

ARE YOU READY FOR A DENTAL BOARD COMPLAINT, INQUIRY, AND INVESTIGATION?

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Introduction—The Regulation of Dentistry

In the United States, the practice of dentistry is regulated by state agencies through the delegation of authority to dental boards, commissions, or committees (Board). The primary goal of a Board is to protect the general public from unsafe and unprofessional practices.¹ Boards fulfill this protective role through the examination and licensure of dentists, adoption of administrative regulations, and the enforcement of laws and regulations related to the practice of dentistry. **Issuance of a dental license is an earned privilege and not a right, and when warranted to protect the public this privilege can be terminated by Board action.** Even the best of dentists find themselves under scrutiny from time to time, often as result of a patient complaint. Being prepared for a regulatory inquiry and investigation is essential to good practice and can contribute to a more desirable outcome. While the foremost goal of Boards is to protect the health, safety, and welfare of the public, a dentist's interest in their license is also protected through procedural safeguards. There is variation across the United States with regard to the laws and regulations governing the practice of dentistry. This article outlines the general parameters associated with the administration of the disciplinary process designed to protect the public while at the same time provide due process for practicing dentists.

Composition of Dental Boards, Their Purpose and Authority

Boards have been created by law in the states, District of Columbia, and territories (i.e., Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands) of the United States. The appointment process varies and may be through selection by an executive office (e.g., governor, secretary of state, board of regents, or mayor) or election by licensed dental professionals. A majority of the members of Boards are licensed dentists with several years of active practice immediately preceding appointment. Boards also commonly include licensed dental hygienists. Other dental professionals (e.g., dental assistants, dental therapists, and denturists) are less frequently represented. Given that the purpose of Boards is to protect the public interest in health, safety, and welfare, representation also commonly includes public/consumer representatives.

In some jurisdictions, Board composition explicitly includes representation from dental specialties. For example, in Louisiana, the Board includes a licensed, board-eligible or board-certified pediatric dentist.² In Ohio, the Board includes two dentists recognized as specialists who are not representing the same specialty.³ In Michigan, two members of the Board are dentists who have been issued a health profession specialty certification. In addition, the Board is authorized to create a task



force for the health profession specialty fields that consists of nine members including one pediatric dentist to advise the board.⁴ In Missouri, the Board is authorized to establish a committee for each American Dental Association (ADA) recognized specialty that consists of at least two dentists who hold valid Missouri specialty licenses in the recognized specialty and who are current diplomats of an American specialty board recognized by the ADA. These committees assist the Board in evaluating applicants for specialty licensure and other duties as established.⁵ Whether or not mandated, the AAPD strongly encourages every Board to include a pediatric dentist as a member or in an advisory capacity in order to provide the best subject matter expertise concerning children's oral health.

A key role of Boards is to establish educational, licensure, and scope of practice regulations. **State regulation and licensure for specialty practice varies significantly across the United States,** ranging from specific specialty licensure or certifi-

cation; to permits, recognitions, and designations; to no requirement beyond the general dental license. Categories of regulation and licensure include: 1) specific state general dental license and specialty status with no limits on scope of practice⁶; 2) specific state general dental license and specialty status with limits on scope of practice (e.g., specialty only or majority specialty)⁷; 3) non-specific state general dental license and specific state specialty status required with limits on scope of practice⁸; 4) only specific state specialty license required with no limits on scope of practice⁹; 5) only specific state general dental license with no limits on scope of practice¹⁰; and 6) only specific state general dental license with limits on scope of practice.¹¹

Another key role of the Board is to monitor licensee practice for compliance with controlling state laws and regulations, and to discipline and impose sanctions for violations.

What to Expect in the Event of a Board Complaint, Inquiry, and Investigation

Licensed dentists have a property interest in retaining their license, which is different from having a right to their license. A property interest cannot be deprived by the government without a disciplinary process that includes the state's procedural due process protections. The disciplinary process, which includes notice and an opportunity to be heard, varies across the United States, but has four foundational stages: receipt of a complaint, inquiry and investigation, hearing, and adjudication.

Receipt of a Complaint. No one wants to be the subject of a complaint to a Board. While most complaints probably come from patients, or in the case of a pediatric patient, their parents or legal guardian, a complaint could also be made by a staff member or even another dentist or health-care provider, governmental agency, educational institution, or Board itself. Boards are generally charged with responding to complaints in their role to protect the consumer of dental services. Upon receipt of a complaint, Boards will conduct a preliminary or initial threshold review: 1) review compliance with the complaint submission process, and 2) review jurisdictional authority. The complaint submission processes vary across the United States. Some Boards require a formal written, signed complaint that is notarized or contains an affidavit as to the truth of the complaint¹², others require a written and signed complaint¹³, and still others request a written and signed complaint, but allow for anonymous submission.¹⁴ Boards will generally include information on how to file a complaint on their websites, and may include an online complaint submission process. While anonymous complaints, if not strictly prohibited, may pass the initial submission compliance review, they may



face difficulty getting past the jurisdictional review based on the inability of the Board to interview the complainant and gather additional information. The jurisdictional review considers factors such as whether the scope of the complaint is within the disciplinary authority of the Board (e.g., does the complaint set forth facts which if proven would constitute grounds for taking action against the respondent's license and/or whether the complaint is time-barred). Complaints that fail to meet threshold requirements will be closed with no further action and not made public.

Notice of a complaint may not be provided to a licensee until after such an initial threshold review is conducted and determination is made to proceed with further inquiry and investigation. When notice of complaint is issued to the subject dentist, it will include the complaint, a request for a response, and requests for patient records or other documentation as relevant to the matter. **Interestingly, while the complainant's identity is often necessary to conduct a full investigation, the complainant's identity is usually not directly provided to the subject dentist during the initial inquiry and investigation to protect the complainant's identity during this process.**¹⁵

Upon receipt of a complaint from a Board, it is advisable for a pediatric dentist to seek legal counsel. The complaint will require a time sensitive response and the dentist is best positioned to respond with the assistance of legal counsel. There may be a tendency for the dentist to think they can handle the response alone. Getting ahead of charges at the initial stage with legal counsel may help in several ways to: 1) potentially limit the scope of the review; 2) prevent the dentist from providing information that may expand the scope beyond the initial complaint; and 3) prepare for possible charges of state law violations. It is also strongly recommended that the dentist notify their professional liability insurance carrier of the complaint.

Complaint advances to disciplinary proceeding – inquiry and investigation. Complaints that advance to disciplinary proceedings are subject to continued investigation. The scope of investigation can include a request for patient records, an office visit, an interview or meeting with the subject dentist, or all of the above. The required document production will be impacted by the number and type of alleged violations, severity of alleged violations, and complexity of legal issues. For example, if recurring behavior is under investigation then multiple patient records may be requested. A subpoena for dental records from the Board should include patient's consent for release of the patient records in order to comply with HIPAA, since an agency subpoena does not rise to the level of a court ordered subpoena. If a Board requests patient records and does not issue a subpoena it should be requested. The Board is likely to provide very specific instruction about how it wishes to receive the requested information. Adherence to the specifics of the request is critical. If the subject dentist or their staff are uncooperative or do not timely respond to the Board's requests, this may

lead to an expanded and prolonged investigation. If a meeting with the Board is requested, it is best to avoid having it at the dentist's practice to reduce the risk of an expanded scope of review.

An investigation may or may not end with a dentist licensee being charged with violation of state law. If the investigation is completed and no violation is found, the licensee should be notified that the matter will be dismissed or closed and resolved without further action. In some jurisdictions, when the findings of an investigation are limited to minor or technical violations, or it is not clear that there has been a violation, the matter may be concluded with the issuance of an informal, non-disciplinary action such as an administrative warning or letter of concern.¹⁶ Investigations that are dismissed or closed as a result of no finding of violations do not become public record; however, non-disciplinary actions may become public record.¹⁷

Investigation results in the finding of violations. If an investigation results in charges, the charged dentist will generally have opportunity for "due process" before disciplinary sanctions are administered unless preliminary, emergency action (e.g., license suspension) is determined to be necessary to protect public health, safety, and welfare. Charges often result for any of the following non-exhaustive reasons: lack of informed consent, incomplete patient record keeping, failure to diagnose, over treating, failure to meet the standard of care, failure to properly supervise staff, practicing outside the scope of practice by staff or dentist, practicing without a license (failure to timely renew), actions related to prescribing or distributing controlled substances, substandard infection control practices; fraudulent billing practices, failure to provide proof of fulfillment of continuing education requirements, and pharmaceutical records/storage/disposal violations. There can also be charges that result from failure to cooperate with

an investigation, including timely and complete responses.¹⁸ Specialty licenses can be suspended or revoked on the same grounds as general dental licenses.¹⁹

Depending on the nature and severity of a violation and whether there is controversy over the findings, the licensee may be provided the opportunity to resolve the matter through settlement in lieu of proceeding with an administrative hearing. A settlement in some jurisdictions may be referred to as a consent agreement. Such forms of dispute resolution are legal documents that are enforceable against the dentist. Their terms may be publicly accessed. The effect is that the charges are dropped, but only if the conditions of the consent agreement are met. Conditions may include a restriction on practice in the areas of concern (e.g., endodontic or surgical treatments) until the completion of designated remedial actions that the dentist has agreed to take under the consent agreement. For example, a dentist may be required to complete a requisite number of hours of continuing dental education regarding the subject matter that led to the alleged violation of state law. The dentist may further be required to regularly report to the Board with the production of patient records for the Board to assess ongoing level of care. Any settlement or consent agreement should be reviewed by the licensee's legal counsel prior to its execution, as they may be able to affect some favorable changes. The decision of whether or not to accept a consent agreement may depend on the circumstances, including, but not limited to, the nature and extent of the charges, the degree to which the dentist disputes the allegations, the likelihood of not being more successful with a full hearing (e.g., the standard of proof required at the hearing – preponderance of the evidence versus clear and convincing evidence), the potential costs associated with proceeding to hearing²⁰, and the

risk tolerance of the subject dentist. The same risk analysis may be applied as in the case of whether or not to settle a lawsuit.

Violations are adjudicated. Matters that are not resolved through settlement will proceed to an administrative/adjudicative hearing. The subject dentist will be issued a notice of hearing with the charges delineated. The subject dentist will be provided an opportunity to subpoena witnesses and records to support their presentation of arguments on issues of law and policy and evidence on issues of fact at the hearing. At the hearing, the subject dentist will be able to present and cross-examine witnesses. Because of the legal formality of the hearing process, the engagement of legal counsel is strongly encouraged. The hearing body will render a decision as to each charge and the sanction(s) to be imposed. The sanctions that can be imposed include, but may not be limited to, public reprimand, censure, fines, education requirements, probation (for specified time and conditions), limitations of practice (permanently, until time certain, or until certain acts are performed), suspension of a license, and revocation of a license. The results of hearings that call for sanctions against the subject dentist are made public. Adverse licensing actions will also likely be reported to the National Practitioner Data Bank.²¹

What Risk Management and Best Practices Should be Considered to Limit Potential for Complaints and Minimize Untoward Consequences of a Complaint?

The first goal of risk management is to protect the health and safety interests of your patients and minimize the potential for allegations of professional misconduct. As a dentist, it is imperative to know and comply with the laws under which you practice. It is equally important for staff and

colleagues to comply with those laws. It is vital to be familiar with reporting requirements to which you may be subject, such as communicable disease reporting²², child abuse or neglect reporting²³, termination or restriction of services provided by a licensed employee based on unprofessional conduct or inability to practice with reasonable skill and safety due to a mental or physical condition²⁴, and adverse event reporting such as “patient death or other life-threatening incident or complication, permanent injury or admission to a hospital ... which is or may be the result of a dental procedure ...”.²⁵ As a specialist, you may be subject to expectations that exceed those of a general dentist. In addition to the general laws associated with the practice of dentistry, there may also be specific laws or those more closely aligned with pediatric dentistry specialty practice. As noted above, many jurisdictions have licensure/certification requirements for specialty practice that may or may not limit the authorized scope of practice. It is important that all dentists in the practice adhere to those requirements, including owner dentists and their associates. Understanding the advertising requirements for specialty practice is also important as they vary significantly across jurisdictions.

It is essential to be familiar with the Board authorized to regulate and enforce the laws associated with the practice of dentistry in your jurisdiction and to maintain compliance with requirements associated with maintaining your license such as: 1) keep the Board informed of the address(es) where you practice dentistry, 2) complete the required continuing education, which may be on a one, two, or three year cycle²⁶, and 3) timely license renewal, which may be annual or biennial.²⁶ **Receipt of any communication from the Board must always be taken seriously and acted upon promptly, with the licensee taking charge.** Best practice is not to delegate response to any communication or inquiry from the Board to staff.

As noted above, obtaining legal counsel to advise and represent the licensee as necessary is an advisable risk management strategy. Legal counsel will advocate for the licensee to the extent possible. In the event of disciplinary action or legal action, as noted previously it is important to report to your malpractice carrier as may be required by your policy. The policy may have coverage for responding to complaints and investigations and timely reporting to the carrier helps ensure that payment under such coverage will be approved. The carrier may also identify an experienced attorney to handle your case.

REFERENCES

1. ALA. CODE § 34-9-2 (2024); CAL. BUS. & PROF. CODE § 1601.2 (West 2024); and DEL. CODE ANN. tit. 24, § 1100 (West 2024)
2. LA. STAT. ANN. § 37:753 (2024)
3. OHIO REV. CODE ANN. § 4715.02 (West 2024)
4. MICH. COMP. LAWS ANN. § 333.16621 (West 2024) and MICH. COMP. LAWS ANN. § 333.16624 (West 2024)
5. MO. ANN. STAT. § 332.171 (West 2024)
6. MICH. COMP. LAWS ANN. § 333.16608 (2024) and N.J. ADMIN. CODE § 13:30-6.1 (2024)
7. LA. ADMIN. CODE tit. 46, pt. XXXIII, § 122 (2024) and TENN. COMP. R. & REGS. 0460-02-.06 (2024)
8. NEV. REV. STAT. ANN. § 631.255 (West 2024)
9. MINN. STAT. ANN. § 150A.06 (1c) (West 2024)
10. COLO. CODE REGS. §709-1:1.17 (2024)
11. 234 MASS. CODE REGS. 5.03 (2024)
12. Board of Dental Examiners of Alabama Complaint and Investigation Policy (Rev 2024), <https://dental-board.org/wp-content/uploads/2024/08/BDEAL-Investigation-Complaint-Protocol-FINAL-08162024.pdf> (last visited February 3, 2025) and MD. CODE REGS. 10.44.07.05 (2024)
13. D.C. Mun. Regs. tit. 17, § 4101 (2024) and MO. CODE REGS tit. 20, § 2110-2.200 (2024)

14. California Department of Consumer Affairs, *How to File a Complaint with the Dental Board*, <https://www.dca.ca.gov/consumers/complaints/dbc.shtml> (last visited February 3, 2025) and FLA. STAT. § 456.073 (2024)
15. ARIZ. REV. STAT. ANN. § 32-1263.02 (2024)
16. N.Y. EDUC. LAW § 6510 (McKinney 2024); LA ADMIN. CODE tit. 46, pt. XXXIII, § 803 (2024); and COLO. REV. STAT. ANN. § 12-20-404 (West 2024)
17. ARIZ. REV. STAT. ANN. § 32-1201 (2024)
18. ALASKA ADMIN. CODE tit. 12 § 28.906 (2024)
19. ALASKA STAT. ANN. § 08.36.245 (West 2024) and MICH. ADMIN. CODE r. 338.11527 (2024)
20. WASH. REV. CODE § 18.32.775 (2024) and MINN. STAT. ANN § 150A.08 (West 2024)
21. U.S. Department of Health & Human Services, *National Practitioner Data Bank*, <https://www.npdb.hrsa.gov> (last visited on February 11, 2025).
22. WASH. ADMIN. CODE § 246-101-101 (2024)
23. WASH. REV. CODE § 26.44.030 (West 2024)
24. WASH. ADMIN. CODE § 246-16-270 (2024)
25. WASH. ADMIN. CODE § 246-817-780 (2024)
26. NEV. REV. STAT. ANN. § 631.342 (West 2024); OHIO REV. CODE ANN. § 4715.141 (West 2024); and WASH. ADMIN. CODE § 246-817-440 (2024)
27. N.J. STAT. ANN. § 45:6-10 (West 2024) and OHIO REV. CODE ANN. § 4715.14 (West 2024)

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