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# COLORADO REVISED STATUTES

## Title 12 **Professions and Occupations**

### Article 35 **Dentists and Dental Hygienists**

Effective July 1, 2010

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**PART 1**  
**GENERAL PROVISIONS**

**12-35-101. Short title.**

This article shall be known and may be cited as the "Dental Practice Law of Colorado".

**12-35-102. Legislative declaration.**

The practice of dentistry and dental hygiene in this state is declared to affect the public health, safety, and welfare and to be subject to regulation and control in the public interest. It is further declared 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. It is the purpose of this article to promote the public health, safety, and welfare by regulating the practice of dentistry and dental hygiene and to ensure that no one shall practice dentistry or dental hygiene without qualifying under this article. The provisions of this article relating to licensure by credentials are not intended to reduce competition or restrain trade with respect to the oral health needs of the public. All provisions of this article relating to the practice of dentistry and dental hygiene shall be liberally construed to carry out these objects and purposes.

**12-35-103. Definitions.**

As used in this article, unless the context otherwise requires:

(1) "Accredited" means a program that is nationally recognized for specialized accrediting for dental, dental hygiene, and dental auxiliary programs by the United States department of education.

(2) "Board" means the state board of dental examiners, created in section 12-35-104.

(3) "Dental assistant" means any person not a dentist or dental hygienist licensed in Colorado who may be assigned or delegated to perform dental tasks or procedures as authorized by this article or by rules of the board.

(4) "Dental hygiene" means the delivery of preventive, educational, and clinical services supporting total health for the control of oral disease and the promotion of oral health provided by a dental hygienist within the scope of his or her education, training, and experience and in accordance with applicable law.

(4.5) "Dental hygiene diagnosis" means the identification of an existing oral health problem that a dental hygienist is qualified and licensed to treat within the scope of dental hygiene practice. The dental hygiene diagnosis focuses on behavioral risks and physical conditions that are related to oral health. A dentist shall confirm any dental hygiene diagnosis that requires treatment that is outside the scope of dental hygiene practice pursuant to sections 12-35-124, 12-35-125, and 12-35-128.

(5) "Dentistry" means the evaluation, diagnosis, prevention, or treatment, including nonsurgical, surgical, or related procedures, of diseases, disorders, or conditions of the oral cavity, maxillofacial area, or the adjacent and associated structures and the impact of the disease, disorder, or condition on the human body so long as a dentist is practicing within the scope of his or her education, training, and experience and in accordance with applicable law.

(6) (a) "Direct supervision" means the supervision of those tasks or procedures that do not require the presence of the dentist in the room where performed but require the dentist's presence on the premises and availability for prompt consultation and treatment.

(b) For purposes of this subsection (6) only, "premises" means within the same building, dental office, or treatment facility and within close enough proximity to respond in a timely manner to an emergency or the need for assistance.

(7) "Examination proctor" means a licensed dentist or dental hygienist, who shall have at least five years' clinical experience and who is appointed by the board to supervise and administer written and clinical examinations in the field in which the dentist or dental hygienist is licensed to practice under this article.

(8) "Inactive license" means a status granted to a person pursuant to section 12-35-122.

(9) "Independent advertising or marketing agent" means a person, firm, association, or corporation that performs advertising or other marketing services on behalf of licensed dentists, including referrals of patients to licensees resulting from patient-initiated responses to such advertising or marketing services.

(10) (a) "Indirect supervision" means the supervision of those tasks or procedures that do not require the presence of the dentist in the office or on the premises at the time such tasks or procedures are being performed, but do require that the tasks be performed with the prior knowledge and consent of the dentist.

(b) For purposes of this subsection (10) only, "premises" means within the same building, dental office, or treatment facility and within close enough proximity to respond in a timely manner to an emergency or the need for assistance.

(11) "Laboratory work order" means the written instructions of a dentist licensed in Colorado authorizing another person to construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to function in the oral cavity, maxillofacial area, or adjacent and associated regions.

(12) "License" means the grant of authority by the board to any person to engage in the practice of dentistry or dental hygiene. "License" includes an academic license to practice dentistry pursuant to section 12-35-117.5. A license shall be a privilege personal to the licensee and may be revoked, suspended, or subjected to disciplinary conditions by the board for violation of any of the provisions of this article and shall be null and void upon the failure of the licensee to file an application for renewal and to pay the fee as required by section 12-35-121.

(13) "License certificate" means the documentary evidence that the board has granted authority to the licensee to practice dentistry or dental hygiene in this state.

(14) "Proprietor" includes any person who:

(a) Employs dentists, dental hygienists, or dental assistants in the operation of a dental office, except as provided in sections 12-35-113 and 12-35-128;

(b) Places in possession of a dentist, dental hygienist, dental assistant, or other agent such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation for the use of such material, equipment, or offices; or

(c) Retains the ownership or control of dental equipment or material or a dental office and makes the same available in any manner for use by dentists, dental hygienists, dental assistants, or other agents; except that nothing in this paragraph (c) shall apply to bona fide sales of dental equipment or material secured by a chattel mortgage or retain-title agreement or to the loan of articulators.

(15) "Renewal certificate" means the documentary evidence that the board has renewed the authority of the licensee to practice dentistry or dental hygiene in this state.

**12-35-104. State board of dental examiners - subject to termination - immunity - repeal of article.**

(1) (a) The state board of dental examiners is hereby created as the agency of this state for the regulation of the practice of dentistry in this state and to carry out the purposes of this article. The board shall be under the supervision and control of the division of registrations as provided by section 24-34-102, C.R.S. The board shall consist of five dentist members, two dental hygienist members, and three members from the public at large, each member to be appointed by the governor for a term of four years and to have the qualifications provided in this article. No member shall serve more than two consecutive terms of four years. Due consideration shall be given to having a geographical, political, urban, and rural balance among the board members. Should a vacancy occur in any board membership before the expiration of the term thereof, the governor shall fill such vacancy by appointment for the remainder of such term in the same manner as in the case of original appointments. Any member of the board may be removed by the governor for misconduct, incompetence, or neglect of duty.

(b) Notwithstanding the July 1, 2004, recreation and reenactment of this article, members of the board who were serving as of June 30, 2004, shall continue to serve except as otherwise provided in this article, and their service shall be deemed to have been continuous. On and after January 1, 2005, the board shall consist of seven dentist members, three dental hygienist members, and three members from the public at large, each member to be appointed by the governor for a term of four years and to have the qualifications provided in this article.

(2) The board shall organize annually by electing one of its members as chairperson and one as vice-chairperson. It may adopt such rules for its government as it may deem proper. The board shall meet at least quarterly, and more often if necessary, at such times and places as it may from time to time designate.

(3) The board may employ examination proctors when necessary.

(4) (a) The provisions of section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the board. At the time of sunset review by the appropriate legislative committee, all functions of the board, including the issuing of permits for administering anesthesia and the regulation of such administration of anesthesia, shall be reviewed.

(b) This article is repealed, effective July 1, 2014.

#### **12-35-105. Qualifications of board members.**

(1) A person shall be qualified to be appointed to the board if such person:

(a) Is a legal resident of Colorado;

(b) Is currently licensed as a dentist or dental hygienist, if fulfilling that position on the board; and

(c) Has been actively engaged in a clinical practice in this state for at least five years immediately preceding the appointment, if fulfilling the position of dentist or dental hygienist on the board.

(2) Notwithstanding subsection (1) of this section or section 24-5-101, C.R.S., a person convicted of a felony in Colorado or any other state or of violating this article or any law governing the practice of dentistry shall not be appointed to or serve on the board.

#### **12-35-106. Quorum of board - panel.**

A majority of the members of the board shall constitute a quorum for the transaction of business, but if less than a quorum is present on the day appointed for a meeting, those present may adjourn until a quorum is present. Any action taken by a quorum of the assigned panel shall constitute action by the board; except that, for disciplinary matters concerning a dentist, a majority of dentist members is required for a quorum.

#### **12-35-107. Powers and duties of board.**

(1) The board shall exercise, subject to the provisions of this article, the following powers and duties:

(a) Conduct examinations to ascertain the qualifications and fitness of applicants for licensure to practice dentistry and dental hygiene. To assist with such examinations:

(I) Only proctors or licensed dentists may participate in the examination of candidates for dental licensure; and

(II) Only licensed dentists, licensed dental hygienists, or proctors may participate in the examination of candidates for dental hygiene licensure.

(b) Make, publish, declare, and periodically review such reasonable rules as may be necessary to carry out and make effective the powers and duties of the board as vested in it by this article. Rules of the board may include but shall not be limited to:

(I) The examination of applicants for licensing as dentists and dental hygienists;

(II) The practices of dentistry and dental hygiene;

(III) The tasks and procedures that may be assigned to dental assistants and dental hygienists;  
and

(IV) The specification of essential instructions to be included in a laboratory work order.

(c) Conduct hearings to revoke, suspend, or deny the issuance of a license or renewal license granted under the authority of this article or of previous laws, issue a confidential letter of concern, issue a letter of admonition, or reprimand, censure, or place on probation a licensee when evidence has been presented showing violation of any of the provisions of this article by a holder of or an applicant for a license. The board may elect to hear the matter itself pursuant to the provisions of section 12-35-129, or it may elect to hear the matter with the assistance of an administrative law judge or an advisory attorney from the office of the attorney general, and, in such case, the advisor or administrative law judge shall advise the board on legal and procedural matters and rule on evidence and otherwise conduct the course of the hearing.

(d) Conduct investigations and inspections for compliance with the provisions of this article;

(e) Grant and issue licenses and renewal certificates in conformity with this article to such applicants as have been found qualified. The board may also grant and issue temporary licenses. The board shall promulgate rules concerning the granting of temporary licenses, which rules shall include, but not be limited to, restrictions with respect to effective dates, areas of practice that may be performed, and licensing fees that may be charged to the applicant.

(f) Make such reasonable rules as may be necessary to carry out and make effective the powers and duties of the board as vested in it by the provisions of this article; except that all rules adopted or amended by the board on or after July 1, 1979, shall be subject to sections 24-4-103 (8) (c) and (8) (d) and 24-34-104 (9) (b) (II), C.R.S. Such rules may include, but shall not be limited to, minimum training and equipment requirements for the administration of local anesthetics, general anesthesia, conscious sedation, and nitrous oxide/oxygen inhalation sedation, including procedures that may be used by and minimum training requirements for dentists, dental hygienists, and dental assistants. The general assembly declares that rules relating to anesthesia are not intended to permit administration of local anesthetics, general anesthesia, or conscious sedation, by dental assistants nor to reduce competition or restrain trade with respect to dentistry needs of the public.

(g) Through the department of regulatory agencies and subject to appropriations made to the department of regulatory agencies, employ hearing officers or administrative law judges on a full-time or part-time basis to conduct any hearings required by this article. The hearing officers and administrative law judges shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(h) (I) Issue anesthesia permits to licensed dentists and set and collect a fee for such issuance.



(II) Anesthesia permits shall be valid for a period of five years and shall allow permit-holding licensees to administer deep conscious sedation or both general anesthesia and deep conscious sedation.

(i) Develop criteria and procedures for an office inspection program including, but not limited to:

(I) Designating qualified inspectors who are experts in dental outpatient general anesthesia and deep conscious sedation;

(II) Requiring each licensee inspected to bear the cost of inspection by allowing designated inspectors to charge a reasonable fee as established by the board;

(III) Requiring an inspector to notify the board in writing of the results of an inspection.

(2) The board may recognize those dental specialties defined by the American dental association.

(3) To facilitate the licensure of qualified applicants, the board may, in its discretion, establish a subcommittee of at least six board members to perform licensing functions in accordance with this article. Four subcommittee members shall constitute a quorum of the subcommittee. The chairperson of the board may serve on a subcommittee as deemed necessary by the chairperson. Any action taken by a quorum of the subcommittee shall constitute action by the board.

#### **12-35-108. Limitation on authority.**

The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

#### **12-35-109. Power of board to administer oaths - issue subpoenas - service - penalty for refusing to obey subpoena.**

(1) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board.

(2) Upon failure of any witness to comply with such subpoena or process, the board may petition the district court in the county in which the proceeding is pending setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, in which event, the district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other evidence.

(3) Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 1, and any person who lodges a complaint pursuant to this part 1 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this part 1 shall be immune from any civil or criminal liability that may result from such participation.

**12-35-110. Disposition of fees.**

(1) The board shall not have the power to create any indebtedness on behalf of the state. All examination and other fees under this article shall be collected by the board and transmitted to the state treasurer, who shall credit the same pursuant to section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the uses and purposes of this article. Expenditures from such appropriations shall be made upon vouchers and warrants drawn pursuant to law.

(2) Appropriations made to the board shall be applied only to the payment of the necessary traveling, hotel, and clerical expenses of the members of the board in the performance of their duties; the payment of dues for membership in the American association of dental examiners and the expense of sending delegates to the convention of such association; and the payment of all such other expenditures as may be necessary or proper to carry out and execute the powers and duties of the board and the provisions of this article.

(3) Publications of the board circulated in quantity outside the executive branch shall be issued in accordance with the provisions of section 24-1-136, C.R.S.

**12-35-111. Change of address - duplicate licenses and certificates.**

(1) Every person licensed under this article, upon changing the licensee's place of business, shall furnish to the board the licensee's new mailing address within thirty days.

(2) The board may issue a duplicate of any license upon attestation by the licensee of loss or destruction and shall charge a fee established pursuant to section 24-34-105, C.R.S., for a duplicate.

**12-35-112. Persons entitled to practice dentistry or dental hygiene.**

(1) It is unlawful for any person to practice dentistry or dental hygiene in this state except those:

(a) Who are duly licensed as dentists or dental hygienists pursuant to this article;

(b) Who are designated by this article as dental assistants, but only to the extent of the procedures authorized by this article and the rules adopted by the board.

**12-35-113. What constitutes practicing dentistry.**

(1) A person shall be deemed to be practicing dentistry if such person:

(a) Performs, or attempts or professes to perform, any dental operation, oral surgery, or dental diagnostic or therapeutic services of any kind; except that nothing in this paragraph (a) shall be construed to prohibit a dental hygienist or dental assistant from providing preventive dental or nutritional counseling, education, or instruction services;

(b) Is a proprietor of a place where dental operation, oral surgery, or dental diagnostic or therapeutic services are performed; except that nothing in this paragraph (b) shall be construed to prohibit a dental hygienist or dental assistant from performing those tasks and procedures consistent with section 12-35-128;

(c) Directly or indirectly, by any means or method, takes impression of the human tooth, teeth, jaws, maxillofacial area, or adjacent and associated structures, performs any phase of any operation incident to the replacement of a part of a tooth, or supplies artificial substitutes for the natural teeth, jaws, or adjacent and associated structures; except that nothing in this paragraph (c) shall prohibit or be construed to prohibit a dental hygienist or dental assistant from performing tasks and procedures consistent with sections 12-35-124 (1) (d), 12-35-125 (1) (d), and 12-35-128 (3) (a) (I);

(d) Furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth or upon the jaws, maxillofacial area, or adjacent and associated structures other than on the written laboratory work order of a duly licensed and practicing dentist;

(e) Places an appliance or structure described in paragraph (d) of this subsection (1) in the human mouth;

(f) Adjusts or attempts or professes to adjust an appliance or structure described in paragraph (d) of this subsection (1);

(g) Delivers an appliance or structure described in paragraph (d) of this subsection (1) to any person other than the dentist upon whose laboratory work order the work was performed;

(h) Professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth or upon the jaws, maxillofacial area, or adjacent and associated structures;

(i) Examines, diagnoses, plans treatment of, or treats natural or artificial structures or conditions associated with, adjacent to, or functionally related to the oral cavity, jaws, maxillofacial area, or adjacent and associated structures and their impact on the human body;

(j) Extracts, or attempts to extract, human teeth or corrects, or attempts to correct, malformations of human teeth or jaws;

(k) Repairs or fills cavities in human teeth;

(l) Prescribes ionizing radiation or the use of an X ray for the purpose of taking dental X rays or roentgenograms; except that nothing in this paragraph (l) shall be construed to prohibit these procedures from being delegated to appropriately trained personnel in accordance with this article and rules of the board;

(m) Gives, or professes to give, interpretations or readings of dental X rays or roentgenograms, CT scans, or other diagnostic methodologies; except that nothing in this paragraph (m) shall be construed to prohibit a dental hygienist from performing tasks and procedures consistent with sections 12-35-124 and 12-35-125;

(n) Represents himself or herself to an individual or the general public as practicing dentistry, by using the words "dentist" or "dental surgeon", or by using the letters "D.D.S.", "D.M.D.", "D.D.S./M.D.", or "D.M.D./M.D.". Nothing in this paragraph (n) shall be construed to prohibit a dental hygienist or dental assistant from performing tasks and procedures consistent with section 12-35-128 (2) or (3) (a).

(o) States, permits to be stated, or professes by any means or method whatsoever that he or she can perform or will attempt to perform dental operations or render a diagnosis connected therewith;

(p) Prescribes such drugs or medications and administers such general or local anesthetics, anesthesia, or analgesia as may be necessary for the proper practice of dentistry; except that nothing in this paragraph (p) shall be construed to prohibit a dental hygienist from performing those tasks and procedures consistent with sections 12-35-124 (1) (e), 12-35-125 (1) (e) and (1) (f), and 12-35-128, and in accordance with rules promulgated by the board;

(q) Prescribes, induces, and sets dosage levels for inhalation analgesia; except that nothing in this paragraph (q) shall be construed to prohibit the delegation of monitoring and administration to appropriately trained personnel in accordance with this article and rules of the board;

(r) Gives or professes to give interpretations or readings of dental charts or records or gives treatment plans or interpretations of treatment plans derived from examinations, patient records, dental X rays, or roentgenograms; except that nothing in this paragraph (r) shall be construed to prohibit a dental hygienist or dental assistant from performing tasks and procedures consistent with sections 12-35-124, 12-35-125, and 12-35-128 (2) and (3).

#### **12-35-114. Dentists may prescribe drugs - surgical operations - anesthesia.**

A licensed dentist is authorized to prescribe such drugs or medicine, perform such surgical operations, administer such general or local anesthetics, and use such appliances as may be necessary to the proper practice of dentistry. A dentist shall not prescribe, distribute, or give to any person, including himself or herself, any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5), C.R.S., or as contained in schedule II of 21 U.S.C. sec. 812, other than in the course of legitimate dental practice and pursuant to the rules promulgated by the board regarding controlled substance record-keeping.

**12-35-115. Persons exempt from operation of this article.**

(1) Nothing in this article shall apply to the following practices, acts, and operations:

(a) Practice of his or her profession by a physician or surgeon licensed as such under the laws of this state unless the physician or surgeon practices dentistry as a specialty;

(b) The giving of an anesthetic by a qualified anesthetist or registered nurse for a dental operation under the direct supervision of a licensed dentist;

(c) The practice of dentistry or dental hygiene in the discharge of their official duties by graduate dentists or dental surgeons or dental hygienists in the United States armed forces, public health service, Coast Guard, or veterans administration;

(d) Students or residents regularly employed by a private hospital or by a city, county, city and county, or state hospital under an advanced dental education program accredited by the commission on dental accreditation of the American dental association and approved and registered as such by the board;

(e) The practice of dental hygiene by instructors and students or the practice of dentistry by students or residents in schools or colleges of dentistry, schools of dental hygiene, or schools of dental assistant education while such instructors, students, or residents are participating in accredited programs of such schools or colleges;

(f) The practice of dentistry or dental hygiene by dentists or dental hygienists licensed in good standing by other states or countries while appearing in programs of dental education or research at the invitation of any group of licensed dentists or dental hygienists in this state who are in good standing, so long as such practice is limited to five consecutive days in a twelve-month period and the name of each person engaging in such practice is submitted to the board, in writing and on a form approved by the board, at least ten days before the person performs such practice;

(g) The filling of laboratory work orders of a licensed dentist, as provided by section 12-35-133, by any person, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth or for restoration of natural teeth, or replacement of structures relating to the jaws, maxillofacial area, or adjacent and associated structures;

(h) The performance of acts by a person under the direct or indirect supervision of a dentist licensed in Colorado when authorized pursuant to the rules of the board or when authorized under other provisions of this article;

(i) The practicing of dentistry or dental hygiene by an examiner representing a testing agency approved by the board, during the administration of an examination; or

(j) (Deleted by amendment, L. 2010, (HB 10-1128), ch. 172, p. 611, § 5, effective April 29, 2010.)

(k) The practice of dentistry or dental hygiene by dentists or dental hygienists licensed in good standing by other states while providing care as a volunteer, at the invitation of any group

of licensed dentists or dental hygienists in this state who are in good standing, so long as such practice is limited to five consecutive days in a twelve-month period and the name of each person engaging in such practice is submitted to the board, in writing and on a form approved by the board, at least ten days before the person performs such practice.

**12-35-116. Names and status under which dental practice may be conducted.**

(1) The conduct of the practice of dentistry or dental hygiene in a corporate capacity is prohibited, but such prohibition shall not be construed to prevent the practice of dentistry or dental hygiene by a professional service corporation of licensees so constituted that they may be treated under the federal internal revenue laws as a corporation for tax purposes only. Any such professional service corporation may exercise such powers and shall be subject to such limitations and requirements, insofar as applicable, as are provided in section 12-36-134, relating to professional service corporations for the practice of medicine.

(2) The group practice of dentistry or dental hygiene is permitted.

(3) The practice of dentistry or dental hygiene by a limited liability company of licensees or by a limited liability partnership of licensees is permitted subject to the limitations and requirements, insofar as are applicable, set forth in section 12-36-134, relating to a limited liability company or limited liability partnership for the practice of medicine.

**12-35-116.5. Ownership of dental or dental hygiene practice - information to be posted - heir to serve as temporary proprietor - limitations.**

(1) (a) Only a dentist licensed to practice dentistry in this state pursuant to this article may be the proprietor of a dental practice in this state.

(b) Only a dentist licensed to practice dentistry in this state pursuant to this article or a dental hygienist licensed to practice dental hygiene in this state pursuant to this article may be the proprietor of a dental hygiene practice in this state.

(c) (I) Notwithstanding paragraphs (a) and (b) of this subsection (1), a nonprofit organization may be the proprietor of a dental or dental hygiene practice if:

(A) The organization is a community health center, as defined in the federal "Public Health Service Act", 42 U.S.C. sec. 254b; or

(B) At least fifty percent of the patients served by the organization are low income. As used in this sub-subparagraph (B), "low income" means the patient's income does not exceed the income level specified for determining eligibility for the children's basic health plan established in article 8 of title 25.5, C.R.S.

(II) Notwithstanding paragraphs (a) and (b) of this subsection (1), a political subdivision of the state may be the proprietor of a dental or dental hygiene practice. As used in this subparagraph (II), "political subdivision of the state" means a county, city and county, city, town, service authority, special district, or any other kind of municipal, quasi-municipal, or public corporation, as defined in section 7-49.5-103, C.R.S.

(III) The proprietorship of a dental or dental hygiene practice by a nonprofit organization that meets the criteria in subparagraph (I) of this paragraph (c) or by a political subdivision of the state shall not affect the exercise of the independent professional judgment of the licensed dentist or dental hygienist providing care to patients on behalf of the organization or political subdivision.

(2) (a) The name, license number, ownership percentage, and other information, as required by the board, of each proprietor of a dental or dental hygiene practice, including an unlicensed heir who is the temporary proprietor of the practice, as specified in subsection (3) of this section, shall be available at the reception desk of the dental or dental hygiene practice during the practice's hours of operation. The information required by this paragraph (a) shall be available in a format approved by the board.

(b) Upon request, the dental or dental hygiene practice shall promptly make available to the requesting person a copy of the information required by paragraph (a) of this subsection (2).

(c) The dental or dental hygiene practice shall ensure that the information required by paragraph (a) of this subsection (2) is accurate and current. Any change in the information shall be updated within thirty days after the change.

(3) (a) Notwithstanding sections 12-35-125 and 12-35-129 (1) (h), (14), and (15), if a dentist or dental hygienist who was the proprietor of a dental or dental hygiene practice and was engaged in the active practice of dentistry or dental hygiene dies:

(I) An heir to the dentist may serve as a proprietor of the deceased dentist's dental or dental hygiene practice for up to one year after the date of the dentist's death, regardless of whether the heir is licensed to practice dentistry or dental hygiene; or

(II) An heir to the dental hygienist may serve as a proprietor of the deceased dental hygienist's dental hygiene practice for up to one year after the date of the dental hygienist's death, regardless of whether the heir is licensed to practice dentistry or dental hygiene.

(b) Upon good cause shown by the heir or the heir's representative, the board may extend the period described in paragraph (a) of this subsection (3) by up to an additional twelve months, if necessary, to allow the heir sufficient time to sell or otherwise dispose of the practice.

(c) If an heir to a deceased dentist or dental hygienist serves as a proprietor of the deceased dentist's or dental hygienist's practice as specified in paragraph (a) of this subsection (3), all patient care provided during the time the heir is a proprietor of the practice shall be provided by an appropriately licensed dentist or dental hygienist.

(d) The temporary proprietorship of a dental or dental hygiene practice by an unlicensed heir shall not affect the exercise of the independent professional judgment of the licensed dentist or dental hygienist providing care to patients on behalf of the practice.

**12-35-117. Application for license - fee.**

(1) Every person not currently holding a license to practice dentistry in this state who desires to practice dentistry in this state shall file with the board an application for a license on a form to be provided by the board, verified by the oath of the applicant, and accompanied by a fee required by section 12-35-138 (1) (a) or established pursuant to section 24-34-105, C.R.S., in which application it shall appear that the applicant:

(a) Has attained the age of twenty-one years;

(b) Is a graduate of a dental school or college that, at the time of the applicant's graduation, was accredited. An official transcript prepared by the dental college or school attended shall be submitted to the board.

(c) Has listed any act the commission of which would be grounds for disciplinary action under section 12-35-129 against a licensed dentist, along with an explanation of the circumstances of such act;

(d) Has verification of licensure from other jurisdictions where the applicant holds or has held a dental or other health care license;

(e) Has proof that he or she has not been subject to final or pending disciplinary action by any state in which the applicant is or has been previously licensed; except that, if the applicant has been subject to disciplinary action, the board may review such disciplinary action to determine whether it warrants grounds for refusal to issue a license; and

(f) Has proof that he or she has met any more stringent criteria established by the board.

(2) An applicant for licensure shall demonstrate to the board that he or she has maintained the professional ability and knowledge required by this article when such applicant has not graduated from an accredited dental school or college within the twelve months immediately preceding the application and has not, for at least one year of the five years immediately preceding the application, engaged in:

(a) The active clinical practice of dentistry;

(b) Teaching dentistry in an accredited program; or

(c) Service as a dentist in the military.

(3) Such other pertinent information shall appear on the application as the board may deem necessary to process the application.

**12-35-117.5. Academic license.**

(1) (a) A dentist who is employed at an accredited school or college of dentistry in this state and who practices dentistry in the course of his or her employment responsibilities shall either make written application to the board for an academic license in accordance with this section or shall otherwise become licensed pursuant to sections 12-35-117, 12-35-118, and 12-35-119, as applicable.



(b) Nothing in this section shall require a dentist who appears in a program of dental education or research, as described in section 12-35-115 (1) (f), to obtain an academic license pursuant to this section.

(2) A person who applies for an academic license shall submit proof to the board that he or she:

- (a) Graduated from a school of dentistry located in the United States or another country;
- (b) Is employed by an accredited school or college of dentistry in this state; and
- (c) Successfully passed the jurisprudence examination described in section 12-35-119 (1) (b).

(3) An applicant for an academic license shall satisfy the credentialing standards of the accredited school or college of dentistry that employs the applicant.

(4) An academic license shall authorize the licensee to practice dentistry only while engaged in the performance of his or her official duties as an employee of the accredited school or college of dentistry and only in connection with programs affiliated or endorsed by the school or college. An academic licensee may not use an academic license to practice dentistry outside of his or her academic responsibilities.

(5) In addition to the requirements of this section, an applicant for an academic license shall complete all procedures for academic licensing established by the board to become licensed, including payment of any fee imposed pursuant to section 12-35-117 (1).

**12-35-118. Graduates of foreign dental schools.**

(1) An applicant for a license to practice dentistry who is a graduate of a foreign nonaccredited dental school shall:

(a) Present evidence of having completed a program in clinical dentistry and having obtained a doctorate of dental surgery or a doctorate of dental medicine at an accredited dental school;

(b) Pass the examination administered by the joint commission on national dental examinations; and

(c) Pass an examination designed to test the applicant's clinical skills and knowledge. Such examination shall be administered by a regional testing agency composed of at least four states or an examination of another state.

**12-35-119. Examinations - how conducted - certificates issued to successful applicants - conditions on reexamination.**

(1) Applicants for dental licensure shall submit to the board proof of having successfully passed the following:

- (a) The examination administered by the joint commission on national dental examinations;

(b) A jurisprudence examination, approved by the board, designed to test the applicant's knowledge of the provisions of this article; and

(c) An examination designed to test the applicant's clinical skills and knowledge. Such examination shall be administered by a regional testing agency composed of at least four states or an examination of another state.

(2) All examination results required by the board shall be filed with the board and kept for reference for a period of not less than two years. Should the applicant successfully complete such examinations and be otherwise qualified, the applicant shall be granted a license by the board and shall be issued a license certificate.

(3) The board shall adopt rules to establish:

(a) The maximum number of times and maximum time period within which an applicant will be allowed to retake only the failed parts of the examination designed to test clinical skills and knowledge; and

(b) The maximum number of times an applicant may fail to successfully complete the examination designed to test clinical skills and knowledge before the board requires such applicant to take specified remedial measures as a prerequisite to retaking the examination.

**12-35-120. Licensure by endorsement.**

(1) The board shall provide for licensure upon application of any person licensed in good standing to practice dentistry in another state or territory of the United States who provides the credentials and meets the qualifications set forth in this section in the manner prescribed by the board.

(2) The board shall issue a license to an applicant licensed as a dentist in another state or territory of the United States if said applicant has submitted credentials and qualifications for licensure that include:

(a) Proof of graduation from an accredited dental school;

(b) Proof the applicant is currently licensed in another state or United States territory;

(c) Proof the applicant has been in practice or teaching dentistry, which involves personally providing care to patients for not less than three hundred hours annually in an accredited dental school for a minimum of five years out of the seven years immediately prior to applying for licensure;

(c) Proof the applicant has been in practice or teaching dentistry, which involves personally providing care to patients for not less than three hundred hours annually in an accredited dental school for a minimum of five years out of the seven years immediately preceding the date of the receipt of the application, or evidence that the applicant has demonstrated competency as a dentist as determined by the board;

**12-35-121. Renewal of dental and dental hygienist licenses - fees.**

Licenses shall be renewed or reinstated pursuant to a schedule established by the director of the division of registrations within the department of regulatory agencies, referred to in this section as the director, and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

**12-35-122. Inactive dental license.**

(1) Any person licensed to practice dentistry pursuant to this article may apply to the board to be transferred to an inactive status. Such application shall be in the form and manner designated by the board. The board may grant such status by issuing an inactive license, or it may deny the application for any of the causes set forth in section 12-35-129.

(2) Any person applying for a license under this section shall:

(a) Provide an affidavit to the board that the applicant, after a date certain, shall not practice dentistry in this state unless he or she is issued a license to practice dentistry pursuant to subsection (5) of this section;

(b) Pay the license fee as authorized pursuant to section 24-34-105, C.R.S.; and

(c) Comply with any financial responsibility standards promulgated by the board pursuant to section 13-64-301 (1), C.R.S.

(3) Such inactive status shall be plainly indicated on the face of any inactive license certificate issued under this section.

(4) The board is authorized to conduct disciplinary proceedings as set forth in section 12-35-129 against any person licensed under this section for any act committed while the person was licensed pursuant to this article.

(5) Any person licensed under this section who wishes to resume the practice of dentistry shall file an application in the form and manner the board shall designate, pay the license fee promulgated by the board pursuant to section 24-34-105, C.R.S., and meet the financial responsibility requirements promulgated by the board pursuant to section 13-64-301 (1), C.R.S. The board may approve such application and issue a license to practice dentistry or may deny the application for any of the causes set forth in section 12-35-129.

**12-35-123. Retired dental and dental hygienist licenses.**

(1) Any person licensed to practice dentistry or dental hygiene pursuant to this article may apply to the board for retired licensure status. Any such application shall be in the form and manner designated by the board. The board may grant such status by issuing a retired license, or it may deny the application if the licensee has been disciplined for any of the causes set forth in section 12-35-129.

(2) Any person applying for a license under this section shall:

(a) Provide an affidavit to the board stating that, after a date certain, the applicant shall not practice dentistry or dental hygiene, shall no longer earn income as a dentist or dental hygiene administrator or consultant, and shall not perform any activity that constitutes practicing dentistry or dental hygiene pursuant to sections 12-35-113, 12-35-124, and 12-35-125 unless said applicant is issued a license to practice dentistry or dental hygiene pursuant to subsection (5) of this section; and

(b) Pay the license fee authorized by section 24-34-105, C.R.S., which fee shall not exceed fifty dollars.

(3) The retired status of a licensee shall be plainly indicated on the face of any retired license certificate issued under this section.

(4) The board is authorized to conduct disciplinary proceedings pursuant to section 12-35-129 against any person licensed under this section for an act committed while such person was licensed pursuant to this article.

(5) Any person licensed under this section may apply to the board for a return to active licensure status by filing an application in the form and manner the board shall designate pursuant to section 12-35-117, paying the appropriate license fee established pursuant to section 24-34-105, C.R.S., and meeting the financial responsibility requirements issued by the board pursuant to section 13-64-301 (1), C.R.S. The board may approve such application and issue a license to practice dentistry or dental hygiene or may deny the application if the licensee has been disciplined for any of the causes set forth in section 12-35-129.

(6) A dentist in retired status may provide dental services on a voluntary basis to the indigent, if such services are provided on a limited basis and no fee is charged. Such a dentist shall have immunity for voluntary care provided pursuant to this subsection (6).

**12-35-124. What constitutes practicing unsupervised dental hygiene.**

(1) Unless licensed to practice dentistry, a person shall be deemed to be practicing unsupervised dental hygiene who, within the scope of the person's education, training, and experience:

(a) Removes deposits, accretions, and stains by scaling with hand, ultrasonic, or other devices from all surfaces of the tooth and smooths and polishes natural and restored tooth surfaces, including root planing;

(b) Removes granulation and degenerated tissue from the gingival wall of the periodontal pocket through the process of gingival curettage;

(c) Provides preventive measures including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(d) Gathers and assembles information including, but not limited to:

(I) Fact-finding and patient history;

(II) Preparation of study casts for the purpose of fabricating a permanent record of the patient's present condition; as a visual aid for patient education, dental hygiene diagnosis, and dental hygiene treatment planning; and to provide assistance during forensic examination;

(III) Extra- and intra-oral inspection;

(IV) Dental and periodontal charting; and

(V) Radiographic and X-ray survey for the purpose of assessing and diagnosing dental hygiene-related conditions for treatment planning for dental hygiene services as described in this section and identifying dental abnormalities for immediate referral to a dentist;

(e) Administers a topical anesthetic to a patient in the course of providing dental care;

(f) Performs dental hygiene assessment, dental hygiene diagnosis, and dental hygiene treatment planning for dental hygiene services as described in this section and section 12-35-125 and identifies dental abnormalities for immediate referral to a dentist; or

(g) Administers fluoride, fluoride varnish, and antimicrobial solutions for mouth rinsing.

(1.5) A dental hygienist shall state in writing and require a patient to acknowledge by signature that any diagnosis or assessment is for the purpose of determining necessary dental hygiene services only and that it is recommended by the American dental association, or any successor organizations, that a thorough dental examination be performed by a dentist twice each year.

(2) Unsupervised dental hygiene may be performed by licensed dentists and licensed dental hygienists without the supervision of a licensed dentist.

(3) (a) Notwithstanding section 12-35-103 (14) or 12-35-113 (1) (b), a dental hygienist may be the proprietor of a place where supervised or unsupervised dental hygiene is performed and may purchase, own, or lease equipment necessary to perform supervised or unsupervised dental hygiene.

(b) A dental hygienist proprietor, or a professional corporation or professional limited liability corporation of dental hygienists, in addition to providing dental hygiene services, may enter into an agreement with one or more dentists for the lease or rental of equipment or office space in the same physical location as the dental hygiene practice, but only if the determination of necessary dental services provided by the dentist and professional responsibility for those services, including but not limited to dental records, appropriate medication, and patient payment, remain with the treating dentist. It shall be the responsibility of the dental hygienist to inform the patient as to whether there is a supervisory relationship between the dentist and the dental hygienist. Such an agreement shall not constitute employment and shall not constitute cause for discipline pursuant to section 12-35-129 (1) (h).

**12-35-125. What constitutes practicing supervised dental hygiene.**

(1) Unless licensed to practice dentistry, a person shall be deemed to be practicing supervised dental hygiene who:

(a) Removes deposits, accretions, and stains by scaling with hand, ultrasonic, or other devices from all surfaces of the tooth and smooths and polishes natural and restored tooth surfaces, including root planing;

(b) Removes granulation and degenerated tissue from the gingival wall of the periodontal pocket through the process of gingival curettage. Such curettage may include the incidental removal of live epithelial tissue and is to be performed under the indirect supervision of a licensed dentist.

(c) Provides preventive measures including, but not limited to, the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(d) Gathers and assembles information including, but not limited to:

(I) Fact-finding and patient history;

(II) Radiographic and X-ray survey for the purpose of assessing and diagnosing dental hygiene-related conditions for treatment planning for dental hygiene services as described in section 12-35-124 and this section and identifying dental abnormalities for immediate referral to a dentist;

(III) Preparation of study casts;

(IV) Oral inspection; and

(V) Dental and periodontal charting;

(e) Administers a topical anesthetic to a patient in the course of providing dental care;

(f) Administers local anesthetic under the indirect supervision of a licensed dentist pursuant to rules of the board, which shall include minimum education requirements and procedures for such administration;

(g) Performs dental hygiene assessment, dental hygiene diagnosis, and dental hygiene treatment planning for dental hygiene services as described in this section and section 12-35-124 and identifies dental abnormalities for immediate referral to a dentist; or

(h) Administers fluoride, fluoride varnish, and antimicrobial solutions for mouth rinsing.

(2) Supervised dental hygiene may be performed by licensed dentists and, except for the administration of local anesthetic performed under paragraph (f) of subsection (1) of this section, by licensed dental hygienists under the indirect supervision of a licensed dentist in accordance with rules adopted by the board.

**12-35-126. Application for dental hygienist license - fee.**

(1) Every person who desires to qualify for practice as a dental hygienist within this state shall file with the board:

(a) A written application for a license, on which application such applicant shall list:

(I) Any act the commission of which would be grounds for disciplinary action under section 12-35-129 against a licensed dental hygienist; and

(II) An explanation of the circumstances of such act; and

(b) Satisfactory proof of graduation from a school of dental hygiene that, at the time of the applicant's graduation, was accredited, and proof that the program offered by the accredited school of dental hygiene was at least two academic years.

(2) Such application must be on the form prescribed and furnished by the board, verified by the oath of the applicant, and accompanied by a fee established pursuant to section 24-34-105, C.R.S.

(3) An applicant for licensure who has not graduated from an accredited school or program of dental hygiene within the twelve months immediately preceding application, or who has not engaged either in the active clinical practice of dental hygiene or in teaching dental hygiene in an accredited program for at least one year during the five years immediately preceding the application, shall demonstrate to the board that the applicant has maintained the professional ability and knowledge required by this article.

(4) Licenses for dental hygienists shall be renewed or reinstated pursuant to a schedule established by the director of the division of registrations within the department of regulatory agencies, referred to in this section as the director, and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule established by the director, such license shall expire. Any person whose license has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

**12-35-127. Dental hygienist examinations - license - endorsement - liability insurance.**

(1) Every applicant for dental hygiene licensure shall submit to the board proof of having successfully completed the following:

(a) An examination administered by the joint commission on national dental examinations;

(b) An examination designed to test the applicant's clinical skills and knowledge, which shall be administered by a regional testing agency composed of at least four states or an examination of another state; and

(c) An examination on the provisions of this article.

(2) All examination results required by the board shall be filed with the board and kept for reference for a period of not less than two years. Should an applicant successfully complete such examinations and be otherwise qualified, the applicant shall be granted a license by the board and shall be issued a license certificate signed by the officers of the board.

(3) (a) The board shall provide for licensure upon application of any person licensed in good standing to practice dental hygiene in another state or territory of the United States who has met the requirements of section 12-35-126, subsections (1) and (2) of this section, and paragraph (b) of this subsection (3) and provides the credentials and meets the qualifications set forth in paragraph (b) of this subsection (3) in the manner prescribed by the board. The examination for knowledge of the provisions of this article shall be accomplished by the use of a mail-in jurisprudence examination administered by the board.

(b) The board shall issue a license to an applicant duly licensed as a dental hygienist in another state or territory of the United States who has submitted credentials and qualifications for licensure in Colorado. Such credentials and qualifications shall include:

(I) Verification of licensure from any other jurisdiction where the applicant has held a dental hygiene or other health care license;

(II) Evidence of the applicant's successful completion of the national board dental examination administered by the joint commission on national dental examinations;

(III) Verification that the applicant has been engaged either in clinical practice or in teaching dental hygiene or dentistry in an accredited program for at least one year during the three years immediately preceding the application;

**Editor's note:** This version of subparagraph (III) is effective until July 1, 2011.

(III) (A) Verification that the applicant has been engaged either in clinical practice or in teaching dental hygiene or dentistry in an accredited program for at least one year during the three years immediately preceding the date of the receipt of the application; or

(B) Evidence that the applicant has demonstrated competency as a dental hygienist as determined by the board;

**Editor's note:** This version of subparagraph (III) is effective July 1, 2011.

(IV) A report of any pending or final disciplinary actions against any health care license held by the applicant at any time; and

(V) A report of any pending or final malpractice actions against the applicant.

(4) A practicing dental hygienist shall have professional liability insurance in the amount of not less than fifty thousand dollars per claim and an aggregate liability limit for all claims during a calendar year of not less than three hundred thousand dollars. Upon request of the board, the dental hygienist shall provide proof of the insurance to the board.



**12-35-128. Tasks authorized to be performed by dental assistants or dental hygienists.**

(1) The responsibility for dental diagnosis, dental treatment planning, or the prescription of therapeutic measures in the practice of dentistry shall remain with a licensed dentist and may not be assigned to any dental hygienist; except that a dental hygienist may perform dental hygiene assessment, dental hygiene diagnosis, and dental hygiene treatment planning for dental hygiene services; identify dental abnormalities for immediate referral to a dentist as described in sections 12-35-124 and 12-35-125; and may administer fluoride, fluoride varnish, and antimicrobial solutions for mouth rinsing as described in sections 12-35-124 and 12-35-125, and resorbable antimicrobial agents pursuant to rules of the board. No dental procedure that involves surgery or that will contribute to or result in an irremediable alteration of the oral anatomy may be assigned to anyone other than a licensed dentist. Prescriptive authority may not be assigned to anyone other than a licensed dentist.

(2) Except as provided in subsection (1) of this section, a dental hygienist may perform any dental task or procedure assigned to the hygienist by a licensed dentist that does not require the professional skill of a licensed dentist; except that such task or procedure shall be performed only under the indirect supervision of a licensed dentist on the premises, or as provided elsewhere in sections 12-35-124 and 12-35-125.

(3) (a) A dental assistant shall not perform the following tasks:

(I) Diagnosis;

(II) Treatment planning;

(III) Prescription of therapeutic measures;

(IV) Any procedure that contributes to or results in an irremediable alteration of the oral anatomy;

(V) Administration of local anesthesia;

(VI) Scaling (supra and sub-gingival), as it pertains to the practice of dental hygiene;

(VII) Root planing;

(VIII) Soft tissue curettage;

(IX) Periodontal probing.

(b) A dental assistant may perform the following tasks under the direct or indirect supervision of a licensed dentist:

(I) Smoothing and polishing natural and restored tooth surfaces;

(II) Provision of preventive measures, including the application of fluorides and other recognized topical agents for the prevention of oral disease;

(III) Gathering and assembling information including, but not limited to, fact-finding and patient history, oral inspection, and dental and periodontal charting;

(IV) Administering topical anesthetic to a patient in the course of providing dental care;

(V) Any other task or procedure that does not require the professional skill of a licensed dentist.

(c) A dental assistant may, under the direct supervision of a licensed dentist in accordance with rules promulgated by the board, administer and monitor the use of nitrous oxide on a patient.

(d) (I) A dental assistant may perform intraoral and extraoral tasks and procedures necessary for the fabrication of a complete or partial denture under the direct supervision of a licensed dentist. These tasks and procedures shall include:

(A) Making of preliminary and final impressions;

(B) Jaw relation records and determination of vertical dimensions;

(C) Tooth selection;

(D) A preliminary try-in of the wax-up trial denture prior to and subject to a try-in and approval in writing of the wax-up trial denture by the licensed dentist;

(E) Denture adjustments that involve the periphery, occlusal, or tissue-bearing surfaces of the denture prior to the final examination of the denture.

(II) The tasks and procedures in subparagraph (I) of this paragraph (d) shall be performed in the regularly announced office location of a licensed practicing dentist, and the dentist shall be personally liable for all treatment rendered to the patient. A dental assistant performing these tasks and procedures shall be properly identified as a dental assistant. No dentist shall utilize more than the number of dental assistants the dentist can reasonably supervise.

(III) Prior to any work being performed pursuant to subparagraph (I) of this paragraph (d), the patient shall first be examined by the treating dentist licensed to practice in this state who shall certify that the patient has no pathologic condition that requires surgical correction or other treatment prior to complete denture service.

(4) In addition to the procedure authorized in this section, a dental assistant may make repairs and relines of dentures pursuant to a dental laboratory work order signed by a licensed dentist.

(5) The board may make such reasonable rules as may be necessary to implement and enforce the provisions of this section.

**12-35-129. Causes for denial of issuance or renewal - suspension or revocation of licenses - other disciplinary action - unprofessional conduct defined - disciplinary panels - cease and desist.**

(1) The board may deny the issuance or renewal of, suspend for a specified time period, or revoke any license provided for by this article or may reprimand, censure, or place on probation any licensed dentist or dental hygienist after notice and hearing, which may be conducted by an administrative law judge, pursuant to the provisions of article 4 of title 24, C.R.S., or it may issue

a letter of admonition without a hearing by certified mail (except that any licensed dentist or dental hygienist to whom such a letter of admonition is sent may, within twenty days after receipt of the letter, request in writing to the board a formal hearing thereon, and the letter of admonition shall be deemed vacated, and the board shall, upon such request, hold such a hearing) for any of the following causes:

(a) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license to practice dentistry or dental hygiene in this state, in applying for professional liability coverage required pursuant to section 13-64-301, C.R.S., or in taking the examinations provided for in this article;

(b) Any conviction of a felony or any crime that would constitute a violation of this article. For purposes of this paragraph (b), conviction includes the entry of a plea of guilty or nolo contendere or a deferred sentence.

(c) Administering, dispensing, or prescribing any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5), C.R.S., to any person, including himself or herself, other than in the course of legitimate professional practice;

(d) Conviction of violation of any federal or state law regulating the possession, distribution, or use of any controlled substance, as defined in section 18-18-102 (5), C.R.S., and, in determining if a license should be denied, revoked, or suspended or if the licensee should be placed on probation, the board shall be governed by the provisions of section 24-5-101, C.R.S.;

(e) Habitually abusing or excessively using any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5), C.R.S., or alcohol;

(f) Misusing any drug or controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(g) Aiding or abetting, in the practice of dentistry or dental hygiene, any person not licensed to practice dentistry or dental hygiene as defined under this article or of any person whose license to practice dentistry or dental hygiene is suspended;

(h) Except as otherwise provided in sections 25-3-103.7, 12-35-116, and 12-35-124 (3), C.R.S., practicing dentistry or dental hygiene as a partner, agent, or employee of or in joint venture with any person who does not hold a license to practice dentistry or dental hygiene within this state or practicing dentistry or dental hygiene as an employee of or in joint venture with any partnership, association, or corporation. A licensee holding a license to practice dentistry or dental hygiene in this state may accept employment from any person, partnership, association, or corporation to examine, prescribe, and treat the employees of such person, partnership, association, or corporation.

(i) 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 this article or lawful rule or order of the board;

(j) Such physical or mental disability as to render the licensee unable to perform dental or dental hygiene services with reasonable skill and with safety to the patient;

(k) An act or omission constituting grossly negligent dental or dental hygiene practice or that fails to meet generally accepted standards of dental or dental hygiene practice;

(l) Advertising in a manner that is misleading, deceptive, or false;

(m) Engaging in a sexual act with a patient during the course of patient care or within six months immediately following the termination of the licensee's professional relationship with the patient. "Sexual act", as used in this paragraph (m), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(n) Refusing to make patient records available to a patient pursuant to a written authorization-request under section 25-1-802, C.R.S.;

(o) False billing in the delivery of dental or dental hygiene services, including, but not limited to, performing one service and billing for another, billing for any service not rendered, and committing a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(p) Abuse of health insurance pursuant to section 18-13-119, C.R.S.;

(q) Failing to notify the board, in writing, of the entry of a final judgment by a court of competent jurisdiction in favor of any party and against the licensee involving negligent malpractice of dentistry or dental hygiene. Such notice shall be given within ninety days after the entry of such judgment and shall contain the name of the court, the case number, and the names of all parties to the action.

(r) Failing to report a dental or dental hygiene malpractice judgment or malpractice settlement to the board by the licensee within ninety days;

(s) Failing to furnish unlicensed persons with laboratory work orders pursuant to section 12-35-133;

(t) Employing a solicitor or other agent to obtain patronage, except as provided in section 12-35-137;

(u) Willfully deceiving or attempting to deceive the board or its agents with reference to any matter relating to the provisions of this article;

(v) Sharing any professional fees with anyone except those with whom the dentist or dental hygienist is lawfully associated in the practice of dentistry or dental hygiene; except that it shall not be considered a violation of this paragraph (v) if a licensed dentist or dental hygienist pays to an independent advertising or marketing agent compensation for advertising or marketing services rendered on the licensed dentist's or dental hygienist's behalf by such agent, including compensation that is paid for the results or performance of such services on a per-patient basis;

(w) The abandonment of a patient by failure to provide reasonably necessary referral of the patient to other licensed dentists or licensed health care professionals for consultation or treatment when such failure to provide referral does not meet generally accepted standards of dental care;

(x) Failure of a dental hygienist to recommend to any patient that such patient be examined by a dentist or failure of a dental hygienist to refer a patient to a dentist when the dental hygienist detects a condition that requires care beyond the scope of practicing supervised or unsupervised dental hygiene;

(y) Engaging in any of the following activities and practices:

(I) Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies;

(II) The administration, without clinical justification, of treatment that is demonstrably unnecessary;

(III) In addition to the provisions of paragraph (x) of this subsection (1), the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession;

(IV) Ordering or performing, without clinical justification, any service, X ray, or treatment that is contrary to recognized standards of the practice of dentistry or dental hygiene as interpreted by the board;

(z) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;

(aa) Violating the provisions of section 8-42-101 (3.6), C.R.S.;

(bb) Violating the provisions of section 12-35-202 or any rule of the board adopted pursuant to said section;

(cc) Administering general anesthesia or deep conscious sedation without obtaining a permit from the board in accordance with section 12-35-107 (1) (h);

(dd) Failure to report within ninety days after final disposition to the board the surrender of a license to, or adverse action taken against a license by, a licensing agency in another state, territory, or country, a governmental agency, a law enforcement agency, or a court for an act or conduct that would constitute grounds for discipline pursuant to this article;

(ee) Failure to provide adequate or proper supervision when employing unlicensed persons in a dental or dental hygiene practice;

(ff) Engaging in any conduct that constitutes a crime as defined in title 18, C.R.S., which conduct relates to the licensee's practice as a dentist or dental hygienist;

(gg) Practicing outside the scope of dental or dental hygiene practice;

(hh) Failing to establish and continuously maintain financial responsibility as required by section 13-64-301, C.R.S.;

(ii) Advertising or otherwise holding oneself out to the public as practicing a dental specialty in which the dentist has not successfully completed the education specified for the dental specialty as defined by the American dental association.

(2) Any person whose license to practice is revoked is rendered ineligible to apply for any license under this article for at least two years after the date of revocation or surrender of the license. Any subsequent application for licensure shall be treated as an application for a new license.

(3) Any member of the board or professional review committee authorized by the board, any member of the board's or professional review committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any civil or criminal liability that may result from such participation.

(4) The discipline of a licensee by another state, territory, or country shall be deemed the equivalent of unprofessional conduct under this article; except that this subsection (4) shall apply only to discipline that is based upon an act or omission in such other state, territory, or country that is defined substantially the same as unprofessional conduct pursuant to this article.

(5) (a) Nothing in this section shall be construed to deprive any dental patient of the right to choose or replace any professionally recognized restorative material, nor to permit disciplinary action against a dentist solely for removing or placing any professionally recognized restorative material.

(b) Nothing in paragraph (a) of this subsection (5) shall be construed to prevent disciplinary action against a dentist for practicing dentistry in violation of this article.

(6) Complaints relating to the conduct of any dentist or dental hygienist shall be in writing and may be made by any person and, if so made, shall be signed by such person or may be initiated by the board on its own motion. The dentist or dental hygienist complained of shall be given notice of such complaint.

(7) (a) If the board has reasonable cause to believe that a person licensed to practice dentistry or dental hygiene in this state is unable to practice dentistry or dental hygiene with reasonable skill and safety to patients, because of a physical or mental disability or because of excessive use of any habit-forming drug or substance or controlled substance, as defined in section 18-18-102 (5), C.R.S., the board may require such licensed dentist or dental hygienist to submit to mental or physical examinations by a qualified professional designated by the board.

(b) Upon the failure of such licensed dentist or dental hygienist to submit to such mental or physical examinations, unless the failure is due to circumstances beyond the dentist's or dental hygienist's control, the board may suspend such dentist's or dental hygienist's license to practice dentistry or dental hygiene in this state until such time as the dentist or dental hygienist submits to the examinations.

(c) Every person licensed to practice dentistry or dental hygiene in this state shall be deemed, by so practicing or by applying for a renewal of the person's license to practice dentistry or dental hygiene in this state, to have given consent to submit to mental or physical examinations when directed in writing by the board, and further to have waived all objections to the admissibility of the examining qualified professional's testimony or examination reports on the ground of privileged communication.

(d) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than before the board.

(e) Investigations, examinations, hearings, meetings, or any other proceedings of the board conducted pursuant to this section shall be exempt from the provisions of any law requiring that proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to this section are open to public inspection; except that the final action of the board taken pursuant to this section shall be open to the public.

(f) If an investigation discloses an instance of conduct that, in the opinion of the board, does not warrant formal board action and should be dismissed, but in which the board has noticed indications of possible errant conduct that could lead to serious consequences if not corrected, a confidential letter of concern shall be sent to the licensee against whom the complaint was made. The person making the complaint shall be sent a notice that a letter of concern has been issued by the board.

(g) The board may include, in any disciplinary order that allows the dentist or dental hygienist to continue to practice, such conditions as the board may deem appropriate to assure that the dentist or dental hygienist is physically, mentally, and otherwise qualified to practice dentistry or dental hygiene in accordance with generally accepted professional standards of practice. Such an order may include any or all of the following:

(I) Submission by the licensee to such examinations as the board may order to determine the licensee's physical or mental condition or professional qualifications;

(II) The taking by the licensee of such therapy, courses of training, or education as may be needed to correct deficiencies found by the board or by such examinations;

(III) The review or supervision of the licensee's practice as may be necessary to determine its quality and to correct any deficiencies;

(IV) The imposition of restrictions on the licensee's practice to assure that such practice does not exceed the limits of the licensee's capabilities.

(8) (a) If a professional review committee is established pursuant to this section to investigate complaints against a person licensed to practice dentistry under this article, the committee shall include in its membership at least three persons licensed to practice dentistry under this article, but such committee may be authorized to act only by:

(I) The board; or

(II) A society or an association of persons licensed to practice dentistry under this article whose membership includes not less than one-third of the persons licensed to practice dentistry

under this article residing in this state if the licensee whose services are the subject of review is a member of such society or association.

(b) Any member of the board or a professional review committee authorized by the board and any witness or consultant appearing before the board or such professional review committee shall be immune from suit in any civil action brought by a licensee who is the subject of a professional review proceeding if such member, witness, or consultant acts in good faith within the scope of the function of the board or such committee, has made a reasonable effort to obtain the facts of the matter as to which such member, witness, or consultant acts, and acts in the reasonable belief that the action taken by such member, witness, or consultant is warranted by the facts. The immunity provided by this paragraph (b) shall extend to the members of an authorized professional review committee of a society or an association of persons licensed pursuant to this article and witnesses or consultants appearing before such committee if such committee is authorized to act as provided in subparagraph (II) of paragraph (a) of this subsection (8).

(9) A professional review committee of a society or an association of persons licensed pursuant to this article shall:

(a) Notify the board within sixty days after the review committee analyzes care provided by a licensee and determines that such care may not meet generally accepted standards or has otherwise violated any provision of this article. Such care may be subject to disciplinary action by the board.

(b) Allow a periodic audit of records of the review committee to be performed by the board or designee of the board who shall be a licensed or retired dentist from any state. Such audit shall be conducted no more than twice annually. If any pattern of behavior of a licensee is identified that may constitute reasonable grounds to believe there has been a violation of this article, all relevant records of the review committee shall be subject to a subpoena issued by the board.

(10) The proceedings and records of a review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against a dentist arising out of the matters that are the subject of evaluation and review by such committee. However, records of closed proceedings and investigations shall be available to the particular licensee under review and the complainant involved in the proceedings. No person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions, or other actions of such committee or any members thereof. However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such committee, and any documents or records that have been presented to the review committee by any witness shall be returned to the witness, if requested by the witness or if ordered to be produced by a court in any action, with copies thereof to be retained by the committee at its discretion. Any person who testifies before such committee or who is a member of such committee shall not be prevented from testifying as to matters within such person's knowledge, but the person shall not be asked about his or her testimony before such a committee or opinions he or she formed as a result of said committee hearings.



(11) If the board finds the charges proven and orders that discipline be imposed, it may also order the licensee to take such courses of training or education as may be needed to correct deficiencies found as a result of the hearing.

(12) (a) On and after January 1, 2005, the chairperson of the board shall divide those members of the board other than the chairperson into two panels of six members each.

(b) Each panel shall act as both an inquiry panel and a hearing panel. Members of the board may be reassigned from one panel to the other by the chairperson. The chairperson may be a member of both panels, but in no event shall the chairperson or any other member who has considered a complaint as a member of a panel acting as an inquiry panel take any part in the consideration of a formal complaint involving the same matter.

(c) All matters referred to one panel for investigation shall be heard, if referred for formal hearing, by the other panel or a committee of such panel. However, in its discretion, either inquiry panel may elect to refer a case for formal hearing to a qualified administrative law judge in lieu of a hearing panel of the board for an initial decision pursuant to section 24-4-105, C.R.S.

(d) The initial decision of an administrative law judge may be reviewed pursuant to section 24-4-105 (14) and (15), C.R.S., by the filing of exception to the initial decision with the hearing panel that would have heard the case if it had not been referred to an administrative law judge or by review upon the motion of such hearing panel. The respondent or the board's counsel shall file such exception.

(e) An investigation shall be under the supervision of the panel to which the investigation is assigned. The person making such investigation shall report the results of the investigation to the assigning panel for appropriate action.

(13) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the complaint shall not be resolved by a deferred settlement, action, judgment, or prosecution.

(14) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (14), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(15) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or unlicensed practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (15) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (15). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (15) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued directing such person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (15), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(16) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any unlicensed act or practice, any act or practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

(17) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(18) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-35-130.

**12-35-130. Review of board action.**

(1) The court of appeals, by appropriate proceedings under section 24-4-106 (11), C.R.S., may review any final action of the board to:

- (a) Deny or refuse to issue or renew a license;
- (b) Suspend a license;
- (c) Revoke a license;
- (d) Censure a licensee;
- (e) Issue a letter of admonition to a licensee;
- (f) Place a licensee on probation;
- (g) Issue a reprimand to a licensee; or
- (h) Issue an order to cease and desist.

(2) The provisions of this section apply to a license issued to a dentist or dental hygienist.

**12-35-131. Use of forged or invalid diploma or certificate.**

It is unlawful for any person to use or attempt to use as his or her own a diploma of a dental college or school, or a license or license renewal certificate, of any other person, or to use or attempt to use a forged diploma, license, license renewal certificate, or identification. It is also unlawful for any person to file with the board a forged document in response to a request by the board for documentation of an applicant's qualifications for licensure.

**12-35-132. Sale of forged or invalid diploma or license certificate.**

(1) It is unlawful to sell or offer to sell a diploma conferring a dental or dental hygiene degree or a license or license renewal certificate granted pursuant to this article or prior dental practice laws, or to procure such diploma or license or license renewal certificate:

(a) With the intent that it be used as evidence of the right to practice dentistry or dental hygiene by a person other than the one upon whom it was conferred or to whom such license or license renewal certificate was granted; or

(b) With fraudulent intent to alter the document and use or attempt to use it when it is so altered.

**12-35-133. Employment of unlicensed person by dentist - penalty.**

(1) Every duly licensed dentist who uses the services of any unlicensed person for the purpose of constructing, altering, repairing, or duplicating any denture, plate, partial plate,

bridge, splint, or orthodontic or prosthetic appliance shall be required to furnish such unlicensed person with a written laboratory work order in such form as shall be approved by the board, which form shall be dated and signed by such dentist for each separate and individual piece of work. Said laboratory work order shall be made in duplicate form, the duplicate copy to be retained by the dentist in a permanent file for a period of two years and the original copy to be retained in a permanent file for a period of two years by the unlicensed person to whom it was furnished, and both of such permanent files shall be open to inspection at any reasonable time by the board or its duly constituted agent.

(2) Failure of the dentist to keep such permanent records of laboratory work orders shall subject such dentist to disciplinary action as deemed appropriate by the board.

(3) Failure of any such unlicensed person to have in the person's possession a laboratory work order signed by a licensed dentist, or a written work order signed by the initial recipient of the laboratory work order that is identifiable with each denture, plate, partial plate, bridge, splint, or orthodontic or prosthetic appliance in the possession of such unlicensed person, shall be prima facie evidence of a violation of this section.

#### **12-35-134. Soliciting or advertisements by unlicensed persons.**

It is unlawful for any unlicensed person, corporation, entity, partnership, or group of persons to solicit or advertise to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth.

#### **12-35-135. Unauthorized practice - penalties.**

(1) Any person who practices or offers or attempts to practice dentistry or dental hygiene without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Repealed.

#### **12-35-136. Attorney general shall represent board and members.**

The attorney general of the state of Colorado shall counsel with and advise the board in connection with its duties and responsibilities under this article. If litigation is brought against the board or any of its individual members in connection with actions taken by it or them under the provisions of this article and such actions are free of malice, fraud, or willful neglect of duty, the attorney general shall defend such litigation without cost to the board or to any individual member thereof.

**12-35-137. Independent advertising or marketing agent - injunctive proceedings.**

(1) Notwithstanding section 12-35-129 (1) (t), a licensed dentist or dental hygienist may employ an independent advertising or marketing agent to provide advertising or marketing services on the dentist's or dental hygienist's behalf, and the same shall not be considered unprofessional conduct.

(2) The board shall not have the authority to regulate, directly or indirectly, advertising or marketing activities of independent advertising or marketing agents except as provided in this section. The board may, in the name of the people of the state of Colorado, apply for an injunction in district court to enjoin any independent advertising or marketing agent from the use of advertising or marketing that the court finds on the basis of the evidence presented by the board to be misleading, deceptive, or false; except that a licensed dentist or dental hygienist shall not be subject to discipline by the board, injunction, or prosecution in the courts under this article or any other law for advertising or marketing by an independent advertising or marketing agent if the factual information that the licensed dentist or dental hygienist provides to the independent advertising or marketing agent is accurate and not misleading, deceptive, or false.

**12-35-138. Dentist peer health assistance fund.**

(1) (a) Effective July 1, 2004, as a condition of renewal in this state, every renewal applicant shall pay to the administering entity that has been selected by the board pursuant to the provisions of paragraph (b) of this subsection (1) an amount not to exceed fifty-nine dollars per year, which maximum amount may be adjusted on January 1, 2005, and annually thereafter by the board to reflect changes in the United States bureau of statistics consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers or goods, or its successor index. Such fee shall be used to support designated providers that have been selected by the board to provide assistance to dentists needing help in dealing with physical, emotional, or psychological problems that may be detrimental to their ability to practice dentistry. Such fee shall not exceed one hundred dollars per year per licensee.

(b) The board shall select one or more peer health assistance programs as designated providers. To be eligible for designation by the board, a peer health assistance program shall:

(I) Provide for the education of dentists with respect to the recognition and prevention of physical, emotional, and psychological problems and provide for intervention when necessary or under circumstances that may be established by rules promulgated by the board;

(II) Offer assistance to a dentist in identifying physical, emotional, or psychological problems;

(III) Evaluate the extent of physical, emotional, or psychological problems and refer the dentist for appropriate treatment;

(IV) Monitor the status of a dentist who has been referred for treatment;

(V) Provide counseling and support for the dentist and for the family of any dentist referred for treatment;

(VI) Agree to receive referrals from the board;

(VII) Agree to make its services available to all licensed Colorado dentists.

(c) The administering entity shall be a qualified, nonprofit private foundation that is qualified under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and shall be dedicated to providing support for charitable, benevolent, educational, and scientific purposes that are related to dentistry, dental education, dental research and science, and other dental charitable purposes.

(d) The responsibilities of the administering entity shall be to:

(I) Collect the required annual payments, directly or through the board;

(II) Verify to the board, in a manner acceptable to the board, the names of all dentist applicants who have paid the fee set by the board;

(III) Distribute the moneys collected, less expenses, to the designated provider, as directed by the board;

(IV) Provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) Post a surety performance bond in an amount specified by the board to secure performance under the requirements of this section. The administering entity may recover the actual administrative costs incurred in performing its duties under this section in an amount not to exceed ten percent of the total amount collected.

(e) The board, at its discretion, may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such payments to the administering entity. All required annual payments collected or due to the board for each fiscal year shall be deemed custodial funds that are not subject to appropriation by the general assembly, and such funds shall not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(2) (a) Any dentist who is a referred participant in a peer health assistance program shall enter into a written agreement with the board prior to such dentist becoming a participant in such program. Such agreement shall contain specific requirements and goals to be met by the participant, including the conditions under which the program will be successfully completed or terminated, and a provision that a failure to comply with such requirements and goals shall be promptly reported to the board and that such failure shall result in disciplinary action by the board.

(b) Notwithstanding section 12-35-129 and section 24-4-104, C.R.S., the board may immediately suspend the license of any dentist who is referred to a peer health assistance

program by the board and who fails to attend or to complete such program. If such dentist objects to such suspension, he or she may submit a written request to the board for a formal hearing on such suspension within ten days after receiving notice of such suspension, and the board shall grant such request. In such hearing the dentist shall bear the burden of proving that his or her license should not be suspended.

(c) Any dentist who is accepted into a peer health assistance program in lieu of disciplinary action by the board shall affirm that, to the best of his or her knowledge, information, and belief, he or she knows of no instance in which he or she has violated this article or the rules of the board, except in those instances affected by the dentist's physical, emotional, or psychological problems.

(3) Nothing in this section shall be construed to create any liability on behalf of the board or the state of Colorado for the actions of the board members in making grants to peer assistance programs, and no civil action may be brought or maintained against the board or the state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or the result of an act or omission of a dentist participating in or referred by a state-funded peer assistance program. However, the state shall remain liable under the provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged to have been the result of an act or omission of a dentist participating in or referred by a state-funded peer assistance program occurred while such dentist was performing duties as an employee of the state.

(4) The board is authorized to promulgate rules necessary to implement the provisions of this section.

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## **PART 2**

### **SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS**

#### **12-35-201. Legislative declaration.**

(1) The general assembly hereby finds, determines, and declares that public exposure to the hazards of ionizing radiation used for diagnostic purposes should be minimized wherever possible. Accordingly, the general assembly finds, determines, and declares that for any dentist or dental hygienist to allow an untrained person to operate a machine source of ionizing radiation, including without limitation a device commonly known as an "X-ray machine", or to administer such radiation to a patient for diagnostic purposes is a threat to the public health and safety.

(2) It is the intent of the general assembly that dentists and dental hygienists utilizing unlicensed persons in their practices provide those persons with a minimum level of education and training before allowing them to operate machine sources of ionizing radiation; however, it is not the general assembly's intent to discourage education and training beyond this minimum. It is further the intent of the general assembly that established minimum training and education requirements correspond as closely as possible to the requirements of each particular work setting as determined by the state board of dental examiners pursuant to this part 2.

(3) The general assembly seeks to ensure, and accordingly declares its intent, that in promulgating the rules authorized by this part 2, the board will make every effort, consistent with its other statutory duties, to avoid creating a shortage of qualified individuals to operate machine sources of ionizing radiation for beneficial medical purposes in any area of the state.

#### **12-35-202. Board authorized to issue rules.**

(1) (a) The state board of dental examiners shall adopt rules prescribing minimum standards for the qualifications, education, and training of unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients for diagnostic medical use. No licensed dentist or dental hygienist shall allow any unlicensed person to operate any machine source of ionizing radiation or to administer such radiation to any patient unless such person has met the standards then in effect under rules adopted pursuant to this section. The board may adopt rules allowing a grace period in which newly hired operators of machine sources of ionizing radiation shall receive the training required pursuant to this section.

(b) For purposes of this part 2, "unlicensed person" means a person who does not hold a current and active license entitling the person to practice dentistry or dental hygiene under the provisions of this article.

(2) The board shall seek the assistance of licensed dentists or licensed dental hygienists in developing and formulating the rules promulgated pursuant to this section.

(3) The required number of hours of training and education for all unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients shall



be established by the board by rule. This standard shall apply to all persons in dental settings other than hospitals and similar facilities licensed by the department of public health and environment pursuant to section 25-1.5-103, C.R.S. Such training and education may be obtained through programs approved by the appropriate authority of any state or through equivalent programs and training experience, including on-the-job training as determined by the board.

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