

**Title 16, Division 11, New Article 4, Section 1104.3  
Dental Hygiene Board of California**

**NOTICE OF PROPOSED RULEMAKING CONCERNING SITE VISITS,  
INVESTIGATIONS, CITE AND FINE, AND PROBATIONARY STATUS FOR DENTAL  
HYGIENE EDUCATIONAL PROGRAMS**

**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 on **Tuesday, November 1, 2022, by 5:00 p.m.**

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 1941.5, and to implement, interpret or make specific BPC sections 125.9, and 1941.5, the Board is considering changes to Division 11 of Title 16 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

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 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 RDH educational programs, and monitoring licensees placed on disciplinary probation by the Board.

Existing law provides the Board shall renew approval of an educational program for a registered dental hygienist, a registered dental hygienist in alternative practice, or a registered dental hygienist in extended functions (collectively DHEPs) provided the program continues to meet the Board's requirements.

Senate Bill 1482 (Hill, Chapter 858, Statutes of 2018) (SB 1482) added BPC section 1941.5 to the Code. BPC section 1941.5 authorizes the Board to conduct periodic surveys, evaluations, and announced and unannounced site visits on existing and new DHEPs. Section 1941.5 authorizes the Board to place an existing or new DHEP on probation with terms, issue a citation and fine, or withdraw approval of a DHEP if a DHEP does not comply with DHEP requirements and the Commission on Dental Accreditation of the American Dental Association (CODA) standards.

This proposal will implement section 1941.5 by: (1) requiring DHEPs to provide the Board access to program records and facilities to determine compliance with Board educational program requirements; (2) authorizing the Board to issue citations, fines and orders of abatement to DHEPs if the Board determines a DHEP is in violation of any law, regulation, or standard applicable to a DHEP; (3) requiring DHEPs to comply with citations, fines, and orders of abatement; (4) providing for DHEPs to contest citations, fines, and orders of abatement; (5) providing the Board may place a DHEP on probation based on any violation of law, regulation, or standard applicable to a DHEP if the Board determines the violation, after review of evidence presented to the Board, warrants a probationary status; and (6) providing for DHEPs to appeal their probationary status.

The Board approved substantive amendments to the proposed language after review at the November 23, 2019, May 29, 2020, August 29, 2020, and November 20, 2021, Board meetings . The Board approved the amended language at its July 28, 2022, Board meeting and delegated authority to the Board's EO to make any technical, non-substantive changes, if necessary.

### **Anticipated Benefits of the Proposed Regulation:**

The anticipated benefits of the proposed regulation are:

- First, requiring DHEPs to provide the Board access to program records and facilities will promote DHEPs' compliance and cooperation with Board reviews of educational program requirements. This promotes safety of the public because it incentivizes DHEPs to follow all laws, regulations, and standards applicable to a DHEP.
- Second, issuing citations, fines, and orders of abatement to DHEPs ensures they

follow Board requirements. This promotes safety of the public as the Board will closely monitor DHEPs who are issued citations, fines, and orders of abatement to ensure DHEPs adhere to all laws, regulations, and standards applicable to a DHEP while caring for patients.

- Third, establishing a process by which DHEPs shall comply with citations, fines, and orders of abatement ensures DHEPs timely comply with Board requirements. This promotes safety of the public as the Board will closely monitor DHEPs issued citations, fines, and orders of abatement to ensure DHEPs adhere to all laws, regulations, and standards applicable to a DHEP while caring for patients.
- Fourth, establishing a process for DHEPs to contest and appeal citations, fines, and orders of abatement, affords a DHEP procedural due process. This promotes a fair, equal, and clear process for DHEPs to present appeals to the Board.
- Fifth, establishing a process for the Board to place DHEPs on probation, or withdrawing the Board's approval if compliance is not made within reasonable specified timelines, ensures DHEPs follow Board requirements. This promotes safety of the public as the Board will closely monitor DHEPs placed on probation to ensure DHEPs adhere to all laws, regulations, and standards applicable to a DHEP while caring for patients.

#### **Determination of Inconsistency and Incompatibility with Existing State Regulations:**

During the process of developing this regulation, 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 PROPOSED ACTION**

The DHBC 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 Board currently has 29 approved DHEPs operating in the state. Under the proposed regulatory authority, the Board anticipates conducting (on average) four site visit inspections per year.

A typical DHEP site visit inspection takes approximately 12 hours (8 hours of on-site inspection time plus 4 hours to write the report) to complete. The work is conducted by an Associate Governmental Program Analyst (AGPA) and a Subject Matter Expert (SME) at a cost of up to approximately \$3,073 per inspection. The total costs to perform

four annual inspections is estimated to be \$12,292 and up to \$122,920 over a ten-year period.

In the event a DHEP is placed on probation, the Board's AGPA and SME will conduct a follow-up inspection to ensure the institution has taken action(s) to ensure compliance. The follow-up inspection typically takes 8 hours to complete (AGPA – 8 hours, SME 4 – hours) at a cost of approximately \$1,929 per year and up to \$19,290 over a ten-year period.

The Board will also incur one-time information technology costs of approximately \$1,000 to update its accounting codes to include fine revenues, which results in total year-one costs of approximately \$15,221.

In the event an institution opts to appeal the citation, the Board will incur additional workload and costs, including Attorney General and Office of Administrative Hearing fees, of approximately \$12,412 per case.

The Board conducts, on average, three to five site visits per year. If cited and fined, a DHEP will most likely be fined the maximum amount of \$5,000 by the Board as cost recovery to partially offset enforcement-related costs. Therefore, the Board anticipates citation and fine revenues of \$5,000 per year and up to \$50,000 over a ten-year period.

Please see Initial Statement of Reasons for a chart summarizing this information. The regulations do not result in costs or savings in federal funds 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**

This regulation may have an economic impact on businesses of up to five thousand dollars (\$5,000) if in violation of any laws, regulations, or standards applicable to a DHEP, depending on the severity of the violation. This initial determination is based on the following facts:

The proposed regulatory language defines parameters for the Board to conduct periodic surveys, evaluations, and announced and unannounced site visits to existing and new DHEPs to ensure continued compliance with all laws, regulations, and standards applicable to a DHEP and define consequences, including probation with terms, issuance of a citation and fine, or have its approval withdrawn, if the DHEP is found noncompliant. Any DHEP placed on probation will likely be cited and fined the maximum \$5,000 by the Board as cost recovery to offset enforcement-related costs. This amount,

while a deterrent to non-compliance, is not considered a statewide adverse economic impact, because a fine can be avoided completely by compliance with law.

An institution may opt to appeal any citation and fine issued, but these costs are unknown at this time. Fines would only be assessed on non-compliant DHEPs, that is, DHEPs found in violation of law. DHEPs in compliance with law would not be fined any money.

### **Cost Impacts on a Representative Private Person or Businesses:**

The Board is not aware of any cost impacts that a representative private person would incur in reasonable compliance with the proposed action because the Board will not or fine an individual, private person.

This regulation may have an economic impact on private businesses (e.g., private, for-profit DHEPs) of up to five thousand dollars (\$5,000) if in violation of any laws, regulations, or standards applicable to a DHEP, depending on the severity of the violation. This initial determination is based on the following facts:

The proposed regulatory language defines parameters for the Board to conduct periodic surveys, evaluations, and announced and unannounced site visits to existing and new DHEPs to ensure continued compliance with all laws, regulations, and standards applicable to a DHEP and define consequences, including probation with terms, issuance of a citation and fine, or have its approval withdrawn, if the DHEP is found noncompliant. Any DHEP placed on probation will likely be cited and fined the maximum \$5,000 by the Board as cost recovery to offset enforcement-related costs.

As noted above, fines would only be assessed on non-compliant DHEPs, that is, DHEPs found in violation of law. DHEPs in compliance with law would have zero cost impacts from this regulatory action.

### **Significant Effect on Housing Costs:** None

### **Business Reporting Requirement**

The proposed language states if the DHEP is in violation of any laws, regulations, or standards applicable to a DHEP, the DHEP shall furnish the Board written proof of compliance with the order and shall permit a site visit by the Board's authorized representative to confirm compliance.

### **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. The proposed language in the regulation defines

parameters for the Board to conduct periodic surveys, evaluations, and announced and unannounced site visits to existing and new DHEPs to ensure continued compliance with all laws, regulations, and standards applicable to a DHEP. It will also define consequences, including probation with terms, issuance of a citation and fine, or withdrawn approval, if the DHEP is found noncompliant.

The Board has determined that this regulatory action would not impact new businesses within the State of California. The proposed language in the regulation defines parameters for the Board to conduct periodic surveys, evaluations, and announced and unannounced site visits to existing and new DHEPs to ensure continued compliance with all laws, regulations, and standards applicable to a DHEP. It will also define consequences, including probation with terms, issuance of a citation and fine, or withdrawn approval, if the DHEP is found noncompliant.

Benefits of the Proposed Action: This regulatory proposal will positively impact worker safety as the proposed language in the regulation would ensure that DHEPs adhere to all laws, regulations, and standards applicable to a DHEP, including worker safety (OSHA).

This regulatory proposal will positively impact the health and welfare of California residents as the proposed language in the regulation would ensure that DHEPs adhere to all laws, regulations, and standards applicable to a DHEP, including patient safety (e.g., Health and Safety Code, Centers for Disease Control and Prevention, and the Health Insurance Portability and Accountability Act).

This regulatory proposal will not affect the state's environment because this proposed regulation does not involve environmental issues.

Effect on Small Business: The Board has determined that this regulatory action would have no impact on small businesses, including the ability of small business to compete in this state. The proposed language in the regulation defines parameters for the Board to conduct periodic surveys, evaluations, and announced and unannounced site visits to existing and new DHEPs to ensure continued compliance with all laws, regulations, and standards applicable to a DHEP. It will also define consequences, including probation with terms, issuance of a citation and fine, or withdrawn approval, if the DHEP is found noncompliant.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (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 described in this Notice 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.

## **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](mailto:adina.petty@dca.ca.gov)

Backup Contact Person:  
Attn: Anthony Lum  
2005 Evergreen St, Ste. 1350  
Sacramento, CA 95815  
Phone: 916-576-5004  
Email: [anthony.lum@dca.ca.gov](mailto: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.

## **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.

### **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 Action, the ISOR, and the text of the regulations can be accessed through the Board's website at <https://www.dhbc.ca.gov/lawsregs/index.shtml>.