

DENTAL HYGIENE BOARD
FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Reviews, Site Visits, Citation and Fines, and Probationary Status for Dental Hygiene Educational Programs.

Section(s) Affected: Section 1104.3 of Title 16 of the California Code of Regulations (CCR).

Updated Information

The Informative Digest and Initial Statement of Reasons are included in the rulemaking file and incorporated as though set forth herein.

The Dental Hygiene Board of California (Board) noticed the proposed rulemaking on September 15, 2022, with a 45-day comment period ending on November 1, 2022, and did not receive any comments.

On January 9, 2023, the Board withdrew proposed section 1104.3 from the Office of Administrative Law to prepare and notice modified text.

On February 4, 2023, the Board approved the modified text and directed staff to notice the modified text for 15-day comment period and take all steps necessary to continue the rulemaking process.

On February 13, 2023, the Board noticed the modified text to persons specified in subdivisions (a)(1) through (4) of Section 44 of Title 1 of the CCR. The comment period concluded on March 2, 2023. The Board did not receive any comments.

The modified text included the following amendments:

A. Deletion of “may” and addition of “shall” after “imposed” and before “result” in subdivision (b)(4)(C)

The Board modified subdivision (b)(4)(C) to replace “may” with “shall” with regard to disciplinary action the Board will take if a Dental Hygiene Educational Program (DHEP) fails to comply with an order of abatement or imposed fine.

The Board’s intension in the original language was that a DHEP’s failure to correct violations and/or pay a fine issued by the Board within the allotted time demonstrates the DHEP’s lack of accountability and warrants further discipline. Therefore, the Board amended the language from “may” to “shall” to clarify the Board shall impose further discipline (e.g., place the DHEP on probation) on the DHEP.

B. Deletion of “may” and addition of “shall” after “Board” and before “withdraw” in subdivision (c)(4)(B).

The Board modified subdivision (c)(4)(B) to replace “may” with “shall” with regard to disciplinary action the Board will take if a DHEP on probation fails to correct all violation(s) and meet all requirements for approval set forth in 16 CCR section 1104.

The Board’s intension in the original language was that a DHEP’s failure to correct all violation(s) and meet all requirements for approval set forth in 16 CCR section 1104 again demonstrates the DHEP’s lack of accountability and warrants further discipline. Therefore, the Board amended the language from “may” to “shall” to clarify that the Board shall impose further discipline (i.e., withdraw Board approval of the DHEP) on the DHEP.

C. Addition of “The probationary DHEP may, within 14 calendar days after service of notice of probation, submit a written request to the Board for an informal conference with the Executive Officer.” in subdivision (c)(5)(A)(i)(a).

The Board added subdivision (c)(5)(A)(i)(a) to provide the probationary DHEP may, within 14 calendar days after service of notice of probation, submit a written request to the Board for an informal conference with the Executive Officer (EO.)

This subdivision is necessary because DHEPs may have questions regarding placement on probation and informal conferences provide the DHEP the ability to request further information or present further evidence of compliance. Additionally, in the Board’s experience, 14 calendar days provides the DHEP sufficient time to request an informal conference with the EO. Having the request in writing is necessary to memorialize and have a historical record of the DHEP’s acknowledgement of culpability to correct the violation within the requested timeframe.

Subdivision (b)(5)(B) is consistent with informal conference requirements in other regulations. (See e.g., Cal. Code Regs., tit. 16, § 1142, subd. (b).)

D. Addition of “The Executive Officer or their designee shall, within 30 calendar days from receipt of the written request for an informal conference pursuant to subdivision (c)(5)(A)(i)(a), hold an informal conference with the DHEP cited and/or their legal counsel or authorized representative, if any, unless continued for good cause.” in (c)(5)(A)(i)(b).

The Board added subdivision (c)(5)(A)(i)(b) to provide the EO or their designee shall, within 30 calendar days from receipt of the written request for an informal conference pursuant to subdivision (c)(5)(A)(i)(a), hold an informal conference with the DHEP cited and/or their legal counsel or authorized representative, if any, unless continued for good cause (e.g., delays due to federal or state holidays, states of emergencies, etc.).

This provision is necessary because DHEPs may have questions regarding probation and this provision allows the DHEP the ability to request further information or present further evidence of compliance. Furthermore, in the Board's experience, 30 calendar days provides the DHEP sufficient time to gather pertinent information applicable to their contestation.

Subdivision (b)(5)(C) is consistent with informal conference requirements in other regulations. (See e.g., Cal. Code Regs., tit. 16, § 1142, subd. (c).)

E. Renumbering of “subdivision (a) to subdivision (c)”, and “subdivision (b) to subdivision (d)” in subdivision (c)(5)(A)(i).

Based on the addition of subdivisions (a) and (b) to the proposed original text in subdivision (c)(5)(A)(i), the Board re-numbered subdivisions (a) and (b) as subdivisions (c) and (d) in the modified text.

F. Deletion of “notification” and addition of “request” after “Such” and before “shall” in subdivision (c)(5)(A)(ii).

Subdivision (c)(5)(A)(ii) refers to a DHEP's hearing request. The Board erroneously referred to the “request” as a “notification” and therefore modified subdivision (c)(5)(A)(ii) to clarify the reference is to the “request.”

G. Addition of “within 30 calendar days after service of a notice of probation, or” after “Board” and before “before” in subdivision (c)(5)(A)(ii).

The Board modified subdivision (c)(5)(A)(ii) to add that requesting a hearing shall be “within 30 calendar days after service of a notice of probation.”

This amendment is necessary because it clarifies the amount of time a DHEP has to request a hearing after notification of probation, as well as to provide consistency among hearing requirements within this proposed regulation.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Economic Impact Assessment:

The Board has determined this regulatory action would not create jobs, eliminate jobs, create new businesses, or eliminate or expand businesses within the State of California, as the proposed language in the regulation only defines parameters for the Board to conduct periodic surveys, evaluations, and announced and unannounced site visits to existing and new DHEPs to ensure continued with all laws, regulations, and standards applicable to a DHEP and define consequences, including probation with

terms, issuance of a citation and fine, or withdrawn approval if the DHEP is found noncompliant.

Fiscal Impact

The Board does not anticipate any increase in costs to the state as a result of adopting the sections identified in this regulatory proposal.

Duplication

Portions of this regulation duplicates language as found in Business and Professions Code section 125.9. This is necessary to meet the clarity standard.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulations or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Board incorporates by reference the alternatives identified in its Initial Statement of Reasons and did not receive any comments that altered its findings.

Objections or Recommendations/Responses

There were no objections or recommendations regarding the proposed action.