

**State of California  
Office of Administrative Law**

In re:  
Dental Hygiene Board of California

Regulatory Action:

Title 16, California Code of Regulations

Adopt sections: 1135, 1136, 1137

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2020-0825-01

OAL Matter Type: Regular (S)

In this action, the Dental Hygiene Board adopts criteria to be used in determining whether a crime, professional misconduct, or other act is substantially related to the professional practice of its licensees for purposes of license denial, suspension, or revocation. The action adopts criteria for determining whether an applicant for a license, or for reinstatement of a license, or for the modification or termination of probation of a license, has been rehabilitated subsequent to a criminal conviction, professional misconduct or other act. The action also adopts criteria for determining whether a licensee has been rehabilitated, subsequent to a criminal conviction, professional misconduct, or other act, when considering whether to suspend or revoke his/her licensee.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. The OAL review period specified in Government Code section 11349.3(a) was extended a total of 120 calendar days pursuant to Executive Orders N-40-20 and N-71-20. This regulatory action becomes effective on 2/5/2021 pursuant to Government Code section 11343.4(b)(3).

Date: February 5, 2021



Dale P. Mentink  
Senior Attorney

For: Kenneth J. Pogue  
Director

Original: Anthony Lum, Executive Officer  
Copy: Adina Pineschi-Petty

# REGULAR

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State on

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2020-0107-01</b>	REGULATORY ACTION NUMBER <b>2020-0825-01</b>	EMERGENCY NUMBER <b>S</b>
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Dental Hygiene Board of California - Department of Consumer Affairs			AGENCY FILE NUMBER (If any)

**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

**FEB 05 2021**  
3:30 P.M.

2020 AUG 25 A 11: 28  
OFFICE OF  
ADMINISTRATIVE LAW

### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Substantial Relationship & Rehabilitation Criteria	TITLE(S) 16	FIRST SECTION AFFECTED 1135	2. REQUESTED PUBLICATION DATE January 17, 2020
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Adina Pineschi-Petty	TELEPHONE NUMBER (916) 576-5002	FAX NUMBER (Optional) (916) 263-2688
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2020, 03-2	PUBLICATION DATE 1/17/20

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Substantial Relationship & Rehabilitation Criteria	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)		
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT Sections 1135, 1136, and 1137		
	AMEND		
TITLE(S) 16	REPEAL		
3. TYPE OF FILING			
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs. title 1, §100) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> File & Print <input type="checkbox"/> Print Only <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Other (Specify) _____			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) June 26, 2020 to July 15, 2020.			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs. title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input checked="" type="checkbox"/> Other (Specify) Kimberly Kirchmeyer, Director, California Department of Consumer Affairs			
7. CONTACT PERSON Adina A. Pineschi-Petty	TELEPHONE NUMBER (916) 576-5002	FAX NUMBER (Optional) (916) 263-2688	E-MAIL ADDRESS (Optional) adina.petty@dca.ca.gov

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE  
DATE  
August 13, 2020

TYPED NAME AND TITLE OF SIGNATORY  
Anthony Lum, Executive Officer, Dental Hygiene Board of California

For use by Office of Administrative Law (OAL) only

**ENDORSED APPROVED**

**FEB 05 2021**

Office of Administrative Law



## ORDER OF ADOPTION

(APPROVED BY BOARD NOVEMBER 21, 2020)

### Article 10. Denials, Discipline, and Reinstatement

Add sections 1135, 1136, and 1137 in Article 10 of Division 11 of Title 16 of the California Code of Regulations to read as follows:

#### 1135. Substantial Relationship Criteria.

- (a) For the purposes of the denial, suspension or revocation of a license pursuant to Section 141, Division 1.5 (commencing with Section 475), or Sections 1950, 1950.5, or 1952 of the Code, a crime, professional misconduct, or act shall be considered to be substantially related to the qualifications, functions or duties of a dental hygienist, dental hygienist in alternative practice, or a dental hygienist in extended functions if, to a substantial degree, it evidences present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare.
- (b) In making the substantial relationship determination required under subdivision (a) for a crime, the Dental Hygiene Board of California (Board) shall consider the following criteria:
- (1) The nature and gravity of the offense;
  - (2) The number of years elapsed since the date of the offense; and
  - (3) The nature and duties of a dental hygienist, dental hygienist in alternative practice, or a dental hygienist in extended functions;
- (c) For purposes of subdivision (a), substantially related crimes, professional misconduct, or acts shall include, but are not limited to, the following:
- (1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of Chapter 1 of Division 2 (commencing with Section 500) of the Code.
  - (2) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of the Dental

Practice Act (Chapter 4 of Division 2, commencing with Section 1600, of the Code) or other state or federal laws governing the practice of dental hygienists, dental hygienists in alternative practice, and dental hygienists in extended functions.

- (3) Conviction or act involving fiscal dishonesty.
- (4) Conviction or act involving child abuse.
- (5) A conviction requiring a person to register as a sex offender pursuant to Section 290 of the Penal Code.
- (6) Conviction or act involving lewd conduct or sexual impropriety.
- (7) Assaultive or abusive conduct as defined in Penal Code section 11160, subdivision (d).
- (8) Any criminal conviction, professional misconduct, or act involving the use, sale, gift, administration, or furnishing of narcotics, dangerous drugs or dangerous devices (Section 4022 of the Code) to an extent or in a manner dangerous to the individual or the public.
- (9) Conviction for driving under the influence of drugs or alcohol.

Note: Authority cited: Sections 481, 1905, and 1906, Business and Professions Code. Reference: Sections 141, 480, 481, 490, 493, 1950, 1950.5, and 1952, Business and Professions Code.

### **1136. Rehabilitation Criteria for Denials and Reinstatements.**

(a) When considering the denial of a license under Section 480 of the Code on the ground that the applicant has been convicted of a crime, the Dental Hygiene Board of California (Board) shall consider whether the applicant made a showing of rehabilitation, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria:

- (1) The nature and gravity of the crime(s) under consideration.
- (2) The length(s) of the applicable parole or probation period(s).

- (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation.
- (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

(b) If the applicant has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the denial is based on professional misconduct, or the denial is based on Sections 1943 or 1958.1 of the code, the Board shall apply the following criteria in evaluating an applicant's rehabilitation:

- (1) The nature and gravity of the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s), professional misconduct, or crime(s) committed subsequent to the act(s), professional misconduct, or crime(s) under consideration as grounds for denial.
- (3) The time that has elapsed since commission of the act(s), professional misconduct, or crime(s) referred to in subsection (b)(1) or (b)(2).
- (4) Whether the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

(c) When considering a petition for reinstatement of a license or a petition for modification or termination of probation under the provisions of section 1957 of the Code, the Board shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in this section, as applicable.

NOTE: Authority cited: Sections 481, 482, 1905, and 1906, Business and Professions Code. Reference: Sections 480, 481, 482, 488, 493, 1943, 1957, and 1958.1, Business and Professions Code.

## **1137. Rehabilitation Criteria for Suspensions and Revocations.**

- (a) When considering the suspension or revocation of a license issued by the Dental Hygiene Board of California (Board) under Section 490 of the Code on the ground that a person holding a license as a registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions has been convicted of a crime, the Board shall consider whether the licensee made a showing of rehabilitation, if the licensee completed the criminal sentence at issue without a violation of parole or probation. In making this determination, the Board shall consider the following criteria:
- (1) The nature and gravity of the crime(s) under consideration.
  - (2) The length(s) of the applicable parole or probation period(s).
  - (3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
  - (4) The terms or conditions of parole or probation and the extent to which they bear on the licensee's rehabilitation.
  - (5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.
- (b) If the licensee has not completed the criminal sentence at issue without a violation of parole or probation, the board determines that the licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), the suspension or revocation is based on a disciplinary action as described in Section 141 of the Code, or the suspension or revocation is based on one or more of the grounds specified in Sections 1949, 1950, 1952, 1955, or 1958.1 of the Code:
- (1) The nature and gravity of the act(s), disciplinary action(s), or crime(s) under consideration.
  - (2) The total criminal record.
  - (3) The time that has elapsed since commission of the act(s), disciplinary action(s), or crime(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the licensee.

(5) The criteria in subdivision (a)(1) through (5), as applicable

(6) If applicable, evidence of dismissal proceedings pursuant to section 1203.4 of the Penal Code.

(7) Evidence, if any, of rehabilitation submitted by the licensee.

NOTE: Authority cited: Sections 481, 482, 1905, and 1906, Business and Professions Code. Reference: Sections 481, 482, 488, 490, 493, 1949, 1950, 1952, 1955, and 1958.1, Business and Professions Code.