

DENTAL HYGIENE BOARD
FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Required Curriculum.

Section(s) Affected: Section 1105.2 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 information contained therein is updated as follows: No changes have been made to warrant a change to the initial statement of reasons as contained in the original notice for section 1105.2.

No public hearing was originally set for this proposal and none was requested. Board staff noticed the proposed rulemaking on November 10, 2021, with a 45-day comment period ending on December 27, 2021. The Board received one comment on November 29, 2021 and is summarized below.

The Board reviewed the comments at its January 22, 2022 meeting. At this meeting, two members of the public offered additional comments. The Board approved the responses to the comments without further amendments to the text, and advanced the proposed rulemaking.

Local Mandate

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

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau 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.

Incorporation of Documents by Reference

All forms incorporated by reference in this rulemaking would be cumbersome, unduly expensive and otherwise impractical to publish in the CCR. All forms incorporated by reference that are being adopted, amended, or repealed in this rulemaking were available on the Board's website and hardcopies will be available from the Board upon request.

Objections or Recommendations/Responses

On November 29, 2021, the Board received an email from Vickie Kimbrough, PhD, MBA, RDH (Comments) on the Board's proposed amendments to section 1105.2. Below are the Board's responses to the comments made therein.

Comment A-1

Comment Summary:

This comment opposes the fees suggested for the Out-of-State Expanded Duty Education and Training in Soft Tissue Curettage, Local Anesthesia, and Nitrous Oxide and Oxygen Analgesia (SLN). She states the fee structure for this course is only applied to the application but does not cover necessary oversight of the program/course to the same extent those provided in California dental hygiene programs and continuing education (CE) providers. Dr. Kimbrough states Dental Hygiene Board of California (Board) Executive Officer Anthony Lum indicated the Board has no jurisdiction for out-of-state programs and courses. She states proposed section 1105.2 sets a precedent for two standards of oversight established and implemented by the Board.

Response:

The Board has considered the comment, and makes no revisions to the text based thereon.

Currently, the second paragraph of section 1105.2, subdivision (d)(3)(E) states: "Out-of-state dental hygiene programs that are accredited by the Commission on Dental Accreditation or an approved accrediting body and who provide instruction according to this subdivision may be approved by the Committee to meet the requirements set forth in Business and Professions Code section 1909." The Board proposes the underlined language to clarify what requirements out-of-state dental hygiene programs must satisfy to be approved to provide instruction in SLN as this process is unclear.

The Board proposes to assess a fee of \$500 to cover the cost for its staff to review a program's SLN curriculum to ensure all requirements for SLN courses are met pursuant to Title 16, California Code of Regulations, section 1107.

The Board recognizes the Commission on Dental Accreditation (CODA) as the national

accrediting agency of DHEPs and accepts out-of-state DHEP program coursework for licensure. (Bus. & Prof. Code, § 1917.1, subd. (a)(6)) CODA was established in 1975 and is nationally recognized by the United States Department of Education as the sole agency to accredit dental and dental-related education programs conducted at the post-secondary level.¹ As both in-state and out-of-state programs must satisfy these standards, the Board is not setting a precedent for two standards of oversight.

Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

Comment A-2

Comment Summary:

The comment states the dental hygiene programs and three other Board approved CE providers in California are under the purview of the Board for unannounced site visits and inspection of course content and records. Dr. Kimbrough states under proposed section 1105.2, the out-of-state programs, or providers applying for SLN course approval, will never have a site visit by Board staff. She states these SLN courses will only be required to provide a biennial report.

Response:

The Board has considered the comment, and makes no revisions to the text based thereon.

The Board acknowledges that out-of-state DHEPs will not receive any site visits from the Board. The commenter is incorrect that the Board does not review course content and records. Pursuant to subdivision (d)(3)(E)(ii), the Board requests out-of-state DHEPS to submit SLN syllabi for Board review. The required biennial report, "Periodontal Soft Tissue Curettage, Local Anesthesia, and Nitrous Oxide-Oxygen Analgesia (SLN) Course Provider Biennial Report" (DHBC SLN-03, Rev 03/2021) incorporated by reference at section 1107(a)(5), also requires DHEPs to submit various records, including course policies and procedures, course curriculum (e.g., syllabi, course hours, student evaluation mechanisms including clinical skills and competency assessment forms, remediation policies and procedures, and didactic, preclinical, and clinical schedules), student attendee records, and course faculty records.

The biennial report will provide the Board the necessary information to ensure the out-of-state DHEP is following the requirements of 16 CCR section 1107. Additionally, the out-of-state DHEP program SLN course application asks if the out-of-state DHEP abides by the statutory and regulatory requirements set forth in BPC section 1909, and Title 16, Division 11 of the CCR, and acknowledges that failure to do so may result in loss of course approval. Furthermore, both the application and the biennial report

¹ <https://coda.ada.org/en/accreditation/about-us> [12/16/2021 8:49:46 AM]

require the out-of-state DHEP to certify under the penalty of perjury the statements made in the application and biennial report are true and correct. Moreover, the application informs the out-of-state DHEP SLN course applicant that course records of the out-of-state DHEP SLN course shall be subject to inspection by the Board at any time.

The Board relies on CODA for overall approval of the out-of-state DHEP.

Accordingly, the Board is making no changes to the proposed regulations in response to this comment.

Comment A-3

Comment Summary:

The comment states based on the language of the regulation, the SLN courses (whether provided by a California dental hygiene program or by a Board-approved CE provider) are required to track all local anesthesia injections, nitrous-oxide-oxygen analgesia experiences, and periodontal soft tissue curettage experiences by each student and CE course participant. She states these records are available to Board staff site visitors at any time upon request. She states such records must be kept on file for five years, which is another aspect of oversight by the Board.

Response:

The Board incorporates by reference its response to Comment A-2 above.

Comment A-4

Comment Summary:

The comment states having two standards of oversight is not in the best interest of California consumers. She states it also opens the opportunity for California programs and CE course providers to request the same oversight as out-of-state programs and CE courses. Dr. Kimbrough states if two sets of standards are in place, out-of-state programs and CE providers may have more flexibility in how they can manage and implement the course.

Response:

The Board incorporates by reference its response to Comment A-1 above.

Comment A-5

Comment Summary:

The comment states in protecting the California consumer, the Board must apply the same oversight and monitoring to approved out-of-state programs and CE providers as done with those in-state.

Response:

The Board incorporates by reference its response to Comment A-2 above.

Comment A-6

Comment Summary:

The comment states as the fee structure does not address the Board's ability to site visit out-of-state programs and courses with the same oversight and requirements as specified in the California Dental Practice Act (DPA), it is suggested the Board establish a site visit fee for out-of-state Board-approved programs/courses to ensure the same standard is being met by all providers of the SLN course. She requested the Board to revisit how out-of-state programs and CE providers will be regulated under the DPA prior to approving the applications for out-of-state dental hygiene programs and CE providers.

Response:

The Board has considered the comment, and makes no revisions to the text based thereon.

The Board does not assess a fee on DHEPs to conduct site visits. The fee is solely to cover application processing and documentation review, which is the same for in state and out-of-state applicants.

As stated in response to Comment A-2 above, the biennial report will provide the Board the necessary information to ensure the out-of-state DHEP is following the requirements of 16 CCR section 1107. The out-of-state DHEP program SLN course application asks if the out-of-state DHEP abides by the statutory and regulatory requirements set forth in BPC section 1909, and Title 16, Division 11 of the CCR, and acknowledges that failure to do so may result in loss of course approval. Furthermore, both the application and the biennial report require the out-of-state DHEP to certify under the penalty of perjury the statements made in the application and biennial report are true and correct.

Accordingly, the Board is making no changes to the proposed regulations in response to this comment.