does not have standards or guidelines for reference in adjudicating cases involving dental hygiene licensees. The Committee is mandated to implement Business and Professions Code Section 315 by using the uniform standards.

Anticipated Benefits: This proposed regulation will protect consumers by providing the Committee with the necessary tools to discipline licensees who harm consumers through willful or impaired practice of dental hygiene. This proposed regulation will benefit the Committee by providing clear and consistent standards and penalties to use when considering disciplinary action against a licensee, as well as specific consequences for substance abusing licensees. The regulation makes a clinical diagnostic evaluation mandatory for cases involving drugs or alcohol, and applies the uniform standards contingent upon the evaluation, which provides public protection from undiagnosed substance abusing licensees as well as a mechanism by which the Committee may differentiate a licensee who is not a substance abuser but may have simply had a single lapse of judgment.

This regulation is necessary to implement the uniform standards mandated by Section 315 and the Dental Hygiene Committee of California's disciplinary guidelines for use in disciplinary cases involving dental hygiene licensees.

TITLE PAGE

Proposed Change: The Committee proposes the following language: "Dental Hygiene Committee of California DHCC Uniform Standards Related to Substance Abuse and Disciplinary Guidelines. It also proposes to include the date of the regulations, and both DHCC's logo and the logo of the Department of Consumer Affairs.

Problem: The Committee needs to clearly identify the document incorporated by reference, and the date, so there is no confusion as to the correct version being used if it is amended in future.

Anticipated Benefits: Licensees, the public, the Committee and ALJs benefit by having this reference document clearly labeled and dated with the current revision date, so there is no mistaking which document must be used in dental hygiene disciplinary cases.

TABLE OF CONTENTS

Proposed Change: The Committee proposes to adopt a Table of Contents that will assist users in locating pertinent information within the Uniform Standards and Disciplinary Guidelines.

Problem: Information within the document incorporated by reference needs to be easily accessible to its users.

Anticipated Benefits: Licensees, the public, the Committee and ALJs benefit by the ability to readily identify and locate information contained within the document without having to peruse the document in its entirety.

INTRODUCTION

Proposed Change: The Committee proposes this text to clarify that its primary mission is consumer protection and that the Disciplinary Guidelines for disciplinary orders and conditions of probation for violations of the laws governing the practice of dental hygienists were adopted

for this purpose. The text further clarifies that all facts are considered in each case and that an ALJ will provide a detailed basis for all decisions, particularly when there is a deviation from the Disciplinary Guidelines, however specifies that the ALJ may not deviate from the Uniform Standards Related to Substance Abuse. This section provides that an ALJ must order outright revocation if, for any reason, the licensee is not capable of safe practice, and provides for license suspension in instances of deficiencies in skills, education or rehabilitation.

Problem: Without an introductory overview of its provisions, users may not know how to use the document.

Anticipated Benefits: The introduction makes clear to the public, licensees and ALJs that there are actually two documents that must be considered, the Uniform Standards Related to Substance Abuse (US) and the Disciplinary Guidelines (DG), and clarifies in what manner a decision should be reached and when and how it may deviate from the Disciplinary Guidelines. This introduction is necessary to eliminate any confusion on the part of users of the document.

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES, Text of Section 1138

Proposed Change: The Committee is proposing to include the proposed regulatory text of Section 1138 within the document incorporated by reference.

Problem: Without the inclusion of the regulation itself into the document, users would have to refer to a different document to locate the regulation.

Anticipated Benefits: By including the regulatory text within the document “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines”, users have complete information within a single document to reference.

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE

Proposed Change: The Committee is proposing language that specifies that the US shall be used in all cases in which a license is placed on probation due to a substance abuse problem, and clarifies that other conditions may be ordered at the Committee’s discretion. This text provides licensees and consumers with specific assurance that at least these particular standards will be applied equally and unequivocally to all licensees who are determined to have a substance abuse problem.

Problem: At this time the Committee does not have any uniform standards to use when reviewing cases that involve substance abuse by dental hygiene licensees, any mechanism by which to assess substance abuse, or any mechanism to suspend a licensee’s practice pending such an evaluation, or a mechanism by which to determine that licensees who have undergone treatment may safely return to practice. SB 1441(Ch. 548, Stat 2008) through Business and Professions Code Section 315(c) requires all healing arts boards to use the US developed by the SACC when dealing with substance abusing licensees.

Anticipated Benefits: This proposed change protects consumers from substance abusing licensees, provides the Committee and ALJs with consistent standards to use when considering disciplinary action cases and meets the requirements of SB 1441.

The Committee’s obligation to adopt the US, as set forth in Business and Professions Code Section 315(c), in and of itself is the basis for the necessity of the US portion of this proposed rulemaking. Nevertheless, a more detailed discussion for the necessity for each US probation condition is included below.

PETITION FOR REINSTATEMENT

Proposed Change: This proposed language allows for the reduction or elimination of the standards in the instance of a licensee's petition for reinstatement or reduction of penalty according to specific statutes that contain different provisions for these actions. This language acknowledges that the Committee may have existing statutes which conflict with the US that would supersede these regulations in those instances.

Problem: The US were developed by the SACC in response to the requirements of SB 1441 for all boards within the Department of Consumer Affairs, notwithstanding each board's existing individual statutes. The Committee has existing statutes that provide for reinstatement of a license or a reduction in penalties that may conflict with the broadly based provisions of the US, therefore this section addresses any potential instances where such conflicts exist.

Anticipated Benefits: This section is necessary to prevent any conflicts in the law by allowing existing statutes to supersede the US when a licensee petitions for reinstatement of a license.

Clinical Diagnostic Evaluations:

Proposed Change: In consideration of #1 US, the Committee proposes this text to require that if a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator must be a licensed practitioner who holds a valid, unrestricted license which authorizes the practitioner to conduct clinical diagnostic evaluations, has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders and is approved by the Committee. The text specifies that clinical diagnostic evaluations must be conducted in accordance with accepted professional standards for such evaluations.

Problem: The Committee currently does not have any requirement in place that evaluators must meet any criteria or produce any outcome in instances where a licensee is ordered to undergo a clinical diagnostic evaluation. Clinical evaluations are necessary to determine whether a licensee is a substance abusing licensee, whether or not a licensee is safe to return to either part-time or full-time practice, whether the licensee is a threat to himself or others, and whether any recommendations or restrictions should be imposed.

Anticipated Benefits: This text was developed by the SACC in accordance with the requirements of SB 1441 and ensures that evaluators meet specific criteria and that their evaluations are conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. This provides a mechanism by which the Committee can determine if a licensee should be suspended or may safely return to practice, allowing for better consumer protection by:

- Requiring that a clinical diagnostic evaluation provider meet specified qualifications.
- Providing the Committee with a professional opinion of whether the licensee has a substance abuse problem.
- Specifying that the evaluator must be approved by the Committee.

This text is needed to provide the Committee and licensees with clear written specifications for evaluators' qualifications and mirrors #1 of the US.

Clinical Diagnostic Evaluation Report:

Proposed Change: In consideration of #1 and #2 US set by the SACC, the Committee proposes to require the Clinical Diagnostic Evaluation Report contain but not be limited to, the evaluator's opinion of whether the licensee is a threat to him or herself or others and recommendations for substance abuse treatment.

Problem: The Committee must meet the requirements of Section 315. The Committee has statutory authority over licensees and a mandate to protect the public; however, the Committee's ability to remove impaired licensees quickly from the work place is limited. Due to the complexity of an addictive disease, professional substance abuse evaluations are needed to assist the Committee in making informed decisions regarding a licensee's ability to practice. An evaluation by a professional, experienced in substance abuse and approved by the Committee, can provide valuable information to assist the Committee in evaluating a case. The Committee needs the opinion of professional evaluators to help it determine the possible basis for the identified behavior. Many individuals who have substance abuse issues also have other mental health problems. The evaluator can present recommendations for a therapeutic plan. Any disciplinary action should be based on the behavior and the resulting harm or risk of harm.

Anticipated Benefits: This standard would increase consumer protection by:

- Requiring that the evaluator not have any financial, personal, familial or business relationship with the licensee, to ensure that evaluators provide fair and unbiased reports to the Committee;
- Requiring that 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 so that the Committee may swiftly take action in such instances to prevent harm from occurring;
- Requiring that a final written clinical diagnostic evaluation report must 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, which may not exceed 30 days so the Committee receives information on a timely basis while allowing the evaluator time to make a considered evaluation; and
- Requiring the Committee review the 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 specified criteria that includes, but is not limited to, license type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history and medical history so that the Committee may reach an informed decision regarding the licensee's ability to practice safely. In addition, the Committee proposes to specify that the Committee consider the recommendations of the clinical diagnostic evaluation, while taking into account the 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 and whether the licensee is a threat to himself or herself or others when considering disciplinary actions against licensees, since each factor and all factors considered collectively will assist the Committee in determining the appropriate action to be taken for a particular licensee.

By requiring that the Committee be provided with expert recommendations for treatment and practice restrictions according to language contained in US #1 and #2, this standard ensures that licensees who continue to have substance abuse problems cannot practice on patients, and licensees who have undergone treatment and have made steps towards recovery have a means by which to safely return to practice.

Worksite Monitor Requirements:

Proposed Change: In consideration of recommendation #7 of the US of the SACC, the Committee proposes this language to specify that if the Committee determines that a worksite monitor is necessary for a particular licensee, the worksite monitor must meet the specified requirements to be considered for approval by the Committee.

As directed in SB 1441 in consideration of recommendation #7 of the US, this text specifies worksite monitoring requirements and standards, including, but not limited to 1) required qualifications of monitors, 2) required methods of monitoring by monitors, and 3) required reporting by monitors.

Problem: Currently, the Committee does not have any provision for worksite monitoring. The worksite monitor documents the licensee's behavior and enhances the public's safety by notifying the Committee, within one day of the occurrence, if a licensee is suspected of working under the influence of drugs and/or alcohol. The worksite monitor is different from the practice monitor who monitors the practice of the licensee to ensure that the licensee provides appropriate care to the patients or to see if deficient care is being provided to patients.

The role of the worksite monitor is to monitor the licensee who is chemically impaired to ensure that the license is not abusing drugs and/or alcohol. The worksite monitor is also responsible for reporting to the Committee whether patient safety may be at risk and any change in the licensee's behavior that may be cause for suspected substance abuse. This section ensures that the worksite monitor provides impartial evaluations. Frequent face-to-face contact with the licensee is important in order to assess the licensee's appearance, eye contact and behavior. The worksite monitor needs to interview the staff in the office regarding the licensee's behavior and review the attendance records in order to adequately report to the Committee the licensee's overall performance. The reporting criteria would identify a time line for reporting possible substance abuse by the licensee to the Committee, what information must be included in the worksite monitor's report, and the timeline in which the report is to be submitted to the Committee. Included in the standard is language to require the licensee and worksite monitor to sign and submit consent and affirmation documents in order for the Committee to have the ability to communicate directly with the worksite monitor.

Anticipated Benefits: This standard will increase consumer protection by:

- Requiring, but not limited to, that the 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.
- Requiring that the worksite monitor's license includes the scope of practice of the licensee who is being monitored or that it is another health care professional if no monitor with like scope of practice is available; or a person in a position of authority who is capable of monitoring the licensee at work.

- Requiring the worksite monitor has an active unrestricted license, with no disciplinary action within the last 5 years.
- Requiring the worksite monitor sign and submit an affirmation that he or she has reviewed the terms and conditions to the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Committee.
- Requiring the worksite monitor to 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, to determine through physical observation if the probationer is substance abusing.
- Requiring the worksite monitor to interview other staff in the office regarding the licensee's behavior, if applicable, and to review the licensee's work attendance, which can indicate that the probationer has resumed substance abuse.

The Committee also proposes the following requirements of the worksite monitor according to #7 US:

- Any suspected substance abuse must be orally reported to the Committee and the licensee's employer within 1 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.
- Requiring the worksite monitor to 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.
- Requiring the licensee sign an agreement with the monitor and the Committee to permit the Committee to communicate with the monitor.

Implementing this standard would enhance the public's safety by providing the Committee with 1) documentation of the licensee's behavior and 2) immediate notification to the Committee if a licensee is suspected of working under the influence of drugs and/or alcohol so that the Committee may take quick action to revoke the probationer's license to prevent public harm.

Positive Test

Proposed change: The Committee proposes to include this language according to #8 of the US that specifies that if a licensee tests positive for a banned substance, the Committee must order the licensee to cease practice and immediately notify the licensee's employer that the licensee may not practice until the order is lifted.

Problem: Currently, the Committee has no authority in regulation to order that a licensee cease practice if he or she tests positive for a substance that is banned by his or her conditions of probation, which places the public at risk from substance abusing probationary licensees.

Anticipated Benefits: This regulation will protect the public from impaired licensees by giving the Committee the ability to quickly order the probationary licensee to cease practice and notify his or her employer that the employee may not practice, thereby preventing public harm, and conforms to the text developed by the SACC in US #8.

Major and Minor Violations

Proposed Change: In consideration of #10 US of the SACC according to the provisions of SB 1441, the Committee proposes to include the following definitions for 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 other state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing an object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

This text provides that if a licensee commits a major violation, the Committee shall order the licensee to cease any practice of dental hygiene and refer the matter for disciplinary action or other action as determined by the by the Committee.

Consequences

The consequences for major violations include, but are not limited to the following:

1. Licensee will be ordered to cease practice, and:
 - a. the licensee must undergo a new clinical diagnostic evaluation, and
 - b. the licensee must test negative for a least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement with the Committee
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the Committee

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

1. Failure to submit 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.

This text provides that if a licensee commits a minor violation, the Committee shall determine what action is appropriate. The consequences for minor violations include, but are not limited to the following:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance or citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other actions as determined by the Committee.

Problem: Protection of the public is the highest priority of the Committee in exercising its licensing, regulatory and disciplinary functions. The Committee protects the public through the California Business and Professions Code Sections 1900-1966.6 and regulations. The Committee currently has no clear, specific standards in place to determine what action would be appropriate for certain violations by its licensees, and must comply with the US.

Anticipated Benefits: Having specific standards in place for major and minor violations assists the Committee in determining the appropriate disciplinary action for each of these violations and would enable the Committee to educate its licensees regarding the consequences that may result from violations, and differentiates between major and minor violations.

This section benefits licensees and the Committee by clarifying and specifying major and minor violations and penalties in writing for the information of licensees and the public, thereby enhancing the Committee's education and outreach efforts. This section benefits the public by providing for the testing, evaluation and suspension from practice of impaired licensees. This text is required in all possible substance abuse cases by the provisions of Section 315 and mirrors language in #10 of the US.

Drug Testing Standards:

Proposed Change: In compliance with #4 US, developed in accordance with the provisions of SB 1441, the Committee proposes that the following standards shall govern aspects of testing required to determine abstinence from alcohol and drugs for any person whose license is placed on probation or who is ordered into a diversion program due to substance abuse.

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

1. The Committee may order a licensee to drug test at any time. Additionally, each licensee shall be RANDOMLY drug tested in accordance with the schedule below:

<u>Level</u>	<u>Segments of Probation/Diversion</u>	<u>Minimum Range of Number of Random Tests</u>
I	Year 1	52-104 per year
II	Year 2+	36-104 per year

*The minimum range of 36-104 test identified in level II, is for the second year of probation or diversion, and up to 5 years thereafter.

Nothing precludes the Committee from increasing the number of random tests for any reason. If the Committee finds or reasonably suspects that a licensee has committed a violation of the Committee's testing program or who has committed a major violation, as identified above, the Committee may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

2. Licensees shall be randomly drug tested at least 52 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 36 times per year, and at any time as directed by the Committee;
3. Drug testing may be required on any day, including weekends and holidays;
4. The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he or she will be tested again. The Committee should be prepared to report data to support back-to-back testing, as well as numerous different intervals of testing.

5. Licensees shall be required to make daily contact to determine if drug testing is required;
6. Licensees shall be drug tested on the date of notification as directed by the Committee;
7. Collection of specimens shall be observed;
8. Prior to vacation or absence, alternative drug testing location(s) must be approved by the Committee; and

The Committee may use other testing methods in place of, or to supplement biological (sample) testing, if alternate testing method is appropriate.

Problem: Currently, the Committee does not have provisions in law for drug testing of licensees who have substance abuse problems, and must comply with the US.

Anticipated Benefits: This section clearly defines drug testing requirements and procedures, improving public safety. The text informs licensees of the consequences of drug use, conforms to the requirements of SB 1441 and benefits licensees and the Committee by specifying the requirements for drug testing of licensees, the responsibilities of notifications, and benefits the public through enforcement of these standards. This text is required by Section 315, and mirrors language in #4 of the US.

EXCEPTION TO TESTING FREQUENCY SCHEDULE

Proposed Change: The Committee is proposing language developed by the SACC to address five specific instances which would be exceptions to the standard testing frequency, as follows:

I. PREVIOUS TESTING SOBRIETY

This proposed language would allow the Committee to grant an exception to the standard testing frequency in instances where there is evidence that the licensee has participated in treatment or monitoring which requires random testing prior to being subject to testing by the Committee.

Problem: If a licensee is subject to random testing by another entity and provides documentation and test results to the Committee, the Committee currently is unable to take this evidence into account in order to consider altering the testing schedule.

Anticipated Benefits: This provision would benefit probationers who are currently participating in treatment or monitoring which requires random testing, by allowing the Committee to order an altered testing schedule and to accept evidence of another entity's random testing of the probationer, thereby eliminating duplicative testing.

II. VIOLATIONS OUTSIDE OF EMPLOYMENT

The Committee is proposing this language to allow the Committee to consider bypassing level I substance testing and ordering a probationer to participate in level II testing in instances of a single conviction or incident, or two convictions or incidents spanning more than 7 years from each other.

Problem: The Committee currently does not have the discretion to order a lesser testing schedule than standard in cases of a licensee's initial violation occurring outside of employment. This may cause over-testing of an individual who has only had one violation during his or her licensure, or two violations more than 7 years apart, and directs valuable enforcement resources toward cases which are likely isolated incidents and have not caused any patient harm.

Anticipated Benefits: This provision benefits the public by conserving the Committee's enforcement resources while maintaining public protection by allowing for a reduced testing schedule for individuals who are a small risk to public safety.

III. NOT EMPLOYED IN HEALTH CARE FIELD

The Committee is proposing this language to allow the Committee to reduce the testing frequency to no less than once monthly for probationers who are not practicing in any health care field. The licensee is required to notify the Committee and secure its approval prior to practicing or working in any health care field. Before returning to employment, such probationers are subject to level I testing for at least 60 days, and if the probationer has not previously met the level I frequency standard, he or she must complete a full year at level I testing frequency standard.

Problem: The Committee currently does not have the discretion to order a lesser testing schedule than the standard weekly requirement for probationers who are not currently practicing in any health care field.

Anticipated Benefits: This provision benefits the public by conserving the Committee's enforcement resources while maintaining public protection by allowing for a reduced testing schedule for individuals who are little risk to public safety since they are not practicing in any health care field. The public is protected through the requirement that probationers notify the Committee and secure its approval before practicing or working in any health care field, and by providing a mechanism by which the probationer must complete at least 1 year of standard testing frequency.

IV. TOLLING

The Committee is proposing language that would allow the Committee to postpone all testing for any probationer who is on a tolling status. Tolloed probationers are those persons who are not in California during the term of their probation. The language requires the probationer to notify the Committee when he or she returns to the state.

Problem: The Committee does not currently have the ability to order that a probationer's standard substance testing schedule be tolled along with the probationary period when the probationer has left the state. This can result in a probationer whose probationary period has been tolled, and begins when he or she returns to California, however the period for standard drug testing has passed, causing either a violation of the drug testing standard or the Committee's inability to enforce the required drug testing, since the time of the order has passed.

Anticipated Benefits: This regulation benefits the public by requiring probationers to meet all terms of their probation, rather than simply leaving the state and waiting for the probationary period to be over, and returning to practice with no requirement for drug testing. The regulation assists the Committee's enforcement program by clearly stating that any required drug testing will be tolled along with the probationary period, and informs probationers that all probationary terms, including standards for drug testing must be met when they return to California.

V. SUBSTANCE ABUSE DISORDER NOT DIAGNOSED

The Committee is proposing language that would allow for a lesser testing schedule, but not less than twice monthly, for probationers who have not been diagnosed with a substance abuse disorder.

Problem: The Committee currently has no discretion to order a lesser testing schedule for licensees who have not been diagnosed with a substance abuse disorder. Such probationers are less likely to repeat violations and do not require close monitoring.

Anticipated Benefits: This provision benefits the public by conserving the Committee's enforcement resources while maintaining public protection by allowing for a reduced testing schedule for individuals who are a lesser risk to public safety, since they have not been diagnosed with a substance abuse disorder.

DISCIPLINARY GUIDELINES

Proposed Change: The Committee is proposing text to specify that the following factors be considered in determining whether a license will be revoked, suspended or placed on probation:

1. Nature and severity of the act(s), offense(s), 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; or aggravation;
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.

Problem: The Committee currently has no guidelines to use when considering disciplinary cases against dental hygiene licensees. As a result, licensees and consumers may consider decisions to be arbitrary or capricious. When cases are sent to an ALJ, the judge has no basis for reference as to appropriate penalties for various violations by dental hygienists. Specifically:

1. The nature and severity of the act(s), crime(s) or violation(s) need to be considered since some acts, crimes or violations are major and heinous, necessitating a more stringent penalty than lesser or minor violations, which would logically incur a lesser penalty.
2. Actual or potential harm to the public must be considered since the Committee's primary mission is protection of the public, and members of the public other than patients can be subject to actual or potential harm due to blood borne pathogens or other infectious materials encountered in the dental hygiene profession.
3. Actual or potential harm to any patient must be considered since the Committee's primary mission is public protection, particularly of the patients of the licensees it oversees. Actual or potential patient harm can include exposure to infectious diseases, gross trauma and pain.
4. Prior disciplinary records need to be considered, particularly in cases where the licensee has previously been disciplined for the same act, crime or violation, which would indicate a pattern of misconduct.
5. The number and variety of current violations must be considered when making any decision, since the penalty imposed for a single violation would logically be less than the penalty for multiple and different violations.
6. Evidence of mitigation, or conversely, aggravation should be considered as it indicates the intent and any remorse, or lack of remorse on the part of the licensee, which would affect the severity and nature of the penalty imposed.
7. Similarly, evidence of rehabilitation should be considered. If the cause of the violation has been addressed, less monitoring may be needed.

8. In cases where the licensee has been convicted of a crime, whether or not the licensee has complied with the sentence or the terms of probation should be considered. If so, it indicates good faith. If not, it indicates that the licensee may not comply with any penalty or terms of probation imposed by the ALJ, which would warrant closer monitoring or revocation.
9. The licensee's overall criminal record must be considered, along with other factors listed above, as well as when any other crimes took place. Criminal activity in the distant past may indicate rehabilitation, while recent criminal activity may indicate a substance abuse problem or other factors which should be weighed in any decision regarding penalties. The nature, number, severity and age of convictions will dictate what, if any, probationary terms are appropriate.
10. The amount of time which has passed since the act(s) or offense(s) occurred must be considered because an act or offense which occurred recently likely indicates the current state of the licensee's conduct and judgment. An act occurring in the past may indicate a single lapse of judgment that may call for monitoring and a lesser penalty, while more recent acts or offenses may require stricter monitoring and more stringent penalties for public protection.
11. Evidence of expungement proceedings according to the provisions of Penal Code Section 1203.4 should be considered in any disciplinary action against a licensee because such proceedings indicate that the licensee has fulfilled the conditions of his or her probation, or has been discharged prior to the termination of probation, thus demonstrating good faith and compliance with the probationary terms. If there is a criminal history, expungement may reflect the licensee's desire to conform to the law in future.

Anticipated Benefits: These guidelines will provide a clear and consistent basis for all disciplinary action decisions for the Committee and for ALJs who subsequently receive such cases. Licensees and the public can be informed as to the criteria for the decision. These factors are consistent with those considered by other healing arts boards in disciplinary cases.

Situations in which Revocation Shall Be Imposed

Proposed Change: The Committee proposes language to specify that, in addition to violations of the laws governing dental hygienists, 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.

Problem: There are instances in which the appropriate penalty is revocation of the license. Listing them out in the Disciplinary Guidelines will standardize the process.

Anticipated Benefits: It has been DHCC's experience that this same language in DBC's Disciplinary Guidelines has been effective in outright revocation and is consistent with the DBC's Disciplinary Guidelines currently used by the Committee. This language also adds the instance of second offenses, since the Committee believes that certain second offenses, such as those related to substance abuse or gross negligence, necessitate outright revocation as the recommended penalty. The Committee needs the ability to revoke a dental hygiene license in these particular situations which is currently lacking, and disciplined licensees need to know the actions that will result in the revocation of their license.

Recommended Action by Violation

Proposed Change: The Committee is proposing this language to specify that Code sections and recommended disciplinary actions follow and that the Office of the Attorney General may also cite other related statutes and regulations when filing an Accusation.

Problem: There are currently no written guidelines for recommended penalties for violations of Business and Professions Code Sections 1900-1966, statutes applicable to dental hygiene licensees. When a licensee violates any of these statutes, the Committee must determine what penalties to impose without guidelines or references. The Committee needs clear, specific and standardized guidelines to be used in determining penalties for each violation, and the Office of the Attorney General needs this resource to cross-reference additional applicable statutes and regulations, as appropriate.

Anticipated Benefits: This regulation directs users to clear and consistent written guidelines that are used when determining penalties for specific violations of dental hygiene statute, assists the Committee's enforcement efforts, and allows licensees and consumers to see the recommended penalties for violations of law in writing and have a better understanding of the potential penalties for a particular violation.

Probationary Terms and Conditions

Proposed Change: This section states the Committee's statutory mandate to protect the consumer, the benchmark by which all probationary terms must be measured. It specifies that any disciplinary order in which probation is imposed includes conditions that ensure consumer protection, and that these conditions consist of standard conditions which are included in all probation orders and additional conditions that are specific to the nature of the violation. The text states that the Committee generally recommends a minimum 3 year probationary term, or longer, depending upon the violation's severity.

Problem: There are currently no written guidelines for recommended penalties for violations of Business and Professions Code Sections 1900-1966. The Committee must decide on appropriate penalties in each disciplinary case on a case-by-case basis.

Anticipated Benefits: This regulation will give the Committee clear, standardized written guidelines to use in determining probationary terms and conditions for specific violations of dental hygiene statute, assisting the Committee's enforcement efforts. A 3-year probationary term is the minimum time that the Committee needs to track a probationer's progress, and gives the probationer time to complete all probationary terms. Licensees and the public will be able to see the recommended penalties for violations of law in writing and have a better understanding of the potential penalty that will be incurred for a particular violation.

Model Language for Probation Orders

Proposed Change: The Committee proposes that a stipulated settlement or proposed decision must contain probationary terms and conditions and specified language, as follows:

- **Licensees:** Registered Dental Hygienist (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.

Problem: There are currently no written templates in regulation for model language to be included in all stipulated settlements or proposed decisions for dental hygiene licensees. Without basic sample language, there would be no consistency among the structure of probationary orders.

Anticipated Benefits: This text provides the Committee and ALJs with clear written templates to use in preparing each stipulated settlement or proposed decision and places the text into regulation for the information and benefit of licensees, staff and the public. These templates are necessary so that probationary orders are clear and consistent.

List of Probation Conditions

Proposed Change: The Committee proposes to add a list of standard probation conditions that are required and will be imposed in all cases, and additional probation conditions that may be imposed depending on whether it is applicable to the offense. These standard and additional conditions are consistent with conditions used by other healing arts boards within their disciplinary guidelines, with modifications as determined by the Committee to be appropriate for dental hygiene licensees.

Problem: The Committee currently has no list of standard conditions or additional conditions that can be used in probationary orders. The necessity for each condition is addressed individually.

Anticipated Benefits: This text will provide a clear and consistent framework that the Committee can use for standard and additional conditions for probationary orders. The benefit of each particular condition is discussed individually.

Standard Probation Conditions

Proposed Change: The Committee is proposing this language be required for all probationary orders as follows:

The necessity for each probation condition and term follows each item.

(1) Severability Clause:

The Committee proposes to require a severability clause which states that each condition of probation is a separate and distinct condition. It states that if any condition or portion is declared unenforceable it does not affect the decision, and that each condition is separately valid and enforceable.

Problem: The severability clause is a requirement 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 when a single condition is struck down.

Anticipated Benefits: The public will benefit from improved protection from licensees whose decisions could potentially be invalidated upon successful appeal without this clause. This section will assist the Committee's enforcement staff in its efforts to protect consumers.

(2) Obey all laws:

The Committee proposes to require that probationers obey all federal, state, US Military and local laws and regulations. The text further requires a full and detailed account of any and all violations of law in writing within 72 hours of occurrence, and specifies that if a Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, it is deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both. The text states that if a Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders of conditions imposed by other agencies, it is considered a violation of probation, resulting in the filing of an accusation or petition to revoke probation or both.

Problem: If a probationer engages in misconduct in another forum, it needs to be reported to the Committee timely to determine whether or not it will impact the probationer's status. The 3-day timeframe provides the minimum amount of reasonable time to notify the Committee, which takes into account that two of those days may fall on a weekend. Any and all violations of law reflect the probationer's ability and willingness to abide by the terms of probation.

Anticipated Benefits: If a probationer violates any law or regulation that is substantially related to the qualifications, functions or duties of the license, this would constitute a violation of probation and allow the Committee to effectively carry out the disciplinary order to protect the public. This text is needed to ensure that probationers who violate other laws, even in other states, are prevented from practice on patients in California.

(3) Quarterly Reports:

The Committee proposes to require that probationers submit quarterly declarations to the Committee, stating whether there has been compliance with all the conditions of probation. The Committee currently uses this information to track probationers' compliance.

Problem: The Committee has no mechanism to regularly hear from a probationer. If a probationer fails to comply with any of the terms and conditions of his or her probation, the Committee has no way to know this unless a complaint is received or the probationer is monitored. This report provides a mechanism by which the Committee can ensure a probationer's compliance with probationary terms, and the probationer may document the completion of probationary terms in view to restoration of the license.

Anticipated Benefits: Requiring periodic declarations under penalty of perjury creates a legal obligation for the probationer to be truthful, or incur a criminal penalty. A quarterly requirement

is frequent enough to keep the Committee apprised of the probationer's status, but not so frequent as to be burdensome, and is less restrictive than monitoring. Receiving these reports quarterly allows the Committee to track probationers' compliance, and offers a review process for determining whether or not the license should be restored at the completion of probation.

(4) Probation Program:

This section proposes that probationers must comply with the Committee's probation program and:

- Submit quarterly reports to the Committee's staff, upon notice;
- Contact enforcement staff regarding any questions specific to the probation order; and,
- Shall not have any unapproved contact with victims or complainants or persons serving the Committee as expert consultants.

Problem: The Committee does not have a mechanism to ensure probationers' compliance with quarterly reporting requirements. Probationers need a mechanism by which they may receive clarification on their probationary order in order to ensure maximum compliance. Probationers' contact with victims, complainants or subject matter experts (SMEs) has great potential for harassment or tainting, resulting in further harm.

Anticipated Benefits: This section improves consumer protection in that the probationer cannot claim that he or she did not understand the terms and conditions of probation and will be held responsible therefore. Victims, complainants, experts utilized by the Committee, and witnesses would be protected from harassment by the probationer.

(5) Interview with the Committee:

The Committee proposes text to require that the probationer appear in person for interviews with the Committee upon request at various intervals and to participate in telephone interviews upon request by the Committee.

Problem: The Committee needs a mechanism to require that the probationer appear in person for periodic face to face personal interviews and participate in telephone interviews to allow staff to personally observe probationers to ensure compliance with probationary orders and to hear and observe verbal and non-verbal cues from the probationer that may not otherwise be discerned through other provisions of probation, such as quarterly written reports.

Anticipated Benefits: This condition allows the Committee to schedule periodic in-person and telephone interviews in order to monitor probationers' compliance with the probationary order and protect the public. Verbal and non-verbal cues give the Committee valuable information about the probationer's ability to practice safely. The Committee needs to ensure that its probationers do not endanger the public.

(6) Changes of Name, Address of Record or Employment:

This proposed text would require that probationers must notify the Committee in writing of any changes of physical address, address of record, e-mail, or employment including location and address within 30 days of such change, and to notify the Committee of a legal name change within 10 days of such change, so the Committee has a written record of any change.

Problem: The Committee needs to be able to locate and identify its probationers in order to monitor their probationary orders and provide public protection. Changes made by phone provide no written record and may be misunderstood by staff. A name change reflects a probationer's identity, and has a greater potential for patient harm, as neither the Committee nor

the public would be able to identify the individual as a probationer, therefore any change of name must be reported within 10 days. The Committee has chosen this amount of time, more than one week, but less than two, as the minimum amount of time that a probationer would need to apprise the Committee of a name change. Address changes, or changes in employment, while important, have a lesser potential for harm, so may be reported within 30 days. One month is a standard amount of time that may accommodate changes in things like month-to-month leases, pay periods, etc.

Anticipated Benefits: This condition allows the Committee to be informed of probationers' current name, address, email address and employment information so that the Committee may locate the probationer. This section informs probationers of specific timelines for notifications, so the probationer does not inadvertently violate his or her probation.

(7) Tolling Provisions:

The Committee proposes this text to require that if a probationer leaves California to practice outside the state, a written notification must be provided to the Committee of the dates of departure and anticipated return to the state so that the probation may be tolled and to clarify that practice outside of California will not apply to the reduction of the probationary period.

The proposed text requires the probationer to provide a list of all states, United States territories, and countries where he or she has ever been licensed as a dental hygienist or held any health-care related professional license or certificate, and the status of each license. Additionally, a probationer must inform the Committee if he or she applies for or obtains a license outside of California during the term of probation.

This section further provides that 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.

Problem: The Committee needs a mechanism that provides for monitoring a probationer while he or she is actively engaged in practice. Probationers who leave the state to practice elsewhere or simply avoid practice during the term of probation have not demonstrated an ability to practice safely on California consumers.

Anticipated Benefits: This text ensures that a probationer 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 that the probationer may choose to practice, as a probationer may choose to work in another health care field to avoid the conditions of probation.

(8) Notification to Employer:

The Committee proposes text to specify that if a probationer is currently employed, in the process of applying for employment, or is contracted to provide services as a dental hygienist, a copy of the Committee's Decision must be provided to the employer, supervisor or contractor no later than the effective date of the Committee's Decision, so that the employer is aware of the problem. The text requires that probationers notify any future employers, supervisors or contractors of their probationary status with the Committee before accepting such employment, provide the Committee the names, locations, and telephone numbers of all employers, supervisors and contractors, requires that probationers complete required consent 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. This section requires each employer and supervisor or contractor to submit

quarterly written declarations to the Committee, including a performance evaluation, and requires the probationer to notify the Committee in writing within 10 days of any change in employment status. The Committee has chosen this amount of time, more than one week, but less than two, as the minimum amount of time that a probationer would need to apprise the Committee of a change in his or her employment status.

Problem: The Committee has no regulatory requirements that probationers notify it of their employer or employment status, making it difficult to monitor each probationer's terms and compliance. The Committee has no authorization to communicate with a probationer's employer or supervisor. This text is necessary for the Committee to discuss with employers and supervisors the probationer's safe practice on patients. Employers and supervisors need to be aware of the probationer's areas of concern in order to provide adequate supervision and perspective to the Committee. The Committee must quickly be informed if there is any change in a probationer's employment status, such as termination or reduction in hours, so as to be aware of any problems with the probationer's employment. The 10 day period balances the Committee's need to be apprised of such changes as soon as possible with the probationer's interest in having enough time to do so. The Committee has chosen this amount of time, more than one week, but less than two, as a reasonable amount of time that a probationer would need to apprise the Committee of any changes in his or her employment status.

Anticipated Benefits: This text allows the Committee's enforcement staff to effectively monitor probationers' compliance with the terms of each probationer's decision, ensuring that dental hygienists who are probationers and are practicing on California patients are doing so safely. Quarterly reports from employers and supervisors will coincide with the probationer's quarterly written reports for consistency and to ensure that probationers are in compliance with the terms of their probation. Supervisors and employers need to know the terms of probation to know what is required of the probationer and on what their supervision should focus.

(9) Cost Recovery:

The Committee proposes this section to allow the probationer to pay the Committee for its costs for investigation and enforcement. The probationer would 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.

Problem: The Committee needs a mechanism to allow for reimbursement of its investigation and enforcement costs by probationers who are directly responsible for those costs, otherwise the Committee would eventually risk insolvency.

Anticipated Benefits: This section acknowledges that the Committee incurs costs associated with the investigation and disciplinary process and, once determined to be responsible for the actions, requires the probationer to reimburse the Committee for those expenditures.

(10) Probation Monitoring Costs:

The Committee proposes that each probationer pay the costs associated with probation monitoring for every year of probation, to be adjusted annually. These costs would be paid and mailed to the Committee, and failure to pay the costs within 30 days of the due date would be a violation of probation. Thirty days is a reasonable timeframe to require payment, rather than a shorter timeframe that might be difficult for the probationer to meet.

Problem: The Committee needs a mechanism to allow for reimbursement of its probation monitoring costs by probationers who are directly responsible for those costs; otherwise the Committee would eventually risk insolvency if there is no consequence for non-payment.

Anticipated Benefits: This condition would assist the Committee's enforcement efforts by requiring the probationer to take the responsibility of reimbursing the Committee for those costs. The 30-day timeframe allows a reasonable length of time for a probationer to comply with the order and reflects most employees' pay periods, while providing the Committee a mechanism that assures compliance.

(11) Violation of Probation

The Committee proposes language to specify that if the probationer violates probation in any respect, the Committee may, after giving specified notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stated. This section further specifies that if an accusation or petition to revoke probation is filed against the probationer during probation, the Committee has jurisdiction over the probationer's license until the matter is final, and probation shall be extended until the matter is final. Additionally, the text clarifies that a petition for modification or termination of probation cannot be considered while there is an accusation or petition to revoke probation pending against a probationer.

Problem: Probationary terms are specific to the areas of concern with each probationer. They are put into place to protect the public. Violation of these safeguards places the public at risk.

Anticipated Benefits: This condition allows the Committee to carry out the disciplinary orders stated in the decision when a probationer fails to comply with any probationary conditions. These probationers would receive notification to allow for due process, and the Committee would have the ability to revoke the license to prevent public harm.

(12) License Surrender:

This proposed section would allow a probationer to request in writing to surrender the license(s) to the Committee if, during the term of probation the probationer wishes to cease practice. It requires the Committee to evaluate the request and notify the Respondent in writing whether the request is granted. Upon formal acceptance of the license surrender, the Respondent's license will no longer be subject to the conditions of probation and the pocket license(s) and wall certificate(s) must be returned to the Committee within 10 days of the effective date of the surrender. Such surrender of a license is considered a disciplinary action and becomes a part of the 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.

Problem: Currently, there is no standardized mechanism for surrender of a license if the Respondent feels incapable of following any of the conditions of the probation order, nor for the eventual reinstatement of a license, should those circumstances change.

Anticipated Benefits: This condition allows the Respondent the option to voluntarily surrender his or her license, protecting public safety while conserving valuable Committee resources by not having to pursue further disciplinary action against a licensee who does not intend to practice and is therefore no threat to the public. Ten days is a reasonable amount of time to return the items immediately that allows for mail service times. The regulation would benefit the licensee by allowing for petition to the Committee for reinstatement of the license if his or her circumstances change.

(13) Completion of Probation:

This section specifies that the Committee will fully restore a probationer's license upon successful completion of probation, and the probationer has demonstrated his or her ability to practice unrestricted.

Problem: There is currently no provision in regulation that specifies the conditions of restoration of a dental hygiene license to a probationer who has completed the terms of probation. The probationer needs to know what will happen after he or she successfully completes probation, and what action is necessary to reinstate the license.

Anticipated Benefits: This section allows for a licensee to have their license restored upon completion of probationary terms and demonstration of the ability to practice safely on patients, thereby benefiting the public, who may receive services from the licensee. The automatic restoration of the license once a probationer has served his or her term of probation, and has demonstrated the ability to practice unrestricted saves time and money for all parties involved.

(14) Law and Ethics Supplemental Exam:

This proposed text would require that a Respondent take and successfully complete the California Law and Ethics supplemental exam within 60 days of the effective date of the decision, as a condition to be used in cases of fraudulent behavior, improper record keeping, or deficiency of knowledge or skills. The exam is a computer-based test given at 13 testing centers statewide by appointment by the tested individual. Sixty days is a reasonable timeframe for the probationer to study, make an appointment and successfully complete the examination, even if he or she is unsuccessful on the initial attempt, since subsequent appointments for re-examination can be made within 7-10 days.

Problem: Currently, if a licensee has issues with improper recordkeeping, fraudulent behavior or a lack of knowledge regarding the law, there is nothing specific in law or regulation that allows the Committee to address these ethical or knowledge-based problems and no specific deadline for the probationer to know when he or she must comply.

Anticipated Benefits: This section provides a mechanism for the Committee to address problems directly related to the licensee's knowledge of the law or of ethical practices, and it allows a probationer the opportunity to become educated toward lawful and ethical practices. This provision is needed to directly address a probationer's ethical deficiencies that may have led to the violation.

(15) Continued Education Course(s):

The Committee proposes language to specify a conditional term that a probationer must take and successfully complete a specified amount of continuing education hours during each year of probation in specified areas that relate to the particular violation. The text specifies that coursework must be pre-approved by the Committee, be taken at the graduate level, correspondence or home study coursework shall not count toward this requirement, and this coursework must be in addition to any continuing education courses that may be required for license renewal. The text specifies a timeframe of 60 days from the effective date of the Decision for the probationer to submit a plan for meeting the educational requirements to the Committee for approval and that all costs of the coursework must be paid by the probationer. Sixty days is a reasonable time for the probationer to submit a plan for scheduling and completing required coursework and provides a mechanism by which the Committee can track the probationer's progress.

Problem: Currently, if a licensee has knowledge or skill deficiencies in certain areas of practice that may have caused a violation of law, there is nothing specific in regulation that allows the Committee to address these knowledge- or skill-based problems. This provision is needed to allow the Committee to directly address a probationer's knowledge or skill deficiencies that may have resulted in the violation, over and above what non-disciplined licensees must take for basic license renewal continuing education. The difference is that general continuing education is meant to keep licensees' knowledge current to the profession. This continuing education is to remediate gaps in knowledge or skills so substantial that they result in violation of the law.

Anticipated Benefits: This section provides a mechanism for the probationer to remediate problems related to his or her knowledge or skills in certain areas of practice, allowing for the probationer's eventual return to safe practice once these probationary conditions are met. Home-study and correspondence courses are less formal and structured, and the Committee wants a structured setting for the benefit of the probationer to acquire the necessary knowledge or skills that he or she lacks for safe practice.

ADDITIONAL PROBATION CONDITIONS

Proposed Change: The Committee proposes to add the following language for additional terms that are in compliance with the SACC uniform standards and consistent with other healing arts boards' disciplinary guidelines to specify that additional probationary conditions may be imposed depending on the nature of the violation(s) and that some of these additional probationary conditions should be applied to substance abusing licensees.

The necessity for each probation condition and term follows each item.

(16) Actual Suspension:

The Committee is proposing language to allow a probationer to be suspended from practice for a specified number of days beginning with the effective date of the Decision.

This allows the Committee to restrict a probationer's practice of dental hygiene for a limited amount of time, to provide an opportunity for the probationer to satisfy other conditions.

Problem: If a probationer is reported to be using drugs or alcohol, or in other cases where he or she must be away from work, the individual must not be allowed to continue practicing. Suspension would also be warranted in some cases which involve a lack of skills or knowledge that places patients at risk and must be remediated prior to resuming any practice.

Anticipated Benefits: This section provides a mechanism to allow for suspension of practice of impaired or otherwise unqualified licensees in order to protect the public. This text conforms to Business and Professions Code Section 315 requirements for all healing arts boards.

(17) Psychological Evaluation:

The Committee is proposing language to allow the Committee to require an initial psychological evaluation within 90 days of the effective date of a Decision and on a periodic basis thereafter. This allows the probationer a reasonable time to acquire the services of a psychologist, the opportunity for the evaluation to be performed, and the results be transmitted to the Committee. The text lists specific criteria for psychological evaluations and possible psychological testing if necessary, and provides for a release of all information to the Committee.

The regulation provides that if the Committee concludes from the results of the evaluation that the Respondent is unable to practice independently and or safely, upon notification from the

Committee he or she shall immediately cease practice and not resume practice until notified by the Committee. Further, the probationer must pay all costs associated with the evaluation and failure to pay costs will be considered a violation of the probation order.

If appropriate, the Committee may order the probationer 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.

Problem: If a licensee commits an offense that calls into question his or her judgment, emotional condition or mental condition, or where there is a history of abuse or dependency on alcohol or controlled substances, the Committee needs a standardized mechanism by which it may require psychological evaluation or testing, and a timetable within which it must be done.

Anticipated Benefits: This section allows the Committee to require a psychological evaluation and testing of a licensee who has committed an offense that could affect that person's ability to practice safely or have the potential to cause public harm or where there is a history of abuse or dependency. This section conforms to the requirements of Business and Professions Code Section 315 for all healing arts boards. The regulation allows the probationer a reasonable timeframe to obtain an appropriate psychologist to complete the evaluation, and transmit the resulting report to the Committee.

(18) Psychotherapy:

This proposed section would allow the Committee to require as a condition of probation that the probationer submit a proposed therapist and plan of therapy within 45 days of the Decision, to be approved by the Committee. This six-week timeframe balances the Committee's need to ensure that the probationer receives the treatment that he or she needs, while allowing the probationer a reasonable opportunity to acquire a therapist who agrees to submit quarterly reports and a required treatment plan for the Committee's approval. The text provides that the cost of therapy be borne by the probationer, as the Committee does not have funds available for this purpose, and the plan of therapy must include the nature of the treatment and its proposed duration. The text specifies that the psychotherapist must agree to submit quarterly reports to the Committee regarding the progress and participation of the probationer and that the treatment program not be terminated without the Committee's approval. This section clarifies requirements in the case of a need for ongoing psychological treatment, and specifies that this condition should be imposed as an additional condition whenever there is evidence that the Respondent may have a psychological problem that may impact his or her being able to practice safely. If the Respondent is already in therapy, this condition should be imposed to ensure that he or she continues to receive help.

Problem: Whenever there is evidence that a probationer may have a psychological problem that may impact his or her ability to practice safely, the Committee needs to require that the probationer seek help, as well as a timeframe in which to do so.

Anticipated Benefits: Probationers will receive necessary therapy, and the public will benefit through the improved health of probationers who may be able to return to practice safely. The Committee will receive timely reports from qualified therapists so as to be able to monitor the progress of their probationers in therapy to ensure public protection. This provision is needed to ensure that probationers receive the therapy that they need in order to practice safely.

(19) Physical Examination:

This section is proposed to allow the Committee to require a probationer to complete a physical examination at his or her own cost within 90 days of a Decision according to certain criteria and specifications if physical problems or disabilities are indicated. The text provides that the physician render fair and unbiased reports to the Committee, and agree to serve as the probationer's monitor. The probationer is required to comply with any treatment recommendations contained in the evaluation report submitted to the Committee by the physician and surgeon and must ensure that the physician and surgeon provides the initial evaluation report and all written progress reports to the Committee on a quarterly basis.

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. Ninety days allows the probationer time to comply. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol and/or drug abuse.

Problem: A probationer may have physical limitations or disabilities that affect his or her ability to practice safely. The Committee currently has no regulation which allows for the requirement of a physical examination in these cases, or funds to pay for them. As a result, it is difficult for the Committee to know if such physical factors affecting a licensee's safe practice exist.

Anticipated Benefits: Probationers will receive a physical examination and monitoring by a physician. The Committee will be able to monitor the physical status of probationers to ensure public protection. This provision meets the requirements of Business and Professions Code Section 315 when indicated for drug or alcohol abuse, as required of all healing arts boards.

(20) Billing Monitor:

This section is proposed to allow the Committee to require a billing monitor for probationers who have committed offenses relative to billing or recordkeeping. This condition provides specific criteria and timetables for action by the probationer, the Committee and the billing monitor, and specifies that the probationer must pay all monitoring costs. Probationers must submit the name and qualifications of a billing monitor that meets the specified criteria within 30 days, and the Committee must provide the monitor with copies of the Decision and a proposed monitoring plan that must be agreed to by the monitor within 15 days. This provides the probationer with enough time to find an appropriate monitor, and gives the Committee the assurance that the monitor understands the violations and the responsibilities involved. The text requires that the monitor submit a quarterly written report to the Committee that includes an evaluation of billing practices indicating whether the probationer is billing appropriately, and specifies that it is the sole responsibility of the probationer to ensure that the monitor submits the quarterly written reports to the Committee.

This section requires that probationers notify the Committee within 5 calendar days of a monitors' resignation and submit a replacement for the Committee's approval to assume the duties of a billing monitor within 15 days, so that there is no lapse in monitoring and the Committee is aware that the probationer is practicing while temporarily unmonitored. The text specifies that a probationer be suspended from practice if no replacement monitor can be found within 60 days, until a replacement monitor is approved. This allows the probationer ample time to secure another billing monitor before a suspension is imposed, while allowing the Committee to prevent the risk of public harm from a probationer's continued unmonitored practice. Since RDHAPs practice independently, they are required to cease practicing within 3 days of notification of suspension by the Committee, to prevent patients from inappropriate or fraudulent billing. 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 is a violation of probation.

The Committee shall utilize billing monitoring when Respondent's inability to appropriately bill has been determined, or as a result of questionable judgment in billing.

Problem: The Committee currently has no provision in regulation to require a billing monitor to oversee the billing or recordkeeping aspects of practice for probationers convicted of offenses related to billing or recordkeeping, or any funds to pay for monitoring. This provision is necessary to allow a probationer to continue practice while preventing any further public harm, as an unmonitored probationer may be tempted to offend again.

Anticipated Benefits: Having a billing monitor will provide another layer of review for a licensee who has had problems with billing or recordkeeping. Being accountable to a third party will cause the licensee to adopt good billing and/or recordkeeping practices, benefiting the licensee, the Committee and the public. Probationers will receive assistance in meeting billing and recordkeeping requirements and have the ability to continue to practice. Required timelines ensure the Committee will receive reports on the probationer's progress in this area for public protection. The public will benefit by having access to dental hygiene services while the probationer is monitored for compliance with good billing and recordkeeping practices.

(21) Clinical Diagnostic Evaluation:

The Committee proposes this condition to allow the Committee to require a probationer to undergo a clinical diagnostic evaluation within 20 days of the effective date of the Decision and at any time upon order of the Committee. This timeframe allows for a swift determination as to whether the probationer's is or is not abusing substances. The language specifies that an evaluator have no prior or current relationship with the probationer 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 the probationer's monitor. The language specifies that the probationer must provide the evaluator with a copy of the Committee's Decision prior to the clinical diagnostic evaluation being performed.

The text specifies that the probationer must cease any practice of dental hygiene beginning on the effective date of the Decision, pending the results of the clinical diagnostic evaluation, and specifies that during this time the probationer must submit to random drug testing at least 2 times per week. The language clarifies that if the probationer is ordered to undergo a clinical diagnostic evaluation at any other time, he or she will be ordered to cease practice for a minimum of 1 month pending the results of the evaluation and submit to random drug testing at least twice a week. This language is contained in US #2.

Additionally, the text requires that the Committee receive 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, and that the cost of the evaluation be paid by the probationer. This language is contained in US #1.

This language requires that the probationer comply with any restrictions or recommendation made as a result of the clinical diagnostic evaluation, and clarifies that the probationer may not resume practice 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. This language is contained in US #2.

Problem: The Committee currently has no authority in regulation to require a clinical diagnostic evaluation in cases where a licensee may have substance abuse problems which could cause patient or public harm. The Committee is required to comply with the uniform standards developed by the SACC and this text meets that requirement. The timeframes must be reasonable yet swift to protect the public from the hazards of substance-abusing licensees.

Anticipated Benefits: Probationers will receive a clinical diagnostic evaluation to determine whether or not the licensee has a substance abuse problem. This benefits the licensee by having a swift diagnosis which either confirms or rules out substance abuse. The Committee's enforcement staff has a valuable tool to use when substance abuse is indicated, and public protection is improved through the quick suspension of practice and regular, defined drug testing of licensees who abuse drugs or alcohol. The text of this probationary term reflects the clinical diagnostic evaluation language of the SACC's US. This language is necessary to effectuate #1 and #2 of the US.

(22)Submit Biological Samples:

The Committee is proposing this language according to US #4 to require that probationers immediately submit to and pay for random and directed biological sample testing, at the request of the Committee. This condition would require a probationer to be subject to a minimum of 52 random tests per year within the first year of probation and a minimum of 36 random tests per year thereafter for the duration of the probationary term. Weekly testing is reasonable for the initial phase of substance abuse monitoring, as the risk of recidivism is greater at this time than in subsequent years of sobriety, when a less frequent testing schedule is applied. The text specifies that if the probationer tests positive for a banned substance, the Committee will order him or her to immediately cease practice, and not practice unless and until notified by the Committee as required by US #8.

This text specifies that the probationer must make daily contact as directed by the Committee to determine if drug testing is required, and must submit a drug test on the same day that he or she is notified that a test is required according to US #4. Probationers need to be aware that testing may be required randomly at any time to ensure that substance abuse is not occurring. The text clarifies that all alternative drug testing sites due to vacation or travel outside of California must be pre-approved by the Committee prior to the vacation or travel, and that the Committee may use other testing methods in place of, or to supplement biological (sample) testing, if an alternate testing method is appropriate.

Problem: The Committee currently has no authority in regulation to require a licensee with substance abuse problems which could cause patient or public harm to submit biological samples for testing. Mechanisms must be in place that eliminate the probationer's potential to relapse during any perceived times of safety. Treatment programs agree that relapse is to be expected; therefore the Committee needs tools to ensure that substance-abusing probationers continue to be substance free while practicing. Additionally, the Committee is required to conform to the US as developed by the SACC.

Anticipated Benefits: Probationers will be required to submit biological samples for random testing at least once per week, which benefits the licensee and the public by ensuring that the probationer remains substance-free for the probationary term. This gives the Committee's enforcement staff a tool to use when substance abuse is indicated, and public protection is improved through regular, randomized testing of probationers who abuse drugs or alcohol. The Committee must use the US in dealing with substance abusing licensees to comply with Business and Professions Code Section 315(c). The text of this probationary term reflects the language of the SACC's #4 and #8 US.

(23) Worksite Monitor:

The Committee is proposing this text according to US #7 to specify that a worksite monitor may be ordered, and if so, the probationer must submit the name of the proposed monitor within 20 days of the effective date of the Decision. A worksite monitor is an individual who is physically present in the probationer's workplace while he or she is practicing. The language specifies that a monitor shall have no prior or current relationship with the probationer, including a relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Committee, and must agree to serve as monitor. This language specifies that the probationer must complete any required consent and sign an agreement with the worksite monitor and the Committee regarding the requirements and reporting responsibilities of both parties, and that once approved, the probationer may not practice unless the monitor is present at the worksite.

The text specifies that if the worksite monitor terminates the agreement, the probationer may not resume practice until another worksite monitor is approved by the Committee.

Problem: The Committee currently has no regulation which specifies that a probationer may be ordered to have a worksite monitor to make sure that the probationer, if allowed to practice, is practicing safely and lawfully, practicing according to the terms of his or her probation and not abusing drugs or alcohol. Probationers who have been ordered to limit their practice to adults or not to practice on either males or females due to anger or other issues need their practice physically monitored to ensure compliance with these terms. Probationers who are substance abusers are more likely to need their practice monitored. The short timeframe and reporting requirements reflect the serious nature of potential patient harm and provides a mechanism to prohibit the probationer's practice for noncompliance. The Committee is required to comply with the US developed by the SACC and this text contains the language in US #7.

Anticipated Benefits: Probationers will be allowed to practice with the timely addition of a worksite monitor, thereby continuing their employment. This benefits the probationer, who is able to earn income and have a meaningful occupation, and benefits the public by employment of the probationer's skills in the health care field while ensuring that the probationer is practicing safely and lawfully according to the terms of his or her probation. The Committee and the public benefit through prohibiting unmonitored practice by probationers who are substance abusers or have practice limitations due to conduct involving certain segments of patients.

(24) Practice Monitor:

The Committee is proposing this language to specify that the Committee may order a practice monitor in cases warranting the monitoring of patient records due to substandard or inappropriate care given to patients, and the probationer must submit for prior approval, within 30 days of the effective date of the Decision, the name and qualifications of one or more Dental Board or Committee licensees whose license is valid and in good standing who will act as a practice monitor to monitor the probationer's patient records to ensure that the probationer is giving safe and appropriate treatment to patients. A practice monitor reviews the probationer's records for compliance, but is not physically present while the probationer is practicing dental hygiene. The language specifies that a monitor shall have no prior or current relationship with the probationer, or any relationship that could reasonably be expected to compromise the monitor's ability to render fair and unbiased reports to the Committee, and shall agree to serve as the probationer's monitor. The text specifies that the probationer must pay all monitoring costs, as the Committee does not have the resources to pay for probationers to be monitored.

The proposed language specifies that the Committee will provide the approved monitor with copies of the Committee's Decision and a proposed monitoring plan, and that within 15 days of receipt of the Decision and proposed monitoring plan, the monitor shall submit a signed statement that he or she 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 must submit a revised monitoring plan with the signed statement.

The text clarifies that the probationer's practice must be monitored within 60 days of the effective date of this Decision, and continuing throughout probation, and that all records be made available for immediate inspection and copying on the premises by the monitor at all times during business hours and records be retained for the entire term of probation.

This language specifies that a monitor must submit quarterly written reports to the Committee that include an evaluation of the probationer's practices indicating whether appropriate care is being given to patients and that it is the probationer's responsibility to ensure that the monitor submits the quarterly written reports to the Committee.

This regulation clarifies that if the monitor resigns or is no longer available, the probationer must submit to the Committee for its prior approval, the name and qualifications of a replacement monitor within 5 calendar days, who will be assuming that responsibility within 15 days, and that if a replacement monitor is not found and approved within 60 days of the resignation or unavailability of the monitor, the probationer is suspended from the practice until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. This regulation clarifies that if the probationer is an RDHAP, he or she must cease the practice of RDHAP within 3 days after being so notified by the Committee.

This regulation clarifies that 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. The text clarifies that monitoring shall be used when a probationer's ability to provide appropriate care to patients is at issue, or as a result of deficient care being provided to patients. This text is needed to ensure that the monitor is in place timely, meets the criteria, understands his or her role, and the probationer is continuously monitored, so there is no confusion on the part of the probationer or the monitor as to their respective responsibilities.

Problem: The Committee currently has no authority in regulation to require a probationer have a practice monitor to be responsible for reviewing patient records in cases where public harm may be caused through fraud, practice mismanagement or falling below the standard of care, nor any timetable or mechanism to suspend such a probationer from unmonitored practice. Monitors need to be apprised of the Decision to be aware of what to look for, and agree to the responsibilities of a monitor so they may fulfill their function. If a monitor resigns or is unable to perform the functions of monitoring, the Committee needs to be aware of this fact immediately in order to protect the public. Since an RDHAP may practice independently, it is even more urgent that the Committee be aware of any unmonitored activity by RDHAP probationers who have provided below standard care in the past, and the ability to order an RDHAP to cease practice immediately when notified to do so by the Committee. Practice monitors are needed to provide independent, third-party monitoring of a probationer.

Anticipated Benefits: Probationers may be allowed to practice their profession with the addition of a practice monitor, thereby continuing their employment. This benefits the licensee, who is able to earn income and have a meaningful occupation, and benefits the public by employment of the probationer's skills in the health care field while ensuring that the probationer is providing

appropriate and adequate care to patients. The Committee benefits from specific written guidelines that provide standardized criteria, instructions and timetables for practice monitors and probationers so that all parties know their responsibilities.

(25) Restriction of Practice:

The Committee is proposing this language to specify that during the probationary period, the probationer is prohibited from providing dental hygiene services to patients who are at risk from the probationer. The language specifies that within 30 days from the effective date of the decision the probationer must submit an implementation plan to the Committee for prior approval, and provide satisfactory proof to the Committee of his or her compliance with this term of probation. A provision for a worksite monitor may also be appropriate.

This proposed text may be used in cases where some factor of the patient population, such as age or gender, may put those patients at risk if in treatment with the probationer. The language allows for additional language to be added to the order for clarification. The Committee has found that one month is the amount of time reasonably needed to formulate such an implementation plan.

Problem: The Committee currently has no ability to limit or restrict a probationer's practice, which may be necessary in cases where the probationer's threat to public harm is specific to certain segments of the population, such as children or women. These patients must be protected; however the probationer may pose no threat to patients outside these particular segments of the population.

Anticipated Benefits: Probationers will be allowed to practice with restrictions to eliminate contact with the specific segment of the population that is at risk of harm. This benefits the licensee, who is able to earn income within their occupation, and benefits the public by employment of the probationer's skills in the health care field. This condition is necessary to prevent specific segments of the patient population from risk of harm while allowing the probationer to continue to provide dental hygiene services to those who are not at risk.

(26) RDH Clinical Examination:

The Committee is proposing this language to allow the Committee to specify that a probationer must cease practice until he or she pays the examination fees and successfully passes the Dental Hygiene Clinical Licensing Exam or Western Regional Examination Board (WREB). The text specifies that failure to pass the exam within 2 years of the effective date of the Decision is a violation of probation and is sufficient cause for revoking probation and imposing an order of revocation.

This language allows the Committee to require this condition in cases involving evidence of severe deficiencies in the body of knowledge required to be minimally competent to practice, and therefore appropriate to require the probationer to take and pass the clinical Hygiene Examination or its equivalent during the course of the probationary period. The 2-year time allowed is ample for the probationer to prepare for and pass the RDH clinical exam, since the exam is given two or three times yearly. The text specifies that the Committee may, in some instances, suspend the licensee's practice until the examination is passed (condition precedent).

Problem: In some cases, violations are the direct result of a lack of knowledge in practice areas. Licensees who obtain licensure through credentialing are not required to complete California's Dental Hygiene Clinical Licensure Exam or the WREB clinical examination as a condition of licensure. The Committee does not currently have the regulatory authority to require that a

probationer address deficiencies in the knowledge areas that are required for minimal competence in practice. Two years is enough time to study, prepare and take the exam, but not so long that the knowledge is stale or outdated for current dental hygiene practice.

Anticipated Benefits: This regulation is needed to protect the public by requiring that a probationary licensee who is deficient in knowledge areas that are required for minimal competence in practice must take and pass a clinical licensing examination accepted for California dental hygiene licensure to demonstrate minimum clinical competence before being allowed to return to practice on patients.

(27) Abstain from Alcohol:

The Committee is proposing this language as an additional condition to specify that the probationer shall completely abstain from the intake of alcohol during the period of probation. This proposed text allows the Committee to monitor alcohol abusing probationers.

Problem: The Committee currently has no authority in regulation to require a probationer to abstain from alcohol as a condition of probation if the probationer has an alcohol problem. This is a problem because alcohol impairs a licensee's ability to practice safely. Additionally, the Committee is required to comply with the US developed by the SACC and this condition meets that requirement for cases involving alcohol abuse.

Anticipated Benefits: This regulation protects the public from probationers who abuse alcohol by prohibiting probationers' use of alcohol as a condition of their probation, and complies with the US developed by the SACC that are required to be used by all healing arts boards.

(28) Abstain from Controlled Substances:

The Committee is proposing this language to specify that a probationer 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. This text allows the Committee to include this provision when a probationer has a substance abuse problem.

Problem: The Committee currently has no authority in regulation to require a probationer to abstain from controlled substances as a condition of probation if the probationer has a substance abuse problem which could affect a licensee's ability to practice safely and cause public harm. The Committee is required to comply with the US developed by the SACC and this condition meets that requirement for cases involving substance abuse.

Anticipated Benefits: This regulation protects the public from probationers who are substance abusers by prohibiting probationers' use of controlled substances and complies with the US developed by the SACC, required to be used by all healing arts boards.

(29) Restitution:

The Committee is proposing this language as an additional condition to specify that a probationer may be ordered to pay restitution to patients who have been harmed, either physically or financially, by the probationer's actions. The regulation specifies that these costs may be paid in a payment plan approved by the Committee, with payment to be completed no later than 6 months prior to the end of probation. This text ensures that harmed patients receive relief before a probationer is automatically relicensed upon completion of probation.

Problem: Currently, the Committee has no provision in regulation to order a probationer to make restitution to patients for any actions, including fraud and severe patient harm, and no mechanism or timetable to enforce payment prior to the completion of probation. Restitution provides direct, tangible relief to harmed patients, and is an appropriate penalty in many different types of cases involving patients' physical or financial harm. Regular payments allow probationers to spread the penalty out through the course of their probation, so they are less burdensome. This allows the Committee to track the progress of such payments and sufficient time to notify probationers of any final sum that must be paid, and probationers to make payment arrangements to coincide with the automatic reinstatement of the license upon completion of probation.

Anticipated Benefits: This regulation assists patients who have been harmed through the willful actions of licensees by providing a mechanism by which the Committee can order restitution be paid to the patient who has been harmed by the actions of the licensee. This section ensures that payment may be made throughout the probationary period, spreading the amount out so that the probationer may make small payments that must be completed before the end of the probationary period. This ensures that harmed patients are provided relief before a probationer's license is reinstated. Six months will provide adequate time for Committee staff to verify that such payment has been made.

Accusations and Decisions

Proposed Change: The Committee is proposing this text to clarify that the following guidelines provide the necessary consistency and clarity for accusations and decisions used in all disciplinary actions.

Problem: Users need to be informed that this information will be used in every disciplinary action, so that it is clear to licensees, staff and ALJs that all accusations and decisions will contain this information. It is confusing and unfair not to include these specific pieces of information in all accusations and decisions. Staff needs to know what to include in the documents.

Anticipated Benefits: This text benefits licensees, staff and ALJs by providing a clear and consistent content framework for all accusations and decisions, ensuring that necessary information is included so that all parties have documents that assist the process and are not confusing and inconsistent.

ACCUSATIONS

Proposed Change: The Committee is proposing this text that specifies its authority for cost recovery of its expenses incurred while investigating and prosecuting its cases, and its authority to order restitution. The text asks that this information be included and made part of the accusation.

Problem: ALJs need specific references for the Committee's authority to recover its costs for investigation and prosecution of its cases, and each accusation needs to include this information, otherwise the Committee will not be able to recover its costs.

Anticipated Benefits: This text benefits the Committee and ALJs by providing specific statutory references to be included in all accusations, so the Committee may recover its costs and not become insolvent due to a lack of funding for enforcement investigations.

STIPULATED SETTLEMENTS & PROPOSED DECISIONS

Proposed Change: The Committee is proposing this language to clarify its willingness to agree to stipulated settlements to promote consumer protection. The text specifies exactly what must accompany the stipulation in order to be considered by the Committee.

Problem: Currently, there is no specific information in either law or regulation as to whether the Committee will consider a stipulated settlement, and what information it needs to contain to be considered.

Anticipated Benefits: This regulatory text is needed so the Committee, staff and licensees know that the Committee will consider stipulated settlements, and informs all parties of the requirements that such stipulations must contain for the Committee's consideration. This allows for a settlement that is acceptable to the Committee and the respondent, and saves the time and cost of a full hearing process, if all parties are agreeable to the stipulated settlement.

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

Proposed Change: The Committee is proposing this text to specify the required elements that any proposed decision and stipulation must contain. These elements and the necessity for each one follow:

1. Names and addresses of the Respondent;
This text is needed to inform all parties that the stipulation must include the names and addresses of the Respondent so the Committee can clearly identify which licensee and case that they are considering, and where to send the decision, once it is determined.
2. Specific code section(s) violated with the definition of the code section(s) in the Determination of Issues;
This text is necessary to inform all parties of the law or laws that were violated so the Committee can make an informed decision and the Respondent knows the violations he or she is charged with committing. This is a due process requirement.
3. Clear description of the acts or omissions that caused the violation to occur;
This text is needed to provide the Committee with all of the information to make an informed decision regarding the case and to give the complete facts of what led to the violation.
4. Explanation of mitigating and aggravating factors;
This text is needed to give the Committee additional information regarding any mitigating or aggravating factors that they would need to take into account when making a decision. This information will bear on the severity of penalty imposed and whether the Committee will accept the proposed stipulated settlement.
5. Explanation of discipline imposed from Committee's Disciplinary Guidelines;
This text is needed to inform the Committee of the recommended penalties as described in the Disciplinary Guidelines which would normally be imposed through the disciplinary process. This is used as a baseline for the stipulated settlement.
6. Detailed explanation if Committee's guidelines not imposed.
This text is needed to describe the reasons for any differences between the penalties that would normally be imposed and why the Committee might deviate from those penalties, in order to ensure that discipline is imposed uniformly across all probations.

Problem: There are no specific requirements that are necessary within a stipulation. The Committee could provide a stipulation that does not contain the Respondent's name or violation, so a Respondent could not be certain that the stipulation actually is correct or applicable.

Anticipated Benefits: The Committee and Respondents benefit from having clear requirements that each stipulation must contain so that every stipulation contains specific elements that allow for identification of the Respondent, the violation in question, what the usual recommended penalties consist of, any mitigating or aggravating factors, and the stipulated settlement (stip) that the Committee is willing to accept. Having the stipulation process clearly defined makes the process easier for all parties, will eliminate a lengthy offer/counteroffer stip process, and allows for a speedier and less costly result of the disciplinary action than the full hearing process.

Recommended Language for Cost Recovery for Revocations and Surrenders

Proposed Change: The Committee is proposing this text to specify the standard language to be used in instances of revocation or surrender of a license. This text will allow the Committee to recover its investigation and enforcement costs upon the reinstatement of the license from individuals who no longer hold a license due to its revocation or surrender.

Problem: There is currently no specific language that may be included in a Decision and Order to require that a licensee whose license has been revoked or surrendered must pay the costs associated with any investigation and enforcement of that license upon such time as the license is reinstated. A licensee should not be able to surrender his or her license, then petition for reinstatement at a later time and avoid repaying the costs that the Committee spent in enforcing the license. The Committee could become insolvent if it is unable to recover the cost of investigating and enforcing licensees' unlawful activities.

Anticipated Benefits: The Committee benefits by having specific language to include in all Decisions and Orders that result in the revocation or surrender of a license to allow the recovery of costs expended in the investigation and enforcement of the license.

Denial of Licensure

Proposed Change: The Committee is proposing this text to clarify the reasons that a license may potentially be denied according to its statutory authority in Business and Professions Code Section 480.

Problem: The Disciplinary Guidelines must make applicants aware of the reasons that a license may be denied, and how they may be able to reapply for licensure in the future.

Anticipated Benefits: Applicants and the Committee benefit by having specific written reasons for which a license may be denied. Applicants are informed that they may reapply one year after the date of denial, so they do not believe that they are permanently denied licensure. This language is necessary so that all parties are informed of the reasons that dental hygiene licensure may be denied, and that it is possible to reapply after one year has elapsed.

Demonstrations of Rehabilitation

Proposed Change: The Committee is proposing this text to specify the things that the Committee will consider in evaluating an applicant's or licensee's rehabilitation. These considerations and the necessity for each one follow:

1. The nature and severity of the crime under consideration. This text is needed so the Committee may consider the nature of the crime, such as drug-related, mistreatment of minor patients, fraud, or gross trauma, as well as its severity, from minor to severe, when

considering an individual's demonstrations of rehabilitation. These factors help the Committee to determine whether an individual has shown evidence of rehabilitation that is appropriate to the nature and severity of the crime.

2. Evidence of any acts committed subsequent to the crime(s) under consideration as grounds for disciplinary action or denial of license. This text is necessary so that if an individual re-offends, or commits another violation, the Committee may take this into account as evidence of the applicant or licensee's failure to rehabilitate.
3. The time that has elapsed since the commission of the crime(s). In instances that the violation has come to light substantially after its commission, the offender may have ceased the activity and determined not to repeat it. This may be evidence of rehabilitation that the Committee would need to consider.
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. Compliance means that the licensee has taken probation seriously and is committed to change, indicating evidence of rehabilitation that the Committee's could consider.
5. Evidence, if any, of rehabilitation by the applicant or licensee demonstrating that Respondent has gained an appreciation of and taken responsibility for the gravity of the misconduct and remorse for the harm caused, shown by a course of conduct that convinces and assures that Committee that the public would be safe if Respondent is permitted to be licensed to practice dental hygiene. This text is necessary to allow the Committee to consider any other evidence of rehabilitation that may be presented by the Respondent.

Problem: Applicants and licensees need to know the criteria against which they will be judged. The Committee currently has no provisions in the law to consider any demonstrations of rehabilitation on the part of the applicant or licensee. Such demonstrations show that the applicant or licensee has realized the gravity of the misconduct, and taken responsibility for his or her actions, and speaks to the ability to safely practice in future, if permitted to do so.

Anticipated Benefits: These considerations benefit the Committee by allowing full evaluation of the evidence of rehabilitation presented by an applicant or licensee when considering a disciplinary action. These criteria allow the Committee to make an informed decision on rehabilitation and to receive focused evidence on that issue. Respondents benefit by the ability to present evidence that they no longer engage in activities that could harm patients. The public benefits by having dental hygiene practitioners that practice safely and according to the law.

Proposed Change: The Committee is proposing this text that specifies a list of evidence that the Committee will consider in determining whether or not an applicant or licensee has been rehabilitated. These items and the necessity for each one follow:

1. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction. This text is needed so the Respondent knows that the Committee will accept and review these documents to determine whether or not he or she has complied with any sanctions imposed. If sanctions were imposed and the Respondent has complied, this shows the Respondent's responsibility and good faith, if the Respondent has not complied, it may indicate the likelihood that the Respondent would not comply with all probationary terms. This will assist the Committee in reaching a fair decision regarding the action.
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. This text is needed so that the Respondent knows that he or she may write a letter directly to the Committee to describe any circumstances, rehabilitation

efforts or changes in life that may assist the Committee in reaching a fair decision regarding the action.

3. Letters of reference from professors or colleagues within the field of dental hygiene. This text is needed so the Respondent knows that letters of reference from his or her colleagues will be considered by the Committee in reaching a fair decision regarding the action because others in the dental hygiene field have direct knowledge of the Respondent and his or her capabilities and character.
4. Letters of reference from past and/or current employers. This text is needed so the Respondent knows that he or she may submit letters of reference from employers to the Committee to provide more complete evidence regarding his or her character and history that would allow the Committee to reach a fair decision in the action.
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. This text is necessary for applicants or licensees who have substance abuse problems to demonstrate that they are actively in a recognized recovery program and may be safe to practice, so the Committee may reach a fair decision that maintains public protection.
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. This text is needed so the applicant is aware that he or she may undergo such an evaluation, which may allow the Committee to decide that the applicant may be licensed in future without compromising public protection.
7. Letters of reference from other knowledgeable professionals, such as probation or parole officers. This text is necessary to inform the Respondent that he or she may submit letters from professional individuals that demonstrate his or her commitment to changes in habits, outlook, goals or other characteristics that indicate the Respondent will not reoffend.
8. Copy of certificate of rehabilitation or evidence of expungement proceedings. This text is necessary to inform the Respondent that these documents may be submitted as proof that the Respondent has completed a set of goals and intends to put his or her past behind.
9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions. This text is necessary to inform the Respondent that such documents may be submitted as proof that he or she has accepted responsibility for his or her actions and has completed and complied with any requirements or sanctions that were imposed as a consequence of past actions or offenses.

Problem: The Committee currently has no written guidelines that state what physical evidence may be placed into consideration when determining a Respondent's rehabilitation. The Respondent does not know what evidence, if any, may be submitted for the Committee's consideration of rehabilitation.

Anticipated Benefits: These regulations allow for the introduction of physical proofs of evidence of the Respondent's rehabilitation. Respondents benefit through a written listing of specific items that they can submit as evidence for the Committee's consideration, therefore focusing the petition. The Committee benefits from the allowance of such evidence when considering a decision in an action, as it will be better informed to make a decision on the Respondent's rehabilitation. Staff benefits by having specific written items to guide Respondents in preparing materials to submit for the Committee's consideration in disciplinary actions.

Evidence of Mitigation

Proposed Change: The Committee is proposing this text that specifies that the Respondent is allowed to present any mitigating circumstances at either a hearing or in the settlement process. Specific documents are listed as examples of appropriate evidence of mitigating circumstances

that a Respondent may submit to demonstrate his or her efforts at rehabilitation and competency in the profession of dental hygiene. Items and the necessity for each one follow:

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. Appropriate in instances of substance abuse, this text allows letters to be submitted, and specifies that letters must be from credentialed counselors, must be recent, and must include basic information that the Committee can use to reach a fair and informed decision in a disciplinary action that takes into account the Respondent's efforts to rehabilitate himself or herself. Counselors are arguably the individuals most knowledgeable about the licensee's substance abuse and recovery therefrom. The Committee will need this information to make a decision on the licensee's rehabilitation.
2. Recent letters describing Respondent's participation in support groups such as Alcoholics Anonymous or Narcotics Anonymous, where appropriate. This text allows letters to be submitted to the Committee as evidence of mitigation, specifies that they must be recent, and specifies that they must include the sobriety date. Appropriate in instances of substance abuse, such letters indicate to the Committee that the Respondent is actively addressing his or her substance abuse problems and provide evidence of mitigation regarding a disciplinary action relative to substance abuse.
3. Recent, dated laboratory analyses or drug screen reports, where appropriate. This text allows Respondents who are disciplined due to substance abuse problems to provide the Committee with physical evidence of sobriety through specified lab analyses.
4. Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner or physician assistant approved by the Committee. This text allows Respondents who have been disciplined for actions related to physical impairments to provide proof of the physical ability to practice dental hygiene through specified reports by qualified health professionals approved by the Committee. This text allows individuals who have been unable to safely practice dental hygiene due to physical factors to submit evidence to the Committee that they have improved to the point that they are no longer a risk to the public and may again safely practice dental hygiene.
5. Certificates or transcripts of courses related to dental hygiene which Respondent may have completed since the date of the violation. This text allows Respondents to submit evidence to the Committee that they have addressed educational deficiencies that prevented them from practicing safely on the public and resulted in disciplinary action.

Problem: The Committee currently has no written guidelines that state what proof of mitigation may be submitted for consideration by the Committee and ALJs when considering penalties. The Respondent does not know what evidence, if any, may be submitted for consideration, and the Committee does not know if mitigating circumstances may be considered, and if so, what form it may take.

Anticipated Benefits: These regulations benefit the Respondent, the Committee, and ALJs by allowing for the introduction of specific evidence of mitigating circumstances, and clearly specifying what may be considered in reaching a fair decision and prevents duplication of penalties, such as a requirement for additional coursework that the Respondent has already completed. The types of information listed will allow the Committee to make an informed decision on rehabilitation by receiving pertinent, focused documentation on that issue.

Petition for Penalty Relief and Reinstatements

Proposed Change: The Committee is proposing this text to specify that a Respondent whose license has been revoked, suspended, surrendered, or placed on probation must wait a specified minimum amount of time before petitioning the Committee for penalty relief or reinstatement of the license. This text provides specific examples and timeframes for a person whose license was revoked or surrendered and probationers to wait before the Committee will consider reinstatement or penalty relief.

Problem: The Committee currently has no written guidelines that provide for the reinstatement of a dental hygiene license subsequent to revocation or surrender, or for a probationer to petition for relief of the penalties imposed as a result of disciplinary action, or for any specific time that must pass before such a petition may be pursued.

Anticipated Benefits: These regulations benefit the Respondent, the Committee, and ALJs by allowing for the reinstatement of a license that has been revoked by the Committee or surrendered by the licensee after three years from the effective date of the Decision. This text allows the Committee to consider a former licensee's petition after a three year period, and specifies that this waiting period must be completed before a former licensee may petition, to prevent an individual from immediately petitioning for reinstatement after revocation or surrender of the license. This section further provides for early termination or modification of a licensee's terms of probation after two years, or for probationary terms less than 3 years, after one year. These timeframes are fair to the probationer or former licensee, and give the opportunity for probationers to comply with terms of probation while protecting the public.

PETITION HEARINGS

Proposed Change: The Committee is proposing text to specify that certain factors be considered in determining whether a license will be reinstated, or if penalty relief in the form of modification of probationary terms or length of probation will be allowed. These factors and the necessity for each one follow:

1. Nature and severity of the act(s) or offense(s). The Committee must have the ability to consider the nature and severity of the offense in any decision that will place the licensee in a situation where patient harm could occur. Certain acts and offenses are very serious, requiring completion of the entire probationary period, or the permanent revocation of the license. Other offenses are less serious, and may warrant consideration of reinstatement or modification of probationary terms.
2. Total criminal record. The Committee needs the ability to consider a petitioner's total criminal record in order to gain insight into the petitioner's likelihood for reoffending before reinstating the license or lessening the terms of probation.
3. Time passed since the act(s) or offense(s) occurred. The Committee needs to be able to take into consideration if the act(s) or offense(s) occurred recently or some time ago to assist in determining whether the petitioner has changed his or her behavior and will be therefore less likely to cause public harm if the license is reinstated or probationary terms are reduced.
4. Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person. The Committee needs the ability to consider whether the petitioner has met his or her obligations in good faith as an indication of the likelihood of re-offense if the license is reinstated or probationary terms are reduced.
5. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4. The Committee needs to be able to consider that a petitioner has completed expungement proceedings, which indicates that the petitioner has met certain criteria and completed requirements before the expungement is allowed.

Problem: The Committee currently has no guidelines to use or factors to consider when considering petitions for reinstatement or modification of probationary terms.

Anticipated Benefits: These regulations benefit the Respondent and the Committee by specifying the factors that will be considered before the reinstatement of a revoked or surrendered license, or any modification of a petitioner’s probationary terms. The Respondent knows what evidence to submit in the petition, and the Committee is able to consider these specific factors which illustrate a petitioner’s desire and ability to practice safely.

Index of Violations

Proposed Change: In consideration of the US of the SACC and Disciplinary Guidelines, the Committee proposes to specify an indexed list of violations including but not limited to the following:

Business and Professions Code		Page No.
Section 1950 (a)	– Conviction of a Crime	32
Section 1950.5 (a)	– Obtaining of Any Fee by Fraud or Misrepresentation	32
Section 1950.5 (b)	– Aiding or Abetting of Any Unlicensed Person to Practice Dentistry	32
Section 1950.5 (c)	– Aiding or Abetting of Any Licensed Person to Practice Dentistry Unlawfully	33
Section 1950.5 (d)	– Sexual Abuse, Sexual Misconduct or Relations with a Patient	33
Section 1950.5 (e)	– The Use of Any False, Assumed or Fictitious Name Other Than Licensed to Practice	33
Section 1950.5 (f)	– Accepting or Receiving a Commission	33
Section 1950.5 (g)	– False or Misleading Advertising	33
Section 1950.5 (h)	– Advertising Superiority	33
Section 1950.5 (i)	– Employing or Using Solicitors	34
Section 1950.5 (j)	– Advertising in Violation of Section 651	34
Section 1950.5 (k)	– Advertising to Perform Painless Service	34
Section 1950.5 (l)	– Violation of Any Provision of This Division	34
Section 1950.5 (m)	– Permitting of Any Person to Operate Dental Radiographic Equipment Who Has Not Met The Requirements of Section 1656	34
Section 1950.5 (n)	– Excessive Administration of Drugs or Treatment	35
Section 1950.5 (o)	– Threats or Harassment Against an Employee or Patient	35

Section 1950.5 (p)	– Suspension or Revocation of a License Issued by Another Agency or State That Would be Grounds in This State	35
Section 1950.5 (q)	– Alteration of Patient Record with Intent to Deceive	35
Section 1950.5 (r)	– Unsafe or Unsanitary Office Conditions	35
Section 1950.5 (s)	– Patient Abandonment	36
Section 1950.5 (t)	– Willful Misrepresentation of Facts Relating to Discipline to Patients	36
Section 1950.5 (u)	– Securing a License by Fraud or Deceit	36
Section 1950.5 (v)	– Any Action or Conduct that Would Warrant the Denial of a License	36
Section 1950.5 (w)	– Aiding or Abetting a Licensee to Practice in a Negligent Manner	36
Section 1950.5 (x)(y)	– Failure to Report the Death of a Patient to Committee.	36
Section 1952 (a)	– Obtain or Possess Any Controlled Substance	37
Section 1952 (b)	– Use of a Controlled Substance	37
Section 1952 (c)	– Conviction Involving Controlled Substance	38
Section 1953 (b)	– Failure to Identify In Patient Record, Repeated Acts	38
Section 1956	– Negligence/Gross Negligence	38
Section 125	– Misdemeanor Offenses by Licensees	39
Section 125.6	– Refusal to Treat Patient	39
Section 125.9	– Failure to Comply with Citation	39
Section 480	– Denial of a License	39
Section 496	– Subversion of Licensing Examinations	39
Section 498	– Securing License by Fraud, Deceit, or Misrepresentation	40
Section 650	– Accepting or Receiving Rebates	40
Section 651	– False, Misleading or Deceptive Public Communications	40
Section 654.2	– Charges, Billings, Solicitations or Referrals without Disclosure of Beneficial Interest Prohibited	40
Section 726	– Commission of Act of Sexual Abuse or Misconduct with Patient	40
Section 810	– Insurance Fraud	40

Problem: The Committee currently has no regulatory text or index that clearly lists where the penalties for violating laws pertaining to dental hygiene may be found. Without this index, users may be confused as to where penalties for certain violations are located within the text.

Anticipated Benefits: This proposed regulation will benefit the Committee's Enforcement Program by clearly listing the code sections of specific violations and listing the page number where information relative to maximum and minimum penalties can be found for ease of use. Licensees and the public also benefit from easy access to this information. Additionally, this regulation meets the requirements for uniform standards as developed by the SACC and contained within the document entitled "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" dated April 2012. This proposed language will assist the Committee to more efficiently and effectively protect consumers from licensees who violate the law, including those who are impaired by alcohol or drugs, thus benefiting the consumers of California.

Penalties for all violations were considered by the Committee based upon a starting point of those of the Dental Board. It has been DHCC's experience that the probationary terms and penalties contained in DBC's Disciplinary Guidelines have been effective in discipline of licensees and is consistent with the DBC's Disciplinary Guidelines currently used by the Committee. Certain changes have been made to probationary terms or penalties in consideration of potential and actual patient harm that could be caused by each offense on the part of a dental hygienist as opposed to a dentist, and also in consideration of the level of supervision received by dental hygienists, which differs from dentists, who many times are autonomous and unsupervised within their practice.

Applicable Dental Hygiene Licensure Statutes

Conviction of a Crime, Section 1950(a)

Proposed change: The Committee is proposing to add this language to specify that conviction of a crime is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, with the addition of billing, worksite or practice monitor and restitution as additional probationary terms, if appropriate. Monitoring and restitution are penalties that may address the underlying crime, and restitution directly benefits harmed consumers.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of applicable statutes. If convicted of a crime involving fraud or substance abuse, there is no provision for a probationer to work while appropriately monitored, thereby depriving the community of needed health care. Many dental hygienists work in areas where there are serious dental care shortages.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's conviction of a crime. Depending on the nature and severity of the crime, the Committee may impose at least 3 and up to 5 years probation, with standard conditions, and additional conditions as appropriate to the crime.

The public is protected from licensees who have committed crimes by the revocation of the license, or if the revocation is stayed, by the licensee's probation for at least 3 years. Licensees and the public have the knowledge that if convicted of a crime, a licensee is subject to license revocation, or at minimum, 3 years of probation with conditions such as practice restriction, monitoring or restitution imposed, if warranted. This allows the probationer to work, if monitored, in order to provide necessary dental care to patients, and to provide restitution to any patients

who may have been harmed by the probationer's actions. More serious criminal convictions would be subject to a longer probationary term, in order to better protect the public.

Unprofessional Conduct, Section 1950.5(a), Obtaining of Any Fee by Fraud or Misrepresentation.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(a) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are similar to those contained in the DBC's Disciplinary Guidelines, while allowing for a lesser probationary period because dental hygienists must work under a dentist's supervision, while dentists work unsupervised.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(a) relating to obtaining fees by fraud or misrepresentation, making decisions in such cases seem arbitrary. ALJs have no guide to assist them in considering what penalties to impose on dental hygienists who obtain fees through fraud or misrepresentation. The public is financially harmed through these offenses.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's fraud or misrepresentation in obtaining fees. The Committee may revoke the license or stay the revocation and impose 3 to 5 years probation, with standard conditions, and additional conditions such as a billing or worksite monitor, or restitution as appropriate.

The public is protected from licensees who fraudulently obtain fees by the revocation of the license, or if the revocation is stayed, by the licensee's probation for at least 3 years, and up to 5 years. The DBC's Disciplinary Guidelines stipulate a 5-year probationary period, however the Committee feels that a lesser probationary period is warranted because dental hygienists work under the supervision of a licensed dentist, while dentists work unsupervised. Also, dental hygienists' fees are substantially less than dentists' fees, resulting in a lesser impact to patients. Licensees and the public have the knowledge that if convicted of obtaining fees by fraud or misrepresentation, the penalty is license revocation or at minimum, 3 to 5 years of probation with conditions such as worksite and practice monitoring or restitution imposed, as appropriate. Revocation is the maximum penalty possible against a license; three years probation is the accepted standard minimum length of probation currently used for dental health professionals.

Unprofessional Conduct, Section 1950.5(b), Aiding or Abetting of any Unlicensed Person to Practice Dentistry.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(b) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. The standard penalties are the same as those contained in the DBC's Disciplinary Guidelines, however, the DBC lists additional conditions of suspension, community service, and an ethics course. The Committee decided that additional conditions of worksite monitor, practice monitor and restitution were more effective and pertinent conditions to address dental hygienist licensees' violations of this section of law as they directly affect the probationer's practice conditions to protect the public from any violations during the probationary period, and restitution provides relief to affected consumers.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(b) relating to the aiding or abetting of

the unlicensed practice of dentistry. Unlicensed practice is a serious problem, and licensees who assist unlicensed practice are a threat to public safety and can cause patient harm.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee who aids or abets the unlicensed practice of dentistry. The Committee may revoke the license or stay the revocation and impose 3 years probation, with standard conditions, and additional conditions such as a worksite or practice monitor, and restitution in cases of patient harm. Revocation is the maximum penalty possible against a license; three years probation has been proven to be an effective minimum length of probation currently as used for dental health professionals.

This regulation protects the public from licensees who assist the unlicensed practice of dentistry by the revocation of the hygienist's license, or if the revocation is stayed, by the licensee's probation for at least 3 years and monitoring of both the worksite and practice records to ensure that no additional violations occur for the period. Restitution may also be ordered in instances where patients have been harmed through a licensee's aiding or abetting of unlicensed practice, to provide some compensation to the patient for the harm that occurred.

Unprofessional Conduct, Section 1950.5(c), Aiding or Abetting of any Licensed Person to Practice Dentistry Unlawfully.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(c) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, except for replacement of the Board's additional conditions of suspension, remedial education, community service and an ethics course which address the penalties for a dentist who aids and abets another licensee to practice unlawfully. The Committee may revoke the license or stay the revocation and impose 3 years probation, with standard conditions, and additional conditions such as a worksite or practice monitor, or restitution as appropriate. Three years probation has been proven to be an effective minimum length of probation as used for dental health professionals. The Committee decided that replacing the Board's additional conditions of suspension, remedial education, community service and an ethics course with additional conditions of a worksite monitor, practice monitor and restitution were more effective and pertinent conditions to address violations by dental hygienists of this section of law as they directly affect the probationer's practice conditions under the supervision of a licensed dentist and are sufficient to protect the public from any violations during the probationary period. The condition of restitution mirrors an additional condition of the DBC's Disciplinary Guidelines and was retained by the Committee as it provides direct relief to harmed consumers.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(c), the aiding or abetting of any licensed person to practice dentistry unlawfully. Licensees who collude with or assist other licensees in the unlawful practice of dentistry place the public at risk of permanent, irreversible harm from performance of procedures outside the licensee's scope of practice.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for the maximum and minimum penalties to be imposed for a licensee's aiding or abetting the unlawful practice of dentistry by other licensees. This regulation protects the public from dental hygiene licensees who assist the unlawful practice of dentistry by any other dental professional licensee by revocation of the dental hygienist's license, or if the revocation is stayed, by the licensee's probation for 3 years with worksite and practice monitoring to ensure compliance with the law

and prevent any future violations. Three years probation has been proven to be an effective minimum length of probation currently as used for violations by dental health professionals. A worksite monitor must be in place to monitor the hygienist's practice whenever he or she is working, and a practice monitor is responsible for reviewing records to make sure that the probationer does not reoffend. Restitution may be ordered to compensate any patients who were harmed through the licensee's actions.

Unprofessional Conduct, Section 1950.5(d), Sexual Abuse, Sexual Misconduct or Relations with a Patient.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(d) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are more stringent than those contained in the DBC's Disciplinary Guidelines, as both the maximum and minimum penalty is revocation. The Committee feels strongly that sexual abuse or misconduct is a zero tolerance violation, particularly when the offender is in a position to be the only person in proximity to the patient, unlike dentists, who normally have an assistant in the operatory.

Problem: Violation of Section 1950.5(d) places the public at risk from licensees who are convicted of sexual abuse or sexual misconduct with a patient. The Committee wants its standard starting-off point to be a zero-tolerance policy. If the licensee crosses this line, the Committee does not want to put the public in a position where the licensee could potentially cross it again.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for the penalty for a licensee's sexual abuse or sexual misconduct with a patient. This regulation will allow the Committee to protect the public from licensees who prey on patients by the ability to revoke the license in those instances.

Unprofessional Conduct, Section 1950.5(e), Use of any False, Assumed or Fictitious Name other than Licensed to Practice.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(e) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are similar to those contained in the DBC's Disciplinary Guidelines, while recommending a longer probationary period of at least 3 years as the minimum penalty. The DBC's recommended minimum penalty is for only a two year period, while the Committee chose to instead allow for a minimum penalty of a range of 3 to 5 years probation for consistency and to improve public protection. Three years has been proven to be an effective minimum length of probation as used for dental health professionals. The DBC also has additional conditions of suspension and an ethics course, which have been eliminated and offset by the minimum probationary period being lengthened by one year. The Committee decided that additional conditions of a worksite monitor, practice monitor and restitution were more effective and pertinent conditions to address violations of this section of law as they directly affect the probationer's practice conditions in order to protect the public from any violations during the probationary period. The Committee may revoke the license or stay the revocation and impose 3 to 5 years probation, with standard conditions, and additional conditions such as worksite or practice monitor, as appropriate to the particular case.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(e) relating to a licensee's use of any false, assumed or fictitious name, other than the name that the license is issued to. Licensees

who use false or assumed names may do so in order to commit fraud or similar unlawful actions. The Committee feels that the minimum penalty for the willful use of a false name with the intent to defraud patients warrants a probationary period of at least 3 years, with monitoring, so that an independent 3rd party can keep abreast of what the probationer is doing to make sure that it does not happen again. Three years has been proven to be an effective minimum length of probation as used for dental health professionals.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties in instances of a licensee's use of a name that is not the name he or she is licensed under. The public is protected from licensees who use a false, assumed or fictitious name to defraud patients by the revocation of the license, or if the revocation is stayed, by the licensee's probation for at least 3 and up to 5 years, with monitoring, so the probationer is prevented from any further violations against patients. Restitution provides compensation to affected consumers who have been harmed by the actions of the probationer. The Committee feels that a minimum of three years probation is necessary for violations that involve the licensee's use of a false name or identity.

Unprofessional Conduct, Section 1950.5(f), Accepting or Receiving a Commission.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(f) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, while allowing for the possibility of a longer probationary period of 3 to 5 years. The DBC's Disciplinary Guidelines only allow for a 3 year probationary period. The Committee decided to use a range to allow for the imposition of a longer probationary period in the most egregious cases of a licensee's receipt of kickbacks.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(f) relating to a licensee's acceptance or receipt of a commission. Licensees are prohibited from receiving rebates or kickbacks in any form, but without the establishment of recommended penalties in regulation, the Committee and ALJs could arbitrarily impose probation of a few months or many years for the same violation. ALJs may disagree with the penalty imposed by the Board and strike it down, causing delays in enforcement. Patients may be encouraged and directed by the licensee to use more expensive services and providers because there is a direct financial benefit to the licensee for directing the patient to the provider of that service or material.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties imposed for a licensee's acceptance or receipt of commissions. The Committee may revoke the license or stay the revocation and impose at least 3 but no more than 5 years probation, with standard conditions, and additional conditions such as a billing monitor or restitution as appropriate. A range of probation is indicated for consistency and allows the Committee has discretion to impose a longer probationary period due to the circumstances of the case, such as when the commissions received are part of a widespread effort to defraud consumers and involve many thousands of dollars.

The public is protected from licensees who illegally gain a financial benefit from commissions for providing or directing patients to certain professional services or drugs by the revocation of their license, or if the revocation is stayed, by the licensee's probation for a standardized period and worksite and practice monitoring, to prevent any further violations during the period.

Unprofessional Conduct, Section 1950.5(g), False or Misleading Advertising.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(g) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are the same as those contained in the DBC's Disciplinary Guidelines, other than the Committee has determined that additional conditions of a billing monitor and restitution be imposed for the probationary period to ensure that no further violations occur during the period, replacing the DBC's additional conditions of community service and an ethics course, which have a more general benefit.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(g) relating to false or misleading advertising by a licensee or a licensee's agent, which can cause harm to patients who have expectations for treatment which cannot be met based upon the licensee's false claims.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's false advertising. The Committee may revoke the license or stay the revocation and impose 3 years probation, with standard conditions, and additional conditions such as a billing monitor or restitution as appropriate. The public is protected from licensees who unfairly benefit from false or misleading advertising by revocation, or if the revocation is stayed, by the licensee's probation for 3 years and monitoring by an independent 3rd party to minimize the risk of reoccurrence. The availability of a restitution provision is necessary because this type of violation may have a financial impact on victims. A three year probationary term has been proven to be an effective minimum length of probation as currently used for dental health professionals.

Unprofessional Conduct, Section 1950.5(h), Advertising Superiority.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(h) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are the same as those contained in the DBC's Disciplinary Guidelines, other than the Committee chose the additional condition of restitution as more applicable to the violation than the Board's additional conditions of community service and completion of an ethics course, as they do not assist consumers who have been directly harmed through advertising professional superiority, and were therefore eliminated.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(h), a licensee's advertisement of professional superiority, which can cause public harm through unreasonable expectations of superior treatment by one licensee over another and is unfair to other licensees who are equally competent. Patients are more likely to employ a licensee who they perceive to be the best, and may pay more in fees to a licensee who advertises superiority.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's advertising of superiority. The Committee may revoke the license or stay the revocation and impose the current standard of 3 years probation, with standard conditions, and additional condition of restitution if warranted. Providing restitution to patients who have been harmed through the actions of a probationer is more effective than community service or an ethics course would be, and directly benefits harmed patients.

This protects the public from licensees who unfairly benefit through advertising professional superiority by the revocation of the license, or if stayed, by the licensee's probation for 3 years and restitution, if patients have been harmed through such actions.

Unprofessional Conduct, Section 1950.5(i), Employing or Using Solicitors.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(i) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, other than the Committee substituting the additional condition of restitution for the Board's additional conditions of community service and completion of an ethics course is more applicable as it provides a direct benefit to harmed consumers.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(i) relating to the employment or use of solicitors by a licensee, which can cause public harm through solicitors' untruthful claims and marketing promotions. ALJs currently do not know or have any direction as to appropriate penalties for violations of this Section, which may result in too lenient or too severe a penalty being imposed on a licensee.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's illegal use of solicitors. The Committee may revoke the license or stay the revocation and impose the current standard of 3 years probation, with standard conditions, and additional conditions such as a billing monitor or restitution as appropriate. A billing monitor provides an independent 3rd party to minimize the risk that the probationer will engage in the activity during the probationary term.

The public is protected from licensees who unfairly benefit from the employment or use of solicitors by the revocation, or if stayed, by the licensee's monitored probation for 3 years. Harmed patients benefit by receiving restitution for the probationer's prohibited actions.

Unprofessional Conduct, Section 1950.5(j), Advertising in Violation of Section 651.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(j) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are similar to those contained in the DBC's Disciplinary Guidelines, while requiring at least three years probation and restitution, rather than the DBC's two years. The Committee feels a three year period is consistent with other penalties relative to advertising and provides an additional year of public protection. Three years has been proven to be the minimum amount of time adequate to ensure compliance and deter repeat offense. Restitution provides relief to consumers who are harmed through false, misleading or deceptive public communications.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(j), advertising in violation of Section 651 by a licensee, which can cause harm through the intent to deceive the public. Section 651 outlines permissible advertising for all health care licensees.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's advertising in violation of Section 651. The Committee may revoke the license or stay the revocation and impose up to 3 years probation, with standard conditions, and additional condition of restitution if consumers are found to have

been harmed through the licensee's fraudulent public communications. The Committee will benefit from the additional year of information it receives on the probationer during probation.

The public is protected from licensees who prey on the public by advertising in violation of Section 651 through revocation of the license. If the revocation is stayed, the public is protected by the licensee's probation for 3 years and may be ordered restitution from the licensee, if the Committee determines that consumers have been harmed by the licensee's false claims.

Unprofessional Conduct, Section 1950.5(k), Advertising to Perform Painless Service.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(k) is grounds for disciplinary action, and the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, other than the Committee chose the standard minimum 3 year probationary term as consistent with other penalties for advertising offenses, rather than the DBC's minimum two year period, and replaced the Board's additional conditions of community service and completion of an ethics course with the additional condition of restitution, as it is more applicable to the violation and provides direct relief to defrauded consumers.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(k), a licensee's advertising to perform painless service, which misleads the public and can cause harm, particularly to children. Patients, especially minors, may be harmed through such false statements and develop a needless aversion to dental treatment. The Committee has no mechanism to allow for restitution to patients who have been harmed by a licensee who promises painless services.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's advertising to perform services painlessly. The Committee may revoke the license or stay the revocation and impose 3 years probation, with standard conditions, and the additional condition of restitution as appropriate.

The public is protected from licensees who promise to perform services painlessly by revoking the license, or if the revocation is stayed, by the licensee's probation for 3 years, with standard conditions, and the additional condition of restitution to patients who have been directly harmed by a licensee who promised to perform services painlessly.

Unprofessional Conduct, Section 1950.5(l), Violations of Any Provisions of this Division.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(l) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. The penalties of revocation or revocation stayed with probation for 3 years are equivalent to those contained in other healing arts boards' Disciplinary Guidelines. This standard has proven to be effective in tracking compliance, giving the probationer enough time to satisfy any conditions of probation and deter from repeat offense.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(l), violations of any provision of this division, which encompasses all defined unprofessional conduct that can cause public harm. The Committee, similar to other boards, needs a mechanism to specify the penalties that may be imposed for violating its laws. Staff needs the ability to enforce all provisions of its laws. The Committee and ALJs need specific guidelines to use when considering penalties for a licensee's violation of any section of law related to the practice of dental hygiene. This text provides clear

penalties for sections of law which do not contain penalties for violations, and allows for additional conditions that may be tailored directly to the nature and severity of each case.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for violations of any provision of this division. The Committee may revoke the license or stay the revocation and impose up to 3 years probation, with standard conditions, and any additional conditions which may be warranted by the nature and severity of the violation. Probation may be allowed if certain additional conditions are imposed, allowing the licensee to work to generate income and the public to derive benefit from the licensee's knowledge and skills.

This regulation protects the public from licensees who violate any provisions of this division by revocation of the license, or if revocation is stayed, by the licensee's probation for 3 years. This standard provides a clear and consistent level of public protection for the period.

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

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(m) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are similar to those contained in the DBC's Disciplinary Guidelines, other than the Board requires a minimum of 5 years probation with additional conditions of suspension, community service and an ethics course. The Committee feels that the hygienist, as a person who is much less likely to employ or supervise others, may be allowed a lesser probationary period and that additional conditions of a worksite monitor and practice monitor are more applicable to this violation to prevent patient harm. Community service and an ethics course may provide a general benefit, but does not directly protect patients as a third party monitor will.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(m), permitting any person to operate dental radiographic equipment who has not met the requirements of Section 1656, which can cause harm to patients and other dental office personnel through untrained individuals operating radiographic equipment in an unsafe manner. This regulation is needed to prevent licensees from exposing patients, employees, and other members of the public to the hazards of unprotected radiation or radiation above safety levels.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for permitting any person to operate dental radiographic equipment who has not met the requirements of Section 1656 through specific training on the safe use of radiographic equipment. The Committee may revoke the license or stay the revocation and impose up to 3 years probation with standard conditions, and additional conditions, such as a worksite monitor or practice monitor.

This regulation protects the public from licensees who permit untrained persons to operate dental radiographic equipment by revocation of the license, or if revocation is stayed, by the licensee's probation for 3 years and additional conditions of a worksite monitor and practice monitor, to prevent the public from exposure to hazardous levels of radiation.

Unprofessional Conduct, Section 1950.5(n), Excessive Administration of Drugs or Treatment.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(n) is

grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are similar to those contained in the DBC's Disciplinary Guidelines, while allowing for the lesser responsibility of the dental hygienist through a shorter minimum 3 year probationary period with additional conditions of restriction of practice, a clinical diagnostic evaluation, worksite and practice monitoring. The 3 year minimum probationary term is consistent throughout these guidelines and has been proven to be an effective standard in tracking compliance, giving the probationer enough time to satisfy any conditions of probation and deter from repeat offense. The condition of restriction of practice prevents a probationer from practicing in situations where there is no close supervision and where the probationer could have undue authority over others and access to controlled substances. A clinical diagnostic evaluation is warranted in instances where a licensee may have a substance abuse problem, which requires a professional evaluation to either confirm or rule out the contention that the licensee is a substance abuser. Such a diagnosis would result in the imposition of the US. Worksite monitoring is necessary to prevent re-offense and patient harm. A practice monitor ensures that the probationer is not providing excessive treatment to patients.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(n), a licensee's excessive administration of drugs or treatment, which can cause harm to patients through overtreatment or overdosing. The Committee needs the ability to impose specific conditions to ensure that the public is not at risk from licensees who have performed excessive treatment on patients or have had a lapse in judgment which resulted in overdosing of patients, and to determine whether the licensee has a larger or more serious problem than would be indicated by a single violation.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties to impose for a licensee's excessive administration of drugs or treatment. The Committee may revoke the license or stay the revocation and impose up to 3 years probation, with standard conditions, and additional conditions such as restriction of practice, clinical diagnostic evaluation, a worksite monitor and a practice monitor, which may be warranted by the nature and severity of the violation. These conditions have proven to be the most effective in preventing repeat offenses and thereby, preventing patient harm.

This regulation protects the public from licensees who excessively administer drugs or treatment by the revocation of the license, or if revocation is stayed, by the licensee's probation for 3 years and the imposition of additional conditions of worksite and practice monitoring for public safety. If a clinical diagnostic evaluation is warranted, the Committee has the ability to require that as a condition of probation so that the licensee may seek help for his or her problems or receive a professional determination that there are no larger issues affecting the violation.

Unprofessional Conduct, Section 1950.5(o), Threats or Harassment Against an Employee or Patient.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(o) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are similar to those contained in the DBC's Disciplinary Guidelines, while allowing for a range of probationary terms of 3-5 years as opposed to the DBC's minimum 5 year probation, and additional conditions of a psychological evaluation, psychotherapy, worksite and practice monitoring, which are more appropriate to dental hygiene practice than the 60-day suspension, ethics course and community service that they replace. A lesser probationary period may be appropriate in some cases since the vast majority of dental hygienists work under the supervision and authority of a dentist. Threats or harassing activity may be indicative of mental illness; therefore a psychological evaluation and psychotherapy

may effectively address the problem. A worksite monitor and practice monitor will ensure that the probationer does not reoffend while practicing. Revocation is still the maximum penalty.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(o), a licensee's threats or harassment against an employee or patient, for public protection according to the Committee's mission.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for the maximum and minimum penalties that may be imposed on a licensee who makes threats against or harasses an employee or patient.

The public needs protection from licensees who make threats or harass employees or patients. This regulation provides for the revocation of the license, or if revocation is stayed, by the licensee's probation for at least 3 and up to 5 years and the imposition of additional conditions, such as monitoring, to ensure public safety from licensees who harass or threaten their patients or co-workers. The 3 year minimum standard has proven to be effective in tracking compliance, giving the probationer enough time to satisfy the conditions of probation and deter from repeat offense. In some cases, the threats and harassment are severe and numerous enough that a longer probationary term of up to 5 years would be prudent for public protection if the license is not revoked. This regulation provides for the additional condition of a psychological evaluation so the Committee has the information to determine whether the licensee is or is not able to safely practice and the additional condition of psychotherapy so that a licensee can receive the help that he or she needs.

Unprofessional Conduct, Section 1950.5(p), Suspension or Revocation of a License Issued by Another Agency or State that Would be Grounds in this State.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(p) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, while allowing for a range of 3 to 5 years for the probationary term. The DBC requires a 5-year minimum probationary period. A lesser probationary period may be appropriate in some cases, and the Committee needs the discretion to impose a lesser term, if warranted, because dental hygienists normally work under the direct supervision and authority of a dentist, providing an additional level of public protection.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(p), when a licensee's out of state or country license is suspended or revoked for grounds which would result in disciplinary action to the license in this state.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties to be imposed when a licensee's out-of-state or out-of-country license is suspended or revoked on grounds that would result in disciplinary action to their California license. The Committee benefits from the flexibility to assign a 3 year period for lesser violations, and up to a 5 year period or revocation for more serious offenses.

This regulation protects the public from licensees who have had their out-of-state or out-of-country license suspended or revoked for reasons that would result in suspension or revocation of their California license by revocation of the California license, or if stayed, by the licensee's probation for 3 to 5 years and the imposition of additional conditions to ensure public safety.

Unprofessional Conduct, Section 1950.5(q), Alteration of Patient Record with Intent to Deceive.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(q) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, while allowing for a range of 3 to 5 years probation rather than the DBC's minimum five years, and additional conditions of billing, worksite and practice monitoring, which the Committee feels are more preventive measures that are directly applicable to the violation replacing the Board's additional conditions of community service, remedial education and completion of an ethics course, the first of which provides a general benefit rather than specifically addressing the problem and the second two benefit the licensee through continuing education without any requirement that the licensee has learned not to alter patient records. A lesser minimum probationary period is warranted for dental hygienists since alteration of patient records by a dentist tends to be a more serious offense than their alteration by a dental hygienist, as the procedures allowed to be performed by dentists tend to be less reversible, much more costly and can cause more permanent damage.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(q), a licensee's alteration of a patient's record with the intent to deceive, which may be fraud, or conceal or cause patient harm.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for the licensee's willful alteration of a patient's record with the intent to deceive. This regulation is necessary to protect the public from licensees who have altered patient record(s) for fraudulent purposes or to cover up the mistreatment of a patient, by the revocation of the license, or if the revocation is stayed, by licensee's probation for 3 to 5 years with additional conditions of monitoring to prevent reoccurrence and ensure public safety. The three to five year period provides the Committee the flexibility to impose a shorter probationary term for lesser violations and a longer one for more egregious offenses.

Unprofessional Conduct, Section 1950.5(r), Unsafe or Unsanitary Office Conditions.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(r) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are the same as those contained in the DBC's Disciplinary Guidelines, other than the additional requirements of worksite and practice monitoring, which the Committee feels are pertinent to the violation and prevent reoccurrence. The DBC also requires remedial education, which the Committee eliminated as less effective than actual monitoring in protecting patients from probationers' potential to reoffend.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(r), when a licensee practices in unsafe or unsanitary office conditions, which can impact public safety of patients and workers.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for the maximum and minimum penalties to impose for a licensee's unsafe or unsanitary office conditions. This regulation is needed to protect the public from licensees who practice in unsafe or unsanitary office conditions by revocation of the license, or if the revocation is stayed, by the licensee's probation for 3 to 5 years and the imposition of additional conditions of worksite and practice monitoring by third parties to prevent any reoccurrence during probation. This standard has proven to be effective in tracking compliance, giving the probationer enough time to satisfy the conditions of probation and deter from repeat offense.

Unprofessional Conduct, Section 1950.5(s), Patient Abandonment.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(s) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, other than allowing for a 3 year minimum probationary period rather than the DBC's 5 year minimum probationary term due to the facts that the vast majority of dental hygiene licensees practice under a dentist's supervision, and abandonment of a patient in the midst of dental hygiene treatment is less hazardous to the patient's health and well-being than abandonment during many procedures (i.e., crown, bridge, implants, etc.) that are performed by a dentist. The Committee replaced the DBC's additional conditions of community service and an ethics course with actual suspension and restriction of practice as more effective in preventing patient harm and potential re-offense by the probationer.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(s), a licensee's abandonment of a patient without written notice and before the patient has opportunity to secure the services of another licensee, which may jeopardize the health of the patient.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's abandonment of a patient. The Committee may revoke the license or stay the revocation and impose 3 years probation with standard conditions, and additional conditions of a worksite or practice monitor. This standard has proven to be effective in tracking compliance, giving the probationer enough time to satisfy the conditions of probation and deter from repeat offense.

This regulation protects the public from dental hygienist licensees who abandon patients without notice and before the patient has had the opportunity to secure other services by revocation of the license, or if the revocation is stayed, probation and additional conditions that increase patient safety and eliminate potential abandonment are imposed.

Unprofessional Conduct, Section 1950.5(t), Willful Misrepresentation of Facts Relating to Discipline to Patients.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(t) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are the same as those contained in the DBC's Disciplinary Guidelines, with the additional conditions of worksite and practice monitoring to prevent any reoccurrence replacing the DBC's additional condition of an ethics course that the Committee deemed less effective in preventing re-offense.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(t), a licensee's willful misrepresentation of facts relating to discipline to patients, leading to fraud or patient harm. A practitioner's patients need to be informed of the facts in any disciplinary action that has been taken against their health care provider.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's willful misrepresentation of facts relating to discipline to their patients. The Committee may revoke the license or stay the revocation and impose up to 3 years probation with standard conditions, and additional conditions of a worksite

or practice monitor. This standard has proven to be effective in tracking compliance, protecting the public and deter from repeating the offense.

This regulation protects the public from licensees who willfully misrepresent the facts relating to any disciplinary action taken against them to their patients by the revocation of the license, or if the revocation is stayed, by licensee's probation for 3 years and the imposition of additional conditions to ensure that patients are not harmed by practitioners who lie or distort the facts of a disciplinary action taken against them. Patients need information regarding their hygienist's disciplinary actions to make informed decisions regarding their oral care.

Unprofessional Conduct, Section 1950.5(u), Securing a License by Fraud or Deceit.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(u) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, while allowing for a lesser minimum probationary period of 3 years and the additional conditions of suspension and restriction of practice, which are more applicable to the violation than the Board's additional conditions of community service and completion of an ethics course, which do not directly address the violation. A lesser probationary period is appropriate because a dental hygienist normally works under the supervision and authority of a dentist. Restricting or suspending the probationer's practice until the Committee determines that the probationer has the education and skills to practice safely on patients directly addresses the issue of unqualified practice and patient safety.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(u), a licensee's securing a license by fraud or deceit, which impacts public safety. Such licensees may not possess the required qualifications for licensure and may harm patients.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's obtaining a license by fraud or deceit. The Committee may revoke the license or stay the revocation and impose up to 3 years probation with standard conditions, and additional conditions of actual suspension and restricted practice so that patients are not harmed while the Committee investigates whether the practitioner has the ability to practice safely.

This regulation protects the public from licensees who obtain licensure through fraud or deceit by the revocation of the license, or if the revocation is stayed, by licensee's probation for 3 years and the imposition of conditions such as an actual suspension or restriction of practice to ensure public safety. The Committee needs a mechanism to suspend or restrict the practice of unqualified individuals who have become licensed through fraudulent or deceitful means and may not be qualified to practice dental hygiene without compromising patient safety.

Unprofessional Conduct, Section 1950.5(v), Any Action or Conduct That Would Have Warranted a Denial of a License.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(v) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are the same as those contained in the DBC's Disciplinary Guidelines, other than allowing for a 3 to 5 year range for the minimum probationary period rather than simply 5 years due to the fact that dental hygienists routinely practice under supervision of a licensed dentist.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(v), a licensee's action or conduct that would have warranted the denial of a license, which impacts public safety. These licensees may harm patients through actions which would have been cause for denying an applicant's license.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines and a range of maximum and minimum penalties for a licensee's action or conduct that would have warranted denial of a license. This regulation protects the public from licensees who have taken actions while licensed that, if committed prior to licensure would have resulted in the denial of a license by the revocation of the license, or if the revocation is stayed, by licensee's probation for 3 to 5 years and the imposition of any additional conditions as warranted by the nature and severity of the action or conduct in order to promote public safety and prevent any reoccurrence. This has proven to be the standard probationary term that protects the public, allows the probationer to complete the probationary terms, and deter any repeat offense.

Unprofessional Conduct, Section 1950.5(w), Aiding or Abetting a Licensee to Practice in a Negligent Manner.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(w) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, while allowing for a range of probationary terms from 3 to 5 years. The DBC's guidelines call for a minimum 5 year probationary period. Dental hygienists normally practice under the supervision of a licensed dentist, while dentists practice unsupervised and autonomously. Also, a dentist's negligent practice has potentially more severe consequences than a hygienist's. Additional terms and conditions, such as a worksite or practice monitor, may be warranted in more severe instances to ensure that the probationer does not reoffend.

Problem: The Committee currently has no guidelines to use for consistency when considering penalties or probationary conditions for violations of Section 1950.5(w), a dental hygiene licensee's aiding or abetting another dental hygiene licensee's negligent practice, which may result in patient harm.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties to be imposed in instances where a licensee aids and abets another licensee's negligent practice. The Committee may revoke the license or stay the revocation and impose 3 to 5 years probation with standard conditions and any additional conditions warranted. This has proven to be the standard probationary term that protects the public, allows the probationer to complete the probationary terms, and deter any repeat offense.

This text protects the public from licensees who aid and abet the negligent practice of other licensees through probationary terms that ensure that the licensee does not assist negligent practice and compromise patient safety.

Unprofessional Conduct, Section 1950.5(x)(y), Failure to Report the Death of a Patient to Committee.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1950.5(x) or (y) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, while allowing for a 3 to 5 year range of probationary terms rather than the minimum 5 year term used by the DBC, due to the supervised nature of dental hygiene

practice. Any additional conditions may be imposed as warranted to allow the Committee the discretion to impose other conditions, such as the ability to order an inspection of the worksite, or practice monitoring which directly addresses the violation.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1950.5(x) or (y), a licensee's failure to report the death of a patient during the performance of hygiene services or whose death is related to the performance of hygiene services or who was hospitalized for more than 24 hours as a result of dental hygiene treatment, or the death of any person employed in the practice. These licensees impact public safety by not meeting the reporting requirements and the Committee has no ability to inspect the practice if it is necessary to discern the facts of the situation.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties to impose for a licensee's failure to report a patient's or employee's death, or the hospitalization of a patient as a result of dental hygiene treatment. This regulation protects the public from licensees who fail to report the death or hospitalization of a patient for more than 24 hours during or as a result of dental hygiene treatment by the revocation of the license, or if the revocation is stayed, by licensee's probation for 3 to 5 years and the imposition of additional conditions as warranted for public safety. This has proven to be the standard probationary term that protects the public, allows the probationer to complete the probationary terms, and deter any repeat offense.

Concealing a patient's or employee's death or the hospitalization of a patient due to dental hygiene treatment is a failure of the most serious nature. The Committee needs a mechanism to require an inspection of the practice in these cases, and the ability to take swift action, such as worksite or practice monitoring, to prevent further deaths or hospitalizations of either patients or workers in the affected practice for public safety.

Violation of Controlled Substance Laws as Unprofessional Conduct, Section 1952(a), Obtain or Possess any Controlled Substance.

Proposed change: The Committee is proposing to add language to specify that unprofessional conduct according to Business and Professions Code Section 1952(a) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines for such violations, while allowing a range of 3 to 5 year probationary period and additional conditions that directly relate to the offense, including psychological evaluation, psychotherapy, drug testing, worksite and practice monitoring, and abstaining from drugs and/or alcohol. The DBC's Disciplinary Guidelines require a 5 year minimum probationary period. This allows the Committee to impose a shorter probationary term in less severe cases, and the flexibility to order the full 5 year term or revocation if the circumstances warrant. A psychological evaluation may reveal mental illness or substance abuse issues that may be addressed by psychotherapy or abstaining from drugs or alcohol. Worksite and practice monitoring are valuable tools that provide the assurance of a 3rd party's presence to document the probationer's progress while providing the public protection from the probationer's re-offense.

Problem: The Committee and ALJs have no guidelines to use when considering penalties or probationary conditions for violations of Section 1952(a), a licensee's securing or possession of any controlled substance. These licensees may be a danger to themselves and the public, and the Committee needs the ability to take swift and appropriate action for public protection. The Committee is required to comply with the US in any instance of substance abuse.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's obtaining or possession of any controlled substance. The Committee may revoke the license or stay the revocation and impose 3 to 5 years probation with standard conditions, and additional conditions of psychological evaluation, psychotherapy, biological sample testing, a worksite or practice monitor, and abstaining from alcohol and/or controlled substances, which protects both the licensee and the public by providing the Committee with tools to identify and address a licensee's mental illness or substance abuse issues. Sample testing ensures compliance with the term of abstention. These conditions are required by the US in all cases of substance abuse, and bring the Committee into compliance with this requirement.

This regulation protects the public from licensees who have obtained or possess controlled substances by revoking the license, or if the revocation is stayed, by the licensee's probation for 3 to 5 years and imposing additional conditions to ensure the safety of both the licensee and the public. A worksite or practice monitor protects the public by preventing reoccurrence. This period has proven to be the standard probationary term that protects the public, allows the probationer to complete the probationary terms, and deter any repeat offense.

Violation of Controlled Substance Laws as Unprofessional Conduct, Section 1952(b), Use of a Controlled Substance.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1952(b) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines for such violations, while allowing for additional conditions that directly relate to the offense including a psychological evaluation to determine whether the licensee is a substance abuser and thereby subject to the US, psychotherapy may be indicated by the evaluation to assist the licensee's mental health, a physical examination can determine any physical reasons for a licensee's use of controlled substances, drug testing as mandated by the US upon a diagnosis of substance abuse, worksite and practice monitoring ensure that the public is protected if the probationer is practicing, and abstaining from drugs and/or alcohol if recommended by either the psychological evaluation or the physical examination.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1952(b), a dental hygiene licensee's use of a controlled substance to any extent, as it can endanger the licensee and others and impair the licensee's ability to practice safely. The Committee is required to comply with the US in all instances of substance abuse.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's use of a controlled substance. The Committee may revoke the license or stay the revocation and impose 3 to 5 years probation with standard conditions, and additional conditions to ensure public safety. The US are mandatory in instances of substance abuse.

This protects the public from licensees who use controlled substances by the revocation of the license, or if the revocation is stayed, by licensee's probation for 3 to 5 years and the imposition of standard and additional conditions to ensure the licensee's and the public's safety, including drug testing and the requirement to abstain from drugs and/or alcohol. These conditions will allow the licensee to practice safely while addressing his or her problems.

Violation of Controlled Substance Laws as Unprofessional Conduct, Section 1952(c), Conviction Involving a Controlled Substance.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1952(c) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines for such violations, while allowing for additional conditions that directly relate to the offense, including a psychological evaluation to determine whether the licensee is a substance abuser and thereby subject to the US, psychotherapy may be indicated by the evaluation to assist the licensee's mental health, a physical examination can determine any physical reasons for a licensee's use of controlled substances, drug testing as mandated by the US upon a diagnosis of substance abuse, worksite and practice monitoring ensure that the public is protected if the probationer is practicing, and abstaining from drugs and/or alcohol if recommended by either the psychological evaluation or the physical examination.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1952(c), a licensee's conviction involving a controlled substance, which impacts public safety.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's conviction involving a controlled substance. The Committee may revoke the license or stay the revocation and impose 3 to 5 years probation with standard and additional conditions to ensure public safety and monitor the licensee's probation and sobriety, and allows the Committee to tailor the probationary terms to the particular offense.

The public is protected from licensees whose convictions involve controlled substances by the revocation of the license, or if the revocation is stayed, by the licensee's probation for 3 to 5 years and the imposition of conditions to ensure public safety, including monitoring and biological sample testing. The US are mandatory in any case of substance abuse.

Identification in Patient Record Required, Section 1953(b), Failure to Identify Yourself in Patient Record (Repeated Acts).

Proposed change: The Committee is proposing to add this language to specify that a licensee's failure to identify himself or herself in the patient record according to Business and Professions Code Section 1953(b) is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, while allowing for a range of 3 to 5 years probationary period rather than the minimum 3 years specified in the DBC Guidelines, and any additional condition warranted by the nature and severity of the violation, so the Committee has the flexibility to tailor the probationary terms to the particular offense. The DBC Guidelines do not specifically include repeated acts, but simply refer to treatment entries in the patient record. This has proven to be the standard probationary term that protects the public, allows the probationer to complete the probationary terms, and deter any repeat offense.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 1953(b), a licensee's repeated acts of failure to identify himself or herself in the patient record, which can affect patient safety. Treatment records are required to contain the initials or identifying number of the person who provided treatment. If a licensee fails to enter this identifying information into the treatment record and a complaint is filed, there is no record that the licensee provided the treatment under investigation.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's repeated failure to identify himself or herself in patient records. The Committee may revoke the license or stay the revocation and impose 3 to 5 years probation with standard conditions, and any additional conditions warranted to ensure that treatment records are completed with the required identification of who provided each treatment for patients' safety and to facilitate the investigation of complaints.

This regulation protects the public from licensees who have repeatedly failed to identify themselves in the patient record by the revocation of the license, or if the revocation is stayed, by licensee's probation for 3 to 5 years and the imposition of conditions to ensure patient safety, which may include monitoring by independent 3rd parties to prevent any reoccurrence.

Negligence as Unprofessional Conduct, Section 1956.

Proposed change: The Committee is proposing to add this language to specify that unprofessional conduct according to Business and Professions Code Section 1956 is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, while allowing for a range of 3 to 5 years probationary period rather than the minimum 2 years specified in the DBC Guidelines, and any additional condition warranted by the nature and severity of the violation, so the Committee has the flexibility to tailor the probationary terms to the particular offense. Negligence is a serious offense that would, in some cases, warrant a substantially longer probationary period than two years for public protection.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions to be imposed for violations of Section 1956, a licensee's negligence or gross negligence in treatment, which affects patient safety and can result in patient harm.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's negligence or gross negligence in treatment. The Committee will have the ability to revoke the license or stay the revocation and impose 3 to 5 years probation with standard conditions, and additional conditions of actual suspension, a billing monitor, clinical diagnostic evaluation, and worksite and practice monitors to ensure public safety from any further negligence on the part of the licensee.

This regulation protects the public from licensees who are negligent in treatment of patients by the revocation of the license, or if the revocation is stayed, by the licensee's probation for 3 to 5 years and the imposition of additional conditions to ensure that patient safety is maintained and the probationary licensee is not practicing in a negligent manner. This has proven to be the standard probationary term that protects the public, allows the probationer to complete the probationary terms, and deter any repeat offense.

General Business and Professions Code Provisions

Section 125, Misdemeanor Offenses by Licensees.

Proposed change: The Committee is proposing to add this language to specify that conviction of a misdemeanor offense according to Business and Professions Code Section 125 is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation, which are not currently specified in the statute.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 125 (unlicensed practice), a licensee's conviction of a misdemeanor offense of allowing an unlicensed person to use his or her license, or to act as his or her agent or partner, which impacts public safety through unqualified

individuals practice of licensed dental hygiene functions which they have not demonstrated the knowledge or ability to perform.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's allowing or promoting an unlicensed person's use of his or her license. The Committee may revoke the license or stay the revocation and impose 3 years probation with standard conditions, and additional conditions of actual suspension, restitution and any additional conditions warranted by the nature and severity of the offense, to provide for recompense to harmed patients and allow the Committee the discretion to impose additional conditions that are directly related to the offense, such as monitoring. Three years has proven to be the minimum standard probationary term that protects the public, allows the probationer to complete the probationary terms, and deter any repeat offense.

This regulation protects the public from licensees who allow or collude with unlicensed persons to use their license by the revocation of the license, or if the revocation is stayed, by licensee's probation for 3 years and the imposition of conditions to ensure that a licensee does not aid unlicensed individuals to practice on California consumers, potentially harming those patients. Harmed patients can receive restitution, and other conditions such as monitoring or suspension may be imposed if warranted by the severe or serious nature of the offense to prevent any reoccurrence.

Section 125.6, Refusal to Treat Patient.

Proposed change: The Committee is proposing to add this language to specify that conduct according to Business and Professions Code Section 125.6 is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, with the additional conditions of a worksite monitor and practice monitor replacing the DBC's ethics course to ensure that there is no reoccurrence of discrimination or refusal to treat patients.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 125.6, a licensee's refusal to treat a patient or discrimination in treating patients, which impacts public safety.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's refusal to treat a patient due to discrimination. The Committee may revoke the license or stay the revocation and impose 3 years probation with standard conditions, with additional conditions of a worksite monitor and practice monitor to ensure that the public receives services without discrimination. This has proven to be the standard probationary term that protects the public, allows the probationer to complete the probationary terms, and deter any repeat offense.

This regulation protects the public from licensees who refuse to treat patients based on their race, religion, disability or other characteristics listed in Civil Code Section 51 by the revocation of the license, or if the revocation is stayed, by licensee's probation for 3 years and the imposition of conditions to ensure that the public is not discriminated against or refused necessary dental hygiene treatment by a licensee.

Section 125.9, Failure to Comply with Citation.

Proposed change: The Committee is proposing to add this language to specify that conduct according to Business and Professions Code Section 125.9 is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, other than the

condition of suspension, which the Committee felt was unnecessary if the licensee meets the condition of compliance with the citation.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 125.9, a licensee's failure to comply with a citation, affecting the Committee's ability to carry out its enforcement functions and its mission to protect the public.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's failure to comply with a citation. The Committee may revoke the license or stay the revocation and impose 3 years probation with standard conditions, a requirement to comply with the citation and any additional conditions warranted by the nature and severity of the action or conduct. Enforcement staff benefit by having a mechanism that specifies compliance so that probationary terms are enforceable.

This regulation is needed to protect the public from licensees who fail to comply with a citation by refusing to release records, using a false name, or practicing without a valid license, all of which impact public safety. Three years has proven to be the standard minimum probationary term that protects the public, allows the probationer to complete the probationary terms, and deter any repeat offense.

Section 480, Denial of a License.

Proposed change: The Committee is proposing to add this language to specify that conduct according to Business and Professions Code Section 480 is grounds for disciplinary action, and the minimum and maximum penalties that may be imposed for a violation. These penalties are in line with those of other healing arts boards.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 480, denial of an applicant's license for reasons such as fraud, conviction of a crime, or commission of any act that would be grounds for suspension or denial of a license, which affects the Committee's ability to deny an applicant's license for cause or to issue a license and impose probation of 3 to 5 years to protect the public from actions that may cause harm or would have prevented the probationer from being licensed.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties imposed for an applicant's fraud, commission of a crime or action that would result in suspension of a license. The Committee may deny a license or issue a license, stay the revocation and impose 3 to 5 years probation with standard conditions and any additional conditions warranted by the nature and severity of the action or conduct. Three years has proven to be the standard minimum probationary term that protects the public, allows the probationer to complete the probationary terms, and deter any repeat offense, and a range allows the Committee to impose a longer probationary term for more serious convictions.

This regulation protects the public from applicants who have committed fraud, another crime or any act that would result in revocation of a licensee's license, mirroring the protection provided to the public within these regulations from licensees who commit such offenses.

Section 496, Subversion of a License Exam.

Proposed change: The Committee is proposing to add this language to specify that subversion of a license exam according to Business and Professions Code Section 496, violation of Section 123 pertaining to subversion of licensing examinations, is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These

penalties are equivalent to those contained in the DBC's Disciplinary Guidelines for violations of Section 123, Subversion of Examinations, with the exception of their requirements for community service and an ethics course. The Committee feels that community service, though valuable, does not address this violation, and all dental hygiene licensees are required to complete an ethics examination prior to licensure.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 496, subversion of a license exam, affecting the Committee's ability to protect the public by denying licensure to applicants who attempt to subvert the examination through copying exam materials, paying others to take an exam, obtaining exam questions or communicating with other examinees during an exam.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for an applicant's subversion or attempted subversion of a license examination. The Committee may deny the license or stay the revocation and impose 3 to 5 years probation with standard conditions and the requirement to take and pass the RDH (registered dental hygiene) clinical examination, to ensure that the applicant has clinical competence to practice on patients before a license is issued. Three years has proven to be the standard minimum probationary term that protects the public, allows the probationer to complete the probationary terms, and deter any repeat offense. A range of probation gives the Committee the flexibility to impose a longer probationary term if the violation is egregious.

This regulation protects the public from applicants who attempt to subvert the examination and avoid being tested for minimum competence, thereby protecting public safety through the requirement of passing the RDH clinical examination for California licensure.

Section 498, Securing a License by Fraud, Deceit or Misrepresentation.

Proposed change: The Committee is proposing to add this language to specify that securing a license by fraud, deceit or misrepresentation according to Business and Professions Code Section 498 is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, while allowing for a 3-year probationary period if the nature and severity of the violation is less serious. Three years is used consistently throughout these guidelines as it has proven to be the standard probationary term that protects the public, allows the probationer to complete the probationary terms, and deter any repeat offense. The DBC's Guidelines also specify possible additional conditions of suspension, community service and an ethics course. The additional conditions of suspension and community service do not directly address this violation, and an ethics examination is required prior to issuance of all licenses.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 498, a licensee's obtaining his or her license through fraud, deceit or misrepresentation, which affects the Committee's ability to protect the public from unqualified practitioners who secure a license through fraudulent means.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for an applicant's attempt to obtain or a licensee's obtaining a license through fraud, deceit or misrepresentation. The Committee may deny or revoke the license, or stay the revocation and impose 3 to 5 years probation with standard conditions and the requirement to take and pass the RDH clinical examination, to ensure that the individual is competent to practice before being allowed to practice on patients.

The public is protected from applicants and licensees who have attempted or achieved licensure through fraud and falsehood, which protects the public from practice by unqualified individuals.

Section 650, Accepting or Receiving Rebates.

Proposed change: The Committee is proposing to add this language to specify that a licensee's acceptance or receipt of rebates according to Business and Professions Code Section 650 is grounds for disciplinary action, and the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, other than additional conditions of suspension, community service and an ethics course. The Committee feels that the additional conditions of suspension and community service are not pertinent to this violation, and an ethics examination is required prior to issuance of all licenses. The Committee feels that restitution is more appropriate condition.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 650, accepting or receiving rebates, affecting the Committee's ability to protect the public from licensees who accept or receive consideration in any form for patient referrals by carrying out its enforcement functions.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's acceptance or receipt of any rebate or consideration for referring patients. The Committee may revoke the license or stay the revocation and impose 3 years probation with standard conditions and restitution.

This regulation protects the public from licensees who accept or receive rebates from individuals who may not be aware that this is expressly prohibited by law. Individuals are harmed financially when compensation and not patient interest is the motivation behind a referral, so restitution is the appropriate penalty.

Section 651, False, Misleading or Deceptive Public Communications.

Proposed change: The Committee is proposing to add this language to specify that false, misleading or deceptive public communications by a licensee according to Business and Professions Code Section 651 is grounds for disciplinary action, and specify the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, other than the DBC imposes a two year probationary period rather than three. The Committee felt that three years of probation with restitution when appropriate provides the best level of protection to the public from licensees who use false or fraudulent advertisements or other public communication. Three years has proven to be the standard minimum probationary term that protects the public, allows the probationer to complete the probationary terms, and deter any repeat offense.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 651, which impacts the Committee's ability to protect the public from licensees who attempt to deceive the public through false or misleading advertising practices by various methods of public communication.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties imposed for a licensee's false, misleading or deceptive public communications. The Committee may revoke the license or stay the revocation and impose up to 3 years probation with standard conditions and restitution if appropriate.

This regulation is necessary to protect the public from licensees who disseminate false, misleading or fraudulent information which may result in financial loss and patient harm through the expectation of unachievable results and unsubstantiated claims.

Section 654.2, Charges, Billings, Solicitations or Referrals without Disclosure of Beneficial Interest Prohibited.

Proposed change: The Committee is proposing to add this language to specify that charges, billings, solicitations or referrals without the licensee's disclosure of a beneficial interest is prohibited according to Business and Professions Code Section 654.2, is grounds for disciplinary action, and the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, except the probationary term required is three years, rather than two. The Committee feels that three years probation provides more public protection than two years.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 654.2, which impacts the Committee's ability to protect the public from licensees who fail to disclose in writing that either they or their family have an interest in an organization that the licensee refers the patient to, and that the patient may choose any organization to deliver the services ordered or requested by the licensee.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's funneling of patients to organizations or facilities in which the licensee has a significant interest. The Committee may revoke the license or stay the revocation and impose at least 3 years probation with standard conditions and a billing monitor if appropriate.

This regulation is needed to protect the public from licensees who fail to disclose any financial or business interest that they or their family may have in an organization that the licensee refers patients to. This can result in fraud to the public and financial or other benefit to the licensee or his or her family, so probation in conjunction with a billing monitor prevents any further such activity on the part of the licensee during the probationary period.

Section 726, Commission of Act of Sexual Abuse or Misconduct with Patient.

Proposed change: The Committee is proposing to add this language to specify that the commission of an act of sexual abuse or misconduct with a patient by a licensee according to Business and Professions Code Section 726 will result in revocation of the license. This penalty is similar to that contained in the DBC's Disciplinary Guidelines, however the Dental Board allows for revocation to be stayed with 5 years probation if the sex was consensual with one patient only. The Committee believes that a zero tolerance penalty is appropriate in instances of a licensee's sexual abuse or misconduct with a patient, and provides better public protection through revocation of the license for all violations.

Problem: The Committee currently has no guidelines that specify that the standard penalty for violations of Section 726 is license revocation, which impacts the Committee's ability to protect the public from licensees who violate a patient's trust through sexual abuse or sexual misconduct.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines that specify revocation as the sole penalty for a licensee's sexual abuse of or sexual misconduct with a patient. The Committee will have the ability to revoke the license in order to protect patients from licensees who are sexual predators.

This text is needed to protect the public from licensees who are sexual predators and are able to gain their victims' trust through the patient-licensee relationship.

Section 810, Insurance Fraud.

Proposed change: The Committee is proposing to add this language to specify that insurance fraud by a licensee according to Business and Professions Code Section 810 is grounds for disciplinary action, and the minimum and maximum penalties that may be imposed for a violation. These penalties are generally equivalent to those contained in the DBC's Disciplinary Guidelines, while deviating in the following respects:

- DBC allows for an additional condition of remedial education in book keeping. The Committee feels that a billing monitor more effectively addresses insurance fraud.
- DBC allows for an additional condition of 50 hours of community service. The Committee believes that an independent 3rd party worksite monitor who is onsite in the practice of the probationer provides more consumer protection from insurance fraud.
- DBC allows for completion of an ethics course. The Committee believes that a practice monitor who inspects the probationer's patient records more effectively addresses instances of insurance fraud.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 810, which impacts the Committee's ability to protect the public from licensees who commit insurance fraud.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for insurance fraud by a licensee. The Committee may revoke the license or stay the revocation and impose up to 5 years probation with standard conditions, actual suspension from practice, a billing monitor, worksite monitor, practice monitor and restitution if appropriate.

This regulation is needed to protect the public from licensees who commit insurance fraud, resulting in financial loss and patient harm through treatment which is billed for but not rendered. All members of the public are harmed through increased insurance rates.

Section 822, Psychological or Physical Illness.

Proposed change: The Committee is proposing to add this language to specify that a licensee's psychological or physical illness which impairs practice according to Business and Professions Code Section 822 is grounds for disciplinary action, and the minimum and maximum penalties that may be imposed for a violation. These penalties are equivalent to those contained in the DBC's Disciplinary Guidelines, while allowing for a range of probationary period of 3 to 5 years. A longer probationary term may be warranted when a probationer's well-being and ability to practice is at issue. The Committee needs additional time to ensure that a probationer is well enough to practice by providing a longer period of public protection, if warranted by the circumstances, and allowing any additional probation condition that may be warranted by the action or conduct. This gives the Committee the discretion to impose additional conditions that specifically relate to the violation, such as suspension until the licensee undergoes a psychological evaluation or a physical evaluation.

Problem: The Committee currently has no guidelines to use when considering penalties or probationary conditions for violations of Section 822, which impacts the Committee's ability to protect the public from licensees who are impaired by a physical or psychological illness affecting the licensee's competency to practice.

Anticipated benefits: The Committee and ALJs benefit from having clear guidelines for maximum and minimum penalties for a licensee's impaired practice due to a physical or psychological illness. The Committee may revoke the license or stay the revocation and impose 3 to 5 years probation with standard conditions, an actual suspension, psychological evaluation, psychotherapy, physical evaluation and any additional probation conditions as appropriate.

This regulation protects the public from licensees who are impaired by either psychological or physical illness, or both, which may affect the licensee's ability to practice competently, and allows the Committee to impose specific conditions as warranted by the action or conduct.

Anticipated benefits from this regulatory action

These proposed regulations benefit the Committee by fulfilling its statutory mandate and establishing minimum and maximum penalties within these disciplinary guidelines to be used in enforcement actions that allow discretion in its decisions to impose more stringent terms or conditions, if warranted, thereby benefiting consumers by increasing public protection. These regulations will benefit the Committee by establishing specific guidelines for pursuing disciplinary actions against licensees and will benefit ALJs by setting out clear and consistent guidelines to be used in reaching decisions in dental hygiene license enforcement cases. These regulations will benefit licensees by placing guidelines and standards for the license in writing, so that licensees know or can become educated regarding practices that can result in disciplinary action against their license, and specifically what the action may be. These regulations will benefit consumers by providing enforcement tools that the Committee and judges can use to discipline or revoke the licenses of individuals who pursue unsafe, unsanitary or illegal practices.

Factual Basis/Rationale

Since the Committee was created in 2009, it has discussed topics related to improving its enforcement functions, which were carried out by the Dental Board of California before that time. Additionally, in March 2010, the Department of Consumer Affairs (DCA) developed a report (Department of Consumer Affairs "*Consumer Protection Enforcement Initiative BCP Independent Verification & Validation Report, March 2010*") regarding enforcement problems faced by healing arts boards and encouraged boards to pursue regulatory actions to ensure patient safety. The DCA also sponsored legislation, Senate Bill 1111 (Negrete McLeod), during the 2009-2010 Legislative Session to codify many of the recommendations within the report; however, the bill failed to be enacted. When the bill failed to be enacted into law, the DCA encouraged healing arts boards to pursue regulatory action to assist the boards with investigating and prosecuting complaints in a timely manner, and to provide the boards with tools to improve the enforcement process and ensure patient safety.

The Committee's proposal would implement provisions of the DCA's Consumer Protection Enforcement Initiative relative to unprofessional conduct. In addition to the acts that constitute unprofessional conduct found at Business and Professions Code Section 1949-1956, the Committee has determined that it is necessary to protect the public by taking action against the holder of any licensee who is guilty of the acts specified in its proposal.

Existing law, California Business and Professions Code Section 315 established the SACC within the Department and required the SACC to formulate uniform and specific standards in sixteen specified areas for each healing arts board to use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.

Business and Professions Code Sections 1905 and 1906 generally authorize the Committee to adopt or amend rules and regulations pertaining to the manner of issuance and reissuance of licenses and the administration and enforcement of California dental hygiene licenses.

Business and Professions Code Section 1949 authorizes the Committee to take action against a licensee as a consequence of unprofessional conduct, incompetence, gross negligence, repeated acts of negligence in the profession, receiving a license by mistake, and the like.

Business and Professions Code Section 1950 authorizes the Committee to take action against a licensee as a consequence of the conviction of a crime substantially related to the licensee's qualifications, functions, or duties.

Business and Professions Code Section 1950.5 defines 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 dated April 2012.

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 ALJs in identifying and imposing 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 44 page document that 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. December 10, 2009 Dental Hygiene Committee Minutes.
2. April 30, 2010 Dental Hygiene Enforcement Subcommittee Meeting.
3. September 27, 2010 Dental Hygiene Committee Enforcement Subcommittee Minutes.
4. September 28, 2010 Dental Hygiene Committee Minutes.
5. December 6, 2010 Dental Hygiene Committee Minutes.
6. April 29, 2011 Dental Hygiene Committee Minutes.
7. December 13, 2011 Dental Hygiene Committee Minutes.
8. Uniform Standards Regarding Substance-Abusing Healing Arts Licensees, SACC, April 2010.
9. Dental Board of California Disciplinary Guidelines with Model Language, August 30, 2010.
10. Legal Opinion of Dept. of Consumer Affairs' Legislative and Policy Review Unit
11. Legal Opinion of Legislative Counsel

12. Legal Opinion of Attorney General

BUSINESS IMPACT

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

This regulation will not have a significant adverse economic impact on businesses as it only affects those individuals and businesses whose dental hygiene licenses are disciplined or who are denied dental hygiene licensure for specific violations of the California Code of Regulations or the California Business and Professions Code.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the only individuals who will be affected will be dental hygiene applicants and licensees who have violated provisions of California law that result in disciplinary action against their licensure.
- It will not create new businesses or eliminate existing businesses within the State of California because the only businesses that will be affected would be businesses that are operated by dental hygiene licensees who have violated California laws. The majority of dental hygienists do not operate their own business, but rather work for a dentist or multiple dentists.
- It will not affect the expansion of businesses currently doing business within the State of California because dentists who employ dental hygienists will not be directly affected by these uniform standards and disciplinary guidelines unless one of their employees is disciplined. Only dental hygiene licensees who have violated provisions in the California Code of Regulations or the California Business and Professions Code will be affected.
- This regulatory proposal benefits the health and welfare of California residents because these regulations provide public protection by setting standards by which substance abusing licensees are prevented from practice on patients, or required to be monitored. The public is protected through the establishment of clear and specific minimum and maximum penalties for licensees' violations of law, including special conditions for monitoring and/or restitution, if indicated by the particular violation.
- This regulatory proposal benefits worker safety because health care workers in dental offices are protected from substance abusing licensees and licensees who have violated provisions of the law by providing the Committee with guidelines for disciplinary action which would remove such licensees from the workplace, or impose monitoring.
- This regulatory proposal does not affect the state's environment because the regulations affect only dental hygiene licensees and applicants who either abuse substances or violate the California Code of Regulations or the 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 and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. The Committee is required by statute, SB 1441, to use the Uniform Standards developed by the SACC when dealing with substance abusing licensees.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The Committee currently has no uniform standards when dealing with substance abusing licensees, and no guidelines in regulation to use in making decisions regarding disciplinary actions against its licensees. One alternative might be not to pursue this regulation. If the Committee chooses this alternative, the Committee, the Office of the Attorney General, and the Office of Administrative Law will be making decisions on disciplinary actions regarding dental hygienists without the benefit of disciplinary guidelines which reflect current law. Using these guidelines will maximize protection for the consumers of California.

In addition, the Committee would be out of compliance with the statutory requirements of SB 1441 that it use the Uniform Standards developed by the SACC in dealing with substance abusing licensees. The Committee considered the following approaches in how to determine whether a respondent is a substance abusing licensee:

1) If a licensee is found to have any underlying violations involving drugs or alcohol, even on a first time offense, that respondent will be presumed to be a substance abusing licensee and would have the opportunity to rebut this presumption.

2) All 16 uniform standards would apply contingent upon a clinical diagnostic evaluation finding that the Respondent is a substance abusing licensee.

The Committee voted to choose option 2, to have the uniform standards apply contingent upon the findings of a clinical diagnostic evaluation as the fairest option, so the licensee is provided with due process through a professional clinical diagnostic evaluation rather than be automatically assumed to have a substance abuse problem. Applying the uniform standards in the interim protects the public, and if the licensee is found to have a substance abuse problem through the clinical diagnostic evaluation, it is more efficient and effective that they are in place.