



**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Subject Matter of Proposed Amended Regulations: Appeals Process and Reinstatement of Withdrawn Dental Hygiene Educational Programs

Sections Affected: Section 1105.4 of Title 16 of the California Code of Regulations (CCR)

Specific Purpose of Each Adoption, Amendment, or Repeal:

1. Background/Statement of the Problem

The Dental Hygiene Board of California (Board) is charged with oversight of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions (collectively RDHs). 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 California Code of Regulations (CCR). 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 Dental Hygiene Educational Programs (DHEPs), and monitoring licensees placed on disciplinary probation by the Board.

Existing law provides the Board shall renew approval of a DHEP provided the DHEP continues to meet requirements prescribed by the Board. More specifically, the Board may deny or withdraw its approval of an educational program. If the Board denies or withdraws approval of a program, the reasons for withdrawal or denial will be provided. Existing law already provides that any educational program whose approval is denied or withdrawn shall be granted an informal conference before the Executive Officer or his or her designee prior to the effective date of such action. However, the Board determined there was no clear process within California Code of Regulations (CCR), Title 16, section 1105.4 to reinstate Board approval of DHEPs withdrawn due to noncompliance with Board laws and regulations. Additionally, the Board determined there was no clear guidance as to requirements to maintain the withdrawn status of DHEPs should the DHEP not comply with the Board directives.

This regulatory proposal will: 1) establish a process by which to reinstate Board approval of DHEPs withdrawn due to noncompliance with Board laws and regulations;; and 2) establish requirements to maintain the withdrawn status of DHEPs should the DHEP not comply with Board directives.

The Board approved the original proposed text at the November 18, 2023 Full Board Meeting, with modified text with clarifying edits at the July 22, 2024 Full Board 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:

The Board has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents and worker safety:

- First, by establishing a process by which to reinstate Board approval of DHEPs withdrawn due to noncompliance with Board laws and regulations affords a DHEP procedural due process. This establishes a clear, fair, and equitable process for the DHEP to provide evidence they have complied with Board requirements in order to reinstate their approval.
- Second, by establishing requirements to maintain the withdrawn status of DHEPs should the DHEP not comply with Board directives ensures graduates of withdrawn DHEPs are not eligible for California licensure. This promotes safety of the public as the Board will not license RDH graduates that do not meet the minimum standards for safe practice in California.

Factual Basis/Rationale
Section 1105.4

CCR Section 1105.4 – Title

The Board proposes to amend the title of 1105.4 to include the words “and Reinstatement of Withdrawn Dental Hygiene Educational Programs” to inform the regulated public that this section now includes a process for reinstatement.

Subdivision (a)

The Board proposes to amend subdivision (a) by adding “calendar” before “days” and after “(90)” to clarify the time frame by which the Board will notify the DHEP as to the withdrawal or denial of their DHEP. In the Board’s experience, ninety (90) calendar days provides the Board sufficient time to provide a written record of the decision.

Subdivision (a) is consistent with notification requirements in other regulations. (See e.g., Cal. Code Regs., tit. 16, §1104.3, subd. (d)(4).)

Subdivision (b)

The Board proposes to amend subdivision (b) by adding “business” before “days” and after “ten” to clarify the time frame by which the DHEP shall be granted an informal conference before the Executive Officer (EO) or their designee prior to the effective date

of the withdrawal or denial of the DHEP. In the Board's experience, ten business days provides the EO sufficient time to grant an informal conference upon receipt of the request for an informal conference.

Subdivision (b) is consistent with informal conference requirements in other regulations. (See e.g., Cal. Code Regs., tit. 16, §1104.3, subd. (b)(5)(B).)

Subdivision (c)(1)

The Board proposes to amend subdivision (c)(1) by adding "business" before "days" and after "ten" to clarify the time frame by which the EO will notify the educational program of the final decision of the EO. In the Board's experience, ten business days provides the EO sufficient time to provide a written record of the decision resulting from the informal conference.

Subdivision (c)(1) is consistent with informal conference requirements in other regulations. (See e.g., Cal. Code Regs., tit. 16, §1104.3, subd. (b)(5)(D).)

Subdivision (c)(2)

The Board proposes to amend subdivision (c)(2) by adding "of" after "writing" and before "the program's" to correct a grammatical error.

Additionally, the Board proposes to amend (c)(2) by adding "at least 5 calendar days" after "Board" and before "before the date of the informal conference" to clarify the time frame by which the DHEP must notify the Board as to their decision to forgo an informal conference and request to proceed with 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. In the Board's experience, five calendar days provides the EO sufficient time to cancel the informal conference.

Subdivision (c)(2) is consistent with notification requirements in other regulations. (See e.g., Cal. Code Regs., tit. 16, §1104.3, subd. (c)(5).)

Subdivision (d)

The Board proposes to amend section 1105.4 by adopting subdivision (d) with regard to requirements a DHEP shall comply with to reinstate Board approval of the DHEP. Subdivision (d) is necessary to provide the requirements to reinstate Board approval applicable to withdrawn DHEPs and provides a clear, fair, and equitable process.

Subdivision (d)(1)

The Board proposes to amend section 1105.4 by adopting subdivision (d)(1) requiring a withdrawn DHEP to correct all violation(s) which resulted in the withdrawal of Board approval. It is necessary for a withdrawn DHEP to correct the violation to avoid perpetuation of the violation, as well as to remedy the "reason" for the withdrawal.

DHEP review and reporting requirements in subdivision (d)(1) is also consistent with other regulations. (See e.g., Cal. Code Regs., tit. 16, §1104.3(b)(2).)

Subdivision (d)(2)

The Board proposes to amend section 1105.4 by adopting subdivision (d)(2) requiring a withdrawn DHEP to furnish the Board with written proof of compliance pursuant to 16 CCR section 1104 within the Board-provided deadline. It is necessary for the Board to receive documented proof of compliance to memorialize compliance of the cited violation, in addition to providing proof of compliance. Additionally, it is necessary for a withdrawn DHEP to correct the violation within a set timeframe to avoid perpetuation of the violation.

Additionally, the DHEP shall be required to permit a site visit by the Board's authorized representative to confirm compliance of the violation, as well as to ensure facilities and records comply with all requirements enforced by the Board. (See e.g., Cal. Code Regs., tit. 16, §1104.3(a).)

DHEP review and reporting requirements in subdivision (b) are also consistent with other regulations. (See e.g., Cal. Code Regs., tit. 16, §1104.3(b)(2).)

Subdivision (d)(2)(A)

The Board proposes to amend section 1105.4 by adopting subdivision (d)(2)(A) providing if a withdrawn DHEP demonstrates it has corrected the violation(s) and meets all requirements for approval set forth in 16 CCR section 1104, the Board shall, at a noticed Board meeting, grant the DHEP reapproval. This is necessary because once a DHEP meets all requirements enforced by the Board, the DHEP will be in compliance with BPC section 1941.5, and its approval shall be restored. Additionally, 16 CCR 1104(b)(5) states continuation of approval of all DHEPs shall be contingent upon compliance with the requirements described in Article 3, and therefore withdrawn DHEPs may be removed from withdrawn status and be returned to a full-approved status.

Subdivision (d)(2)(A) is consistent with restoring DHEP approval in other regulations. (See e.g., Cal. Code Regs., tit. 16, §1104.3(c)(4)(A).)

Subdivision (d)(2)(B)

The Board proposes to amend section 1105.4 by adopting subdivision (d)(2)(B) providing if a withdrawn DHEP demonstrates it has corrected a substantial number of the violation(s) as specified within the "Letter of Withdrawal" order and is actively working towards meeting the requirements for approval set forth in 16 CCR section 1104, the Dental Hygiene Board shall, at a noticed Board meeting, grant the dental hygiene educational program the status of "reapproval with conditions of probation." This is necessary because if a DHEP demonstrates a "good faith" effort to come into

compliance, and there are circumstances out of the DHEP's control which delays full compliance (e.g., construction delays in obtaining a county permit for a clinic remodel, lack of clinic supplies due to delays in the supply chain, etc.), the Board does not want to penalize the DHEP. Therefore, the Board determined to allow an intermediate status of "reapproval with conditions of probation" in order to acknowledge a DHEP's diligence in working towards compliance.

For example, a DHEP was determined to have ten violations. However, three of the ten violations were major (e.g., infection control violations), and the remaining seven were of minor concern (e.g., clerical corrections on forms, new program director agreements requiring signatures, etc.). The DHEP has corrected the three major violations immediately, but are in the process of actively correcting the remaining seven minor violations. In this case, it would be in the best interest for the Board to find that the school was in substantial compliance and to allow the school to be given reapproval with conditions.

Subdivision (d)(2)(B) is consistent with determination of correction limitations in other regulations. (See e.g., Cal. Code Regs., tit. 16, §1104.3(b)(4)(A).)

Subdivision (d)(2)(C)

The Board proposes to amend section 1105.4 by adopting subdivision (d)(2)(C) providing if a withdrawn DHEP fails to demonstrate correction of all violation(s) and does not meet the requirements for approval set forth in 16 CCR section 1104 by the Dental Hygiene Board, the Board shall maintain the withdrawn approval of the dental hygiene educational program.

16 CCR 1104(b)(5) states continuation of approval of all DHEPs shall be contingent upon compliance with the requirements described in Article 3 (applicable to educational programs). If the DHEP does not correct all violations and meet the requirements for approval set forth in 16 CCR 1104, the Board may choose to maintain the withdrawn status of the DHEP.

Violations of Article 3 have the potential to cause harm to the public. For example, 16 CCR 1105.2(d)(3)(A) requires DHEPs to provide infection control equipment according to the requirements of 16 CCR 1005. If a DHEP fails to follow infection control protocols pursuant to 16 CCR 1005 [e.g., subdivision (b)(12) requires critical instruments to be discarded (local anesthesia needles) or sterilized (instruments such as scalers to clean teeth)], the public could potentially be exposed to contamination from other patients and may be placed at risk for infections or disease (e.g., Hepatitis B or HIV from contaminated needles or instruments). Therefore, the Board determined there are situations by which maintenance of the withdrawn status for noncompliant DHEPs would be necessary.

Subdivision (d)(2)(C) is consistent with determination of withdrawal status in other regulations. (See e.g., Cal. Code Regs., tit. 16, §1104.3(c)(4)(B).)

Underlying Data:

- Minutes: Full Board Meeting, Saturday, November 18, 2023.
- Meeting Materials: Full Board Meeting, Saturday, November 18, 2023.
- Minutes: Full Board Meeting, Saturday, July 20, 2024.
- Meeting Materials: Full Board Meeting, Saturday, July 20, 2024.

Business Impact:

The proposed regulation will not have a 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 to the regulation will simply allow a process by which to reinstate Board approval of DHEPs withdrawn due to noncompliance with Board laws and regulations who have come into compliance, or to maintain a DHEP's withdrawn status if the DHEP fails to correct violations cited by the Board.

According to the Board, the types of violations resulting in a DHEP having their registration withdrawn varies significantly. As a result, the Board does not have a cost estimate for a DHEP to come into compliance at this time. However, the Board anticipates a DHEP will be able to remedy non-compliance within normal business operations.

Economic Impact Assessment:

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because proposed amendments to the regulation will simply allow a process by which to reinstate Board approval of DHEPs withdrawn due to noncompliance with Board laws and regulations who have come into compliance, or to maintain a DHEP's withdrawn status if the DHEP fails to correct violations cited by the Board.
- It will not create new businesses or eliminate existing business within the State of California because the proposed amendments to the regulation will simply allow a process by which to reinstate Board approval of DHEPs withdrawn due to noncompliance with Board laws and regulations who have come into compliance, or to maintain a DHEP's withdrawn status if the DHEP fails to correct violations cited by the Board.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposed amendments to the regulation will simply allow a process by which to reinstate Board approval of DHEPs withdrawn due to noncompliance with Board laws and regulations who have come into compliance, or to maintain a DHEP's withdrawn status if the DHEP fails to correct violations cited by the Board.

- This regulatory proposal positively benefits the health and welfare of California residents because the proposed language in the regulation would help to ensure DHEPs adhere to all laws, regulations, and standards applicable to a DHEP, including patient safety (HIPAA, HSC, CDC).
- This regulatory proposal positively impacts worker safety as the proposed language in the regulation would ensure DHEPs adhere to all laws, regulations, and standards applicable to a DHEP, including worker safety (OSHA).
- This regulatory proposal does not affect the state's environment because it does not involve environmental issues.

Fiscal Impact Assessment:

The Board anticipates one DHEP per year will have their registration withdrawn and be subject to probationary actions with costs ranging from approximately \$10,790 to \$13,141 per year and up to \$124,407 over a ten-year period as follows:

Dental Hygiene Board of California Withdrawal & Reinstatement - Fiscal Impact (Costs)													
Type	Event	Costs	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Withdrawal	1	\$728	\$728	\$750	\$772	\$796	\$819	\$844	\$869	\$895	\$922	\$950	\$8,346
Reinstatement	1	\$1,092	-	\$1,125	\$1,159	\$1,193	\$1,229	\$1,266	\$1,304	\$1,343	\$1,383	\$1,425	\$11,427
Initial Probation Inspection	1	\$2,738	\$2,738	\$2,771	\$2,805	\$2,839	\$2,875	\$2,912	\$2,950	\$2,989	\$3,029	\$3,071	\$28,979
Probation Compliance Inspection	1	\$1,624	\$1,624	\$1,796	\$1,818	\$1,842	\$1,865	\$1,890	\$1,915	\$1,941	\$1,968	\$1,996	\$18,656
*Appeals: AG & OAH	1	\$5,700	\$5,700	\$5,700	\$5,700	\$5,700	\$5,700	\$5,700	\$5,700	\$5,700	\$5,700	\$5,700	\$57,000
Total Costs:			\$10,790	\$12,141	\$12,254	\$12,370	\$12,489	\$12,612	\$12,738	\$12,869	\$13,003	\$13,141	\$124,407

*AG - Attorney General
*DAH - Office of Administrative Hearings

The regulations do not result in costs or savings in federal funds to the state.

Specific Technologies or Equipment:

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

Consideration of Alternatives:

The Board has initially determined that 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 which 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 as protecting the consumer is paramount in their mission. BPC section 1941(a) authorizes the Board to renew approval of only those educational programs for RDHs that continuously maintain a high-quality standard of instruction.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Board welcomes comments from the public.