

DENTAL HYGIENE BOARD
FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Unprofessional Conduct.

Section(s) Affected: Section 1138.1 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 Dental Hygiene Board of California (Board) noticed the proposed rulemaking on September 24, 2021, with a 45-day comment period ending on November 9, 2021 with no comments received.

On January 26, 2022, the Board received comments from the Office of Administrative Law (OAL) on the Board's proposed regulations for 16 CCR section 1138.1, which necessitated substantive changes that required the Board's approval.

On January 27, 2022, the Board withdrew proposed section 1138.1 from OAL review, and prepared a modified text and an Addendum to the Initial Statement of Reasons (ISOR) for a 15-day comment period. The modified text and Addendum to ISOR was noticed to those persons specified in subsections (a)(1) through (4) of Section 44 of Title 1 of the CCR and subdivision (b) of Government Code section 11347.1 on February 23, 2022, with a comment period that ended on March 11, 2022.

On March 19, 2022, the Board approved the modified text and Addendum to ISOR and directed staff to take all steps necessary to continue the rulemaking process.

The modified text included the following amendments:

A. 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.

B. 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 renumbers subdivisions (b) through (d) as subdivisions (a) through (c) in the modified text.

C. 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.

Local Mandate

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

Fiscal Impact

The Board does not anticipate any increase in costs to the state as a result of adopting the sections identified in this regulatory proposal.

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.

Objections or Recommendations/Responses

There were no objections or recommendations regarding the proposed action.