

**State of California
Office of Administrative Law**

In re:
Dental Hygiene Board of California

Regulatory Action:

Title 16, California Code of Regulations

Adopt sections: 1104.3

Amend sections:

Repeal sections:

NOTICE OF APPROVAL OF REGULATORY
ACTION

Government Code Section 11349.3

OAL Matter Number: 2023-0307-02

OAL Matter Type: Regular Resubmittal (SR)

This regular rulemaking action by the Dental Hygiene Board sets forth requirements for the issuance of citations, fines, and orders of abatement to dental hygiene educational programs (DHEP) when the Board determines a DHEP is in violation of any law, regulation, or standard applicable to a DHEP.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/1/2023.

Date: March 27, 2023



Amy R. Gowan
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Anthony Lum, Executive Officer
Copy: Adina Pineschi-Petty

RESUBMITTAL

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER Z- 2022-0906-01	REGULATORY ACTION NUMBER 2023-0307-02SR	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		OFFICE OF ADMIN. LAW 2023 MAR 7 PM 3:15	
NOTICE		REGULATIONS	

ENDORSED - FILED
 In the office of the Secretary of State
 of the State of California

MAR 27 2023
Received at 1:28 pm

AGENCY WITH RULEMAKING AUTHORITY Dental Hygiene Board of California	AGENCY FILE NUMBER (If any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Site Visits, Citation & Fine, Education Programs	TITLE(S) 16	FIRST SECTION AFFECTED 1104.3	2. REQUESTED PUBLICATION DATE September 16, 2022
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
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Site Visits, Citation & Fine, Dental Hygiene Educational Programs	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2022-1122-03S
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	ADOPT 1104.3
	AMEND
	REPEAL
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) TITLE(S) 16	

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 type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
	<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
	<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify)		

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 14, 2023 through March 2, 2023.

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
 Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) Effective on filing with Secretary of State \$100 Changes Without Regulatory Effect 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 type="checkbox"/> State Fire Marshal
<input checked="" type="checkbox"/> Other (Specify) <u>Kimberly Kirchmeyer, Director, Department of Consumer Affairs</u>		

7. CONTACT PERSON Adina Pineschi-Petty DDS	TELEPHONE NUMBER (916) 576-5002	FAX NUMBER (Optional) (916) 263-2688	E-MAIL ADDRESS (Optional) adina.petty@dca.ca.gov
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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.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Anthony Lum</i>	DATE March 6, 2023
TYPED NAME AND TITLE OF SIGNATORY Anthony Lum, Executive Officer	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 27 2023

Office of Administrative Law

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

ORDER OF ADOPTION

Legend: <u>Underlined</u> Indicates proposed regulatory language.

Adopt Section 1104.3 of Title 16 of the California Code of Regulations (CCR) to read as follows:

Article 3. Educational Programs

§1104.3 Reviews, Site Visits, Citations and Fines, and Probationary Status for Dental Hygiene Educational Programs

(a) Program Reviews and Site Visits

A dental hygiene educational program for a registered dental hygienist, a registered dental hygienist in alternative practice, or a registered dental hygienist in extended functions (collectively DHEPs) shall provide access during business hours to the DHEP's records and premises to the Dental Hygiene Board of California (Board) or its authorized representative(s) to review the DHEP for compliance with all laws, regulations, and standards applicable to a DHEP including, but not limited to, the Business and Professions Code, the California Code of Regulations (CCR), the Commission on Dental Accreditation Standards of the American Dental Association, Occupational Safety and Health Administration, Health and Safety Code, Centers for Disease Control and Prevention, and the Health Insurance Portability and Accountability Act (HIPAA). For the purpose of this subdivision, "records" shall include, but are not limited to, course records, student records, faculty and staff records, and patient records.

(b) Citations, Fines, and Orders of Abatement

(1) The Executive Officer of the Board or their designee may issue a citation to a DHEP containing an order to pay a fine not to exceed \$5,000 and an order of abatement against a DHEP for any violation of Division 11 of Title 16 of the California Code of Regulations or any laws governing DHEPs.

(A) A citation may be issued without the assessment of a fine when determined by the Executive Officer or their designee in accordance with the factors set forth in subdivision (b)(3).

(B) Each citation issued pursuant to subdivision (b)(1) of this section shall be in writing and shall describe with particularity the nature and facts of each

violation specified in the citation, including a reference to the law or regulation alleged to have been violated.

(2) If the Board or its authorized representative determines that a DHEP is in violation of any law, regulation, or standard applicable to a DHEP, the DHEP shall correct the violation(s) within the amount of time specified in the order. The DHEP shall furnish the Board written proof of compliance with the order and shall permit a site visit by the Board's authorized representative to confirm compliance.

(3) In the issuance of any citation or fine, the following factors shall be considered:

(A) Nature and severity of the violation;

(B) Length of time that has passed since the date of the violation;

(C) Consequences of the violation, including the potential to harm, or actual patient harm;

(D) History of previous violations of a similar nature;

(E) Evidence that the violation was willful;

(F) Gravity of the violation; and

(G) The extent to which the cited DHEP has remediated the deficiencies.

(4) Compliance with Citation/Order of Abatement

(A) If a cited DHEP who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond the DHEP's control after the exercise of reasonable diligence, the DHEP cited may request an extension of time from the Executive Officer or their designee in which to complete the correction. The request shall be in writing and shall be made within the time set forth for abatement.

(B) When a citation or order of abatement is not contested or if the order is appealed and the DHEP cited does not prevail, failure to abate the violation within the time allowed or pay the fine that was imposed, if one was, shall constitute a violation and a failure to comply with the citation or order of abatement.

(C) Failure to timely comply with an order of abatement or pay a fine that is imposed shall result in disciplinary action being taken by the Board in addition to other remedies.

(5) Contested Citations

(A) The citation shall inform the cited DHEP if they desire a hearing to contest the finding of a violation, the hearing shall be requested by written notice

to the Board within 30 calendar days of the date of issuance of the citation. Hearings shall be held pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(B) In addition to or as an alternative to requesting a hearing as provided in subdivision (b)(5)(A), the cited DHEP may, within 14 calendar days after service of the citation, submit a written request to the Board for an informal conference with the Executive Officer.

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

(D) The Executive Officer or their designee may affirm, modify or dismiss the citation at the conclusion of the informal conference. A written decision stating the reasons for the decision shall be mailed to the cited DHEP and their legal counsel, if any, within 14 calendar days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the informal conference procedure.

(i) If the citation, including any administrative fine levied or order of abatement pursuant to subdivision (b)(1), is dismissed, the request for a hearing shall be deemed withdrawn.

(ii) If the citation, including any administrative fine levied or order of abatement, is affirmed, the cited DHEP may, in its discretion, withdraw the request for a hearing or proceed with the administrative hearing process as set forth in subdivision (b)(5)(A). An additional informal conference shall not be held on affirmed citations.

(iii) If the citation, including any administrative fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a cited DHEP wishes to contest a modified citation, the cited DHEP shall, within 30 calendar days after issuance of the modified citation, contest it by submitting a written request for an administrative hearing, as provided for in subdivision (b)(5)(A), to the Board. An informal conference shall not be held on modified citations.

(c) Probationary Status of a DHEP

(1) If the Board or its authorized representative determines a DHEP is in violation of any law, regulation, or standard applicable to a DHEP, the Board at a

noticed Board meeting may, pursuant to Section 1941.5 of the Code, place a DHEP on probation.

- (2) In the issuance of probation, the Board will consider the factors set forth in subdivision (b)(3) of this section.
- (3) If the Board places a DHEP on probation, the DHEP is required to provide notice of their probationary status in writing to its students within fifteen (15) business days of being placed on probation. The formal notice shall include, but not be limited to, a notice that the DHEP was placed on probation by the Board, the date of the beginning of the probation, as well as a copy of the Board's order issuing probation to the DHEP which includes the terms of the probation. In addition, the DHEP shall provide notice to each potential student applicant to the DHEP before offering to enroll the applicant. The DHEP shall provide the Board with written proof of compliance with this subdivision as a condition for removal from probationary status.
- (4) A DHEP on probationary status shall correct the violation(s) within the amount of time specified in the order. The DHEP shall furnish the Board written proof of compliance with the order and shall permit a site visit by the Board's authorized representative to confirm compliance.

 - (A) If the DHEP on probation demonstrates it has corrected the violation(s) and meets all requirements for approval set forth in 16 CCR section 1104, the Board may determine, at a noticed Board meeting, that the DHEP shall be removed from probationary status.
 - (B) If the DHEP on probation fails to demonstrate to the Board by the end of its probationary period the DHEP has corrected all violation(s) and met the requirements for approval set forth in 16 CCR section 1104, the Board shall withdraw approval of the DHEP.
- (5) Appeals Process for a DHEP on Probationary Status

 - (A) Any DHEP who is placed on probation may request, in writing, to appeal their probationary status by either:

 - (i) Requesting an informal conference.

 - (a) 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.
 - (b) 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.

(c) The Executive Officer shall notify the DHEP of the final decision of the Executive Officer within ten days of the informal conference. Based on the outcome of the informal conference, the DHEP may request a hearing pursuant to subdivision (c)(5)(A)(ii) to contest the Executive Officer's final decision.

(d) A DHEP shall request a hearing by written notice to the Board within 30 calendar days of the date of the letter of the Executive Officer's final decision after the informal conference. Hearings shall be held pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(ii) Requesting a hearing pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. Such request shall be made to the Board within 30 calendar days after service of a notice of probation, or before the date of the informal conference, if one was requested.

Note: Authority cited: Sections 125.9, 1905, 1906, and 1941.5, Business and Professions Code. Reference cited: Sections 125.9 and 1941.5, Business and Professions Code.