

**State of California  
Office of Administrative Law**

**In re:**  
**Dental Hygiene Board of California**

**Regulatory Action:**

**Title 16, California Code of Regulations**

**Adopt sections: 1138.1**

**Amend sections:**

**Repeal sections:**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2022-0407-02**

**OAL Matter Type: Regular Resubmittal (SR)**

---

This rulemaking action by the Dental Hygiene Board of California defines conduct that qualifies as unprofessional conduct.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/1/2022.



**Date: May 16, 2022**

---

**Lindsey S. McNeill  
Senior Attorney**

**For: Kenneth J. Pogue  
Director**

**Original: Anthony Lum, Executive Officer**

**Copy: Adina Pineschi-Petty**

## NOTICE PUBLICATION/REGULATORY SUBMISSION

STD. 400 (REV. 10/2019)

**RESUBMITTAL**

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z- 2021-0914-02	REGULATORY ACTION NUMBER 2022-0407-02SR	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Dental Hygiene Board of California			AGENCY FILE NUMBER (If any)

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

MAY 16 2022

3:127m

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE Unprofessional Conduct		TITLE(S) 16	FIRST SECTION AFFECTED 1138.1	2. REQUESTED PUBLICATION DATE September 24, 2021
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Adina A. Pineschi-Petty, DDS		TELEPHONE NUMBER (916) 576-5002
FAX NUMBER (Optional) (916) 263-2688		NOTICE REGISTER NUMBER		PUBLICATION DATE
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Unprofessional Conduct		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2021-1216-01S	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT Section 1138.1	
TITLE(S) 16		AMEND REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)		<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	
<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)		<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> File & Print	
<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)		<input type="checkbox"/> Other (Specify) _____	
<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)		<input type="checkbox"/> Print Only	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) February 24, 2022 through March 11, 2022.			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100 )			
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))		<input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)		<input type="checkbox"/> Fair Political Practices Commission	
<input checked="" type="checkbox"/> Other (Specify) Kimberly Kirchmeyer, Director, California Department of Consumer Affairs		<input type="checkbox"/> State Fire Marshal	
7. CONTACT PERSON Adina A. Pineschi-Petty, DDS		TELEPHONE NUMBER (916) 576-5002	FAX NUMBER (Optional) (916) 263-2688
		E-MAIL ADDRESS (Optional) adina.petty@dca.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAY 16 2022

Office of Administrative Law

SIGNATURE OF AGENCY HEAD OR DESIGNEE

*Anthony Lum*

DATE

April 6, 2022

TYPED NAME AND TITLE OF SIGNATORY

Anthony Lum, Executive Officer, Dental Hygiene Board of California



**TITLE 16. DENTAL HYGIENE BOARD OF CALIFORNIA - DEPARTMENT OF  
CONSUMER AFFAIRS**

**ORDER OF ADOPTION**

**Legend:**

Underlined

Indicates proposed regulatory language.

Adopt Section 1138.1 of Title 16 of the California Code of Regulations (CCR)  
to read as follows: <sup>v</sup>  
*in Article 10 of Division II*

**§ 1138.1. Unprofessional Conduct.**

In addition to the conduct described in Sections 1950.5 and 1955 of the Code,  
“unprofessional conduct” also includes, but is not limited to, the following:

- (a) A licensee’s failure to provide to the Dental Hygiene Board of California (Board),  
as directed, lawfully requested copies of documents within 15 calendar days of  
receipt of the request or within the time specified in the request, whichever is  
later, unless the licensee is unable to provide the documents within this time  
period for good cause, including but not limited to, physical inability to access  
the records in the time allowed due to illness or travel. This subdivision shall not  
apply to a licensee who does not have access to or control over the documents.
  
- (b) Failure to cooperate or participate in any Board investigation pending against the  
licensee. This subdivision shall not be construed to deprive a licensee of any  
privilege guaranteed by the Fifth Amendment to the Constitution of the United  
States, or any other constitutional or statutory privileges. This subdivision shall  
not be construed to require a licensee to cooperate with a request that would  
require the licensee to waive any constitutional or statutory privilege or to  
comply with a request for information or other matters within an unreasonable  
period of time in light of the time constraints of the licensee’s practice. Any valid  
exercise by a licensee of any constitutional or statutory privilege shall not be  
used against the licensee in an administrative or disciplinary proceeding against  
the licensee.
  
- (c) Failure to report to the Board in writing, within 30 calendar days, any of the  
following:

(1) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(2) Any final disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

Note: Authority cited: Sections 1905 and 1906, Business and Professions Code.  
Reference: Sections 1950.5 and 1955, Business and Professions Code.