

**Dental Hygiene Board of California
California Department of Consumer Affairs**

ADDENDUM TO INITIAL STATEMENT OF REASONS

The Dental Hygiene Board of California (Board) provides the following addendum to the Initial Statement of Reasons for the proposed amendments to Title 16, section 1138.1, of the California Code of Regulations.

A. Authority and Reference in Notice of Proposed Action

Pursuant to the authority vested by Business and Professions Code (BPC) sections 1905 and 1906 and to implement, interpret or make specific BPC sections 1950.5 and 1955, the Board is considering changes to Division 11 of Title 16 of the California Code of Regulations (CCR) as set forth in the Notice of Proposed Action.

B. Section 1138.1(a)

Proposed section 1138.1(a) originally provided: “Knowingly making any statement or signing any certificate or other document directly or indirectly related to the practice of dental hygiene that falsely represents the existence or nonexistence of a state of facts.”

The Board initiated this rulemaking prior to the passage of Senate Bill (SB) 534 (Jones, Chapter 491, Statutes of 2021). SB 534 added subdivision (z) to BPC section 1950.5. This amendment states: (z) “Knowingly making a statement or signing a certificate or other document that falsely represents the existence or nonexistence of a fact directly or indirectly related to the practice of dental hygiene.”

As proposed section 1138.1(a) is duplicative of BPC section 1950.5(z), the Board deletes subdivision (a) in the rulemaking.

C. Renumbering of “subdivision (b) to subdivision (a)”, “subdivision (c) to subdivision (b)”, and “subdivision (d) to subdivision (c)”.

Based on the deletion of subdivision (a) in the proposed original text, the Board re-numbers subdivisions (b) through (d) as subdivisions (a) through (c) in the modified text.

D. Section 1138.1(b)

Proposed section 1138.1(b) provides the licensee’s failure to provide to the Board, lawfully requested copies of documents within 15 calendar days of receipt of the request or within the time specified in the request is unprofessional conduct. This applies “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 provision is necessary to allow the licensee time to comply with the request during situations beyond their control. For example, anecdotally, in May, 2020 the Board requested a licensee provide a patient’s treatment record. However, the patient’s treatment record was unavailable due to the dental office being closed due to the Coronavirus (COVID-19) pandemic. The Board would work with the licensee to allow a reasonable time period to access the requested record without penalizing them with a charge of unprofessional conduct. The Board added this provision to accommodate for such circumstances.

E. Section 1138.1(c)

The Board modified section 1138.1(c) to add that the required report must be “in writing.” This amendment clarifies the reporting process for the areas of concern to the Board as found in subdivision (c) (e.g., convictions of the licensee or final disciplinary actions). The Board determined these reports must be provided in writing for clarity and to memorialize the conviction or disciplinary action and provide for a historical record of the licensee’s acknowledgement of reporting culpability. Any method of writing will be accepted by the Board as proof of compliance with this section.

F. Business Impact

This regulation will not have any significant adverse economic impact on businesses. This initial determination is based on the following facts:

The proposed amendments to the regulation set forth additional conduct the Board considers unprofessional that is not included in BPC section 1950.5 and 1955. These amendments only affect the individual licensee and their ability to practice dental hygiene. This regulation does not impose any stipulations or reporting requirements on businesses.

G. Economic Impact

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the regulations are aimed at clarifying definitions for areas considered as unprofessional conduct. Subjecting a licensee to discipline for reporting violations would not create or eliminate jobs in California. The reporting requirements only affect the individuals within those job positions, requiring discipline of the individual licensee.
- It will not create new businesses or eliminate existing business within the State of California because the regulations are aimed at clarifying definitions for areas considered as unprofessional conduct. Subjecting a licensee to

discipline for reporting violations would not, in and of itself, create or eliminate businesses in California.

- It will not affect the expansion of businesses currently doing business within the State of California because the regulations are aimed at clarifying definitions for areas considered as unprofessional conduct. Subjecting a licensee to discipline for reporting violations would not affect expansion of businesses in California.
- This regulatory proposal benefits the health and welfare of California residents because it would clarify definitions for areas considered as unprofessional conduct. By ensuring that RDHs advise the Board of convictions of the licensee or final disciplinary actions, the Board will be able to determine if any of those convictions or final disciplinary actions would endanger the public. For example, if the licensee is convicted of use of illegal substances (e.g., cocaine), the Board would place the licensee on probation with terms (e.g., mandatory drug testing) to ensure the licensee is not under the influence while practicing on patients.
- This regulatory proposal does not affect worker safety because it does not involve worker safety.
- This regulatory proposal does not affect the state's environment because it does not involve environmental issues.