

**TITLE 16. DENTAL HYGIENE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIR**

PROPOSED LANGUAGE

Legend: Added text is indicated with an underline.

Adopt Section 1104.3 of Title 16 of the California Code of Regulations (CCR) to read as follows:

§1104.3 Reviews, Site Visits, Citations and Fines, and Probationary Status for Dental Hygiene Educational Programs

(a) Program Reviews and Site Visits

A dental hygiene educational program for a registered dental hygienist, a registered dental hygienist in alternative practice, or a registered dental hygienist in extended functions (collectively DHEPs) shall provide access during business hours to the DHEP's records and premises to the Dental Hygiene Board of California (Board) or its authorized representative(s) to review the DHEP for compliance with all laws, regulations, and standards applicable to a DHEP including, but not limited to, the Business and Professions Code, the California Code of Regulations (CCR), the Commission on Dental Accreditation Standards of the American Dental Association, Occupational Safety and Health Administration, Health and Safety Code, Centers for Disease Control and Prevention, and the Health Insurance Portability and Accountability Act (HIPAA). For the purpose of this subdivision, "records" shall include, but are not limited to, course records, student records, faculty and staff records, and patient records.

(b) Citations, Fines, and Orders of Abatement

(1) The Executive Officer of the Board or their designee may issue a citation to a DHEP containing an order to pay a fine not to exceed \$5,000 and an order of abatement against a DHEP for any violation of Division 11 of Title 16 of the California Code of Regulations or any laws governing DHEPs.

(A) A citation may be issued without the assessment of a fine when determined by the Executive Officer or their designee.

(B) Each citation issued pursuant to subdivision (b)(1) of this section shall be in writing and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the law or regulation alleged to have been violated.

(2) If the Board or its authorized representative determines that a DHEP is in violation of any law, regulation, or standard applicable to a DHEP, the DHEP shall correct the violation(s) within the amount of time specified in the order. 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.

(3) In the issuance of any citation or fine, the following factors shall be considered:

- (A) Nature and severity of the violation;
- (B) Length of time that has passed since the date of the violation;
- (C) Consequences of the violation, including the potential to harm, or actual patient harm;
- (D) History of previous violations of a similar nature;
- (E) Evidence that the violation was willful;
- (F) Gravity of the violation; and
- (G) The extent to which the cited DHEP has remediated the deficiencies.

(4) Compliance with Citation/Order of Abatement

- (A) If a cited DHEP who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond the DHEP's control after the exercise of reasonable diligence, the DHEP cited may request an extension of time from the Executive Officer or their designee in which to complete the correction. The request shall be in writing and shall be made within the time set forth for abatement.
- (B) When a citation or order of abatement is not contested or if the order is appealed and the DHEP cited does not prevail, failure to abate the violation within the time allowed or pay the fine that was imposed, if one was, shall constitute a violation and a failure to comply with the citation or order of abatement.
- (C) Failure to timely comply with an order of abatement or pay a fine that is imposed may result in disciplinary action being taken by the Board in addition to other remedies.

(5) Contested Citations

- (A) The citation shall inform the cited DHEP if they desire a hearing to contest the finding of a violation, the hearing shall be requested by written notice to the Board within 30 calendar days of the date of issuance of the citation. Hearings shall be held pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (B) In addition to or as an alternative to requesting a hearing as provided in subdivision (b)(5)(A), the cited DHEP may, within 14 calendar days after

service of the citation, submit a written request to the Board for an informal conference with the Executive Officer.

(C) The Executive Officer or their designee shall, within 30 calendar days from receipt of the written request for an informal conference pursuant to subdivision (b)(5)(A), hold an informal conference with the DHEP cited and or their legal counsel or authorized representative, if any, unless continued for good cause.

(D) The Executive Officer or their designee may affirm, modify or dismiss the citation at the conclusion of the informal conference. A written decision stating the reasons for the decision shall be mailed to the cited DHEP and their legal counsel, if any, within 14 calendar days from the date of the informal conference. This decision shall be deemed to be a final order with regard to the informal conference procedure.

(i) If the citation, including any administrative fine levied or order of abatement pursuant to subdivision (b)(1) is dismissed, the request for a hearing shall be deemed withdrawn.

(ii) If the citation, including any administrative fine levied or order of abatement is affirmed, the cited DHEP may, in its discretion, withdraw the request for a hearing or proceed with the administrative hearing process as set forth in subdivision (b)(5)(A). An additional informal citation conference shall not be held on affirmed citations.

(iii) If the citation, including any administrative fine levied or order of abatement, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a cited DHEP wishes to contest a modified citation, the cited DHEP shall, within 30 calendar days after issuance of the modified citation, contest it by submitting a written request for an administrative hearing, as provided for in subdivision (b)(5)(A) of Section 125.9 of the Code, to the Board. An informal citation conference shall not be held on modified citations.

(c) Probationary Status of a DHEP

(1) If the Board or its authorized representative determines a DHEP is in violation of any law, regulation, or standard applicable to a DHEP, the Board at a noticed Board meeting may, pursuant to Section 1941.5 of the Code, place a DHEP on probation based on the consideration of the factors set forth in subdivision (c)(2).

(2) In the issuance of probation, the Board will consider the factors set forth in subdivision (b)(3) of this section.

(3) If the Board places a DHEP on probation, the DHEP is required to provide notice of their probationary status in writing to its students within fifteen (15) business days of being placed on probation. The formal notice shall include, but not be limited to, a notice that the DHEP was placed on probation by the Board, the date of the beginning of the probation, as well as a copy of the Board's order issuing probation to the DHEP which includes the terms of the probation. In addition, the DHEP shall provide notice to each potential student applicant to the DHEP before offering to enroll the applicant. The DHEP shall provide the Board with written proof of compliance with this subdivision as a condition for removal from probationary status.

(4) A DHEP on probationary status shall correct the violation(s) within the amount of time specified in the order. 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.

(A) If the DHEP on probation demonstrates it has corrected the violation(s) and meets all requirements for approval set forth in 16 CCR section 1104, the Board may determine, at a noticed Board meeting, that the DHEP shall be removed from probationary status.

(B) If the DHEP on probation fails to demonstrate to the Board by the end of its probationary period the DHEP has corrected all violation(s) and met the requirements for approval set forth in 16 CCR section 1104, the Board may withdraw approval of the DHEP.

(5) Appeals Process for a DHEP on Probationary Status

(A) Any DHEP who is placed on probation may request, in writing, to appeal their probationary status by either:

(i) Requesting an informal conference. The Executive Officer shall notify the DHEP of the final decision of the Executive Officer within ten days of the informal conference. Based on the outcome of the informal conference, the DHEP may request a hearing to contest the Executive Officer's final decision. A DHEP shall request a hearing by written notice to the Board within 30 calendar days of the date of the letter of the Executive Officer's final decision after the informal conference. Hearings shall be held pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(ii) Requesting 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. Such notification shall be made to the Board before the date of the informal conference.

Note: Authority cited: Sections 1905, 1906, and 1941.5, Business and Professions Code. Reference cited: Sections 125.9 and 1941.5, Business and Professions Code.