

**COLORADO STATE BOARD OF DENTAL EXAMINERS**  
**BOARD POLICIES**

(Updated November 2011)

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**\*Patient Records in the Custody of a Dentist or Dental Hygienist (Adopted as Rule XXV December 1, 2002)**

## **SECTION 1: ADMINISTRATIVE POLICIES**

### **1.A. ACCEPTANCE OF CLINICAL EXAMINATIONS (Adopted 8/15/2001)**

The Dental Practice Law of Colorado declares that it is "...to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists and dental hygienists be permitted to practice dentistry or dental hygiene in this state." Thus, only qualified dentists and dental hygienists may practice in Colorado. In addition, the Colorado Board of Dental Examiners recognizes that the public's oral health care is facilitated and enhanced by sufficient numbers of qualified dentists and dental hygienists. It also recognizes the inability of Colorado's schools and colleges to produce sufficient dentists and dental hygienists to meet the needs of Colorado's increasing population.

One means by which dentists and dental hygienists are determined to be competent (or qualified) to practice in Colorado is through successful completion of a clinical examination. Clinical examinations historically began and continue to be developed and administered by individual states and groups of states that have formed regions. The exclusivity of these state and regional examinations does not well serve the need to license practitioners educated and examined outside of the state or region in which the clinician desires to practice. Because of the inherent restrictive nature that requiring one specific state or regional examination creates, the Colorado State Board of Dental Examiners establishes the following policy.

It is the policy of the Colorado State Board of Dental Examiners to recognize all dental and dental hygiene examinations that provide adequate assurance of competency and safety to practice for dental and dental hygiene licensure candidates.

Recognition of these examinations requires each state or region-seeking acceptance of their clinical examination to meet the statutory requirement of C.R.S. 12-35-114 (1)(c), and provide the Board with the following information.

- Detailed information regarding the state or regional process for developing, administering and scoring the examination and detailed documentation addressing the reliability and validity of the exam.
- An affirmative statement, supported by data, that its development, processes for revision, administration, and scoring are in accord with the 1999 Standards for Educational and Psychological Testing, jointly published by the American Educational Research Association, the American Psychological Association and the National Council on measurements in Education. Furthermore, when the recommendations of the American Association of Dental Examiners (AADE) Interagency Committee on Scoring Practices are completed, any state or region applying for recognition must document compliance with those recommendations.

Upon receipt of the above materials, the Board will determine whether the state or regional examination appears adequate to evaluate the competency and safety to practice of Colorado dental and dental hygiene candidates for licensure. A final acceptance of the examination will be made only after the Board's direct participation in the administration of at least one exam. If all evaluative factors are acceptable, the Board will recognize the examination from that date forward or from a specified future date forward as proof of clinical competency and grant licensure, providing all other criteria are met by the candidate.

### **1.B. UTILIZATION OF ANESTHESIA/SEDATION APPLICATIONS - ADMINISTRATIVELY APPROVED (Adopted 1/17/1996)**

Upon meeting all criteria of the application process, the Board delegates to the Program Administrator authority to approve anesthesia applications.

The Board will review applications where there is uncertainty if anesthesia requirements are met.

At each meeting, the Board will receive and be asked to ratify a list of the applicants detailing the approval category administratively approved since the previous meeting.

**1.C. BOARD RECORDS AND DOCUMENTS (Adopted 5/24/1990) (Amended 8/24/1994) (Amended 6/2/2004) (Amended 1/15/2009)**

1. The Board staff shall be responsible for forwarding to the Central Repository and maintaining as a public record the following documents:
  - a) The notice of charges, or the formal complaint of the Attorney General after service has been made upon the licensee.
  - b) Formal answer filed by respondent.
  - c) The initial decision of the administrative law judge.
  - d) The final agency order.
  - e) Any judicial review decision.
  - f) Stipulations (unless confidential pursuant to statutory authorization at the time executed).
  - g) Letters of Admonition when the document becomes a public record.
2. No other documents maintained in a disciplinary record will be available for public inspection.
3. Documents that are not considered part of the public record shall be released only through discovery procedures upon referral for formal disciplinary proceedings. Such documents include but are not limited to the following:
  - a) Complaints
  - b) Reports of Investigation
  - c) Exhibits
  - d) Patient Records
4. Complaints dismissed by the Board without any action taken are not public records and shall not be available for inspection by the public nor shall they be required to be released through formal discovery. The board shall release said documents only pursuant to a court order. Dismissed complaints will be released to the dentist named in the complaint upon the dentist's written request.
5. Disciplinary and investigatory information may be provided to other licensing boards and law enforcement agencies.

**1.D. CHILD SUPPORT ENFORCEMENT (Adopted 6/10/1998)**

The Board delegates to the Program Administrator authority to suspend and reinstate licensees upon notification from the Colorado Department of Health and Human Services of noncompliance and compliance with Court Ordered Child support.

**1.E. CONSIDERATION OF INITIAL DECISIONS (Adopted 3/16/1988) (Amended 1/1999)**

The Program Administrator, with the approval of the Board Chairperson, may determine non-substantive procedural matters subsequent to the rendering of an Initial Decision.

**1.F. CONSULTANT PREREQUISITE EXPERIENCE (Adopted 8/21/1996) (Amended 7/10/2008)**

Consultants to the Board are required to have been licensed for at least five years immediately preceding their application and have no history of previous discipline.

**1.G. CONSULTANTS USED FOR INVESTIGATIVE PURPOSES (Adopted 8/20/1986) (Amended 8/18/1993)**

Consultants are to be used for investigative purposes when appropriate. The names are to be selected from a list developed by the Board.

## **1.H. CRDTS: ADDITIONAL AND CANCELED EXAMINATIONS (Adopted 7/15/1998)**

Prior approval is required from the Program Administrator to assure adequate funding is available before an examiner or a Board member can examine at additional CRDTS examinations. If an examiner cancels a scheduled CRDTS exam, the Program Administrator should be notified as soon as possible.

## **1.I. CRDTS: COMMITTEE MEMBER RESPONSIBILITIES (Adopted 6/11/1997)**

CRDTS committee representatives (ERC and Steering) will present to the Board in writing, issues which are on the agenda to be discussed at their respective meetings for Board input/guidance.

## **1.J. CRDTS: DEPUTY EXAMINER QUALIFICATION CRITERIA (Adopted 11/19/1986) (Amended 2/19/1992, 8/18/1993)**

The Board established the following criteria for the appointment of deputy examiners for the regional board examinations:

1. Individual must be actively practicing dentistry or dental hygiene in the State of Colorado.
2. Individual must hold a valid dental license or dental hygiene license that is free from current or pending disciplinary actions.
3. Individual must have actively practiced dentistry or dental hygiene for at least the last five (5) consecutive years.
4. Individual must submit a resume or curriculum vitae to include educational and community accomplishments or activities.
5. Individual must submit verification of current Basic Life Support (BLS) knowledge and skills.
6. Deputy examiners whose names are to be contained in our Central Regional examiner pool will be required to attend a workshop for new examiners and observe one exam prior to being assigned as an examiner.
7. Applicants are to be approved/disapproved per majority vote of Board members at a regularly scheduled monthly meeting. The total number of examiners must be regulated to the demand in an effort to give everyone the opportunity to maintain currency of skills in examining.
8. The Board will review the list of examiners annually and make appropriate additions or deletions in compliance with the number of examiners allowed by CRDTS.

## **1.K. CRDTS: EXAMINATION REVIEW COMMITTEE (ERC) (Adopted 2/18/1998)**

The Colorado State Board of Dental Examiners accepts the following CRDTS Policy.

The ERC reviews and prepares critical analysis of the clinical examination, the results of the exam, makes recommendations to the Steering Committee for examination improvements, etc. Representatives of this committee may be either a dentist or dental hygienist, and may be either current members or past members of the Board. The representative shall be appointed for a term of two (2) years. An appointed representative may serve three consecutive (2) year terms. Appointments will be made in even numbered years for the states of Colorado, Kansas, Missouri, North Dakota, Wisconsin and Illinois. The appointment of a new representative generally occurs prior to the Annual CRDTS meeting on the even numbered years. Both the out-going and the incoming representative attends the Annual meeting.

**1.L. CRDTS: EXAMINER SELECTION AND REIMBURSEMENT POLICY (Adopted 9/17/2003)**

CRDTS examiners will be determined by the Board in January of each year. The names of at least five (5) dentists and two (2) hygienists will be provided to CRDTS. The identified Colorado examiners, who are current Board members, will receive a \$50.00/day per diem for each day he/she provides a portion of the exam. In addition payment for meals, not already paid for in plane fare enroute to an exam or on the return trip, will be reimbursed based on the State's per diem meal schedule. Beginning in examination year 1998, all current Colorado Board members/examiners must be given the opportunity to examine at least twice a year before any past Board member is allowed to examine. The assumption is made that there are sufficient dental chiefs and hygiene coordinators available to draw on and/or develop.

**1.M. CRDTS: MINUTES, REVIEW OF (Adopted 6/11/1997)**

The Chairperson of the Board will review the CRDTS minutes and bring pertinent issues back to the Board for discussion and/or action.

**1.N. CRDTS: STEERING COMMITTEE (Adopted 2/18/1998)**

The Colorado State Board of Dental Examiners accepts the following CRDTS Policy.

The Steering Committee is the governing body, which manages the property & affairs of the corporation (CRDTS, Inc.). Each state is to designate one person to serve for a term of one year on the committee. The term will begin at the Annual meeting. The committee person must be either a licensed dentist or dental hygienist. There are no limitations as to the number of times an individual may be appointed to this committee.

**1.O. DENTAL HYGIENE: PROFESSIONAL DESIGNATION (Adopted 4/30/1997)**

The RDH designation will be used on all licenses during licensing renewals. The Board will recognize dental hygienists in all correspondence with the title RDH.

**1.P. EMERGENCY BOARD MEETINGS (Adopted 4/20/1988)**

When an issue arises that may necessitate an emergency Board meeting, the Program Administrator shall confer with the Board Chairperson. The Chairperson will determine if a meeting shall be held and may authorize an emergency Board meeting. Emergency Board meetings may be conducted by telephone conference call.

**1.Q. LEGISLATIVE UPDATES TO THE BOARD (Adopted 9/18/1996)**

The Board authorizes the Program Administrator to provide information and notice to Board Members in a timely manner on matters concerning the status of legislative bills that may affect the Board's operation, ability to carry out its duty, and the intent of the statutes.

**1.R. LICENSURE: ADMINISTRATIVELY APPROVED (Adopted 2/20/1992) (Amended 6/23/1993, 2/16/1998, 7/7/2004)**

The Board delegates to the Program Administrator the authority to license dentists by examination and credentialing and dental hygienists by examination and endorsement who meet all licensing criteria.

The Board will review applications where there is uncertainty if requirements are met.

At each meeting, the Board will receive and be asked to ratify a list of the applicants administratively licensed since the previous meeting.

**1.S. LICENSURE REINSTATEMENT: ADMINISTRATIVELY APPROVED (Adopted 8/24/1994) (Amended 12/16/1998)**

The board delegates to the Office of Licensing the authority to reinstate dentists and dental hygienists who meet all requirements.

If all reinstatement requirements have been met but it appears the applicant may have practiced on a lapsed license, the license will be reinstated prior to Board review. The Board will review applications where there is uncertainty if reinstatement requirements are met as well as applications for persons believed to have practiced on an expired or lapsed license.

At each meeting, the Board will receive and be asked to ratify a list of the licensees administratively reinstated since the previous meeting.

**1.T MALPRACTICE COMPLAINT PROCESSING (Adopted 11/20/1991)**

All malpractice complaints received by the Board Office are to be cross checked for dates of occurrences, specifics and amounts of settlement prior to new case numbers being assigned for the same respondent.

**1.U MALPRACTICE SETTLEMENTS (Adopted 7/15/1992; 6/23/1993) (Amended 6/23/1993)**

The Board staff will not report to the Board malpractice judgments found in the favor of the licensee, judgments of zero monetary value, and refunds that do not exceed the cost of the services provided.

When information is received that a malpractice settlement has been made, Board staff will request information on the settlement from the named licensee. If there is no response received from the staff request, staff shall refer the matter to Complaints and Investigations to obtain needed information.

**1.V. NATIONAL BOARD PROCTOR PAYMENTS (Adopted 3/12/1997)**

Since per diem is paid by the ADA for proctoring the National Board examinations, the Board will not pay a per diem to proctors in addition to that paid by the National Board. The Board will pay qualified proctors state approved reimbursement rates for two meals (breakfast and lunch), mileage for distances traveled within the State of Colorado to the test center, and parking.

**1.W. PEER ASSISTANCE PROGRAM (PAP): ACCESS TO CLOSED BOARD MEETING INFORMATION (Adopted 5/1/1996)**

These procedures will allow both agencies to properly address those licensees that must remain anonymous and yet fulfill the Board's obligation to protect the public:

1. Closed and open agendas and closed and open minutes shall be sent to PAP by the Program Assistant at the same time that the Board packet is sent.
2. Requests from PAP for information (i.e. Reports of Investigation (ROI), complaints, etc.) shall be submitted in writing to the Law Enforcement Coordinator (LEC).
3. All confidential information sent to the PAP shall be stamped confidential and sent directly to either the Executive Director or the Diversion Program manager of the PAP.
4. After PAP has completed their review of the information provided by the Dental Board, this information shall be shredded.
5. PAP shall not contact any respondent until PAP has confirmed that the Dental Board has notified respondent of action taken regarding the complaint. PAP may then contact the respondent for appropriate follow-up procedures.
6. The PAP Client Rehabilitation Contract shall be revised to read, "If the licensee has knowledge of any complaint filed against him/her, the licensee agrees to inform the PAP of this complaint within thirty (30) days of his/her knowledge of the complaint."
7. All clients currently under contract with the PAP shall sign an addendum to the Rehabilitation Contract acknowledging the above.

**1.X. PRESENTATIONS TO THE BOARD (Adopted 11/16/1994) (Amended 1/18/1995)**

The Board discourages licensee presentations at Board Meetings and will only grant such requests for good cause shown. As reason therefore, the Dental Practice Law of Colorado sets forth the forum for disciplinary actions. Thus, the Board will not review nor discuss the merits of a case, either pending or completed, that has been referred to the Office of the Attorney General for disciplinary proceedings. In limited circumstances, the Board may allow a presentation to the Board. The Board will only permit presentation of a matter when the request has been made in writing, setting forth the reason for the presentation and the issues to be discussed. The Board reserves the right to deny any request for presentation or to limit the issues presented. If such request is granted, the presentation shall be limited to those issues set forth in the request or as limited by the Board. Any deviation from these issues may be grounds for termination of the presentation. The licensee has the right to have legal counsel at the presentation.

**1.Y. REFUND OR FORGIVENESS OF FEES: DEFINITION (Adopted 6/15/1988)**

The Board recognizes that licensees frequently elect to settle complaints amicably to preserve their relationship with the patient. When a refund or payment is made to a patient, which is a refund, or forgiveness of the fees charged to the patient and in an amount, which does not exceed the cost of the dental services, then such a settlement need not be reported to the Board.

**1.Z. REPORTS OF INVESTIGATION AND USE OF CONSULTANTS (Adopted 7/15/1987)  
(Amended 8/18/1993; 2/22/2008) (Ratified 4/23/2008)**

1. Treatment records will not routinely be attached to the report of investigation, as they are very often difficult to read. If they are needed during a review of the complaint the originals may be viewed from the investigator's file.
2. The Board may request investigators to forward a case directly to a consultant in specific situations. The Board may provide specific questions to be presented to the consultant for a response.
3. Written reports from consultants, subsequent treating dentists and any other experts will not be summarized. The entire reports will be attached to reports of investigation and listed under attachments.
4. If a complaint involves any of the following allegations, it will be forwarded directly to the Office of Investigations, without a 30-day request for a response being sent by Board staff to the respondent in the case:
  - a. Allegations involving drugs or alcohol.
  - b. Allegations of sexual misconduct.
  - c. Allegations of unlicensed practice.
  - d. Allegations relating to infection control.
  - e. Allegations relating to insurance fraud.
  - f. Allegations relating to practice beyond the statutory or customary scope of practice.
  - g. Any other complaint where it is apparent to the Program Director that an immediate investigation is needed.
5. If an investigation is conducted in conjunction with any investigation authorized pursuant to Policy 1.Z.4.a-g, without prior notification to the respondent in the case, a copy of the complaint is to be presented to the respondent by the assigned investigator along with a request to respond to the complaint within 30 days of receiving it. Any unannounced inspection shall be conducted during normal business hours. The investigator may be accompanied by a consultant who has expertise in the conduct being investigated. If an infection control report is generated by the infection control inspector, a copy of that report is to be provided by the Board support staff to the respondent for a response within 30 days. However, if the infection control report, or any other report provided by an expert consultant or an investigator, demonstrates that the public health, safety and/or welfare imperatively requires emergency action and/or that there is a willful violation, the Board may take emergency action as set forth in §24-4-104(4)(a), C.R.S.

**1.AA. RETENTION OF PATIENT RECORDS AND X-RAYS IN THE BOARD OFFICE (Adopted  
4/20/1988)**

The Board of Dental Examiners recognizes the occasional need for investigators to return patient records and x-rays to dentists, patients, or other parties involved in a case. However, unless a case has been dismissed by the Board, the investigators must obtain and retain on file duplications of patient records, and x-rays prior to releasing those records from the custody of Complaints and Investigations.

**1.BB. SUBPOENA ENFORCEMENT (Adopted 9/28/1994)**

When, in the course of an investigation of a complaint, a subpoena needs to be enforced pursuant to the Dental Practice Act and the Administrative Procedures Act, the Dental Board specifically authorizes the Program Administrator to refer such matter directly to the Office of the Attorney General for enforcement. The referral will be submitted to the Board at its next meeting for ratification.

## **1.CC. DELEGATED AUTHORITY (Adopted 1/10/2008) (Amended 1/15/2009)**

In order to assist the Colorado Board of Dental Examiners (the "Board") in carrying out its duties, the Board delegates to the Program Director or designee the authority to:

1. Sign Letters of Concern, Letters of Admonition, Cease and Desist Orders, Stipulations, Final Agency Orders or Final Board Orders, and other orders authorized by the Board.
2. Sign Suspension Orders as required by the Child Support Enforcement Program.
3. Perform the initial review of complaints relating to the practice of persons under the Board's jurisdiction and to issue 30-day letters relating to the complaints.
4. Sign and issue subpoenas and otherwise gather information in order to assist the Board in carrying out its duties.
5. Initiate complaints and issue 30-day letters to licensees currently under Stipulation or other Final Board Order if, in the opinion of the Program Director or designee, the licensee has failed to comply with any of the terms of the Stipulation or other Final Board Order.
6. Initiate complaints and issue 30-day letters where otherwise authorized by the Board.
7. Utilize services of the Office of Investigations as warranted to carry out duties of the Board.
8. Perform additional delegated duties as set forth in other Board policies.

## **1.DD PANEL AND Licensing Subcommittee meeting procedures (Adopted 1/13/2011)**

References: Sections 12-35-104(2), 12-35-106, 12-35-107(3), 12-35-129(12), C.R.S.  
Purpose: To clarify the Board Chairperson's participation in Panel proceedings

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It is the policy of the Board and its Panels that the Board Chairperson may participate in all Panel discussions.

The Board Chairperson will not make motions or vote on Panel matters, except as may be required to establish or maintain a quorum in disciplinary matters concerning a dentist.

If the Board Chairperson has considered any complaint as a member of an Inquiry Panel, the Board chairperson shall not take any part in consideration of the matter by a Hearing Panel.

## **SECTION 2: DISCIPLINARY POLICIES**

### **2.A. COMPLAINTS RECEIVED AGAINST PERSONS HOLDING A REVOKED LICENSE (Adopted 3/26/2003)**

When a complaint is received against a person whose license has already been revoked, staff shall send the complainant a letter that states the license of the practitioner has already been revoked, and the complaint shall be retained in the licensee record without assigning a complaint number.

### **2.B. CONTINUING EDUCATION: AUDIO/VISUAL/INTERNET COURSE CREDIT (Adopted 12/15/1993) (Amended 1/12/1994) (Amended 1/10/2008)**

Continuing education may be obtained by viewing or listening to audio and/or video tapes. Credit will be given in the following instances:

- Submission of proof of passing the post-test provided with the audio/visual program, or;
- Submission of one page typed paper summarizing the information in the audio/visual program. The paper shall be 250-300 words.

Only 30% of each required are may be obtained by viewing or listening to audio and/or video tapes.

**2.C. CONTINUING EDUCATION: COURSE REPETITION (Adopted 11/17/1993)**

Repeating the same CE course to meet the requirements of a specific stipulation will not be accepted.

**2.D. CONTINUING EDUCATION: STIPULATION VERIFICATION (Adopted 2/19/1991) (Amended 3/16/1994)**

In order to satisfy continuing education stipulations, a licensee shall submit course offerings for PRIOR approval by the Board. The Board will consider course offerings which are in the required area of study and which specify course title, presenter, credit hours and sponsor. Copies of programs or flyers are acceptable. The Board reserves the right to require additional information upon which to base its decision. Upon completion of continuing education, the licensee must submit a certificate of attendance or letter from the presenter or sponsor verifying attendance. The licensee must complete a form provided by the Board which shall include the educational requirements and time limits of the stipulation. This form must be submitted with all proof of completion submitted to the Board.

In addition, the Board may at its sole discretion, accept courses relevant to the required area of study that have been completed subsequent to the date(s) of the disciplinary violation(s). The requirements for Board approval of completed education courses are the same as set forth above. The decision as to whether completed credit hours will satisfy the terms of a continuing education stipulation is final with the Board.

**2.E. DISCIPLINARY REPORTING IN THE NEWSLETTER (Adopted 10/24/1990) (Amended 8/24/1994, 1/12/2000, 2/16/2000)**

The Board acknowledges the policy of the Division of Registrations, Department of Regulatory Agencies to publish all names of licensees disciplined, including those issued Letters of Admonition. However, the names of persons receiving Letters of Admonition for practicing on an expired license will not be published.

**2.F. MENTAL AND PHYSICAL EXAMINATIONS: CONFIDENTIALITY OF (Adopted 9/21/1988)**

It is the Board's policy that confidentiality extends to the information obtained pursuant to a Board ordered mental or physical examination. Therefore, all documents in which the details of the examinations, the results thereof and/or the diagnosis rendered will be released upon request to the licensee but will not be available to the public.

An Initial Decision or a Final Agency Order which references a violation of 12-35-118(1) (i), but which does not discuss the results of the examination, will be deemed a public record.

**2.G. REPORTING LANGUAGES IN STIPULATIONS (Adopted 12/6/2000)**

Reporting language in the newsletter is determined by the Board and should not be negotiated during settlement proceedings.

**2.H. REQUEST OF DISMISSED COMPLAINTS (Adopted 4/28/1999)**

A copy of the dismissed complaint may be sent to the respondent if the respondent submits a request to the Board office.

## **2.I. TERMINATION OF DISCIPLINARY MATTERS (Adopted 12/21/1988) (Amended 6/30/1996)**

"Dismiss" shall describe the termination of a complaint in which the Board has declined to take any further action on the merits of the facts presented. If a matter results in discipline or the imposition of a sanction and the conditions of that discipline are completed, the matter shall be "closed". Probation shall continue and the licensee affirmatively obligated to comply with all terms of probation until the Board has reviewed the matter for compliance and, if appropriate, voted to mark the case as "completed".

## **2.J. WITHDRAWAL OF COMPLAINT (Adopted 8/19/1987) (Amended 8/15/2001)**

1. If the complaint is withdrawn and has not been investigated at all, the complaint and the letter of withdrawal would be provided to the Board at its next meeting. However, investigation would proceed as a Board initiated complaint if the allegations were serious such as sexual misconduct, etc. The Board would be notified of all factors at the time the matter is reviewed by the Board.
2. If the complaint is withdrawn while staff is obtaining a response from the licensee, the Board will initiate its own complaint, and staff will continue its process. The Board would be notified of all factors at the time the matter is reviewed by the Board.
3. If the complaint is withdrawn after the matter has been referred to Complaints and Investigation, the Board will initiate its own complaint, and C&I will continue its process. The Board would be notified of all factors at the time the matter is reviewed by the Board. If investigation cannot continue because of lack of cooperation with the complainant, the Board will be notified.

## **2.K. CASES DISMISSED WITH LETTERS OF CONCERN: CLARIFICATION OF BASIS FOR DISMISSAL, REOPENING OF SUCH CASES, AND CASE RETENTION PERIOD (Adopted 4/27/2011)**

Purpose: To clarify the basis for this type of dismissal, when the State Board of Dental Examiners may reopen such a case and designation of a specific retention period for these types of cases.

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It is the policy of the State Board of Dental Examiners ("Board") that complaints that are dismissed with letters of concern are not dismissed as being without merit but rather are dismissed due to no reasonable cause to warrant further action at that time. Cases that are dismissed with a confidential letter of concern will be retained in the Board's files for a period of five years.

The Board may reopen a case that was dismissed with a letter of concern in the face of a change in circumstances. Such a change in circumstances would include but not be limited to:

- discovery of new evidence supporting the underlying charges
- evidence that the licensee has engaged in further unprofessional conduct/grounds for discipline following issuance of the letter of concern in which there is a nexus between the new conduct and that was addressed in the case that was dismissed with the letter of concern

After five years from the date of the letter of concern, the file will be disposed of in accordance with the Division's records management procedures. If the licensee has other active cases pending at the end of the five year retention period, the letter of concern may be kept for a longer period of time at the discretion of the Board staff.

## **2.J. PROCESS FOR HANDLING INITIAL DECISIONS RENDERED BY AN ADMINISTRATIVE LAW JUDGE (ALJ) (Adopted 11/2/2011)**

Reference: Section 12-35-129 (12) (d), C.R.S.

Purpose: To provide a written Board Procedural Order Regarding Review of Initial Decision to parties involved in a case or cases before the Board, which initiates review of the Initial Decision on the Board's own

motion, provides general filing requirements, provides applicable deadlines and procedures, and covers ex parte communications and additional relevant information for the parties.

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It is the policy of the State Board of Dental Examiners that any Initial Decision of an Administrative Law Judge (ALJ) from the Office of Administrative Courts (OAC) will be appropriately served with the approved Board Procedural Order Regarding Review of Initial Decision ("Order") upon parties involved in a case or cases before a panel of the Board.

The Board delegates authority to the Program Director or his/her designee to issue procedural orders for the appropriate hearing panel and to rule upon motions, including but not limited to requests for extensions of time for good cause.

The Board further delegates authority to the Section Director and the prosecuting attorney to determine whether or not to file exceptions on behalf of the appropriate inquiry panel if it is unable to timely meet or present a quorum in order to deliberate on the matter.

### **SECTION 3: LICENSING POLICIES**

#### **3.A. CREDENTIALS: CALCULATIONS FOR WORK EXPERIENCE TO QUALIFY FOR LICENSURE (Adopted 4/30/1997)**

Rule IV states that an applicant must work 14 hours per week or 700 hours per year minimum for 5 years immediately preceding an application for licensure by credentials. Calculations will be based on the first full month prior to receipt of the application. The five years immediately preceding means the last 60 months prior to submission of the application.

#### **3.B. MALPRACTICE AND BOARD ACTION INFORMATION FOR LICENSURE APPLICATION (Adopted 6/11/1997)**

Applications for licensure which have any disciplinary or malpractice case(s) (open or closed), will be considered on a case-by-case basis after receipt of all of the information that the Board requests.

On applications where there is a disciplinary action taken by another State Board or a malpractice settlement (open or closed), the staff shall:

1. Request a copy of the formal complaint/pleadings filed by the plaintiff/complainant or State Regulatory Agency for each case as well as a copy of the final action or disposition. If the complaint/pleadings are not readily available, the applicant should procure them from the court where the suit was filed.
2. Obtain the response from the dentist with his /her explanation of the disciplinary action or the malpractice settlement, and;
3. Any further information requested by the Board.

#### **3.C. REINSTATEMENT APPLICATIONS (Adopted 6/16/1999)**

The Board delegates to its Program Administrator the authority to administratively reinstate applications without Board review if all requirements are met.

### **3.D. REINSTATEMENT OF LICENSES (Adopted 9/18/1993) (Amended 1/10/2008)**

An applicant for reinstatement of an expired license, shall submit as payment to the Board the current renewal fee, a reinstatement fee and, if appropriate, a late fee.

All applicants for licensure reinstatement shall successfully complete the most current jurisprudence exam.

Time spent in unlicensed practice will not be counted towards maintenance of clinical competency.

### **3.E. APPROVAL OF CPR COURSES (Amended 2/28/2004)**

CPR courses from the American Heart Association, the American Safety and Health Institute, and the American Red Cross are accepted for granting authorities in which CPR certification is required.

### **3.F. BOARD AND LICENSING SUBCOMMITTEE PROCEDURES RELATING TO APPLICATIONS FOR ISSUANCE, RENEWAL, AND REINSTATEMENT (Adopted 1/21/2009)**

For the purposes of this Policy, reference to “unprofessional conduct” means the causes for denial of issuance, renewal, or reinstatement of a license from the Board. “Unprofessional conduct” is defined in section 12-25-129(1), (2), and (4), C.R.S.

It is the policy of the Board and its Licensing Subcommittees to consider in open session all licensing, renewal, and reinstatement matters that do not concern or involve allegations of any unprofessional conduct. It is the policy of the Board and its Licensing Subcommittees to consider in closed session all licensing, renewal, and reinstatement matters that concern or involve allegations of any unprofessional conduct, including where the applicant has been subject to disciplinary action by any state in which the applicant is or has been previously licensed, so that the Licensing Subcommittee may consider whether to deny or restrict the license pursuant to section 12-35-129(1) and (7)(e), C.R.S.

Where the Board or Licensing Subcommittee has authorized licensure, renewal, or reinstatement with a restriction of any kind, such as an admonition, probationary term, or other limitation, the Board or Licensing Subcommittee delegates to the Program Director the authority to sign the Stipulation and Final Agency Order reflecting the Board or Licensing Subcommittee’s guidance. The final action of the Board and Licensing Subcommittee shall be open to the public.

Where the Board or Licensing Subcommittee has determined in closed session not to proceed with denial or restriction of any kind of a license, renewal, or reinstatement, the Board or Licensing Subcommittee delegates to the Program Director the authority to administratively approve such applications and grant an unrestricted license. Such action shall be subsequently ratified by the Licensing Subcommittee in open session and reflected in the open session minutes.

With respect to the Board’s maintenance of records relating to applications for issuance, renewal, or reinstatement of a license from the Board, this Policy is not intended and shall not be interpreted to affect the Board’s obligation or ability to allow or deny public inspection thereof pursuant to state and federal law.

## **SECTION 4: PRACTICE POLICIES**

### **4.A. AFTER HOURS/EMERGENCY CARE (Adopted 8/14/2002)**

The Colorado Board of Dental Examiners defines access to after hours care and emergency care as the availability of the professional by the protocols consistent with the character of the practice and standards within the local community.

#### **4.B. AMALGAM DENTAL FILLINGS: REMOVAL OF (Adopted 8/21/1996) (Amended 9/18/1996)**

The Colorado State Board of Dental Examiners recognizes that patients have the right to request the removal of amalgam dental fillings by a licensed dentist. Upon such request, the dentist may remove the amalgam dental fillings.

The diagnosis and treatment recommendations for mercury toxicity and other systemic medical conditions that are within the scope of the practice of medicine are to be left to licensed physicians.

Although the Colorado State Board of Dental Examiners recognizes the right of the patient to request removal of amalgam dental fillings by a licensed dentist, the dentist may not make a diagnosis of mercury toxicity nor make a claim that removal of amalgam dental fillings will result in a cure, alleviation, or improvement, of any systemic medical condition. If a dentist believes that amalgam dental materials may be detrimental to a patient's medical health, it is incumbent upon the dentist to make a referral to a licensed physician for examination and evaluation of the suspected medical condition.

#### **4.C. ELECTRONIC RECORDS (Adopted 8/14/2002)**

The Colorado Board of Dental Examiners determines electronic records to be adequate if the entire record is date-stamped without the ability to be subsequently altered.

#### **4.D. EXAMINATION, DIAGNOSIS, AND RECORD KEEPING (Adopted 3/12/1997)**

This policy statement is meant to apply to the comprehensive dental examination, which should be part of all new adult patients' treatment. It should take place relatively early in the course of treatment. This examination will be the responsibility of the member of the dental team who is the primary care provider, in most instances the general dentist. While the parameters describe the common elements of diagnosis and treatment, it is acknowledged that unique clinical circumstances and individual patient preferences must be factored into clinical decisions. This requires the dentist's or dental hygienist's careful professional judgment. Balancing individual patient needs with scientific soundness is a necessary step in providing care.

It is understood that treatment provided by the dentist or the dental hygienist may deviate from these parameters in individual cases depending on the clinic circumstances presented by the patient. This should be documented and explained to the patient.

Evaluation of the patient's dental status requires obtaining a relevant medical and dental history and conducting a thorough clinical and radiographic examination with evaluation of extra oral and intra oral structures. All relevant findings should be documented.

When an examination is performed at the request of a referring dentist, hygienist, other health care professional, or by the patient for an emergency condition or specific area of concern, the examination and records can be limited to the specific problem.

1. A medical history should be taken and evaluated to identify predisposing conditions that may effect treatment, patient management and outcomes. When there is a condition that in the judgment of the dentist requires further evaluation, consultation with an appropriate health care provider should be obtained.
2. A dental history, including the chief complaint or reason for the visit, should be obtained and evaluated. Information about past dental care and records, including radiographs of previous treatment, may be useful.
3. Extraoral structures should be examined and evaluated. When indicated, a timely referral to other dental specialists or health care providers should be made and documented.
4. Intraoral tissues and structures should be examined and evaluated. When indicated, a timely referral to other dental specialists or health care providers should be made and documented.

5. The teeth and their replacements should be examined and evaluated. When indicated a timely referral to other dental specialist or health care provider should be made and documented.
6. Radiographs of diagnostic quality that are current, based on the diagnostic need of the patient are required. The dentist who prescribed the radiographs is responsible for their interpretation or obtaining an interpretation as they relate to all aspects of the teeth and surrounding structures. When indicated, a timely referral to other dental specialists or health care providers should be made and documented.
7. An evaluation of the periodontium is required. The Periodontal Screening and Recording Examination (PSR) or an equivalent examination can be utilized as a screening tool. When indicated, a more comprehensive charting record must be completed and/or an appropriate referral made. When indicated, a timely referral to other dental specialists or health care providers should be made and documented.
8. All relevant clinical findings should be documented in the patient's record.
9. Based on the results of the examination, a diagnosis and proposed treatment plan and options should be presented to the patient. Consequences of no treatment should be explained to the patient.

#### **4.E. INDEPENDENT MEDICAL EXAMINATIONS (IMEs) (Adopted 6/11/1997) (Amended 2/13/2002)**

For the purposes of this policy, the State Board defines an Independent Medical Examination, or IME, as an examination performed by a Colorado licensed practitioner at the request of a third party for the purposes of determining one or all of the following: insurance policy coverage, adequacy of care to date, reasonableness of fees, recommendation for further care and/or additional diagnostic work and needed referrals. This definition of IMEs does not include second opinions performed at the request of the patient or the treating doctor.

The Dental Practice Law of Colorado (December 30, 1996) §12-35-110 (1) (o) states that "a person is deemed to be practicing dentistry if, in the course of legitimate professional practice, such person gives or professes to give interpretations or reading of dental charts or records or gives treatment plans or interpretations of treatment plans derived from examinations, patient records, dental x-rays or roentgenograms;"

Relative to the definition of IME's and the Dental Law of Colorado, it is the position of the State Board of Dental Examiners that in the course of doing business a third party is entitled to seek an IME and that a third party is entitled to advise the subscriber of policy coverage. However, when a subscriber is provided with an interpretation of charts or radiographs, diagnosis, opinion on treatment or treatment plan, then the third party as well as the independent practitioner are deemed to be practicing dentistry. These interpretations can only be provided to the patient or guardian by a practitioner licensed to practice dentistry in the state of Colorado. Doing so without an appropriate license is a violation of the Dental Law of Colorado. Those licensees that provide such interpretations, diagnostic opinions, or treatment plans are held to the same standard as any Colorado licensed dentist as it relates to patient examination, diagnosis, and treatment planning.

#### **4.F. ON CALL COVERAGE (Adopted 8/14/2002)**

The Colorado Board of Dental Examiners determines on call coverage for a dentist or dental hygienist to be adequate when a mutually arranged covering dentist or dental hygienist is identified and the procedure to reach that professional is made readily available to patients of record.

#### **4.G. PATIENT ABANDONMENT (Adopted 8/14/2002)**

The Colorado Board of Dental Examiners defines patient abandonment as the unilateral termination of care of a patient of record on the part of the dentist or dental hygienist. As a patient and dentist or dental hygienist enter into a professional relationship, that dentist or dental hygienist has the responsibility for continuity or

continuous care until either party chooses to discontinue the relationship. At the time at which the dentist or dental hygienist chooses to discontinue, he or she must notify the patient in writing noting with due diligence that the clinician will be available for emergency care and/ or appropriate referrals for 30 days from the date of the letter. The Colorado Board of Dental Examiners defines a patient of record as one who has been treated by that dentist or dental hygienist within the previous two years.

#### **4.H. PATIENT RECORDS: CHARGES FOR COPYING (Adopted 7/15/1998)**

The Board recognizes the regulations of the Colorado Department of Public Health and Environment on Patient Records in the Custody in Individual Health Care Providers.

5.3 Patient Records in custody of individual Health Care Providers (Outpatient Records). The law provides that upon receipt of a properly written authorization request:

5.3.3 The custodian of record shall make a copy of the record available or make the record available for inspection within a reasonable time from the date of the signed request, normally not to exceed five days, excluding weekends and holidays.

5.3.5 The discharged patient or representative shall pay for the reasonable cost to obtain a copy of his/her patient record, not to exceed \$12 for the first ten or fewer pages and \$.25 per page for every additional page. Actual postage costs may also be charged. For one or more specific classes of records (such as x-rays or radiographs) or services, facilities may charge additional sums upon presenting a justification therefore acceptable to the Department.

#### **4.I. PATIENT RECORDS: REFUSAL TO RELEASE (Adopted 11/20/1991)**

1. When a complaint is received that the patient has provided written request to the dentist for his/her records and the dentist has not complied, the complaint is to be reviewed by the Board.
2. When neither the patient nor the dentist have complied with the statute requirements, the Board staff will send a letter to both parties explaining the provisions and responsibilities under the statute.
3. When both the dentist and the patient have been notified of the provisions of the statute, the patient provided written request to the dentist, and the dentist does not comply, the complaint is to be reviewed by the Board.

#### **4.J. MEDICAL IMMOBILIZATION / PROTECTIVE STABILIZATION / RESTRAINTS (Adopted 8/11/2004)**

- A. Within this policy, the terms medical immobilization, protective stabilization, and restraint are used interchangeably.
- B. The purpose of this policy is to recognize the fact that pediatric and special needs patients may need to be medically immobilized or restrained in order to prevent injury and to protect the health and safety of the patients, the dentist, and the dental staff. To achieve this, it is important to build a trusting relationship between the dentist, the dental staff, the patient, and the parent or guardian. This necessitates that the dentist establishes communication with them and promotes a positive attitude towards oral and dental health in order to alleviate fear and anxiety and to deliver quality dental care.
- C. Training requirement. Prior to utilizing medical immobilization, the dentist shall have received training beyond basic dental education through a residency program, graduate program, or an extensive continuing education course that involves both didactic and experiential mentored training.
- D. Pre-Restraint Requirements
  1. Prior to utilizing medical immobilization, the dentist shall consider each of the following.

- a. Other alternate behavioral methods;
- b. The dental needs of the patient;
- c. The effect on the quality of dental care;
- d. The patient's emotional development; and
- e. The patient's physical condition.
- f. The safety of the patient, dentist, and staff;

2. Prior to utilizing restraint, the dentist shall obtain written informed consent for the specific technique of immobilization from the parent or legal guardian and document such consent in the dental record, unless the parent or legal guardian is restraining or immobilizing the patient. Parental consent involving solely the presentation or description of a listing of various behavior management techniques is not considered to constitute informed consent for medical immobilization. The parent or guardian must be informed of the advantages and disadvantages of the technique(s) of restraint being utilized and/or considered.

E. Medical Immobilization, Protective Stabilization or Physical Restraint

1. Immobilization can be performed by the dentist, staff, or legal guardian with or without the aid of an immobilization device.

2. Immobilization must cause no serious or permanent injury and the least possible discomfort.

3. Indications. Partial or complete immobilization may be used for required diagnosis and/or treatment if the patient cannot cooperate due to lack of maturity, mental or physical handicap, failure to cooperate after other behavior management techniques have failed and/or when the safety of the patient, dentist or dental staff would be at risk without using protective restraint. This method can only be used to reduce or eliminate untoward movement, protect the patient and staff from injury, and to assist in the delivery of quality dental treatment.

4. Contraindications. Medical immobilization may not be used for the convenience of the dentist, as punishment, to provide care for a cooperative patient, or for a patient who cannot be immobilized safely due to medical conditions.

5. Documentation. The patient's record should include:

- a. Specific written informed consent for the medical immobilization, including why the use of immobilization is required.
- b. Type of immobilization used.
- c. Indication or reason for specific immobilization
- d. Duration of application
- e. In addition, there must be documentation of the outcome of the immobilization including the occurrence of any marks, bruises, injuries, or complications to the patient.
- f. The patient record must contain the time each immobilization began and ended.
- g. The status and progress of the treatment and the plan for future or remaining treatment with treatment options shall be reported at least hourly, or more frequently if appropriate, to the parent or legal guardian. After each such hourly report, renewed consent for continuation of the immobilization must be specifically obtained. Such consent may be verbal but shall be documented in the record.

6. Duration of application.

7. If the treatment plan changes during the procedure from that presented to the parent or legal guardian in the initial informed consent discussion, the parent and or legal guardian shall be notified and consulted immediately.

8. Dental hygienists and dental assistants shall not use medical immobilization by themselves, but may assist the dentist as necessary.

9. Parents or legal guardians cannot be denied access to the patient during treatment in the dental office unless the health and safety of the patient, parent or guardian, or dental staff would be at risk. The parent or guardian shall be informed of the reason they are denied access to the

patient and both the incident of the denial and the reason for the denial shall be documented in the patient's dental record. This provision shall not apply to dental care delivered in an accredited hospital or acute care facility.

#### **4.K. RETIRED DENTISTS PROVIDING DENTAL SERVICES TO INDIGENT PATIENTS (Adopted 4/30/2003)**

Programs utilizing retired dentists to provide dental services to indigent patients, pursuant to § 12-35-136(6), C.R.S., may charge a nominal fee for such services. The dentist will be in compliance with § 12-35-136(6) if the dentist provides such services on a limited basis and no fee is received by the dentist.

#### **4.L. SCALING AND ROOT PLANING (Adopted 9/26/2001)**

##### **Documentation and Diagnosis**

In order to support the diagnosis of periodontal disease and the need to scale and root plane, the following current diagnostic information is required.

- a. Probing depths for the teeth to be treated
- b. Radiographs, which demonstrate the crestal bone
- c. Bleeding upon probing data for the areas to be treated

##### **Follow-Up Examinations**

After the scaling and root planing procedure, there is an obligation on the part of the dentist who is responsible for the treatment to conduct a follow-up periodontal examination to evaluate and inform the patient of their response to the therapy.

##### **Additional Responsibilities**

It is the obligation of the practitioner when periodontal disease continues to be present to

- a. Provide for maintenance care (supportive periodontal therapy) which includes continued monitoring and documentation of the patient's periodontal status and
- b. Make recommendations regarding additional therapy.

#### **4.M. WHITENING PROCESS SYSTEMS (Adopted 1/12/2000) (Amended 4/25/2001)**

The use of tray, light, or light and tray whitening process systems available only to dentists require direct supervision for dental assistants and general supervision for dental hygienists. A custom tray would be considered an intraoral appliance that requires a work order by a licensed dentist pursuant to C.R.S. 12-35-110 (1) (c).

#### **4.N. Smoking Cessation (Adopted 7/10/2008)**

The Board recognizes the treatment of smoking cessation is within the scope of dentistry and dental hygiene. However, prescription writing would be limited to the scope of dentistry pursuant to C.R.S. 12-35-113 (1)(p) and 12-35-114 and would be subject to the controlled substance record keeping requirements of Board Rule VI.