



**Title 16, Division 11, Article 10, Section 1138.1
Dental Hygiene Board of California**

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING

Unprofessional Conduct, Section 1138.1

California Code of Regulations

NOTICE IS HEREBY GIVEN that the Dental Hygiene Board of California (Board) is proposing to take the rulemaking action described below under the heading Informative Digest/Policy Statement Overview. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice must be received by the Board at its office **by 5:00 p.m. on Tuesday, November 9, 2021.**

The Board has not scheduled a public hearing on this proposed action. The Board will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

The Board may, after considering all timely and relevant comments, adopt the proposed regulations substantially as described in this notice or may modify the proposed regulations if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE:

Pursuant to the authority vested by Business and Professions Code (BPC) sections 1905, 1906, and 1950.5, and to implement, interpret or make specific BPC sections 1905 and 1950.5, the Board is considering changes to Division 11 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BPC sections 1905 and 1906 authorize the Board to adopt, amend, and revoke regulations to implement the statutory requirements of Article 9 of Chapter 4, BPC sections 1900 through 1967.4, regarding dental hygienists. The Board, a constituent

agency within the Department of Consumer Affairs (DCA), regulates registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions (collectively RDHs). The Board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The Board's core functions are issuing licenses to qualified applicants, investigating consumer complaints filed against licensees, disciplining licensees for sustained violations of the BPC and Title 16 of the CCR, regulating and approving RDH educational programs, and monitoring licensees placed on disciplinary probation by the Board.

BPC section 1950.5 sets forth a non-exclusive list of acts constituting unprofessional conduct by licensees. This proposal would add language to expand the categories of conduct the Board considers to be unprofessional that are not included in BPC section 1950.5 and 1955.

- **Add Section 1138.1 to Title 16 of the California Code of Regulations.**

Existing law sets forth the categories of conduct that constitute unprofessional conduct and the conduct that will result in the imposition of civil or administrative penalties or fines. Currently, there is no regulation setting forth additional conduct the Board considers to be unprofessional.

The Board proposes to add section 1138.1 to add the following categories of unprofessional conduct: (1) providing false statements to the Board; (2) failure to provide requested documentation to the Board; (3) failure to cooperate with Board investigations; and (4) failure to report convictions and disciplinary actions against the licensee.

Anticipated Benefits of the Proposed Amended Regulation:

Proposed section 1138.1 will identify additional conduct the Board considers unprofessional that are not included in BPC section 1950.5 and 1955. As protection of the public is paramount to the Board's mission (Bus. & Prof. Code, § 1902.1), the Board has developed additional categories of unprofessional conduct to ensure safety of the public.

First, the Board proposes to include providing false statements to the Board because such conduct could lead to compromised care for the patient. This proscription encourages licensees to be truthful and forthright in their care of patients.

Second, the Board proposes to include failure to provide requested documentation to the Board because a licensee's provision of requested documentation furthers timely investigations and promotes protection of the public.

Third, the Board proposes to include failure to cooperate with Board investigations because evidence a licensee provides to the Board is especially probative of the

appropriateness or lack of care provided to a patient. A licensee's cooperation furthers an accurate investigation by the Board to determine the merits of complaints against licensees.

Fourth, the Board proposes to include failure to report convictions and disciplinary actions against the licensee. Licensees are viewed as professionals guided by a "Code of Ethics" which states: "The Code establishes concise standards of behavior to guide the public's expectations of our profession and supports dental hygiene practice, laws and regulations. By holding ourselves accountable to meeting the standards stated in the Code, we enhance the public's trust on which our professional privilege and status are founded." (Code of Ethics for Dental Hygienists, American Dental Hygienists' Association, June 2020.) Depending on the nature and circumstances of the offense, which the Board would examine, a conviction could undermine public trust.

Determination of Inconsistency and Incompatibility with Existing State Regulations:

During the process of developing this regulatory proposal, the Board has conducted a search of any similar regulations on this topic and has concluded that the proposed regulatory action is not inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

FISCAL IMPACT ESTIMATES

The Board has made the following initial determinations:

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The proposed regulations do not result in a fiscal impact to the state in the form of federal funding or any cost or savings to any state agency. The amendments expand the list of conduct considered as unprofessional conduct consistent with current law. As a result, the Board does not anticipate a fiscal impact to the state.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to any Local Agency or School District for which Government Code Sections 17500 through 17630 Require Reimbursement: None

Business Impact

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business,

including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

The proposed amendments only set forth additional conduct the Board considers unprofessional that is not included in BPC section 1950.5 and 1955.

Cost Impacts on a Representative Private Person or Businesses:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant Effect on Housing Costs: None.

Business Reporting Requirement: None.

Results of the Economic Impact Analysis/Assessment

Impact on Jobs/Businesses: The Board has determined that this regulatory action will not create or eliminate jobs, will not create new business or eliminate existing businesses, and will not affect the expansion of businesses currently doing business within the State of California because the proposed regulation only sets forth additional conduct the Board considers unprofessional that is not included in BPC section 1950.5 and 1955.

Benefits of the Proposed Action: This regulatory proposal benefits the health and welfare of California residents because it would set forth additional conduct the Board considers unprofessional that is not included in BPC section 1950.5 and 1955, thereby holding RDHs accountable to adhere to acceptable standards of care when working with the public.

The Board anticipates that this regulatory action will not have any monetary effect because the proposed regulation clarifies additional areas considered by the Board to be unprofessional conduct, thereby holding RDHs accountable to adhere to acceptable standards of care when working with the public.

This regulatory proposal does not benefit worker safety or the state's environment because it does not affect worker safety or the environment.

Effect on Small Business: The Board has determined that this regulatory action would not affect small businesses because the proposed regulation clarifies additional areas considered by the Board to be unprofessional conduct, thereby holding RDHs accountable to adhere to acceptable standards of care when working with the public.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action or would be more cost-effective to the affected private persons and equally effective in implementing the statutory policy or other provision of the law.

Interested persons are invited to present statements or arguments in writing relevant to the above determinations during the written comment period.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Board may adopt the amendments as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that was noticed to the public. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for review and or written comment at least 15 days before it is adopted. The public may request a copy of the modified regulatory text by contacting Dr. Pineschi-Petty at the address above.

AVAILABILITY OF FINAL STATEMENT OF REASONS

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting Dr. Pineschi-Petty at the address above.

You may obtain a copy of the Final Statement of Reasons once it has been prepared, by making a written request to Dr. Pineschi-Petty at the address above or by accessing the website listed below.

CONTACT PERSONS

Inquiries or comments concerning the proposed regulatory action may be directed to the following designated agency contact persons:

Dental Hygiene Board of California
Attn: Adina A. Pineschi-Petty DDS
2005 Evergreen St, Ste. 1350
Sacramento, CA 95815
Phone: (916) 576-5002
Email: adina.petty@dca.ca.gov

Backup Contact Person:

Attn: Anthony Lum
2005 Evergreen St, Ste. 1350
Sacramento, CA 95815
Phone: (916) 263-1978
Email: anthony.lum@dca.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Dr. Pineschi-Petty at the above address. In her absence, please contact the designated back-up contact person.

TEXT OF THE PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the ISOR, and all of the information on which the proposal is based, may be obtained upon request from the Board at 2005 Evergreen Street, Suite 1350, Sacramento, California 95815, or by accessing the Board's website at <https://www.dhbc.ca.gov/lawsregs/index.shtml>.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Actions the Initial Statement of Reasons, and the text of the regulations can be accessed through the Board's website at <https://www.dhbc.ca.gov/lawsregs/index.shtml>.