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

1. SUBJECT OF NOTICE
   Unprofessional Conduct

2. REQUESTED PUBLICATION DATE
   September 24, 2021

3. NOTICE TYPE
   [X] Notice re Proposed Regulatory Action
   [ ] Notice of Proposed Action
   [ ] Notice of Final Action
   [ ] Other

4. AGENCY CONTACT PERSON
   Adina A. Pineschi-Petty, DDS
   Telephone Number: (916) 576-5002
   Fax Number (Optional): (916) 263-2688

5. AGENCY FILE NUMBER (If any)

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

1a. SUBJECT OF REGULATION(S)
   Unprofessional Conduct

2. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
   2021-1216-01S

3. TYPE OF FILING
   [X] Resubmittal of disapproved or withdrawn nonemergency filing
       (Gov. Code §§11346.2, 11346.3, 11346.4)
   [ ] Regular Rulemaking (Gov. Code §11346)
   [ ] Resubmittal of disapproved or withdrawn emergency filing
       (Gov. Code §11346.1)
   [ ] Emergency (Gov. Code §11346.1(b))
   [ ] Emergency Readopt
       (Gov. Code, §11346.1(h))
   [ ] Changes Without Regulatory Effect (Cal. Code Rgs., title 1, §100)
   [ ] File & Print
   [ ] Print Only
   [ ] Other (Specify)

4. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if applicable)
   1138.1

5. ADAPT
   Section 1138.1

6. AMEND

7. REPEAL

8. CERTIFICATE OF COMPLIANCE
   The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2, 11346.3 before the emergency regulation was adopted or within the time period required by statute.

9. EFFECTIVE DATE OF CHANGES
   Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))

10. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRANCE BY, ANOTHER AGENCY OR ENTITY
    Department of Finance (Form STD. 399) (SAM §6660)
    Fair Political Practices Commission
    State Fire Marshal
    Other (Specify) Kimberly Kirchmeyer, Director, California Department of Consumer Affairs

11. CONTACT PERSON
    Adina A. Pineschi-Petty, DDS
    Telephone Number: (916) 576-5002
    Fax Number (Optional): (916) 263-2688

12. SIGNATURE OF AGENCY HEAD OR DESIGNEE
    Anthony Lum, Executive Officer, Dental Hygiene Board of California
    Date: April 6, 2022
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:

§ 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.