

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

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled.

Subject Matter of Proposed Regulations: Reporting Dental Relationships Between Registered Dental Hygienists in Alternative Practice and Licensed Dentists

Section Affected: Section 1117 of Title 16 of the California Code of Regulations (CCR)

Specific Purpose of Each Adoption, Amendment, or Repeal:

1. Problem Being Addressed:

The Dental Hygiene Board of California (Board) is charged with oversight of registered dental hygienists, registered dental hygienists in alternative practice (RDHAPs), and registered dental hygienists in extended functions. The Board carries out its regulatory authority through enforcement of statutory provisions of the Dental Practice Act, Business and Professions Code (BPC) sections 1900 through 1967.4, and Title 16 of the CCR.

BPC section 1930 requires an RDHAP to provide documentation to the Board of an existing relationship with at least one dentist for referral, consultation, and emergency services. The Board proposes to make BPC section 1930 specific by defining reporting requirements for RDHAPs to inform the Board of an existing relationship with at least one dentist for referral, consultation, and emergency services. This proposal will adopt Title 16, section 1117 to provide requirements for RDHAPs to report a relationship to the Board. These will include: (1) providing documentation to the Board upon application of an RDHAP license of a relationship with at least one licensed dentist located in California for referral, consultation, and emergency services; (2) providing documentation to the Board of a current relationship with at least one licensed dentist at every biennial license renewal; (3) reporting any termination of the existing dentist relationship to the Board within 30 calendar days of the termination and providing documentation of establishment of a new relationship with a licensed dentist; (4) requiring that at all times during the relationship between the RDHAP and the dentist, the dentist's license must be current, active, and not under discipline prohibiting practice by the Dental Board of California (DBC); and (5) requiring termination of the RDHAP-licensed dentist relationship upon learning of any discipline prohibiting practice of the dentist's license by the DBC.

The proposed regulation would utilize proposed form "Documentation of Registered Dental Hygienist in Alternative Practice (RDHAP) Relationship with Dentist" (Form RDHAP-01 (New 07-2021)) which is incorporated by reference at proposed section 1117(f).

The Board approved the proposed language and incorporated form at the Board's August 29, 2020 Full Board WebEx Teleconference meeting and delegated authority to the Board's Executive Officer to make any technical, non-substantive changes, if necessary.

2. Anticipated Benefit(s) from this Regulatory Action:

Proposed section 1117 will do the following:

- First, the requirements ensure RDHAPs have a dental resource to whom to refer the patient for further, more comprehensive treatment outside the scope of the licensee's practice. This will enhance patient safety and ensure continuity of care for RDHAPs' patients.
- Second, requiring RDHAPs to provide the Board with notice of a current relationship with at least one licensed dentist at every biennial license renewal and in the event of termination will ensure continuity of the dentist relationship.
- Third, requiring that the dentist's license must be current, active, and not under discipline prohibiting practice by the DBC at all times ensures that the dentist is legally able to practice and provide safe, necessary care to patients the RDHAP refers.
- Fourth, requiring termination of the RDHAP-licensed dentist relationship upon learning of any discipline of the dentist's license prohibiting practice will ensure that the RDHAP only maintains a relationship with dentists that provide safe, necessary care to patients.

Factual Basis/Rationale

Subdivision (a)

Subdivision (a) provides that upon initial application for a RDHAP license, the applicant must provide documentation specified in subdivision (f) to the Board of a relationship with at least one licensed dentist located in California for referral, consultation, and emergency services.

The Board's highest priority is consumer protection. (Bus. & Prof. Code, § 1902.1.) Section 1930 provides an RDHAP must provide documentation of an existing relationship with at least one dentist for referral, consultation, and emergency services. This subdivision addresses when the documentation must be provided. This provision is necessary so an RDHAP is aware of when the duty to provide the documentation is triggered.

Subdivision (b)

Subdivision (b) requires RDHAP to provide the documentation of a current relationship with at least one licensed dentist at every biennial license renewal.

This requirement is necessary because RDHAP/dentist relationships may change due to unforeseen circumstances (dentist retirement, etc.) Requiring the RDHAP to report a current relationship with a dentist at every license renewal will ensure that the RDHAP maintains a current dental resource to whom to refer the patient.

Subdivision (c)

Subdivision (c) requires an RDHAP to report any termination of the existing dentist relationship to the Board within 30 calendar days of the termination and provide the documentation specified in subdivision (f) to the Board for at least one licensed dentist with whom the new relationship has been established for referral, consultation, and emergency services.

BPC section 1930 requires an RDHAP to provide documentation to the Board of an existing relationship with at least one dentist for referral, consultation, and emergency services. As such, the Board determined that 30 days would provide sufficient time for the RDHAP to establish a relationship with a new dentist for the RDHAP to refer the patient to for further, more comprehensive treatment outside the scope of the licensee's practice. This is necessary to ensure the RDHAP maintains a current dental resource to whom to refer the patient and ensures adequate resources are available to the patient for their continued care.

Subdivision (d)

Subdivision (d) requires that at all times during the relationship between the RDHAP and the dentist, the dentist's license must be current, active, and not under discipline prohibiting practice by the DBC.

This requirement is necessary as only active, licensed dentists are permitted to practice dentistry. BPC section 1950.5 defines unprofessional conduct to include the aiding or abetting of any unlicensed person to practice dentistry or dental hygiene. (Bus. & Prof. Code, § 1950.5, subd. (b).) Section 1117(d) will require that the RDHAP monitor the dentist's license to ensure the dentist is legally able to practice and provide safe, necessary care to patients referred by the RDHAP for dental needs beyond the scope of the RDHAP's practice.

Subdivision (e)

Subdivision (e) of the proposal provides if an RDHAP learns that the dentist with whom they have an existing relationship is being placed under discipline prohibiting practice by the DBC, the RDHAP is required to terminate the relationship.

This requirement is necessary as RDHAPs should only maintain relationships with dentists who are legally able to practice and provide safe, necessary care to patients. BPC section 1950.5 defines unprofessional conduct to include the aiding or abetting of any unlicensed person to practice dentistry or dental hygiene. (Bus. & Prof. Code, § 1950.5, subd. (b).) Section 1117(e) will require that the RDHAP monitor the dentist's

license and terminate the RDHAP/dentist relationship if the dentist's license undergoes discipline prohibiting practice. As a part of monthly practice management, the RDHAP should check the Dental Board of California's (DBC) website for the dentist's license status. If there is any discipline prohibiting practice noted on the dentist's license, the RDHAP should begin their search and arrangements for a new dentist to establish a relationship with for follow-up patient care.

Additionally, the Board determined that 30 days would provide sufficient time for the RDHAP to establish a relationship with a new dentist and supply the Board with the necessary documentation as required by subdivision (f).

Subdivision (f)

Subdivision (f) require licensees to report documentation to the to the Board to include Application Form RDHAP-01 (New 07-2021) as incorporated by reference.

BPC section 1930 requires an RDHAP to provide documentation to the Board of an existing relationship with at least one dentist for referral, consultation, and emergency services. This requirement is necessary because this item provides identifying information for the dentist to ensure the RDHAP maintains a current dental resource to whom to refer the patient. Additionally, this will ensure adequate resources are available to the patient for their safety and continued access to care.

Application Form RDHAP-01 (New 07-2021), Incorporated by Reference

Subdivision (f) requires an RDHAP to provide a signed "Documentation of Registered Dental Hygienist in Alternative Practice (RDHAP) Relationship with Dentist" (Form RDHAP-01 (New 07-2021)), which the subdivision incorporates by reference.

Form RDHAP-01 (New 07-2021) is created to assist the RDHAP to report the RDHAP/dentist relationship and ensures that pertinent information is collected from RDHAPs in a consistent manner to enable fair and efficient processing of the request by the Board. The form collects the date, RDHAP information (name of RDHAP, application number or RDHAP license number, license expiration date, address, telephone number, mobile phone number, and email address) to enable identification of the requester and ensure accuracy in the processing of the application. Form RDHAP-01 (08-2020) also requests the dentist's contact information (name of dentist, dentist license number, dental license expiration date, address, and telephone number) with whom the RDHAP will have a relationship for referral, consultation, and emergency services. Dentist contact information is necessary because it ensures the dentist is practicing with a current and valid license as required by BPC section 1626.

The form includes specific questions that the RDHAP must answer to ensure the RDHAP complies with proposed regulation section 1117. These questions include:

- Whether, pursuant to BPC Section 1930 and 16 CCR Section 1117, the RDHAP has a current relationship with at least one licensed dentist for referral,

consultation, and emergency services. This is necessary to ensure compliance with proposed section 1117(a), (b), (c), and (e).

- Whether, pursuant to 16 CCR Section 1090.1, to the RDHAP's knowledge, the dentist's license is current, active and not under discipline prohibiting practice by the DBC. This is necessary to ensure compliance with proposed section 1117(d).

Additionally, Form RDHAP-01 (New 07-2021) includes a notice that, pursuant to BPC Section 1930 and 16 CCR Sections 1090.1 and 1117, an RDHAP must report any changes in the relationship with their dentist in writing to the Board within 30 calendar days of the change. This is necessary to ensure the RDHAP maintains a current dental resource to whom to refer the patient and ensures adequate resources are available to the patient for their continued care and safety.

Form RDHAP-01 (New 07-2021) also includes a requirement the applicant certify that they have read and met all requirements to help ensure that representations made by the applicant contain truthful factual representations and are made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal. App.4th 1214, 1223 [judicial explanation for the use of certifications].) This is necessary to ensure the RDHAP provides accurate information to the Board as the provision of false information could endanger the care of the patient (e.g., if an RDHAP refers a patient to a dentist with a revoked license for repeated acts of malpractice, the patient may possibly be treated incorrectly and could be subject to harm).

Finally, form RDHAP-01 (New 07-2021) includes the required notices and disclosures to the applicant for the Board's collection of personal information, which is necessary to comply with Civil Code section 1798.17.

Form RDHAP-01 (New 07-2021) referenced in subdivision (f)(3), would be cumbersome, unduly expensive and otherwise impractical to publish in the CCR. The form will be available on the Board's website and hardcopies will be available from the Board upon request.

Underlying Data:

- Senate Bill (SB) 1482 (Chapter 858, Statutes of 2018)
- Minutes: DHBC Full Board WebEx Teleconference, August 29, 2020.
- Minutes: DHBC Full Board WebEx Teleconference, July 17, 2021.

Evidence Supporting Finding of No Significant Statewide Adverse Economic Impact Directly Affecting Business:

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

The proposed regulation would simply define reporting requirements for RDHAPs to inform the Board of an existing relationship with at least one dentist for referral, consultation, and emergency services.

The proposed form incorporated by reference, form RDHAP-01 (New 07-2021), incorporates the reporting requirements proposed in the regulation for uniformity of information reported to the Board and requires a minor expenditure of effort to complete.

Economic Impact Assessment:

This regulatory proposal will have the following effects:

The Board has determined that this regulatory action would not create or eliminate jobs or businesses within the State of California as the proposed language would define reporting requirements for RDHAPs to inform the Board of an existing relationship with at least one dentist for referral, consultation, and emergency services, as required by state law.

The Board has determined that this regulatory action would not impact existing businesses within the State of California as the proposed language in the regulation would define reporting requirements for RDHAPs starting their personal dental hygiene practice to inform the Board of an existing relationship with at least one dentist for referral, consultation, and emergency services, as required by state law.

This regulatory proposal would not impact worker safety as the proposed language in the regulation does not involve worker safety.

This regulatory proposal will would positively impact the health and welfare of California residents as the proposed language in the regulation would clarify RDHAP reporting requirements to ensure the RDHAP has a dental resource to refer their patients for further, more comprehensive treatment outside the scope of the licensee's practice, thereby increasing safety and ensure continuity of care for the patients of RDHAPs.

This regulatory proposal will not affect the state's environment because this proposed regulation does not involve environmental issues. The proposed regulation only establishes a regulation for the Board to define reporting requirements for RDHAPs to inform the Board of an existing relationship with at least one dentist for referral, consultation, and emergency services.

The Board estimates initial RDHAP applicants and renewing RDHAP licensees will take 20 minutes to complete and submit the required documentation at a cost of \$15 per submission. The Board receives approximately 45 initial license applications and 300 renewal license applications per year, which would result in an economic impact of \$5,175 per year and up to \$51,750 over a ten-year period as follows:

RDHAP Workload and Costs												
Reporting Requirement Form		Years Ongoing										Total
		1	2	3	4	5	6	7	8	9	10	
Submissions per year (initial)	45	45	45	45	45	45	45	45	45	45	45	450
Submissions per year (renewal)	300	300	300	300	300	300	300	300	300	300	300	3,000
Complete and submit form (20 minutes)	\$15	\$5,175	\$5,175	\$5,175	\$5,175	\$5,175	\$5,175	\$5,175	\$5,175	\$5,175	\$5,175	\$51,750
Total Costs:		\$5,175	\$5,175	\$5,175	\$5,175	\$5,175	\$5,175	\$5,175	\$5,175	\$5,175	\$5,175	\$51,750

Fiscal Impact Assessment:

The Board indicates a Staff Services Analyst will take approximately 45 minutes to notify RDHAPs and process each document submission, as specified, at a cost of approximately \$66 per submission.

The Board receives approximately 45 initial license applications and 300 renewal license applications per year, which would result in a fiscal impact of \$22,770 per year and up to \$227,700 over a ten-year period as follows:

Dental Hygiene Reporting Requirement Workload												
Reporting Requirement Form		Years Ongoing										Total
		1	2	3	4	5	6	7	8	9	10	
License Applications (initial)	45	45	45	45	45	45	45	45	45	45	45	450
License Applications (renewal)	300	300	300	300	300	300	300	300	300	300	300	3,000
Licensing Workload (45 minutes) - Staff Services Analyst*	\$66	\$22,770	\$22,770	\$22,770	\$22,770	\$22,770	\$22,770	\$22,770	\$22,770	\$22,770	\$22,770	\$227,700
Total Costs:		\$22,770	\$22,770	\$22,770	\$22,770	\$22,770	\$22,770	\$22,770	\$22,770	\$22,770	\$22,770	\$227,700

*SSA (approximately \$88 per hour - includes DCA distributed costs)

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Not adopt the regulation: This alternative was rejected by the Board because BPC section 1906 authorizes the Board to adopt regulations to implement BPC section 1930 which requires an RDHAP to provide documentation to the Board of an existing relationship with at least one dentist for referral, consultation, and emergency services.

2. Adopt the regulation: The Board determined that this alternative is the most feasible because it establishes a regulation for the Board to define reporting requirements for RDHAPs to inform the Board of an existing relationship with at least one dentist for referral, consultation, and emergency services. This will increase safety and ensure continuity of care for the patients of RDHAPs by providing a dental resource for further, more comprehensive treatment to their patients outside the scope of the licensee's practice.