

**TITLE 16. DENTAL HYGIENE COMMITTEE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS**

NOTICE IS HEREBY GIVEN that the Dental Hygiene Committee of California is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the:

Department of Consumer Affairs
1st Floor Hearing Room
2005 Evergreen Street
Sacramento, California on

April 16, 2013

10:00 a.m.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Dental Hygiene Committee of California at its office not later than 5:00 p.m. on April 16, 2013 or must be received by the Committee at the hearing. The Committee, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 315, 315.4, 1905 and 1906 of the Business and Professions Code, and Section 11400.20 of the Government Code and to implement, interpret or make specific Sections 315, 315.2, 315.4, 1947, 1949, 1950 and 1950.5 of the Business and Professions Code and Sections 11400.20, 11425.50(e) of the Government Code, the Committee is considering changes to Division 11 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

Business and Professions Code Section 1906 authorizes the Dental Hygiene Committee of California (DHCC) to adopt, amend and repeal such rules and regulations as may be reasonably necessary to enable the Committee to effect the provisions of Business and Professions Code 1900-1966.6. This proposal would establish uniform standards for substance abusing licensees developed according to the provisions of Business and Professions Code Section 315 (SB 1441, Ch. 548, Stats. 2008) and disciplinary guidelines for DHCC licensees. The Committee is proposing the following amendments:

- o Add Section 1138 of Division 11, Title 16 of the California Code of Regulations

Since its creation in July 2009, the Dental Hygiene Committee of California (DHCC) has continued to use the existing Disciplinary Guidelines of the Dental Board of California (DBC).

Business and Professions Code Section 1906 authorizes the DHCC to adopt, amend and repeal regulations to implement the requirements of its statute. Government Code Section 11400.20 allows an agency to adopt regulations to govern an adjudicative proceeding.

The proposed amendments would place into regulation model language, probationary terms, rationale and factors that may be considered by the Committee and Administrative Law Judges (ALJs) in determining whether a dental hygiene license should be suspended, revoked or placed on probation, and appropriate probationary terms for each violation. This proposal would enhance the Committee's enforcement and administrative processes by establishing regulations specific to California dental hygiene licensees and applicants, thereby increasing the DHCC's enforcement functions and investigation activities for improved consumer protection.

B. Policy Statement Overview/Anticipated Benefits of Proposal

The Dental Hygiene Committee of California's primary mission is protection of California consumers. The Committee does this by issuing licenses to only those applicants who have met the criteria for licensing; investigating complaints against licensees and disciplining licensees for violating the law; and monitoring licensees who are on probation.

Business and Professions Code Section 1906 authorizes the Committee to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable the Committee to carry into effect the provisions of Article 9 of Chapter 4 of Division 2 of the Business and Professions Code.

Business and Professions Code Section 315 established the Substance Abuse Coordination Committee (SACC) within the Department of Consumer Affairs (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 Section 315.2 specifies that a healing arts board within the Department is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. The section specifies that the cease practice order under this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Business and Professions Code Section 315.4 authorizes healing arts boards within the Department to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted as authorized under Section 315. The section specifies that the cease practice order under this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Business and Professions Code Section 1949 allows the Committee to revoke, suspend or place on probation the license of a licensee who has committed incompetence, gross negligence, unprofessional conduct, or who has received a license by mistake or for any other cause applicable to the profession.

Business and Professions Code Section 1950 allows the Committee to revoke, suspend or place on probation the license of a licensee who has been convicted of a crime substantially related to the licensee's qualifications, functions or duties.

Business and Professions Code Section 1950.5 defines, but does not limit, acts of unprofessional conduct.

Business and Professions Code Section 1951 authorizes the Committee to discipline a license through probation and require specific terms and conditions.

The main purpose for this proposal is to adopt into regulation the DHCC's *Uniform Standards Related to Substance Abuse and Disciplinary Guidelines, April 2012*, that is incorporated by reference in Section 1138. The practice of dental hygiene needs its own regulations under the DHCC's authority to enable the Committee to license, regulate and discipline its licensees. The *Uniform Standards Related to Substance Abuse and Disciplinary Guidelines* provide the Committee and ALJs with a framework of specific minimum and maximum penalties for dental hygienists that are appropriate to each violation, which standardize the disciplinary process with recommended probationary terms and conditions consistent with each particular violation.

These proposed regulations give licensees and applicants clear and consistent written information regarding potential violations and the resulting penalties for such violations.

This proposal benefits California consumers by protecting the public through revocation, suspension or placing on probation the license of an individual who has violated the law.

C. Consistency and Compatibility with Existing State Regulations

This Committee has evaluated this regulatory proposal and it is not inconsistent nor incompatible with existing State regulations.

Incorporation by Reference

The Committee is incorporating by reference the document entitled *Uniform Standards Related to Substance Abuse and Disciplinary Guidelines*, dated April 2012.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Requires Reimbursement: None

Business Impact: The Committee has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business:

The Committee is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Committee has determined that the proposed regulations would not have a significant economic impact on small businesses since most dental hygiene licensees do not operate their own business but instead work for a dental office. The proposal would only affect licensees and applicants who have had disciplinary actions taken against them. Small businesses operated by dental hygienists who are in compliance with the law would incur no cost impact. This proposal would not mandate any measures that would have a significant fiscal impact upon small businesses.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Committee has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

The Committee has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety and state's environment:

This regulation will benefit the state's environment and the health of California residents by establishing guidelines for disciplinary action against dental hygiene licensees and applicants who have violated administrative or criminal law, or who have substance abuse problems, thereby protecting consumers from harm from individuals who have committed offenses or who are impaired by substance abuse.

CONSIDERATION OF ALTERNATIVES

The Committee must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Committee has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Dental Hygiene Committee of California at 2005 Evergreen Street, Suite 1050, Sacramento, California 95815.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Donna Kantner
Address: 2005 Evergreen Street, Suite 1050
Sacramento, CA 95815
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The backup contact person is:

Name: Lori Hubble, Executive Officer
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Website Access: Materials regarding this proposal can be found at the Committee's website: www.dhcc.ca.gov.