Certification Page
Regular and Emergency Rules

Revised July 2019

☐ Emergency Rules *(Complete Sections 1-3 and 5-6)* ■ Regular Rules

1. General Information

a. Agency/Board Name: Dental Examiners, Board of			
b. Agency/Board Address: 2001 Capitol Ave, Room 105	c. City: Cheyenne	d. Zip Code: 82002	
e. Name of Agency Liaison: Emily Cronbaugh	f. Agency Liaison Telephone Number: 307-777-6529		
g. Agency Liaison Email Address: emily.cronbaugh@wyo.gov	h. Adoption Date: September 27, 2019		
i. Program: Dental Examiners, Board of			

2. Legislative Enactment

For purposes of this Section 2, "new" only applies to regular (non-emergency) rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.

a. Are these non-emergency or regular rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?

☐ No. ■ Yes. If the rules are new, please provide the Chapter Numbers and Years Enacted (e.g. 2015 Session Laws Chapter 154): 2019 Session Laws Chapter 153

3. Rule Type and Information

For purposes of this Section 3, "New" means an emergency or regular rule that has never been previously created.

a. Provide the Chapter Number, Title* and Proposed Action for Each Chapter. *Please use the "Additional Rule Information" form to identify additional rule chapters.*

Chapter Number:	Chapter Name:			
1	General Provisions	☐ New	■ Amended	☐ Repealed
3	Requirements for Licensure and Renewal	■ New	■ Amended	☐ Repealed
6	Code of Ethics for Dentists	☐ New	■ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed
		☐ New	☐ Amended	☐ Repealed

* If the name of a chapter of rules is changing, please only provide the NEW chapter name on this rules certification form.

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. ☐ No. ☐ Yes. ☑ N/A

b. A public hearing was held on the proposed rules. ■ No. ☐ Yes. **Please complete the boxes below.**

Date:	Time:	City:	Location:

5. Checklist

a. ☑ For regular rules, the Statement of Principal Reasons is attached to this Certification and, in compliance with Tri-State Generation and Transmission Association, Inc. v. Environmental Quality Council, 590 P.2d 1324 (Wyo. 1979), includes a brief statement of the substance or terms of the rule and the basis and purpose of the rule

b. ☐ For emergency rules, the Memorandum to the Governor documenting the emergency, which requires promulgation of these rules without providing notice or an opportunity for a public hearing, is attached to this Certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct. By electronically submitting the emergency or regular rules into the Wyoming Administrative Rules System, the undersigned acknowledges that the Registrar of Rules will review the rules as to form and, if approved, the electronic filing system will electronically notify the Governor's Office, Attorney General's Office, and Legislative Service Office of the approval and electronically provide them with a copy of the complete rule packet on the date approved by the Registrar of Rules. The complete rules packet includes this signed certification page; the Statement of Principal Reasons or, if emergency rules, the Memorandum to the Governor documenting the emergency; and a strike and underscore copy and clean copy of each chapter of rules.

Signature of Authorized Individual	Emily Cronbaugh
Printed Name of Signatory	Emily Cronbaugh
Signatory Title	Executive Director
Date of Signature	October 2, 2019

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	

STATEMENT OF PRINCIPAL REASONS

FOR FORMAL ADOPTION OF REGULAR RULES

The Board of Dental Examiners has received requests to acknowledge dental specialties outside those approved by the American Dental Association. Additionally, the Board has been monitoring several cases in other states related to a dentist's ability to advertise as a specialist. Following discussion at a conference of the American Association of Dental Boards (AADB), the Board incorporated AADB's recommendations already adopted by Louisiana, Georgia, and Idaho Dental Boards.

In addition, after comparing the continuing education requirements of surrounding states, the Board seeks to require continuing education for dentists and dental hygienists. Also, in response to SEA0066 (2019), the Board is adding opioid prescribing guidelines in Chapter 6 and is also seeking a require dentists to obtain continuing education related to responsible prescribing of controlled substances in Chapter 3.

The Board seeks some administrative revisions to the licensing requirements in Chapter 3 due to concerns brought forth by members, applicants, and licensees.

Finally, the Board considered public comment received on the proposed rules and made revisions as appropriate.

The Board of Dental Examiners is seeking the following amendments through the regular rulemaking process:

<u>Chapter 1: General Provisions</u>

- Added definition of CE as Continuing Education to support new reference made in Chapter 3.
- Renumbered definitions accordingly.

<u>Chapter 3: Requirements for Licensure and Renewal</u>

- In Section 4, revised the Jurisprudence Examination section to remove the oral interview portion of this examination. The current jurisprudence and oral examination requires dental applicants to appear before the Board at one of three meetings annually. The proposed rule would instead allow dental applicants to take the jurisprudence examination at their convenience at a board member's office or the Board office.
- In Section 5, removed the requirement to have never been licensed in another state. This will alleviate expenses for new graduates who have already obtained a license in another state and would otherwise have to apply for the more expensive Dental Licensure by Endorsement.
- In Section 6, clarified that if the examination the applicant took did not include a fixed prosthodontics component, the applicant must demonstrate competency by verifying 5,000 hours of clinical practice in the last five years. This revision is necessary because some regional clinical examinations do not include a fixed prosthodontics component and this revision allows those applicants to demonstrate competency in another manner.
- In Section 6, clarified that if the examination the applicant took did not include a fixed prosthodontics component, the applicant can demonstrate competency by completing a specialty practice residency. This revision is necessary because some regional

examinations do not include a fixed prosthodontics component and this revision allows those applicants to demonstrate competency in another manner.

- In Section 6, clarified that the competency requirement in (b)(iv) is for those who have been out of active clinical practice for less than five years. The Board created additional requirements for those out of practice more than five years to ensure competency.
- In Section 6, added competency requirements in (b)(v) for those who have been out of active clinical practice for more than five years. This allows applicants out of practice for more than five years to demonstrate competency by taking the regional clinical examination and completing continuing education. The Board determined that it is necessary for an applicant to retake the clinical examination if they have been out of practice for more than five years in order to demonstrate competency to practice.
- In Section 7, removed requirement for Dental Hygiene Licensure by Examination to have never been licensed in another state. This will alleviate expenses for new graduates who have already obtained a license in another state and would otherwise have to apply for the more expensive Dental Hygiene Licensure by Endorsement.
- In Section 8, clarified that the competency requirement in (b)(iii) is for those who have been out of active clinical practice for less than five years. The Board created additional requirements for those out of practice more than five years to ensure competency.
- In Section 8, added competency requirements in (b)(iv) for those that have been out of active clinical practice for more than five years. This allows applicants out of practice for more than five years to demonstrate competency by taking the regional clinical examination and completing continuing education. The Board determined that it is necessary for an applicant to retake the clinical examination if they have been out of practice for more than five years in order to demonstrate competency to practice.
- In Section 9, added requirement for continuing education to be acquired with renewals. The Board added continuing education requirements in Section 10, and determined it was appropriate require continuing education as part of the renewal application.
- In Section 10, created a new section detailing continuing education requirements. The Board believes requiring continuing education is appropriate to ensure continued competency and determined that any continuing education must be related to the practice of dentistry to qualify. The Board determined that 16 hours every 2 years is sufficient for all licensees and that compliance will be verified by an audit following the renewal period. In addition, the Board added the requirement that all dentists must complete three hours of continuing education related to the responsible prescribing of controlled substances every two years based on Senate Enrolled Act 66 (2019). Originally the Board intended to require 3 hours for both dentists and dental hygienists, but following public comment, the Board amended the rule to only require dentists to obtain these hours.
- In Sections 11, 13 and 14, changed CPR to BLS for Basic Life Support to be consistent with renewal requirements.
- In Section 15, clarified eligibility for non-clinical licensure. In addition, the Board determined that it was appropriate to add provisions related to reactivation of a non-clinical licensure to establish the requirements for those who wish to return to active practice.
- Renumbered following sections accordingly.

<u>Chapter 6: Code of Ethics for Dentists</u>

- In Section 5, the Board determined it was necessary to change its existing rules on announcement of specialization and limitation of practice. The proposed revisions expand the recognized specialty areas to allow licensees to appropriately advertise their credentials, establish criteria for recognizing specialties rather than approving specific

specialty areas or entities, and also remove the limitation of practice requirement. After considering public comment, the Board amended its proposed rules to further expand acceptable specialty designations to allow dentist to advertise their credentials appropriately. The proposed rule mirrors the North Carolina Board of Dental Examiners' rule on specialty advertising. The North Carolina Board worked with the American Board of Dental Specialties and other professional associations to ensure their proposed language did not unlawfully restrict dentists from advertising their credentials. After reviewing other state dental boards' rules, the Board determined that the North Carolina Board's rules were appropriate to not only recognize specific specialty areas or entities, but to also allow another pathway for dentists with specialty recognition by other entities to appropriately advertise their credentials. The rule is intended to ensure consumers are able to verify the advertised specialty credentials. The rule also requires the dentist to maintain documentation of the specialty designation and provide it to the Board upon request so the Board can ensure the advertised specialty meets the requirement set forth.

- Added Section 7 to provide ethical standards for the acceptable prescribing of opioids. This guidance was drafted by the American Dental Association for the use of all dentists. The Board determined that rules related to the responsible prescribing of opioids were necessary to ensure all dentists are appropriately assessing patients when prescribing opioids.
- Added Section 8 to require all licensees to report the morbidity and mortality of any patient. This section was initially in Chapter 5 for sedation providers only. The Board concurred they would better serve the public by requiring this of all licensees. Such notification would ensure the Board would be able to investigate any harm to the public consumer.

Wyoming Board of Dental Examiners
COMMENT SUMMARY AND CHANGES BASED UPON PUBLIC COMMENT

The Wyoming Board of Dental Examiners proposed changes to Chapters 1, 3, and 6. The Board held a public comment period from February 4, 2019 through March 29, 2019, and received comments from fourteen (14) individual members of the public and three (3) professional associations.

Most comments were in regard to the newly proposed continuing education requirements, specifically, the opioid continuing education created by 2019 Senate Enrolled Act 66.

Comment #1: Ben Emery, DDS commented:

Section 9 and Section 10(a) is confusing. How may hours per license year are required? Is the CE requirement 16 hours every two years? Why can't they make it every two years instead of using "even and odd" years? And the three hours of CE for prescribing controlled substances…does that need to happen every year, every two years, or just once? If it is every two years, what a waste of time, energy and resources. I would ask the board to change that to only one time.

Once these questions are posed, I request that the board provide a statement.

Response: *The Board thanks Dr. Emery for commenting. The 2019 Wyoming legislature passed Senate Enrolled Act #66 which changed the Dental Board's Practice Act to read: "The Board shall require three (3) hours of continuing education related to the responsible prescribing of controlled substances every two (2) years." You can view this piece of legislation at https://wyoleg.gov/Legislation/2019/SF0047. Based on this established requirement for specific CE to be due every two (2) years, the Board elected to add additional continuing education requirements, but remain on this established two (2) year cycle to lessen any confusion to licensees. The proposed CE requirement is sixteen (16) hours every two (2) years. Three (3) of those sixteen (16) hours must be related to the responsible prescribing of controlled substances.*

Comment #2: Keshia Brinkerhoff, RDH commented:

I agree with all of the proposed amendments and would like to see them put into effect for Wyoming dental professionals.

Response: *The Board thanks Ms. Brinkerhoff for commenting.*

Comment #3: Sally Berg, RDH commented:

Wow! Looks like a lot of good work!

I have two question:

1. Section 10 (c). Are the 3 hours of CE related to controlled substances required in every renewal period?

2. In the past the requirement of CPR/BLS for licensure was referred to as "CE". Is there going to be any CE value placed on this requirement and if so would it count as Hands On CE?

Thanks to you and the Board for your diligence.

Board Staff Response:
Yes, that would be 3 hours of CE in every renewal period - that's what draft legislation is currently going to require of the Board - so the Board was just planning accordingly! That bill can be read at: https://www.wyoleg.gov/Legislation/2019/SF0047. Dental statutes are 33-15-101 through 133, so you'll see the requirement for this board under 33-15-109 of the draft bill.

The Board did discuss BLS as CE and elected to not count that in the hour requirement, though a current BLS card would still be required for renewal. It was a big debate!

I hope this helps!

Sally Berg, RDH responded:
Thanks Emily, it does help. I can only imagine the discussion around this topic!

Response: *The Board thanks Ms. Berg for commenting. After considering public comment, the Board amended its rule to no longer mandate three hours of CE related to the responsible prescribing of controlled substances for dental hygienists.. The Board also amended its rule to remove the requirement for any CE to be hands-on or in person. To correct board staff's previous response, sixteen (16) hours of CE are due every two years, not every renewal period. Basic Life Support will continue to be required but will not count toward the sixteen (16) hour CE requirement.*

Comment #4: Brenda L. Harvard, RDH commented:
I object to legislating continuing education for dental hygienist for the following reasons:

Collecting continuing education credits can be burdensome and I have seen dental professionals from neighboring states at conventions find ways to cheat the system.

To mandate continuing education without putting in place some quality control of classes, seminars, etc. is irresponsible. I have heard horror stories from hygienists from other states of outrageous costs for continuing education seminars that were a joke; a complete waste of time and money.

I really do not think that dental hygienists need to be forced to seek continuing education. I have been a hygienist in Wyoming for approximately 20 years and I, as well as my colleagues, have obtained continuing education on our own accord without being told to do so.

Response: *The Board thanks Ms. Harvard for commenting. The Board believes continuing education is necessary and appropriate for dentists and dental hygienists.*

Comment #5: Jonathan Morgan, DDS commented:
I applaud the Boards efforts to modernize Continuing Education requirements. I find it abhorrent how that the board is only looking at requiring 8 hours over a two year period. This attitude comes from 15 years of seeing colleagues practice in archaic means. The people of Wyoming suffer because of the lax attitude that some dentists have towards improving their skills and bringing their patients modern care. Frankly their are way too many dentists in this state that should not have a license because of their lack of knowledge in current dental techniques. Dental advancement is taking place at an incredible rate and the boards efforts should be in encouraging that improvement. 8 hours is pathetic. I beg you to

increase that requirement. I respect the thought that the board wants to hold it's dentists to a higher standard, however I don't see that happening. As a dentist who completes over 60 hours of continuing education every year I can speak to the value that brings to treating patients with the best that dentistry has to offer.

My second issue with this change is with regard to the requirement for 3 hours of opioid training. This seems like a tactic to cover a minimum standard again. Is that really the best use of time and money? We have the technology to track those who abuse the incorrect dispensing of these substances. This policy seems like overkill for what the board is trying to achieve. Before throwing out a policy that sounds good on paper let's address the real issue. I don't have statistics on what percentage of dentists have a problem with this, but I would guess it's low. Address the problem directly. If continuing education is really important don't punish dentists with bureaucratic policy that treats all of us like the problem. I encourage the board to step up and do what it's true purpose is. Inspire us to be the best that we can be and help provide solutions that encourage that endeavor.

I feel strongly about these changes, and would be open to further conversation regarding a better solution. Feel free to contact me. Thank you

Response: *The Board thanks Dr. Morgan for commenting. The 2019 Wyoming legislature passed Senate Enrolled Act #66 which changed the Dental Board's Practice Act to read: "The Board shall require three (3) hours of continuing education related to the responsible prescribing of controlled substances every two (2) years." You can view this piece of legislation at https://wyoleg.gov/Legislation/2019/SF0047. Please be aware the proposed rules require sixteen (16) hours every two years, not eight (8) hours every two years.*

Comment #6: Sean Ellis, DDS commented:

I still don't want to give up the personal interview. Hard to point out specifics but I think it has value and I don't apologize for any inconvenience to the applicants.

Chapter 3 Section 9 (c) wording/grammar issue: "or apply for a non-clinical licensure." Can read either...apply for (a) non-clinical licensure (strike the a) or "or apply for a non-clinical license strike the "licensure"

Response: *The Board thanks Dr. Ellis for his comment. The Board amended Chapter 3, Section 9(c) accordingly and determined it was appropriate to remove the oral interview from the rules.*

Comment #7: Scott Larsen, DDS commented:

With regards to the CE changes. I wonder if we could get some clarification on what exactly, "in-person", means? Also what constitutes a,"conference ".
Is live Skype CE acceptably?
Is visiting a CE campus like a University or Spear/Dawson/LVI.....,, consider a conference?
Also if you watch a (recently) recorded lecture that has a required test? Is that acceptable?

Response: *The Board thanks Dr. Larsen for commenting. The Board amended the rule to no longer mandate CE be done hands on or in person. Any means would be acceptable.*

Comment #8: J.T. Mackey, ADHA Government Affairs Manager commented:

I have a question regarding the continuing education requirements included in the Notice of Intent to Adopt Rules. If I understand the proposal correctly, all licensees would need to receive 16 hours of CE over each 2 year renewal period and 3 of those 16 hours would need to cover responsible prescribing of controlled substances. Am I correct in understanding that dental hygienist would need 3 hours of CE each renewal period on responsible prescribing of controlled substances?

Board Staff Response:
That is correct.

Response: *The Board thanks J. T. Mackey for commenting/inquiring on the proposed rules. The Board amended its rule to no longer mandate three hours of CE related to the responsible prescribing of controlled substances for dental hygienists.*

Comment #9: Trisha Hansen, DMD commented:

I was writing because as I am reviewing the proposed rule changes it has in Chapter 3 a requirement for continuing education. There is a SouthEast Wyoming Dental Association meeting tomorrow night and I want to bring this up to make sure dentists are aware of this change.
Would this mean that each year while renewing the dental license that the dentists would also have to include the CE for that past year?
Can you clarify that for me please?

Board Staff Response:
In Wyoming Dentists are required to renew annually. The proposed rules would require dentists to verify 16 hours every other renewal.

I hope this helps!

Response: *The Board thanks Dr. Hansen for commenting. The Board agrees with staff's prior response.*

Comment #10: Denise Kreitman, RDH commented:

Excellent changes to add CE requirements! I support them.

Response: *The Board thanks Ms. Kreitman for commenting.*

Comment #11: Rebecca B. Genzer B.S., D.H. and Shanna Workman A.S., D.H. commented:

Dear Dental Board Members,

Considering the upcoming rule changes we have some concerns and questions.

1. Would psychosomatic, sociology and addiction recovery CE courses fall under the umbrella of (chapter 3 sec 10.b.i) "clinical patient management"? Many courses deal with Alzheimers, the aging population in our care, ADHD, tobacco cessation, etc.

2. We wonder about the parameters that sleep apnea, TMD/occlusion and xerostomia fall into. Would there need to be specific verbage for those areas of study?

3. In the internet age, isn't it appropriate to give consideration to Webinars? We appreciate the face to face contact of seminars (chapter 3 section 10.c) but Webinars are convenient, efficient and possibly more accessible. Shouldn't half of the required credits be allowable through online, live webinars?

4. In chapter 3 section 10.c., there is a question about the 3 required credit hours "related to the responsible prescribing of controlled substances." Is this required for hygienists too or just the prescribing dentist?

Thank you for considering these points.

Response: *The Board thanks Ms. Genzer and Ms. Workman for commenting. If licensees can demonstrate their CE is related to the practice of dental hygiene, it would be accepted. The Board amended the rule to no longer mandate CE be done hands on or in person. Any means would be acceptable. The Board also amended its rule to no longer mandate three hours of CE related to the responsible prescribing of controlled substances for dental hygienists.*

Comment #12: Sarah Mountain, RDH commented:

Dear Wyoming Board of Dental Examiners,

I applaud and strongly support the rule amendments proposed for chapter 3, section 10 relating to mandatory continuing education for licensed dental professionals in Wyoming. I am so pleased and proud that we, as registered dental hygienists and licensed dentists, are consistent with the rest of the United States in embracing the importance of preserving the public trust and the dignity of our professions by requiring ourselves to strive for advancement and enrichment in the art and science of dentistry and dental hygiene.

While I am extremely enthusiastic about these changes, I would like to respectfully ask the Board to review the wording for the requirements in chapter 10, section 3, parts (a) and (c) which read "Three (3) hours of CE shall be related to the responsible prescribing of controlled substances." While this is appropriate for the practice of dentistry, dental hygienists have no prescribing authority, thereby making this requirement inconsequential to the practice of dental hygiene.

Again, kudos to the Wyoming Board of Dental Examiners for implementing this long overdue rule amendment.

Response: *The Board thanks Ms. Mountain for commenting. The Board also amended its rule to no longer mandate three hours of CE related to the responsible prescribing of controlled substances for dental hygienists*

Comment #12: Sarah Henderson, RDH commented:

I am writing in regard to the proposed rule changes to Chapter 3, Section 10 of the Wyoming Dental Practice Act. While I do recognize and support the continuing education (CE) of all dental professionals, I do have some concerns with the wording of the proposed changes. My concerns are as follows:

1. In Regard to Subsection (a): There are too many regulations as to what CE is acceptable. By making so many exclusions of topics that are acceptable, you are not allowing for individual dental professionals to be self-determining or in control of recognizing the needs of their own dental practice. While I agree that CE should be obtained in many different disciplines, I find that the wording could be changed to be more inclusive of different disciplines. For example, "CE credits will be obtained in more than two dental

disciplines" This allows for dental professional to determine their own needs and allows for healthy competition of dental practices. If a new dentist is starting a practice and would like to take CE in dental practice and how to run an effective practice, he/she/(or any other inclusive pronoun) should be allowed to do so, and receive credit for those classes.

2. In Regard to Subsection (a): As a hygienist, I am not able to prescribe controlled substances. I am not sure how having three (3) hours of CE related to the responsible prescribing of controlled substances will enhance my practice of dental hygiene.

3. In Regard to Subsection (c): Methods. Requiring that "A minimum of twelve (12) CE shall be earned at in-person conferences or hands-on training". Ideally every dental professional would have the opportunity to attend dental conferences where they would be able to obtain in-person or hands-on training, but we do not live in an ideal world and requiring in-person or hands-on training in Wyoming can be difficult. Travel is almost always a concern and obtaining in-person or hands on training can be both a logistical and financial strain for those living in remote areas. I am also concerned for my fellow professionals who are single parents and have trouble obtaining CE in-person.

4. Recently in Colorado, their dental board has started accepting college credits as CE as long as the credits are in a dental or healthcare field. This would allow for hygienists who are furthering their education to use these credits toward their CE requirements. I would be interested in the inclusion of a policy like this that will encourage hygienists or other dental professionals to further their education.

I am fully in support of requiring continuing education and believe that it is necessary for the protection of the public and that it will support the elevation of the dental profession in Wyoming. These are some of the concerns that I have noted in the rule changes. I would be happy to discuss these concerns with the Wyoming Board of Dental Examiners either in-person or by phone. Please feel free to contact me using the information below.

Response: *The Board thanks Ms. Henderson for commenting. Chapter 3, Section 10(b)(ii) specifies what CE is unacceptable. The Board amended the rule to no longer mandate CE be done hands on or in person. Any means would be acceptable. The Board also amended its rule to no longer mandate three hours of CE related to the responsible prescribing of controlled substances for dental hygienists. Finally, college courses would be acceptable based on the hours of lecture received.*

Comment #13: Laura Cegelski, RDH commented:

I've been looking at Section 10 and I have a few concerns. I'm ok with 16 hours but in the method of accomplishment these CE classes don't add up with 12 CE and 3 CE for controlled substance. First, that equals 15 CE hours not 16 CE hours. So should it say minimum of 13 CE. Also as I am a dental hygienist am I going to be required to have CE for prescribing controlled substances? If yes, this CE requirement doesn't make sense to me for hygienists. Prescribing is for DDS. Second, acquiring these 16 CE may be hard to achieve for hygienists that are retired and want to be a temp for hygienists that need time off if we are not allowed to use on-line classes. The ADA meeting and the Rocky Mountain Dental Convention prices are for people associated with a dental office or students, being retired a hygienist isn't associated with any particular dentist. With on-line classes there isn't any designation, which would make aquiring CE classes a little bit easier

Response: *The Board thanks Ms. Cegelski for commenting. The Board amended the rule to no longer mandate CE be done hands on or in person. Any means would be acceptable. The Board also amended its rule to no longer mandate three hours of CE related to the responsible prescribing of controlled substances for dental hygienists.*

Comment #14: Kevin McCurry, DDS provided the attached letter.

Response: *The Board thanks Dr. McCurry for commenting. The 2019 Wyoming legislature passed Senate Enrolled Act #66 which changed the Dental Board's Practice Act to read: "The Board shall require three (3) hours of continuing education related to the responsible prescribing of controlled substances every two (2) years." You can view this piece of legislation at https://wyoleg.gov/Legislation/2019/SF0047. Based on this established requirement for specific CE to be due every two (2) years, the Board elected to add additional continuing education requirements, but remain on this established two (2) year cycle to lessen any confusion to licensees. The Board's Practice Act does require all licenses to be renewed annually. The Board amended the rule to no longer mandate CE be done hands on or in person. Any means would be acceptable. The Board also amended its rule to no longer mandate opioid CE for dental hygienists.*

Comment #15: Janis McClelland, RDH for the Wyoming Dental Hygienists' Association (WDHA) provided the attached letter prior to the public comment period and a second attached letter during the public comment period.

Response: *The Board thanks WDHA for commenting. The Board amended the rule to no longer mandate CE be done hands on or in person. Any means would be acceptable, however, while commendable, the Board will not accept volunteer hours as CE. The Board also amended its rule to no longer mandate three hours of CE related to the responsible prescribing of controlled substances for dental hygienists.*

Comment #16: On behalf of Stuart Youmans, DDS, the law firm of Chapman Valdez & Lansing provided the attached letter.

Response: *The Board thanks Dr. Youmans for commenting. Based on comments received and additional research, the Board has amended Chapter 6 to expand the specialty advertising provisions and follow the rules adopted by the North Carolina Board of Dental Examiners, who worked with the American Board of Dental Specialties and Dr. Frank Recker, DDS when drafting its current rules.*

Comment #17: Gianna Hartwig for the American Association of Orthodontists (AAO) provided the attached letter.

Response: *The Board thanks AAO for commenting. Based on comments received and additional research, the Board has amended Chapter 6 to expand the specialty advertising provisions and follow the rules adopted by the North Carolina Board of Dental Examiners, who worked with the American Board of Dental Specialties and Dr. Frank Recker, DDS when drafting its current rules.*

WHITNEY PLAZA DENTAL
A Unique Brand of Care

3-11-19

Dear Wyoming Dental Board of Examiners

This letter is in response to the proposed changes in rules for dentists. I would caution all of you that these rules are de facto "LAWS" and should be enacted only if there is absolute necessity that can be demonstrated and is measureable in its resolution of the "perceived" problem.

I respectfully agree with one of the proposed new "laws".

1) **Bravo! CE is a must, as it is frightening out here! The Dental IQ and oral health of Wyoming's citizens in my estimation, if graded, would get a "D"! Is this related to the lack of CE currently required for Wyoming's Dental Professionals? One could easily argue that point!**

I respectfully disagree with some of the proposed new "laws".

1) **There should be: No mandatory Category of CE, other than BLS.**
2) **There should be: No limitations on what type of CE will best benefit my practice of dentistry! The Dental Board is setting itself up to be Judge, Jury and Executioner, and no unbiased neutral 3rd party with which to appeal! This is never a good thing for citizens.**

Section 4. Jurisprudence Examination and Interview.
(b) ~~All dental licensure applications and necessary documentation, including payment of fee and report from PBIS, shall be received at least forty-five (45) days prior to a Board meeting.~~ The ARC shall recommend eligibility to sit for the jurisprudence examination. ~~The Board staff shall administer the dental jurisprudence examination and the applicant shall be required to interview with the Board.~~

Bless you for getting rid of the oral interview you probably will keep the board from getting sued! I never understood the need as it is only subjective, not objective! I support you and well done!

Section 9. Annual Licensure Renewal.
(b) Renewal Application. A dental or dental hygiene licensee seeking renewal shall:
(iii) Acquire sixteen (16) hours of CE that complies with Section 10.

I totally agree with adding a CE requirement. The stuff that I have seen since coming to this state has been nothing short of amazing and frightening!
Examples:

Kevin McCurry, DDS
MAGD — Master in the Academy of General Dentistry Whitneyplazadental.com (307) 675-1905 Fax: (307) 675-1908 145 North Connor Street, #2; Sheridan, WY 82801

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1) **One of my patients went to 2 different offices and the diagnosis in both was full mouth extractions and full dentures! I had a different diagnosis and treatment plan. I found her physiologic bite, stabilized her, did upper and lower orthodontics, did not restore or remove any lower teeth, crowned her upper teeth and placed 2 implants but we did not remove any upper teeth! She is one very happy and I would add lucky lady!**
2) **I have found cotton underneath alloys (several times), who does this? When was this ever a good idea? Where is this concept taught?**
3) **I routinely see pin retained composites (new ones). I was taught 33 years ago to never place a pin. If one understands bonding then one would know that pins are not ever necessary, and if it is that big and you think it needs a pin maybe that is the wrong diagnosis and treatment for that tooth!**
4) **A PFM crown on top of a tooth that was opened for RCT but RCT was never completed. I know because I opened the tooth as an emergency, she went back (sadly) to her regular doctor, and then I saw her 4 years later so I could extract the abscessed tooth!**
5) **Many teeth are diagnosed for RCT or extraction by other dentists, but in reality the diagnosis was excessive occlusal trauma and the treatment is the removal of the obstructive lateral interferences. One should also if appropriate the diagnosis of any underlying bite disharmonies that contribute to clenching and bruxism.**
6) **Believe it or not, there are still doctors dipping radiographic film! I have had digital radiographs since 1990! You want to talk patient safety? How about 10 times less radiation with improved diagnostics!**
7) **I could go on but I think I have made my point, so yes please; CE is desperately needed in my humble opinion!**

Section 10. Continuing Education Requirements.
(a) Renewal Period. CE shall be obtained January 1 of even years through December 31 of odd years. The first CE period begins on January 1st following the date the license was issued. For a new licensee with a license issued in an even year the licensee shall submit eight (8) hours of CE, three (3) of which shall be related to the responsible prescribing of controlled substances.

I consider myself a fairly intelligent man, but I had to reread section (a) several times to understand. Would it not be simpler to make license renewal once every two years and CE needs to be taken during that 2 year period? BLS is required every 2 years, so let's get this streamlined and easier on everyone! Raise the fees to cover the 2 years if Caesar really needs his money, even though the state should save money in reduced regulatory bureaucratese!

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WHITNEY PLAZA DENTAL
A Unique Brand of Care

I AM ADAMANTLY OPPOSED TO 3 HOURS OF CE EVERY YEAR ON THE PRESCRIBING OF CONTROLLED SUBSTANCES, FOR MANY REASONS:

1) **We Dentists are not the cause of the "opioid" problem!**
2) **The state of Wyoming knows exactly who has prescribed what, when and how much!**
3) **If there is a problem with a particular dentist then the state can call the doctor for an explanation (ideally solved at this level) and/or submit a complaint to the board for action if appropriate. Why punish all of us for a small few bad actors?**
4) **Wyoming is so small and geographically spread out that, I would bet this 3 hour course will only be given once a year at the convention so we will be forced to go! I have zero interest in driving 8 hours to Jackson spending 2 nights and driving 8 hours home for something I have been doing without a problem for almost 30 years!**
5) **If you feel you must have this course for public safety (again we are not the problem in this scenario, if we are please show your proof) then let's make it online and only do it once every 2-5 years! I am sure an online course already exists. If not, create one, license it to the other states and make Wyoming some cash!**
6) **For the love of Mike there is not even an approved radiology course in the State, if you want to do something of benefit to the general public - patients, employees and employers that would be a good place to start. My assistant is having to go to Rapid City to take a course!**
7) **While you are at it get rid of the radiology inspection sham, no inspection criteria and no criteria for becoming an inspector, such a joke!**
8) **This is a solution in search of a problem; I strongly recommend you do not do this!**

Section 10. Continuing Education Requirements.
(b) CE Content. (ii) Unacceptable subjects include, but are not limited to, practice building and business management courses.

WHY? There should be no limitations as long as it is applicable to the practice of dentistry. Basket weaving would be out, just to be clear! Many dentists are poor business owners and let insurance companies run their practices, thereby dictating treatment (I would hope we all agree that this is never in the patients' best interest when it comes to receiving ideal care)! If you want to help the public then get rid of insurance companies or at the very least let the dentist get some training on how to run a better business. This would benefit the public and dentist in numerous ways;

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i.e., customer care, avoiding scams and embezzlement, maximizing the patients dental benefits etc.

(iv) CE earned in excess of the sixteen (16) hours required for renewal may not be carried forward to apply toward the next renewal period.

Make it a two year renewal cycle and this issue is a non-issue. I am scheduled for at least 96 hours this year alone so this will really not affect me, ever! What I have learned about Wyomingites in the last 9 years is that they are an independent lot and really are not fans of being told what to do by the government aka bureaucrats. You are making this too restrictive with too many rules. We are adult professionals and yes there are always a few bad apples, but make it easier for those that want to comply. The ones who do not will always try to find a way around the "LAWS". To be brutally honest the good doctors do not need any of these new "Laws"!

(c) Method. A minimum of twelve (12) CE shall be earned at in-person conferences or hands-on training. Three (3) hours of CE shall be related to the responsible prescribing of controlled substances.

In one word, <u>controlling</u>, in two words <u>Bureaucratic Power</u>. Again I ask <u>why</u>?? I have sat through many an in-person course to only find out it was crap or a waste of my time and expense. I now target what I want to learn and go and find the information. Sometimes it is only online as the cost to attend in person is prohibitive and not worth the ROI! Dentist's taking a business class would know that stands for <u>Return On Investment!</u> If the Course is <u>mandatory</u> will the board be <u>mandating</u> what is or is not in the course? If the board has no control over the content then why is the course mandatory? Consequently, since it will be <u>mandatory</u>, I can guarantee you the price for the course will be <u>whatever they want to charge</u>! You are instituting a <u>mandatory tax</u> on a problem that was not caused by the people you are taxing and with no proof of quantifiable benefits to <u>anyone</u>!
I am sure Wyomingites will LOVE this!

An insight into CE in general: An Example:
Is the WyDA annual session in Cody this year worth the Investment to my practice?

1) **8 hours driving (4 each way) – cost?**
    a. **Gas?** **$200**
    b. **Wear and tear on car? Estimates – $0.61/m x 149m x 2 =** **$182**
    c. **My time?** **$???**
2) **Take ½ Thursday off to drive - cost?** **$3000.00**
3) **Cost of convention – just doc and just CE -** **$200**
4) **3 nights in hotel – Cost? $175.00 x 3=** **$525.00**

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5) **11 Meals for 1 – Cost? Estimate $20.00 x 11 =$220.00 for 2 = $440.00**
6) **Time away from family- my 79 yr. old partially blind mother lives with us so I have to arrange someone to be with her overnight 2 nights= Cost? $???**
7) **10 hours of questionable CE**
    a. **Never heard any of them speak – total gamble**
    b. **Topics I already know a lot about**
        i. **Implants- been placing for over 20 yrs.**
        ii. **Oral surgery complications- I do 99% of my own OS for the last 30 yrs. – I may see a good case or pick up a nugget or two or….not**
        iii. **Essential legal concepts –**
            1. **might be <u>hugely</u> valuable but alas will not be considered CE credit by the new proposed rules, so subtract 2 hours of CE**
        iv. **Silver Diamine Fluoride-**
            1. **could easily find an online course**
            2. **mainly for underserved populations, very young and the elderly- only a stop gap not really repair- value to our practice = minimal to none**

In Summary
$1,547 in hard costs – not counting opportunity lost
8 hours CE of questionable use/ value
$193.375/ hour of CE
Verdict- I will not be attending!

Understand CE costs WILL be passed on to patients whether they ultimately benefit or not! As such, doctors have a fiduciary responsibility to their patients and employees! They should be allowed to do what is best <u>without</u> negative government intrusion!

(e) CE Audit (iii) If the Board disallows any CE, the licensee shall have one hundred twenty (120) days from notice of such disallowance to:

Disallowed? Will we have to get permission prior to any CE? If disallowed will a detailed reason with specifics be given? Will the <u>whole board</u> take the course first to be sure they are not judging a book by its cover? Will the decision be objective or subjective? Any biases involved? Example: We had a dentist in town on the hygiene advisory committee tell my hygienist that lasers in dentistry were only a marketing tool and of no real value. Thank goodness he has retired!

There are times where it feels as if the board/government treats us or speaks to us as if we are incompetent and don't know how to make an educated decision when it comes to our professional careers.

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In Summary:

1) **Make licensing every 2 years**
    a. **Double the yearly fee if you must or God forbid, tax us less since there will be less redundant bureaucratic nonsense**
2) **Make it 16 CE every 2 years**
    a. **Delete section 10 (b) i-iii! Anything dental practice related counts**
    b. **Delete section 10 (c)**
    c. **Delete section 10 (e) iii, iiiA, iiiC, iiiD**
    d. **Move section 10 (e) iiiB to (b) iv**
    e. **Move section 10 (e) iv to (b) iv**
3) **Way similar and you step on less toes and keeps the board from getting sued!**
4) **And while we are talking about CE- maybe some of the staff that work at the board could take a course on "who is really their boss" (us) and "How should you treat your boss" (us) aka appropriate customer service. It was appalling when Debra was in charge but has VASTLY improved with Emily!**
5) **EMILY ROCKS BTW. Sadly, that is where it ends when it comes to quality customer service! My one and only interaction with Jason was that he was terse and he never followed up on my question, so basically unimpressed.**
6) **If none of the above sways you, let it be known you are going down the path California has taken!**

Respectfully,

Kevin McCurry D.D.S.
MAGD- Master Academy of General Dentistry
LVIF- Fellow Las Vegas Institute of Advanced Dental Studies
FACD- Fellow American College of Dentists

CC: Wyoming Board of Dental Examiners, Wyoming Board of Dental Examiners President Dr. Castillon, Governor Mark Gordon

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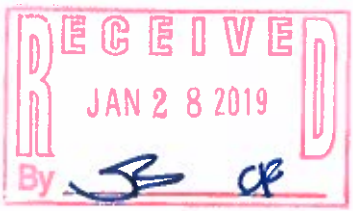

Wyoming Dental Hygienists' Association

January 23, 2019

To the Members of the Wyoming Board of Dental Examiners,

On behalf of the members of the Wyoming Dental Hygienists' Association, I am writing today in support of adding required continuing education (CE) hours to the rules of licensed dental professionals in the state of Wyoming.

Continuing education of dentist and dental hygienists is vital to the protection and safety of Wyoming's residents. It ensures oral health professionals of our state are up to date on processes and procedures in providing quality dental care to everyone. Adding continuing education requirements is important due to the value it gives our profession. Attending continuing education provides dental professionals with knowledge and can be utilized to revitalize what they do daily in their workplace.

The Wyoming Dental Hygienists' Association is proposing the Wyoming Board of Dental Examiners consider adopting minimum continuing education requirements for dental hygiene license renewal. Wyoming is unique in not requiring continuing education by comparison to the rest of the nation. Forty-nine states and the District of Columbia all require a minimum number of continuing education hours per licensure cycle. Continuing education for Wyoming dental professionals would be a step forward in being consistent with all other states and the evolving practice of dentistry. The Wyoming Statute 33-15-109 is already in place and it is our opinion the board should consider setting continuing education requirements for renewal certificates and re-licensure certificates.

In the six surrounding states licensure period and continuing education requirements vary but if broken down by year, range from 12-15 hours of continuing education per year. To place Wyoming on similar footing as other states and ensure a minimum level of continuing education, WDHA proposes the Board adopt a requirement of 12 hours of continuing education for dental hygienists seeking license renewal.

There are numerous ways to get continuing education hours and many of them are free. WDHA will do all in our power to urge our members to take responsibility for lifelong learning. Taking part in continuing education provides positive results as dental professionals will find value in their profession and the services they provide. The process of continuing education will give dental professionals the ability to interact and network with other professionals, ultimately allowing them to grow professionally and personally. Continuing education hours can be tracked on the ADHA website for easy access. Additionally, there are companies such as CE Zoom, which also track hours needed for re-licensure for many states.

Dental hygienists want to provide our citizens in Wyoming the best dental hygiene care possible, incorporating continuing education hours yearly ensures our citizens a higher quality of care.

Respectfully submitted,

Janis McClelland, RDH, BSDH, MSDH (c)

Janis McClelland, RDH, BSDH
President Wyoming Dental Hygienists' Association
janismcclellandrdh@gmail.com
Wyoming Dental Hygienist Expanded Functions License # 1246

CE Requirements of Surrounding States

Montana Rule 24.138.2104(1)(b)

"for dental hygienists, 36 per three-year cycle. Dental hygienists who have a limited access permit must complete an additional 12 continuing education hours pursuant to ARM 24.138.509. Dental hygienists who qualify for limited prescriptive authority pursuant to 37-4-401 and 37-4-405, MCA, must complete an additional three continuing education hours pursuant to ARM 24.138.419;"

Idaho Rule 51

"All active dental hygienists shall acquire twenty-four (24) credits of verifiable continuing education in each biennial renewal period. One (1) credit is defined as one (1) hour of instruction."

Utah R156-69-304a

"In accordance with Section 58-69-304, qualified continuing professional education requirements are established as the (1) All licensed dentists and dental hygienists shall complete 30 hours of qualified continuing professional education during each two year period of licensure."

Colorado Rule III (G)(1)

"Effective March 1, 2016, every licensee with an active license in Colorado is required to complete 30 hours of Board approved continuing education during the 2 years preceding the next renewal period to ensure patient safety and professional competency, pursuant to section 12-35-139, C.R.S. Continuing education hours may only be applied to the renewal period in which they were completed."

Nebraska 56-005.01

"On or before the expiration date of the credential, the credential holder must complete 30 hours of acceptable continuing competency requirements in the 24-month preceding the expiration date of the credential."

South Dakota 20:43:03:07.01

"A dental hygienist shall complete at least 75 hours of board approved continuing education in each five-year licensure cycle. One hour of continuing education may be earned for each hour of attendance at a board approved continuing education course."

Wyoming
Dental Hygienists' Association

Wyoming Board of Dental Examiners
2001 Capitol Ave, Room 105
Cheyenne, Wyoming 82002

March 8, 2019

Wyoming Board of Dental Examiners,

As President of the Wyoming Dental Hygienists' Association I am writing in support of the proposed rule change regarding continuing education requirements. We are pleased to see Wyoming join all other states in requiring dentists and dental hygienists to commit to life-long learning.

As dental professionals we must continually work to improve our skills and knowledge about patient care. The fields of dentistry, medicine and healthcare are constantly evolving and improving through advancements in technology and knowledge. Education and other means of communicating this information are vital to evidence-based care and positive patient outcomes. Techniques change and understanding the need to know about the changes as well as the reasoning behind the change can make a huge difference in how we practice and the outcomes for our patients.

It is our concern however that a dental hygienist, who does not have prescribing authority in Wyoming be required 3 CE hours related to the responsible prescribing of controlled substances. We respectfully ask that the board consider removing this requirement for dental hygienists.

At this time, we would also ask the board to consider revising the section on the required method of obtaining continuing education. We recommend considering 8 hours to be in person and 8 hours from other sources such as online or journals.

Another request for consideration would be to allow for continuing education hours to be given for volunteerism with wording such as, a dental hygienist holding an active status license issued by the Board shall be allowed one (1) credit of continuing education for every two (2) hours of verified volunteer dental hygiene practice performed during the biennial renewal period up to a maximum of 4 hours.

We are pleased the board has proposed the additional rules on continuing education for both dentists and dental hygienists. Our Wyoming citizens will be impacted positively by the required lifelong learning opportunities that improve practice skills, knowledge, quality of care and patient outcomes.

Respectfully submitted,

Janis McClelland

Janis McClelland, RDH BSDH

President, Wyoming Dental Hygienists' Association

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March 29, 2019

Wyoming Board of Dental Examiners
2001 Capitol Avenue Room 105
Cheyenne, WY 82002

Email: Emily.cronbaugh@wyo.gov

Sent by email and mail

Re: *Dental Rules*

Dear Wyoming Board of Dental Examiners,

As you know this firm represents Dr. Stuart Youmans DDS. To our knowledge, Dr. Youmans, is the first, and only, dentist in Wyoming who has earned the status of Diplomate from the American Board of Oral Implantology/Implant Dentistry ("ABOI/ID"), the certifying board sponsored by the American Academy of Implant Dentistry ("AAID"), and the only certifying board approved by the American Board of Dental Specialties ("ABDS").

Previously, Dr. Youmans has asked the Wyoming Board of Dental Examiners (hereafter "Board") to amend or change its ethical Rules and Regulations to allow Dr. Youmans to advertise as an implant specialist. Dr. Youmans is qualified as an implant specialist because of his ABOI/ID Diplomate status and ABDS recognition.

The Board proposes amending Chapter 6, Section 5(p) of the Board's Rules and Regulations titled "Announcement of Specialization and Limitation of Practice" and has solicited comments and suggestions from the public. Dr. Youmans submits his comments attached to this correspondence. If the Board overrules Dr. Youmans's comments, he respectfully requests a statement of principle reasons for the overruling.

Best,

Thomas A. Valdez
Mikole Bede Soto
Patrick J. Lewallen

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CVL

The Board has set forth proposed changes to its Codes of Ethics for Dentists, and in particular, to the area of announcing specialties. Prior to these suggested changes, the Board's Rules and Regulations restricted the announcement of a specialization to the areas approved by the American Dental Association (hereafter "ADA"), which now includes nine (9) specific areas. As such, the Wyoming Board of Dental Examiners have, until this time, followed the ADA. Throughout various states, there have been challenges to dental boards' restriction on advertising specialty areas. For example, in Texas, Iowa, California, Florida, Indiana, New Jersey, Ohio, North Carolina, Virginia, either courts have found that dental boards' restriction of specialties are a direct violation of the First Amendment or the dental board revised the regulations prior to litigation.[1] In addition to challenges occurring on the State level, the ADA has issued advisory opinions on the issue.

In advisory opinion 5.H.2, the ADA expanded its understanding of specializations and allows a dentist to announce a specialty in an area that is recognized by the ADA or is not recognized by the ADA. For specialties not recognized by the ADA, the opinion sets forth that "[t]he organization granting the credential grants certification or diplomate status based on the following: a) the dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level) of at least 12 months' duration; and b) the dentist's training and experience; and c) successful completion of an oral and written examination based on psychometric principles. . . ." This opinion evidences that the ADA itself recognizes it is not the sole organization to grant a dentist an area of specialty. Thus, the ADA no longer prohibits the advertisement of non-ADA specialist areas.

These recent challenges have casted a shadow of doubt upon these types of regulations. Changes to dental boards' rules and regulations, as well as changes within the ADA, means the Board's Code of Ethics, in its current and proposed form, is outdated and unconstitutional. First, restriction on a qualified professional with an expertise in his specific field is denied the ability to publish information on such qualification. Such restriction is inherently unconstitutional. Even if some restriction is permitted, the proposed changes set forth by the Board also violates the First Amendment. Therefore, specialty restrictions on dentists constitute impermissible content-based regulation and, additionally, the specified proposed changes violate the First Amendment's protection of commercial speech.

I. First Amendment Freedom of Speech

Generally, the First Amendment is an instrument to enlighten public decision-making, promote the free flow of information, and support a general "market place of ideas." First Amendment protections apply to States through the Fourteenth Amendment and, in its simplest form, prohibits

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1

Parker v. Texas Society of Oral and Maxillofacial Surgeons, CV 1:14-cv-00191-SS (Tex. 2016); *Michael L. POTTS, D.D.S., and the American Academy of Implant Dentistry, Plaintiffs, v. Brian STIGER, in his Official Capacity as Director, California Department of Consumer Affairs, et al., Defendants.*, 2010 WL 11415952 (E. D. Cal.); *Ducoin v. Ros*, 2009 WL 5574534, (Fla. Cir. Ct.). Indiana and Ohio amended their rules and regulations pending litigation that addressed the constitutionality of their current rules. Iowa, New Jersey, North Carolina, and Virginia likewise amended their rules and regulations pre-litigation to allow for the advertising for non-ADA specialties including those recognized by the ABDS.

the enactment of law that abridges freedom of speech. U.S. Const. amend. I. Under the First Amendment, a government, including a governmental board vested with state authority, "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dept. of Chicago v. Mosley,* 408 U.S. 92, 95, (1972).

A. Chapter 6 impermissibly regulates content-based speech

First at issue here is that by virtue of restricting the areas of specialties, Chapter 6, Section 5(p) of the Board's Rules and Regulations restricts content-based speech and is unconstitutional in its entirety. Content-based laws target speech based on its communicative content and are presumptively unconstitutional. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382 (1992) ("[c]ontent-based regulations are presumptively invalid."). Thus, the standard for analyzing a regulation or law that is facially content-based, "is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2228 (2015). Here, the Board's current and proposed regulations are directly aimed at the content in advertisements, thus the current and proposed regulations are content-based and are presumptively unconstitutional.

In particular, content-based regulations, "suppress unpopular ideas or information or manipulate the public debate through coercion rather than persuasion." *Turner Broadcastings System, Inc. v. Federal Communications Commission*, 512 U.S. 622, 641 (1994). The nature of this regulation is simply the suppression and restriction of information. Dentists who attend post-doctoral programs and other doctoral programs are unable to publish information on their field due to the suppression of information allowed by the regulation. The Wyoming dental board itself does not have the authority to recognize specialties or dictate what constitutes a specialized field of practice and knowledge in dentistry.

Ultimately, these rules and regulations are dictating what a qualified professional may publish on its field and the suppression of such information is impermissible under the First Amendment. The ADA has even recognized there are other entities qualified to recognize other areas of specialties, and consequently, the Wyoming Board should not restrict the free flow of information in that area.

B. Chapter 6 violates the First Amendment Protections for Commercial Speech

Even if the content-based restriction on a dentist's areas of specialties is permitted, the nine (9) specifically listed specialty areas and generalized tenth category violates the protection afforded to commercial speech. In general, it is well settled that First Amendment protections extend to advertising/commercial advertising. *See, e.g., Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 764 (1976) ("society also may have a strong interest in the free flow of commercial information. Even an individual advertisement, though entirely 'commercial,' may be of general public interest."). Commercial speech is an expression that "propose[s] a commercial transaction." *Id.* at 776. Further, the First Amendment's concern for commercial speech is based on the informational function of advertising. Protections available for a particular commercial expression turns on the nature both of the expression and of the governmental interest served by its regulation. *C. Hudson Gas & Elec. Corp. v. Pub. Serv. Commn. Of New York*, 447 U.S. 557, 563 (1980).

The Supreme Court has adopted a four-part analysis in determining whether a government action violates First Amendment protections for commercial speech:

> At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

Id. at 566. The *Central Hudson* test applies an intermediate level of scrutiny to determine whether a government restriction is consistent with First Amendment requirements. *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 249 (2010). Under this level of scrutiny, the question is whether the state restriction directly advances a substantial governmental interest and is not more extensive than necessary to serve that interest. *Id.* Additionally, "[t]he party seeking to uphold a restriction on commercial speech carries the burden of justifying it." *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 71 n. 20 (1983), quoted in *Ibanez v. Florida Dep't of Business and Professional Regulation, Board of Accountancy*, 512 U.S. 136, 142 n. 7 (1994). In reviewing the four factors, the proposed changes to the Code of Ethics, do not meet the *Central Hudson* factors and the Board would ultimately be unable to carry the burden of proof.

a. Advertising an area of specialty not recognized by the ADA concerns a lawful activity is not inherently misleading

The first *Central Hudson* factor is that the speech must concern a lawful activity and it cannot be misleading. First, the advertisement of an area of specialty is a lawful activity and that does not involve any illegal activity. Secondly, with respect to the issue of misleading, the Supreme Court has distinguished between two types of misleading speech: 1) speech which is "inherently likely to deceive," and, 2) speech that is only "potentially misleading." *In re R.M.J.*, 455 U.S. 191, 202-03 (1982). In order for speech not to receive the protection of the First Amendment, the speech must be either "inherently likely to deceive," or "the record [must] indicate[ ] that a particular form or method of advertising has in fact been deceptive." *Id.* at 202. Thus, the question is whether the advertising of an area of specialty not recognized by the ADA is *inherently misleading*.

In particular, speech is inherently misleading if the information is "inherently likely to deceive." *Gibson v. Texas Dep't of Insurance-Div'n of Workers' Compensation*, 700 F.3d 227, 235 (5th Cir. 2012). Further, the mere potential of misleading information alone is insufficient to not afford First Amendment protection to commercial speech. *Id.*

The proposed changes to the Code of Ethics list the nine (9) specific categories previously accepted by the ADA and also provide a tenth generalized category. Under this generalized category, however, only five programs nationwide would meet the requirements in order to be recognized as a specialist in implant dentistry.[2] As the ADA, and various other states have recognized, there

[2] According to a 2017 study conducted by the AAID, institutions listed as offering a two-year or longer full-time post-doctoral education in implant dentistry only include: Brookdale University Hospital Medical Center in Brooklyn New

are a wide variety of programs that are qualified to grant a status upon a dentist, which amounts to an area of specialty. There is no risk of deception for advertising a field of specialty recognized by another qualified program that does not meet the specified language in the proposed changes. *See, Parker v. Texas Society of Oral and Maxillofacial Surgeons*, CV 1:14-cv-00191-SS, 12 (Tex. 2016) (finding that when other programs are qualified to designate areas of specialties, a board's narrow restriction of advertising of specialties under limited programs is insufficient to show the speech is inherently misleading). Due to the variety of programs now qualified to grant certificates and other statuses, there is no inherently misleading information if the regulations are revised to encompass other programs.

b. The Code of Ethics does not advance a substantial interest in a direct and material way

The second factor under this test is whether there is a governmental interest that is substantial. In order succeed under this prong, the Board would have to "demonstrate that the challenged regulation[ ] advance the Government's interest in a direct and material way." *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 625 (1995) (internal citations omitted). In other cases involving this issue, dentistry boards have argued that there is a substantial interest in ensuring the accuracy of commercial information in the marketplace, establishing uniform standard of certification and protecting consumers from misleading professional advertisements. *Parker*, CV 1:14-cv-00191-SS, 14. These interests are considered substantial in some contexts. *See, e.g., Borgner*, 284 F.3d at 1216 ("The state has a substantial interest in regulating the dental profession, establishing uniform standard for certification, and in ensuring that dentists' advertisements are not misleading to consumers."). In this case, however, where there is the fear of misleading consumers in the qualifications of a dentist, there is not substantial interest. *See, Parker*, CV 1:14-cv-00191-SS, 12 (Tex. 2016) (finding that when other programs are qualified to designate areas of specialties, a board's narrow restriction of advertising of specialties under limited programs is insufficient to show the speech is inherently misleading and is therefore not a substantial state interest for purposes of the second factor).

As discussed under the first factor above, the ADA and various other states have recognized the qualifications of other programs. Since there is an overall acceptance of these programs, fears over misleading consumers when a dentist does have a specialty status from these other programs are invalid. The way the changes are prosed, the categorical restriction remain too limited as there are qualified programs, and other areas of specialties, that would not fall under the language of the proposed changes. Thus, the catch-all provision should be amended to include these other programs and any interest in protecting consumers is misguided given the nature of the dentistry field as it stands now.

c. The Code of Ethics are more than reasonably necessary to avoid potential consumer confusion about what constitutes an area of dental specialty

The final two factors in the *Central Hudson* test are intermingled. If the first two factors are answered in the affirmative, the final consideration is whether the government interest is being

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York; Harvard University in Boston Massachusetts; Loma Linda University in Loma Linda California; and Tufts University in Boston Massachusetts; and University of North Carolina in Chapel Hill North Carolina.

advanced and whether it is not more extensive than is necessary to serve that interest. If the state interest is to decrease confusion in the marketplace, the proposed language to the code of ethics is more extensive than necessary. As stated throughout this comment, there are other programs of accreditation that would not be recognized under the proposed language the Board has produced. Therefore, if restriction is deemed necessary, the Code of Ethics should be revised to encapsulate other potential programs that are qualified to certify a dentist's area of specialty.

Additionally, the Board departs from the ADA's advisory opinion on specialist announcement of credentials in non-specialty interest areas. As mentioned above, the ADA's 5.H.2. advisory opinion provides that, "[t]he organization granting the credential grants certification or diplomate status based on the following: a) the dentist's successful completion of a formal, full-time advanced education program (graduate or postgraduate level) of at least 12 months' duration; and b) the dentist's training and experience; and c) successful completion of an oral and written examination based on psychometric principles." Historically the Board has always deferred to the ADA, but it now seeks a more restrictive rule than advised by the ADA. Therefore, if the governmental interest is truly being advanced, it certainly is more extensive than necessary to serve that interest.

As shown below, there are other ways to address the Board's concerns while also allowing dentists to exercise their right to commercial speech under the First Amendment.

II. The Unconstitutionality of the restriction on specialty advertisements for dentists and Proposed Revisions

The Code of Ethics restriction on special advertising in itself is an impermissible regulation of content-based speech. Dentists who have received accreditation through programs are restricted from publishing information about their field. The field of dentistry has expanded and now includes a wide variety of specialties, including implantology. The Board, who does not have the authority of accrediting programs, have now put themselves in a position that restricts speech on a topic that has been expanded by various qualified programs.

Even if some sort of restriction is found necessary for the advertisement of specialties, the current proposed language remains unconstitutional. The applicable standard is the *Central Hudson* factors, which is the test used by Courts in determining whether a regulation of commercial speech is permissible under the First Amendment. The Texas dentistry board, for example, adopted similar language to the one proposed here. In Texas, the regulation listed the nine (9) areas recognized by the ADA and further provided a general catch-all provision. This general provision required a dentist to complete an educational program of two or more years in an area accredited by the Commission on Dental Accreditation (hereafter "CODA") or become board-certified in a State Dental Board. The Texas Court found the entire regulation unconstitutional. *Parker*, CV 1:14-cv-00191-SS.

In considering the above information, and the clear indication that such a regulation is unconstitutional, Dr. Youmans submits the following language in an alternative to the Board's proposed legislation:

(p) Announcement of Specialization and Limitation of Practice. Dentists who use their eligibility to announce as specialists to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when such is not the case are engaged in unethical conduct. The burden of responsibility is on the specialists to avoid any inference that general practitioners who are associated with specialists are qualified to announce themselves as specialists. A general dentist practicing within a specialty practice shall provide a written disclosure that indicates that services are being provided by a general dentist to be signed by the patient. The Board approves the following specialties:

(i) dental public health;
(ii) endodontics;
(iii) oral and maxillofacial surgery;
(iv) oral pathology;
(v) orthodontics and dentofacial orthopedics;
(vi) pediatric dentistry;
(vii) periodontics;
(viii) prosthodontics;
(ix) oral and maxillofacial radiology;
(x) any other area of dentistry for which a dentist has completed a post-doctoral program consisting of at least two (2) full-time years and which program is accredited by an accreditation agency that is recognized by the United States Department of Education; or must be a diplomate of, or board-eligible for, a national certifying board of a specialty recognized by the American Dental Association, or a diplomate of a board recognized by the American Board of Dental Specialties.

(**additions to proposed legislations are underlined**).

The national certifying boards recognized by the ADA are the same nine (9) specialties contemplated in Chapter 6, Section 5(p)(i)-(ix) of the Board's Rules and Regulations and the same nine (9) specialties historically recognized by this Board. Whereas, the American Board of Dental Specialties ("ABDS") specialties are: oral implantology/implant dentistry, oral medicine, orofacial pain, and anesthesiology.

The language advanced by Dr. Youmans merely adds recognition of the ABDS. The ABDS was formed to offer a specialty-recognition process, similar to the American Board of Medical Specialties, that is not controlled by a private professional/trade association such as the ADA. The ABDS imposes rigorous requirements on applicant certifying boards. For example, the ABDS requires that boards seeking dental specialty recognition have a minimum of two (2) fulltime, formal, advanced educational programs that are a minimum of two (2) years in duration and are presented by recognized educations institutions; or require 400 didactic hours in the specific area and the equivalent of one (1) year of clinical practice.

A certifying board seeking membership in the ABDS also must: 1) reflect a distinct and well-defined area of expertise in dental practice, above and beyond that provided at the level of pre-doctoral dental education; that is founded in evidence-based science; 2) develop a rigorous standard of preparation and evaluation in the dental specialty area; 3) provide psychometric evaluation of the written and oral examination; 4) provide an effective mechanism to maintain certification; and 5) exists as an independent, self-governing entity whose main purpose is to evaluate candidates for board certification.

The documentation and application requirements are numerous, and the ABDS maintains rigorous standards for recognition. As such, the demanding ABDS certification requirements aligns with this Board's concern regarding false or misleading advertisements. When an ABDS certified specialist announces her/his ABDS specialty, the public is guaranteed that the services announced are rendered are by a qualified specialist. The community will not be misled or confused and can be ensured the ABDS specialist is adequately qualified to provide the care. Further, in including the ABDS to the Code of Ethics, the Board will recognize other qualified programs. Such revision will allow the Board to address its state interest while meeting the *Central Hudson* factors.

Moreover, adopting this revision will also ensure that the public's strong interest in the free flow of commercial information is balanced with a qualified professional's right to advertise her/his specialty as guaranteed by the First Amendment.

III. Conclusion

Overall, restricting advertising on areas of specialties violates the First Amendment as an impermissible content-based regulation. Arguably, therefore, the Board should not have any sort of restriction on advertising or publishing information on a specialty area. If the Board decides to continue such restriction, the proposed language remains a violation of the First Amendment. Commercial speech is afforded protection under the First Amendment, and the Board's current language violates those protections. The language proposed herein, allows the Board to align itself under the *Central Hudson* factors and to allow advertisement of other areas of specialties that are approved by other qualified programs.

Dr. Youmans, therefore, again requests this Board amend Chapter 6, Section 5(p)(x) of the proposed Rules and Regulations. In particular, Dr. Youmans requests the Board accept the following language:

> (x) any other area of dentistry for which a dentist has completed a post-doctoral program consisting of at least two (2) full-time years and which program is accredited by an accreditation agency that is recognized by the United States Department of Education; or must be a diplomate of, or board-eligible for, a national certifying board of a specialty recognized by the American Dental Association, or a diplomate of a board recognized by the American Board of Dental Specialties.

This language is consistent with language other dental boards have adopted when their rules and regulations have been challenged for violating the First Amendment. Dr. Youmans hopes the

Board considers not only his First Amendment rights, but the rights of other qualified dental specialists. If the Board does not, Dr. Youmans will have no choice but to adjudicate those rights in Federal District Court.

Respectfully Submitted,

s/ Dr. Stuart Youmans

March 28, 2019

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VIA E-MAIL: Emily.cronbaugh@wyo.gov

Dear Ms. Emily Cronbaugh and the Wyoming Board of Dental Examiners,

This letter is sent on behalf of the American Association of Orthodontists ("AAO"), to provide feedback on proposed revisions to Wyoming's Chapter 6, Code of Ethics, Section 5 (p) Announcement of Specialization and Limitation of Practice (hereinafter referred to as "specialty laws"). We appreciate the opportunity to provide this feedback.

The AAO Supports Wyoming Board of Dental Examiners' Proposed Specialty Laws

The AAO supports regulations that require those who are advertising as "specialists" to have successfully completed a post-doctoral program in a specialty area of dentistry consisting of at least two-full time years and which is accredited by an accreditation agency that is recognized by the U.S. Department of Education (U.S. DOE). The AAO is opposed to dentists with less education and training being able to advertise on the same level or in the same manner or with similar words used to describe those who have graduated from accredited programs that receive accreditation from an agency recognized by the U.S. DOE. An accreditation standard backed by the U.S. DOE best assures Wyoming citizens that an individual who truthfully holds himself or herself out as a specialist has met high standards for education and training.

As such, the AAO supports the changes the Wyoming Board has already made to its specialty laws under the Dental Practice Act:

Chapter 6, Section 5(p) Announcement of Specialization and Limitation of Practice.

> (p)Dentists who use their eligibility to announce as specialists to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when such is not the case are engaged in unethical conduct. The burden of responsibility is on the specialists to avoid

any inference that general practitioners who are associated with specialists are qualified to announce themselves as specialists. A general dentist practicing within a specialty practice shall provide a written disclosure that indicates that services are being provided by a general dentist to be signed by the patient. The Board approves the following specialties:
(i) dental public health;
(ii) endodontics;
(iii) oral and maxillofacial surgery;
(iv) oral pathology;
(v) orthodontics and dentofacial orthopedics;
(vi) pediatric dentistry;
(vii) periodontics;
(viii) prosthodontics;
(ix) oral and maxillofacial radiology;
(x) any other area of dentistry for which a dentist has completed a post-doctoral program consisting of at least two (2) full-time years and which program is accredited by an accreditation agency that is recognized by the United States Department of Education.

In closing, the AAO thanks the Wyoming Board of Dental Examiners for its thoughtful revisions that best protect the health and safety of Wyoming's patients. Should you or the Board have any other questions, please feel free to contact Gianna Hartwig, Regional State Affairs Coordinator, at 314-292-6527 or ghartwig@aaortho.org.

Thank you for your time and attention to this matter.

Sincerely,

Myron

Dr. Myron Guymon
AAO Trustee for the Rocky Mountain society of Orthodontists

CHAPTER 1

GENERAL PROVISIONS

Section 1. Authority. These Board Rules are adopted to implement the Board's authority under the Act and the WAPA as it relates to the licensure and discipline of dentists and dental hygienists and regulation of the practice of dentistry and dental hygiene in Wyoming.

Section 2. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to establish administrative procedures.

Section 3. Definitions.

(a) "Act" means the Wyoming Dental Practice Act, Wyoming Statute 33-15-101 through 133.

(b) "ADA" means American Dental Association.

(c) "ADHA" means American Dental Hygiene Association.

(d) "Advertising" means a communication to the public about a dentist or services offered by a dentist.

(e) "ARC" means Application Review Committee.

(f) "BLS" means basic life support for healthcare providers.

(g) "Board Rules" means the administrative rules and regulations promulgated by the Board.

(h) "CDCA" means Commission on Dental Competency Assessments (formerly North East Regional Board).

(i) "CE" means continuing education.

(j) "CITA" means Council of Interstate Testing Agencies.

(k) "CODA" means Commission on Dental Accreditation.

(l) "CPR" means Cardiopulmonary Resuscitation.

(m) "CRDTS" means Central Regional Dental Testing Service.

(n) "DANB" means Dental Assisting National Board.

(o) "DC" means Disciplinary Committee.

(p) “Dentist-Patient Relationship” means a formal inferred relationship between the dentist and a patient of record, which is established once the dentist assumes or undertakes the dental care or treatment of a patient in the state where the patient resides. A dentist-patient relationship is assumed to have been created after there is a physical examination of a patient (e.g., when a patient is seen in a dentist's office), but is not assumed in others (e.g., when a dentist performs a physical examination as a health screening procedure at a health fair event).

(q) “EKG” means Electrocardiogram.

(r) “Hands on” means involving or offering active participation rather than theory.

(s) “NBDE” means National Board Dental Examination.

(t) “NBDHE” means National Board Dental Hygiene Examination.

(u) “PBIS” means Professional Background Information Service.

(v) “SRTA” means Southern Regional Testing Agency.

(w) “Supervision” of dental auxiliary means the act of overseeing or directing duties performed by a dental auxiliary. Types of supervision may include:

(i) “General Supervision” of a dental auxiliary means that a dentist has diagnosed and authorized the procedures which are being carried out; however, a dentist need not be present when the authorized procedures are being performed;

(ii) “Direct Supervision” of a dental auxiliary means that a dentist is physically present in the dental office, a dentist has diagnosed the condition to be treated, a dentist has authorized the procedure to be performed, and before dismissal of the patient, a dentist has approved the work performed by the auxiliary; or

(iii) “Indirect Supervision” of a dental auxiliary means that a dentist is physically present in the dental office, a dentist has diagnosed the condition to be treated, and a dentist has authorized the procedure to be performed.

(x) “WAPA” means Wyoming Administrative Procedure Act, W.S. 16-3-101 through 115.

(y) “WREB” means Western Regional Examining Board.

Section 4. Board Office. The Board Office shall be located at 2001 Capitol Avenue, Cheyenne, Wyoming.

Section 5. Board Meetings. The Board shall set its regular meetings by resolution.

Section 6. Reference by Incorporation.

(a) Each rule and code incorporated by reference is further identified as follows:

(i) Principles of Ethics and Code of Professional Conduct, excluding Principles 5.H. and 5.I., adopted by the ADA and revised November 2016, found at: http://dental.wyo.gov/board/rules.

(ii) Bylaws and Code of Ethics, adopted by ADHA and effective on June 13, 2016, found at: http://dental.wyo.gov/board/rules.

(iii) Dental Assisting National Board's Code of Professional Conduct, adopted by and revised April 2015, found at: http://dental.wyo.gov/board/rules.

(iv) Summary of Infection Prevention Practices in Dental Settings: Basic Expectations for Safe Care, adopted by Centers for Disease Control and Prevention and revised March 2016, found at: http://dental.wyo.gov/board/rules.

(v) Chapter 2 - Uniform Rules for Contested Case Practice and Procedure, adopted by the Office of Administrative Hearings and effective on October 17, 2014, found at: http://dental.wyo.gov/board/rules.

(vi) Chapter 2 - Uniform Procedures, Fees, Costs, and Charges for Inspection, Copying, and Producing Public Records, adopted by the Department of Administration and Information and effective on September 6, 2016, found at http://dental.wyo.gov/board/rules.

(b) For these rules incorporated by reference:

(i) The Board has determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules;

(ii) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (a) of this section; and

(iii) The incorporated rules are maintained at the Board Office and are available for public inspection and copying at cost at the same location.

Section 7. Public Records Inspection. Public records inspections shall be conducted pursuant to the Department of Administration and Information's rules concerning public records.

Section 8. Change of Name, Address, or Telephone Number. Each applicant and licensee shall notify the Board in writing of any change to their legal name, home address, business address, e-mail address, or telephone number within thirty (30) days of the change.

CHAPTER 3

REQUIREMENTS FOR LICENSURE AND RENEWAL

Section 1. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to establish the requirements for licensure, annual license renewal, and volunteer certificates.

Section 2. Application Status.

(a) For those applicants seeking licensure, competency shall be met during the timeframe identified immediately prior to submitting a completed application.

(b) Applications shall be deemed "complete" when all necessary documentation has been received by the Board office.

(c) Applications shall expire one (1) year after submission. If an application expires, an applicant shall submit a new application, including payment of fee.

Section 3. ARC Review of Applications.

(a) An applicant for licensure or certification shall have committed no acts that are grounds for disciplinary action, or if an act was committed, the ARC has found after investigation that sufficient restitution has been made and the applicant no longer presents a threat to the public safety.

(b) If the ARC questions an applicant's competency, the ARC may request an applicant complete a regional clinical examination or other program.

Section 4. Jurisprudence Examination.

(a) The Board shall issue a dental or dental hygiene license to any applicant who meets the qualifications for licensure identified in Sections 5, 6, 7, 8, and 13 and successfully passes the jurisprudence examination.

(b) The ARC shall recommend eligibility to sit for the jurisprudence examination.

(c) To successfully pass the jurisprudence examination, the applicant shall score at least a 75% on the exam.

Section 5. Dental Licensure by Examination.

(a) Eligibility. An applicant may seek dental licensure by examination if the applicant graduated from a CODA accredited U.S. or Canadian Dental School within twelve (12) months.

(b) Application Requirements. Applicant shall:

(i) Submit a completed application and payment of fee;

(ii) Successfully pass the NBDE;

(iii) Successfully pass a regional clinical examination that indicates competency in:

(A) Endodontics, including access opening of a posterior tooth and access, canal instrumentation and obturation of an anterior tooth;

(B) Fixed Prosthodontics including one of the following:

(I) A full crown procedure;

(II) An indirect cast class II inlay;

(III) An indirect cast class II onlay; or

(IV) Cast 3/4 crown.

(C) Periodontics, including scaling and root planing on a patient in a clinical setting; and

(D) Restorative Dentistry, including a class II amalgam or composite preparation and restoration and a class III composite preparation and restoration on a patient in a clinical setting.

(I) Slot preps shall not be accepted.

(II) If an indirect inlay, onlay, or 3/4 crown procedure is done on a patient, the applicant shall be required to perform one (1) additional restorative procedure as listed above.

Section 6. Dental Licensure by Endorsement.

(a) Eligibility. An applicant may seek dental licensure by endorsement if the applicant has a license in good standing in another jurisdiction with licensure requirements as stringent as Wyoming.

(b) Application Requirements. Applicant shall:

(i) Submit a completed application and payment of fee;

(ii) Complete requirements identified in Section 5(b)(ii) and (iii). If applicant successfully passed a regional clinical examination as identified in Section 5(b)(iii) which did not include a fixed prosthodontics component, applicant shall submit evidence of active clinical practice of 5,000 hours in the last five (5) years or verification of completion of a general practice residency (GPR), advanced education in general dentistry (AEGD), or other specialty practice residency as identified in Chapter 6;

(iii) Submit a completed application to PBIS and authorize PBIS to report to the Board; and

(iv) If an applicant has been out of clinical practice for less than five (5) years, the applicant shall submit the following evidence to demonstrate competency:

(A) Active clinical practice of 1,000 hours in the last twelve (12) months;

(B) Successful completion of a regional clinical examination within twelve (12) months; or

(C) Completion of ten (10) hours of hands-on clinical continuing education for each year not actively practicing.

(v) If an applicant has been out of active clinical practice for more than five (5) years, the applicant shall submit the following evidence to demonstrate competency:

(A) Successful completion of a regional clinical examination within twelve (12) months; and

(B) Completion of ten (10) hours of hands-on clinical continuing education for each year not actively practicing.

Section 7. Dental Hygiene Licensure by Examination.

(a) Eligibility. An applicant may seek dental hygiene licensure by examination if the applicant graduated from a CODA accredited U.S. or Canadian Dental Hygiene School or program within twelve (12) months.

(b) Application Requirements. Applicant shall:

(i) Submit a completed application and fees;

(ii) Successfully pass the NBDHE; and

(iii) Successfully pass the CRDTS, WREB, CDCA, CITA, or SRTA exam.

Section 8. Dental Hygiene Licensure by Endorsement.

(a) Eligibility. An applicant may seek dental hygiene licensure by endorsement if the applicant has a license in good standing in another jurisdiction with licensure requirements as stringent as Wyoming.

(b) Application Requirements. Applicant shall:

(i) Submit a completed application and payment of fee;

(ii) Submit a completed application to PBIS and authorize PBIS to report to the Board; and

(iii) If an applicant has been out of active clinical practice for less than five (5) years, the applicant shall submit the following evidence to demonstrate competency:

(A) Active clinical practice of 800 hours in the last twelve (12) months;

(B) Successful completion of a regional clinical examination within twelve (12) months; or

(C) Completion of ten (10) hours of hands-on continuing education for each year not actively practicing.

(iv) If an applicant has been out of clinical practice for more than five (5) years, the applicant shall submit the following evidence to demonstrate competency:

(A) Successful completion of a regional clinical examination within twelve (12) months; and

(B) Completion of ten (10) hours of hands-on clinical continuing education for each year not actively practicing.

Section 9. Annual Licensure Renewal.

(a) Expiration.

(i) All dental and dental hygiene licenses shall expire December 31 of each year.

(ii) Unless a licensee timely renews their license, the licensee shall not practice after December 31.

(b) Renewal Application. A dental or dental hygiene licensee seeking renewal shall:

(i) Submit a completed renewal application and payment of fee;

(ii) Verify current certification in BLS; and

(iii) Acquire sixteen (16) hours of CE that complies with Section 10.

(c) Competency Requirement. After five (5) years of inactive clinical practice, an applicant shall demonstrate competency by successful completion of regional clinical examination or apply for a non-clinical license.

Section 10. Continuing Education Requirements.

(a) Renewal Period. CE shall be obtained January 1 of even years through December 31 of odd years. The first CE period begins on January 1st following the date the license was issued.

(i) For a new hygienist with a license issued in an even year, the licensee shall submit eight (8) hours of CE.

(ii) For a new dentist with a license issued in an even year, the licensee shall submit eight (8) hours of CE, three (3) of which must be related to the responsible prescribing of controlled substances.

(b) CE Content.

(i) The subject matter shall relate directly to the professional competence of the licensee or patient care rendered by the licensee. Acceptable CE subjects include, but are not limited to, the following clinical subjects relating to the dental profession: oral surgery, operative dentistry, oral pathology, preventive dentistry, orthodontics, clinical patient management, pediatric dentistry, oral biology, periodontics, prosthodontics, dental materials, implantology, radiology, infection control, endodontics, management of medical emergencies, dental anesthesiology, professional ethics, and pharmacology.

(ii) Unacceptable subjects include, but are not limited to, practice building and business management courses.

(iii) CE may be acquired in any jurisdiction.

(iv) CE earned in excess of the sixteen (16) hours required for renewal may not be carried forward to apply toward the next renewal period.

(c) Of the required sixteen (16) hours, a dentist shall obtain three (3) hours of CE related to the responsible prescribing of controlled substances every two (2) years. This requirement shall not apply to dental hygienists.

(d) Waiver. The Board may grant a waiver for CE requirements to licensees who

have petitioned and demonstrated just cause based on extenuating circumstances.

(e) CE Audit.

(i) The licensee shall maintain evidence of CE compliance for at least four (4) years after the renewal period in which the course was applied.

(ii) Failure to provide the documents requested for audit within thirty (30) days may subject the licensee to disciplinary action.

(iii) If the Board disallows any CE, the licensee shall have one hundred twenty (120) days from notice of such disallowance to:

(A) Provide evidence that the disallowed CE meet the criteria established by these rules;

(B) Provide documentation of having acquired additional CE during the required time frame; or

(C) Cure the disallowance by acquiring the required number of CE.

(D) Any CE activity completed past the renewal date to cure a disallowance may not be reported on subsequent applications for license renewal.

(iv) If a licensee fails to complete the required number of CE, the licensee shall be subject to disciplinary action.

Section 11. Failure to Timely Renew.

(a) Unlicensed Practice. Failure to timely renew may subject the licensee to disciplinary action for unlicensed practice.

(b) Administrative Grace Period.

(i) The administrative grace period shall be from January 1st to March 31st annually.

(ii) Licensees who failed to timely renew may apply for renewal during the administrative grace period. However, licensees shall not practice until the Board approves their license.

(iii) Licensees who failed to timely renew shall:

(A) Submit a completed renewal application and payment of fee; and

(B) Verify current certification in BLS.

(iv) On April 1st, any license not renewed shall lapse.

Section 12. Lapsed License.

(a) If a dental license lapses, the dentist shall apply for relicensure.

(b) If a dental hygiene license lapses, the dental hygienist may restore their lapsed license until December 31st of the year the license lapsed. After December 31st, the dental hygienist shall apply for relicensure.

Section 13. Dental and Dental Hygiene Relicensure.

(a) Eligibility. An applicant may seek dental or dental hygiene relicensure if the applicant has been licensed in Wyoming and allowed his or her license to lapse.

(b) Application Requirements. Applicant shall:

(i) Submit a completed relicensure application and payment of fee;

(ii) Verify current certification in BLS; and

(iii) Successfully pass the jurisprudence examination.

(c) Competency Requirement for Return to Practice. An applicant applying for relicensure who has not actively practiced in five (5) years shall also demonstrate competency by:

(i) Successful completion of a regional clinical examination within twelve (12) months; and

(ii) Submitting evidence of completion of ten (10) hours of hands-on clinical continuing education for each year not actively practicing.

Section 14. Reinstatement.

(a) Eligibility. An applicant may seek to have his or her dental or dental hygiene license reinstated if the applicant's Wyoming dental or dental hygiene license has been revoked, surrendered, suspended, conditioned, or restricted.

(b) Application Requirements. Applicant shall:

(i) Submit a completed application and payment of fee;

(ii) Verify current certification in BLS;

(iii) Submit evidence of complying with the requirements of a previous Board order;

(iv) Submit evidence of applicant's ability to safely and competently practice; and

(v) Submit evidence demonstrating just cause for reinstatement.

Section 15. Non-Clinical Licensure.

(a) Eligibility. An applicant that currently holds or has previously held a license in good standing to practice dentistry may seek a non-clinical license if the applicant does not engage in active clinical practice. This limited license is intended for those applicants teaching, examining, consulting, reviewing, engaging in administrative oversight, or those who do not intend to practice clinical dentistry.

(b) Application Requirements. Applicant shall:

(i) Submit a completed application and payment of fee; and

(ii) Submit a personal statement describing applicant's intended non-clinical practice.

(c) Renewal Application. A non-clinical licensee seeking renewal shall submit a completed renewal application and payment of fee.

(d) Reactivation. To reactivate a non-clinical license, the licensee shall:

(i) Submit a completed application and payment of fee;

(ii) Verify current certification in BLS;

(iii) Successfully pass the jurisprudence examination; and

(iv) Demonstrate competency by:

(A) Successful completion of a regional clinical examination within twelve (12) months; and

(B) Submitting evidence of completion of ten (10) hours of hands-on clinical continuing education for each year not actively practicing.

Section 16. Volunteer's Certificate. Any applicant that meets the qualifications under Wyoming Statute 33-15-131 shall submit a completed application.

Section 17. Temporary Educator's License. Any applicant that meets the qualifications under W.S. 33-15-133 shall submit a completed application.

CHAPTER 6

CODE OF ETHICS FOR DENTISTS

Section 1. Patient Autonomy. This principle expresses the concept that professionals have a duty to treat the patient according to the patient's desires, within the bounds of accepted treatment, and to protect the patient's confidentiality. Under this principle, the dentist's primary obligations include involving the patients in treatment decisions in a meaningful way, with due consideration being given to the patient's needs, desires and abilities, and safeguarding the patient's privacy.

(a) Patient Involvement. The dentist shall inform the patient of the proposed treatment, and any reasonable alternatives, in a manner that allows the patient to become involved in treatment decisions.

(b) Patient Records. Dentists shall safeguard the confidentiality of patient records. Dentists shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of a patient or another dental practitioner, dentists shall provide any information, including X-rays that will be beneficial for the future treatment of that patient.

Section 2. Nonmaleficence. This principle expresses the concept that professionals have a duty to protect the patient from harm. Under this principle, the dentist's primary obligations include keeping knowledge and skills current, knowing one's own limitations and when to refer to a specialist or other professional, and knowing when and under what circumstances delegation of patient care to auxiliaries is appropriate.

(a) Education. The privilege of dentists to be accorded professional status rests primarily in the knowledge, skill and experience with which they serve their patients and society. All dentists, therefore, shall keep their knowledge and skill current through continuing education.

(b) Consultation and Referral. Dentists shall seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those who have special skills, knowledge, and experience. When patients visit or are referred to specialists or consulting dentists for consultation:

(i) The specialists or consulting dentists upon completion of their care shall return the patient, unless the patient expressly reveals a different preference, to the referring dentist, or, if none, to the dentist of record for future care; and

(ii) The specialists shall be obliged when there is no referring dentist and upon completion of their treatment to inform patients when there is a need for further dental care.

(c) Use of Auxiliary Personnel. Dentists shall be obliged to protect the health of their patients by only assigning to qualified auxiliaries those duties which can be legally delegated.

Dentists shall be further obliged to prescribe and supervise the patient care provided by all auxiliary personnel working under their direction.

(d) Patient Abandonment. Once a dentist has undertaken a course of treatment, the dentist shall not discontinue that treatment without giving adequate notice and the opportunity to obtain the services of other dentists. Care shall be taken that the patient's oral health is not jeopardized in the process.

(e) Personal Relationships. Dentists, because of their position of power and authority over both patients and staff, shall exercise extreme discretion in their conduct and avoid any form of sexual coercion and/or harassment.

(f) Personal Impairment. It is unethical for a dentist to practice while abusing controlled substances, alcohol, or other chemical agents that impair the ability to practice. All dentists have an ethical obligation to urge chemically impaired colleagues to seek treatment. Dentists with first-hand knowledge that a colleague is practicing dentistry when so impaired have an ethical responsibility to report such evidence to the professional assistance committee of a dental society.

(g) Duty to inform. When, during the course of dental treatment, an unexpected or undesirable outcome is obtained, the dentist has the duty to inform the patient of such outcome and to make arrangements for any follow up or additional treatment deemed necessary.

Section 3. Beneficence. This principle expresses the concept that professionals have a duty to act for the benefit of others. Under this principle, the dentist's primary obligation is the competent and timely delivery of dental care within the bounds of clinical circumstances presented by the patient, with due consideration being given to the needs, desires, and values of the patient. The same ethical considerations apply whether the dentist engages in fee-for-service, managed care or some other practice arrangement. Dentists may choose to enter into contracts governing the provisions of care to a group of patients; however, contract obligations do not excuse dentists from their ethical duty to put the patient's welfare first.

(a) Community Service. Since dentists have an obligation to use their skills, knowledge and experience for the improvement of the dental health of the public and are encouraged to be leaders in their community, dentists involved in such service shall conduct themselves in such a manner as to maintain or elevate the esteem of the profession.

(b) Government of a Profession. Every profession owes society the responsibility to regulate itself. Such regulation is achieved largely through the influence of the professional societies. All dentists, therefore, have the dual obligation of making themselves a part of a professional society and of observing its rules of ethics.

(c) Research and Development. Dentists have the obligation of making the results and benefits of their investigative efforts available to all when they are useful in safeguarding or promoting the health of the public.

(d) Patents and Copyrights. Patents and copyrights may be secured by dentists provided that such patents and copyrights shall not be used to restrict research or practice.

(e) Abuse and Neglect. Dentists shall become familiar with the signs of abuse and neglect and to report suspected cases to the proper authorities, consistent with state laws.

Section 4. Justice. This principle expresses the concept that professionals have a duty to be fair in their dealings with patients, colleagues and society. Under this principle, the dentist's primary obligations include dealing with people justly and delivering dental care without prejudice. In its broadest sense, this principle expresses the concept that the dental professional shall actively seek allies throughout society on specific activities that will help improve access to care for all.

(a) Patient Selection. While dentists, in serving the public, may exercise reasonable discretion in selecting patients for their practices, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, color, sex or national origin.

(b) Patients with Bloodborne Pathogens. It is unethical to decline treatment to any individual based on the fact that they are infected with a bloodborne pathogen such as Human Immunodeficiency Virus, Hepatitis B virus, Hepatitis C virus or any others.

(c) Emergency Service. Dentists shall make reasonable arrangements for the emergency care of their patients of record. Specifically, dentists shall make it possible for their patients of record to contact them after business hours. Additionally, dentists shall make reasonable arrangements with a colleague to provide emergency care whenever they are unavailable for such service.

(d) Justifiable Criticism. Dentists shall report to the appropriate reviewing agency as determined by the local component society instances of gross or continual faulty treatment by other dentists. Patients shall be informed of their present oral health status without disparaging comment about prior services.

(e) Expert Testimony. Dentists may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.

(f) Rebate and Split Fees. Dentists shall not accept or tender "rebates" or "split fees."

Section 5. Veracity. This principle expresses the concept that professionals have a duty to be honest and trustworthy in their dealings with people. Under this principle, the dentist's primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity.

(a) Representation of Care. Dentists shall not represent the care being rendered to their patients in a false or misleading manner. A dentist who represents that treatment or

diagnostic techniques recommended or performed by the dentist has the capacity to diagnose, cure or alleviate diseases, infections or other conditions, when such representations are not based upon accepted scientific knowledge or research is acting unethically.

(b) Dental Amalgam. Based on current scientific data the Board has determined that the removal of amalgam restorations from the non-allergic patient for the alleged purpose of removing toxic substances from the body, when such treatment is performed solely at the recommendation or suggestion of the dentist is improper and unethical. The same principle of veracity applies to the dentist's recommendation concerning the removal of any dental restorative material.

(c) Representation of Fees. Dentists shall not represent the fees being charged for providing care in a false or misleading manner.

(d) Waiver of Copayment. A dentist who accepts a third party payment under a copayment plan as payment in full without disclosing to the third party that the patient's payment portion will not be collected, is engaged in overbilling. The essence of this ethical impropriety is deception and misrepresentation; an overbilling dentist makes it appear to the third party that the charge to the patient for services rendered is higher than it actually is.

(e) Overbilling. A dentist shall not increase a fee to a patient solely because the patient is covered under a dental benefits plan.

(f) Treatment Dates. A dentist who submits a claim form to a third party reporting incorrect treatment date for the purpose of assisting a patient -in obtaining benefits under a dental plan, which benefits would otherwise be disallowed, is engaging in making an unethical, false or misleading representation to such third party.

(g) Dental Procedures. A dentist who incorrectly describes on a third party claim form a dental procedure in order to receive a greater payment or reimbursement or incorrectly makes a non-covered procedure appear to be a covered procedure on such a claim form is engaged in making an unethical, false or misleading representation to such third party.

(h) Unnecessary Services. A dentist shall not recommend and perform unnecessary dental services or procedures.

(i) Devices and Therapeutic Methods. Except for formal investigative studies, dentists shall prescribe, dispense, or promote only those devices, drugs and other agents whose complete formulae are available to the dental profession. Dentists shall not hold out as exclusive any device, agent, method or technique if that representation would be false or misleading in any material respect.

(j) Marketing or Sale of Products or Procedures. Dentists who, in the regular conduct of their practices, engage in or employ auxiliaries in the marketing or sale of products or procedures to their patients shall take care not to exploit the trust inherent in the dentist-patient relationship for their own financial gain. Dentists shall not induce patients to purchase products

or undergo procedures by misrepresenting the product's value, the necessity of the procedure or the dentist's professional expertise in recommending the product or procedure. Dentist shall disclose to their patients all relevant information the patient needs to make an informed purchase decision.

(k) Professional Announcement. In order to properly serve the public, dentists shall represent themselves in a manner that contributes to the esteem of the profession. Dentists shall not misrepresent their training and competence in any way that would be false or misleading in any material respect.

(l) Advertising. Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect.

(m) Referral Services. There are two basic types of referral services for dental care: not-for-profit and the commercial. The not-for-profit is commonly organized by dental societies or community services. It is open to all qualified practitioners in the area served. A fee is sometimes charged the practitioner to be listed with the service. A fee for such referral services is for the purpose of covering the expense of the service and has no relation to the number of patients referred. In contrast, some commercial referral services restrict access to the referral service to a limited number of dentists in a particular geographic area. Contractual arrangements whereby the dentist is paying the referral service for patients referred on a per patient basis shall be strictly prohibited. A dentist is allowed to pay for any advertising permitted by the Code, but is generally not permitted to make payments to another person or entity for the referral of a patient for professional services.

(n) Name of Practice. Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical. Use of the name of a dentist no longer actively associated with the practice may be continued for a period not to exceed one (1) year.

(o) Dentist Leaving Practice. Dentists leaving a practice who authorize continued use of their names should seek advice on the legal implications of this action. With permission of a departing dentist, his or her name may be used for more than one year, if, after the one year grace period has expired, prominent notice is provided to the public through such mediums as a sign at the office and a short statement on stationery and business cards that the departing dentists has retired from the practice.

(p) Announcement of Specialization. A dentist shall not advertise or otherwise hold himself or herself out to the public as a specialist, or use any variation of the term, in an area of practice if the communication is false or misleading.

(i) It shall be false or misleading for a dentist to hold himself or herself out to the public as a specialist, or any variation of that term, in a practice area unless the dentist:

(A) has completed a qualifying postdoctoral educational program in that area as set forth in subsection (ii) of this rule; or

(B) holds a current certification by a qualifying specialty board or organization as set forth in subsection (iii) of this rule.

(ii) For purposes of this rule, a "qualifying postdoctoral educational program" is a postdoctoral advanced dental educational program accredited by an agency recognized by the U.S. Department of Education.

(iii) In determining whether an organization is a qualifying specialty board or organization, the Board shall consider the following criteria:

(A) whether the organization requires completion of an educational program with didactic, clinical, and experiential requirements appropriate for the specialty or subspecialty field of dentistry in which the dentist seeks certification, and the collective didactic, clinical and experiential requirements are similar in scope and complexity to a qualifying postdoctoral educational program. Programs that require solely experiential training, continuing education classes, on-the-job training, or payment to the specialty board shall not constitute a qualifying specialty board or organization;

(B) whether the organization requires all dentists seeking certification to pass a written or oral examination, or both, that tests the applicant's knowledge and skill in the specialty or subspecialty area of dentistry and includes a psychometric evaluation for validation;

(C) whether the organization has written rules on maintenance of certification and requires periodic recertification;

(D) whether the organization has written by-laws and a code of ethics to guide the practice of its members;

(E) whether the organization has staff to respond to consumer and regulatory inquiries; and

(F) whether the organization is recognized by another entity whose primary purpose is to evaluate and assess dental specialty boards and organizations.

(iv) A dentist qualifying under subsection (iii) of this rule and advertising or otherwise holding himself or herself out to the public as a specialist, or any variation of that term, shall disclose in the advertisement or communication the specialty board by which the dentist was certified and provide information about the certification criteria or where the certification criteria may be located.

(v) A dentist shall maintain documentation of either completion of a qualifying postdoctoral educational program or of his or her current specialty certification and

provide the documentation to the Board upon request. Dentists shall maintain documentation demonstrating that the certifying board qualifies under the criteria in subsection (iii) of this rule and provide the documentation to the Board upon request.

(q) Superior Designation. A dentist shall not hold himself out as an expert or imply superiority.

(r) General Practitioner Announcement of Services. General dentists who wish to announce the services available in their practices are permitted to announce the availability of those services so long as they avoid any communication that express or imply specialization. General dentist shall also state that the specialty services are being provided by general dentists. That disclaimer shall appear in same font and size as the advertised specialty service. A dentist shall not announce available services in any way that would be false or misleading in any material respect.

(s) Dental Practice Ownership Disclosure. If the name or ownership of the dental practice differs from the dentist(s) providing the services, the dentist providing services shall provide a written disclosure that indicates any and all individuals with a financial interest in the dental practice to be signed by the patient.

Section 6. Compliance with Code of Ethics. Dentists shall comply with the provisions of this Chapter, the ADA's Principles of Ethics and Code of Professional Conduct, the ADHA's Bylaws and Code of Ethics, and the Centers for Disease Control's Summary of Infection Prevention Practices in Dental Settings as referenced in Chapter 1.

Section 7. Prescribing Opioids.

(a) When considering prescribing opioids, dentists shall conduct a medical and dental history to determine current medications, potential drug interactions and history of substance abuse.

(b) Dentists shall register with and utilize prescription drug monitoring programs (PDMP) to promote the appropriate use of controlled substances for legitimate medical purposes, while deterring the misuse, abuse and diversion of these substances.

(c) Dentists shall have a discussion with patients regarding their responsibilities for preventing misuse, abuse, storage and disposal of prescription opioids.

(d) Dentists shall consider treatment options that utilize best practices to prevent exacerbation of or relapse of opioid misuse.

(e) Dentists shall consider nonsteroidal anti-inflammatory analgesics as the first-line therapy for acute pain management.

(f) Dentists shall recognize multimodal pain strategies for management for acute postoperative pain as a means for sparing the need for opioid analgesics.

(g) Dentists shall consider coordination with other treating doctors, including pain specialists when prescribing opioids for management of chronic orofacial pain.

(h) Dentists who are practicing in good faith and who use professional judgment regarding the prescription of opioids for the treatment of pain shall not be held responsible for the willful and deceptive behavior of patients who successfully obtain opioids for non-dental purposes.

Section 8. Morbidity/Mortality Reporting Requirements.

(a) All licensees shall report any morbidity, mortality, or other incident that results in temporary or permanent physical or mental injury of a patient requiring hospitalization to the Board within thirty (30) days.

(b) All licensees shall provide the following documents:

(i) Detailed description of dental procedures performed;

(ii) Names of all licensees involved in procedure;

(iii) All relevant patient records; and

(iv) Detailed description of sedation procedures used, if any.

(c) The Board may request other information or materials as it deems necessary.

CHAPTER 1

GENERAL PROVISIONS

Section 1. Authority. These Board Rules are adopted to implement the Board's authority under the Act and the WAPA as it relates to the licensure and discipline of dentists and dental hygienists and regulation of the practice of dentistry and dental hygiene in Wyoming.

Section 2. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to establish administrative procedures.

Section 3. Definitions.

(a) "Act" means the Wyoming Dental Practice Act, Wyoming Statute 33-15-101 through 133.

(b) "ADA" means American Dental Association.

(c) "ADHA" means American Dental Hygiene Association.

(d) "Advertising" means a communication to the public about a dentist or services offered by a dentist.

(e) "ARC" means Application Review Committee.

(f) "BLS" means basic life support for healthcare providers.

(g) "Board Rules" means the administrative rules and regulations promulgated by the Board.

(h) "CDCA" means Commission on Dental Competency Assessments (formerly North East Regional Board).

(i) "CE" means continuing education.

(j)~~(i)~~ "CITA" means Council of Interstate Testing Agencies.

(k)~~(j)~~ "CODA" means Commission on Dental Accreditation.

(l)~~(k)~~ "CPR" means Cardiopulmonary Resuscitation.

(m)~~(l)~~ "CRDTS" means Central Regional Dental Testing Service.

(n)~~(m)~~ "DANB" means Dental Assisting National Board.

(o)~~(n)~~ "DC" means Disciplinary Committee.

(p)~~(o)~~ "Dentist-Patient Relationship" means a formal inferred relationship between the dentist and a patient of record, which is established once the dentist assumes or undertakes the dental care or treatment of a patient in the state where the patient resides. A dentist-patient relationship is assumed to have been created after there is a physical examination of a patient (e.g., when a patient is seen in a dentist's office), but is not assumed in others (e.g., when a dentist performs a physical examination as a health screening procedure at a health fair event).

(q)~~(p)~~ "EKG" means Electrocardiogram.

(r)~~(q)~~ "Hands on" means involving or offering active participation rather than theory.

(s)~~(r)~~ "NBDE" means National Board Dental Examination.

(t)~~(s)~~ "NBDHE" means National Board Dental Hygiene Examination.

(u)~~(t)~~ "PBIS" means Professional Background Information Service.

(v)~~(u)~~ "SRTA" means Southern Regional Testing Agency.

(w)~~(v)~~ "Supervision" of dental auxiliary means the act of overseeing or directing duties performed by a dental auxiliary. Types of supervision may include:

(i) "General Supervision" of a dental auxiliary means that a dentist has diagnosed and authorized the procedures which are being carried out; however, a dentist need not be present when the authorized procedures are being performed;

(ii) "Direct Supervision" of a dental auxiliary means that a dentist is physically present in the dental office, a dentist has diagnosed the condition to be treated, a dentist has authorized the procedure to be performed, and before dismissal of the patient, a dentist has approved the work performed by the auxiliary; or

(iii) "Indirect Supervision" of a dental auxiliary means that a dentist is physically present in the dental office, a dentist has diagnosed the condition to be treated, and a dentist has authorized the procedure to be performed.

(x)~~(w)~~ "WAPA" means Wyoming Administrative Procedure Act, W.S. 16-3-101 through 115.

(y)~~(x)~~ "WREB" means Western Regional Examining Board.

Section 4. Board Office. The Board Office shall be located at 2001 Capitol Avenue, Cheyenne, Wyoming.

Section 5. Board Meetings. The Board shall set its regular meetings by resolution.

Section 6. Reference by Incorporation.

(a) Each rule and code incorporated by reference is further identified as follows:

(i) Principles of Ethics and Code of Professional Conduct, excluding Principles 5.H. and 5.I., adopted by the ADA and revised November 2016, found at: http://dental.wyo.gov/board/rules.

(ii) Bylaws and Code of Ethics, adopted by ADHA and effective on June 13, 2016, found at: http://dental.wyo.gov/board/rules.

(iii) Dental Assisting National Board's Code of Professional Conduct, adopted by and revised April 2015, found at: http://dental.wyo.gov/board/rules.

(iv) Summary of Infection Prevention Practices in Dental Settings: Basic Expectations for Safe Care, adopted by Centers for Disease Control and Prevention and revised March 2016, found at: http://dental.wyo.gov/board/rules.

(v) Chapter 2 - Uniform Rules for Contested Case Practice and Procedure, adopted by the Office of Administrative Hearings and effective on October 17, 2014, found at: http://dental.wyo.gov/board/rules.

(vi) Chapter 2 - Uniform Procedures, Fees, Costs, and Charges for Inspection, Copying, and Producing Public Records, adopted by the Department of Administration and Information and effective on September 6, 2016, found at http://dental.wyo.gov/board/rules.

(b) For these rules incorporated by reference:

(i) The Board has determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules;

(ii) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (a) of this section; and

(iii) The incorporated rules are maintained at the Board Office and are available for public inspection and copying at cost at the same location.

Section 7. Public Records Inspection. Public records inspections shall be conducted pursuant to the Department of Administration and Information's rules concerning public records.

Section 8. Change of Name, Address, or Telephone Number. Each applicant and licensee shall notify the Board in writing of any change to their legal name, home address, business address, e-mail address, or telephone number within thirty (30) days of the change.

CHAPTER 3

REQUIREMENTS FOR LICENSURE AND RENEWAL

Section 1. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to establish the requirements for licensure, annual license renewal, and volunteer certificates.

Section 2. Application Status.

(a) For those applicants seeking licensure, competency shall be met during the timeframe identified immediately prior to submitting a completed application.

(b) Applications shall be deemed "complete" when all necessary documentation has been received by the Board office.

(c) Applications shall expire one (1) year after submission. If an application expires, an applicant shall submit a new application, including payment of fee.

Section 3. ARC Review of Applications.

(a) An applicant for licensure or certification shall have committed no acts that are grounds for disciplinary action, or if an act was committed, the ARC has found after investigation that sufficient restitution has been made and the applicant no longer presents a threat to the public safety.

(b) If the ARC questions an applicant's competency, the ARC may request an applicant complete a regional clinical examination or other program.

Section 4. Jurisprudence Examination ~~and Interview~~.

(a) The Board shall issue a dental or dental hygiene license to any applicant who meets the qualifications for licensure identified in Sections 5, 6, 7, 8, and ~~12~~13 and successfully passes the jurisprudence examination.

(b) ~~All dental licensure applications and necessary documentation, including payment of fee and report from PBIS, shall be received at least forty-five (45) days prior to a Board meeting.~~ The ARC shall recommend eligibility to sit for the jurisprudence examination. ~~The Board staff shall administer the dental jurisprudence examination and the applicant shall be required to interview with the Board.~~

~~(c) All dental hygiene licensure applications and necessary documentation, including payment of fee and report from PBIS, shall be received by the Board prior to scheduling an appointment to be administered the jurisprudence examination. The ARC shall recommend eligibility to sit for the jurisprudence examination.~~

(c)~~(d)~~ To successfully pass the jurisprudence examination, the applicant shall score at least a 75% on the exam.

Section 5. Dental Licensure by Examination.

(a) Eligibility. An applicant may seek dental licensure by examination if the applicant graduated from a CODA accredited U.S. or Canadian Dental School within twelve (12) months ~~and has never been licensed to practice as a dentist in any state~~.

(b) Application Requirements. Applicant shall:

(i) Submit a completed application and payment of fee;

(ii) Successfully pass the NBDE;

(iii) Successfully pass a regional clinical examination that indicates competency in:

(A) Endodontics, including access opening of a posterior tooth and access, canal instrumentation and obturation of an anterior tooth;

(B) Fixed Prosthodontics including one of the following:

(I) A full crown procedure;

(II) An indirect cast class II inlay;

(III) An indirect cast class II onlay; or

(IV) Cast 3/4 crown.

(C) Periodontics, including scaling and root planing on a patient in a clinical setting; and

(D) Restorative Dentistry, including a class II amalgam or composite preparation and restoration and a class III composite preparation and restoration on a patient in a clinical setting.

(I) Slot preps shall not be accepted.

(II) If an indirect inlay, onlay, or 3/4 crown procedure is done on a patient, the applicant shall be required to perform one (1) additional restorative procedure as listed above.

Section 6. Dental Licensure by Endorsement.

(a) Eligibility. An applicant may seek dental licensure by endorsement if the applicant has a license in good standing in another jurisdiction with licensure requirements as stringent as Wyoming.

(b) Application Requirements. Applicant shall:

(i) Submit a completed application and payment of fee;

(ii) Complete requirements identified in Section 5(b)(ii) and (iii). If applicant successfully passed a regional clinical examination as identified in Section 5(b)(iii) which did not include a fixed prosthodontics component, applicant shall submit evidence of active clinical practice of 5,000 hours in the last five (5) years or verification of completion of a general practice residency (GPR), ~~or~~ advanced education in general dentistry (AEGD), or other specialty practice residency as identified in Chapter 6;

(iii) Submit a completed application to PBIS and authorize PBIS to report to the Board; and

(iv) If an applicant has been out of clinical practice for less than five (5) years, the applicant shall s~~S~~ubmit the following evidence to~~that~~ demonstrate~~s~~ competency ~~including~~:

(A) Active clinical practice of 1,000 hours in the last twelve (12) months~~one (1) year~~;

(B) Successful completion of a regional clinical examination within twelve (12) months; or

(C) Completion of ten (10) hours of hands-on clinical continuing education for each year not actively practicing.

(v) If an applicant has been out of active clinical practice for more than five (5) years, the applicant shall submit the following evidence to demonstrate competency:

(A) Successful completion of a regional clinical examination within twelve (12) months; and

(B) Completion of ten (10) hours of hands-on clinical continuing education for each year not actively practicing.

Section 7. Dental Hygiene Licensure by Examination.

(a) Eligibility. An applicant may seek dental hygiene licensure by examination if the applicant graduated from a CODA accredited U.S. or Canadian Dental Hygiene School or

program within twelve (12) months ~~and has never been licensed to practice as a dental hygiene in any state~~.

(b) Application Requirements. Applicant shall:

(i) Submit a completed application and fees;

(ii) Successfully pass the NBDHE; and

(iii) Successfully pass the CRDTS, WREB, CDCA, CITA, or SRTA exam.

Section 8. Dental Hygiene Licensure by Endorsement.

(a) Eligibility. An applicant may seek dental hygiene licensure by endorsement if the applicant has a license in good standing in another jurisdiction with licensure requirements as stringent as Wyoming.

(b) Application Requirements. Applicant shall:

(i) Submit a completed application and payment of fee;

(ii) Submit a completed application to PBIS and authorize PBIS to report to the Board; and

(iii) If an applicant has been out of active clinical practice for less than five (5) years, the applicant shall s~~S~~ubmit the following evidence ~~that~~ to demonstrate~~s~~ competency ~~including~~:

(A) Active clinical practice of 800 hours in the last twelve (12) months~~one (1) year~~;

(B) Successful completion of a regional clinical examination within twelve (12) months; or

(C) Completion of ten (10) hours of hands-on continuing education for each year not actively practicing.

(iv) If an applicant has been out of clinical practice for more than five (5) years, the applicant shall submit the following evidence to demonstrate competency:

(A) Successful completion of a regional clinical examination within twelve (12) months; and

(B) Completion of ten (10) hours of hands-on clinical continuing education for each year not actively practicing.

Section 9. Annual Licensure Renewal.

(a) Expiration.

(i) All dental and dental hygiene licenses shall expire December 31 of each year.

(ii) Unless a licensee timely renews their license, the licensee shall not practice after December 31.

(b) Renewal Application. A dental or dental hygiene licensee seeking renewal shall:

(i) Submit a completed renewal application and payment of fee; ~~and~~

(ii) Verify current certification in BLS~~CPR.~~; and

(iii) Acquire sixteen (16) hours of CE that complies with Section 10.

(c) Competency Requirement. After five (5) years of inactive clinical practice, an applicant shall demonstrate competency by successful completion of regional clinical examination or apply for a non-clinical license~~licensure~~.

Section 10. Continuing Education Requirements.

(a) Renewal Period. CE shall be obtained January 1 of even years through December 31 of odd years. The first CE period begins on January 1st following the date the license was issued.

(i) For a new hygienist with a license issued in an even year, the licensee shall submit eight (8) hours of CE.

(ii) For a new dentist with a license issued in an even year, the licensee shall submit eight (8) hours of CE, three (3) of which must be related to the responsible prescribing of controlled substances.

(b) CE Content.

(i) The subject matter shall relate directly to the professional competence of the licensee or patient care rendered by the licensee. Acceptable CE subjects include, but are not limited to, the following clinical subjects relating to the dental profession: oral surgery, operative dentistry, oral pathology, preventive dentistry, orthodontics, clinical patient management, pediatric dentistry, oral biology, periodontics, prosthodontics, dental materials, implantology, radiology, infection control, endodontics, management of medical emergencies, dental anesthesiology, professional ethics, and pharmacology.

(ii) Unacceptable subjects include, but are not limited to, practice building and business management courses.

(iii) CE may be acquired in any jurisdiction.

(iv) CE earned in excess of the sixteen (16) hours required for renewal may not be carried forward to apply toward the next renewal period.

(c) Of the required sixteen (16) hours, a dentist shall obtain three (3) hours of CE related to the responsible prescribing of controlled substances every two (2) years. This requirement shall not apply to dental hygienists.

(d) Waiver. The Board may grant a waiver for CE requirements to licensees who have petitioned and demonstrated just cause based on extenuating circumstances.

(e) CE Audit.

(i) The licensee shall maintain evidence of CE compliance for at least four (4) years after the renewal period in which the course was applied.

(ii) Failure to provide the documents requested for audit within thirty (30) days may subject the licensee to disciplinary action.

(iii) If the Board disallows any CE, the licensee shall have one hundred twenty (120) days from notice of such disallowance to:

(A) Provide evidence that the disallowed CE meet the criteria established by these rules;

(B) Provide documentation of having acquired additional CE during the required time frame; or

(C) Cure the disallowance by acquiring the required number of CE.

(D) Any CE activity completed past the renewal date to cure a disallowance may not be reported on subsequent applications for license renewal.

(iv) If a licensee fails to complete the required number of CE, the licensee shall be subject to disciplinary action.

Section 11.~~Section 10.~~ Failure to Timely Renew.

(a) Unlicensed Practice. Failure to timely renew may subject the licensee to disciplinary action for unlicensed practice.

(b) Administrative Grace Period.

(i) The administrative grace period shall be from January 1st to March 31st annually.

(ii) Licensees who failed to timely renew may apply for renewal during the administrative grace period. However, licensees shall not practice until the Board approves their license.

(iii) Licensees who failed to timely renew shall:

(A) Submit a completed renewal application and payment of fee; and

(B) Verify current certification in BLS~~CPR~~.

(iv) On April 1st, any license not renewed shall lapse.

Section 12.~~Section 11.~~ Lapsed License.

(a) If a dental license lapses, the dentist shall apply for relicensure.

(b) If a dental hygiene license lapses, the dental hygienist may restore their lapsed license until December 31st of the year the license lapsed. After December 31st, the dental hygienist shall apply for relicensure.

Section 13.~~Section 12.~~ Dental and Dental Hygiene Relicensure.

(a) Eligibility. An applicant may seek dental or dental hygiene relicensure if the applicant has been licensed in Wyoming and allowed his or her license to lapse.

(b) Application Requirements. Applicant shall:

(i) Submit a completed relicensure application and payment of fee;

(ii) Verify current certification in BLS~~CPR~~; and

(iii) Successfully pass the jurisprudence examination.

(c) Competency Requirement for Return to Practice. An applicant applying for relicensure who has not actively practiced in five (5) years shall also demonstrate competency by:

(i) Successful completion of a regional clinical examination within twelve (12) months; and

(ii) Submitting evidence of completion of ten (10) hours of hands-on clinical continuing education for each year not actively practicing.

Section 14.~~Section 13.~~ Reinstatement.

(a) Eligibility. An applicant may seek to have his or her dental or dental hygiene license reinstated if the applicant's Wyoming dental or dental hygiene license has been revoked, surrendered, suspended, conditioned, or restricted.

(b) Application Requirements. Applicant shall:

(i) Submit a completed application and payment of fee;

(ii) Verify current certification in BLS~~CPR~~;

(iii) Submit evidence of complying with the requirements of a previous Board order;

(iv) Submit evidence of applicant's ability to safely and competently practice; and

(v) Submit evidence demonstrating just cause for reinstatement.

Section 15.~~Section 14.~~ Non-Clinical Licensure.

(a) Eligibility. An applicant that currently holds or has previously held a license in good standing to practice dentistry may seek a non-clinical license if the applicant does not engage in active clinical practice. This limited license is intended for those applicants teaching, examining, consulting, reviewing, ~~or~~ engaging in administrative oversight, or those who do not intend to practice clinical dentistry.

(b) Application Requirements. Applicant shall:

(i) Submit a completed application and payment of fee; and

(ii) Submit a personal statement describing applicant's intended non-clinical practice.

(c) Renewal Application. A non-clinical licensee seeking renewal shall submit a completed renewal application and payment of fee.

(d) Reactivation. To reactivate a non-clinical license, the licensee shall:

(i) Submit a completed application and payment of fee;

(ii) Verify current certification in BLS;

(iii) Successfully pass the jurisprudence examination; and

(iv) Demonstrate competency by:

(A) Successful completion of a regional clinical examination within twelve (12) months; and

(B) Submitting evidence of completion of ten (10) hours of hands-on clinical continuing education for each year not actively practicing.

Section 16.~~Section 15.~~ Volunteer's Certificate. Any applicant that meets the qualifications under Wyoming Statute 33-15-131 shall submit a completed application.

Section 17.~~Section 16.~~ Temporary Educator's License. Any applicant that meets the qualifications under W.S. 33-15-133 shall submit a completed application.

CHAPTER 6

CODE OF ETHICS FOR DENTISTS

Section 1. Patient Autonomy. This principle expresses the concept that professionals have a duty to treat the patient according to the patient's desires, within the bounds of accepted treatment, and to protect the patient's confidentiality. Under this principle, the dentist's primary obligations include involving the patients in treatment decisions in a meaningful way, with due consideration being given to the patient's needs, desires and abilities, and safeguarding the patient's privacy.

(a) Patient Involvement. The dentist shall inform the patient of the proposed treatment, and any reasonable alternatives, in a manner that allows the patient to become involved in treatment decisions.

(b) Patient Records. Dentists shall safeguard the confidentiality of patient records. Dentists shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of a patient or another dental practitioner, dentists shall provide any information, including X-rays that will be beneficial for the future treatment of that patient.

Section 2. Nonmaleficence. This principle expresses the concept that professionals have a duty to protect the patient from harm. Under this principle, the dentist's primary obligations include keeping knowledge and skills current, knowing one's own limitations and when to refer to a specialist or other professional, and knowing when and under what circumstances delegation of patient care to auxiliaries is appropriate.

(a) Education. The privilege of dentists to be accorded professional status rests primarily in the knowledge, skill and experience with which they serve their patients and society. All dentists, therefore, shall keep their knowledge and skill current through continuing education.

(b) Consultation and Referral. Dentists shall seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those who have special skills, knowledge, and experience. When patients visit or are referred to specialists or consulting dentists for consultation:

(i) The specialists or consulting dentists upon completion of their care shall return the patient, unless the patient expressly reveals a different preference, to the referring dentist, or, if none, to the dentist of record for future care; and

(ii) The specialists shall be obliged when there is no referring dentist and upon completion of their treatment to inform patients when there is a need for further dental care.

(c) Use of Auxiliary Personnel. Dentists shall be obliged to protect the health of their patients by only assigning to qualified auxiliaries those duties which can be legally delegated.

Dentists shall be further obliged to prescribe and supervise the patient care provided by all auxiliary personnel working under their direction.

(d) Patient Abandonment. Once a dentist has undertaken a course of treatment, the dentist shall not discontinue that treatment without giving adequate notice and the opportunity to obtain the services of other dentists. Care shall be taken that the patient's oral health is not jeopardized in the process.

(e) Personal Relationships. Dentists, because of their position of power and authority over both patients and staff, shall exercise extreme discretion in their conduct and avoid any form of sexual coercion and/or harassment.

(f) Personal Impairment. It is unethical for a dentist to practice while abusing controlled substances, alcohol, or other chemical agents that impair the ability to practice. All dentists have an ethical obligation to urge chemically impaired colleagues to seek treatment. Dentists with first-hand knowledge that a colleague is practicing dentistry when so impaired have an ethical responsibility to report such evidence to the professional assistance committee of a dental society.

(g) Duty to inform. When, during the course of dental treatment, an unexpected or undesirable outcome is obtained, the dentist has the duty to inform the patient of such outcome and to make arrangements for any follow up or additional treatment deemed necessary.

Section 3. Beneficence. This principle expresses the concept that professionals have a duty to act for the benefit of others. Under this principle, the dentist's primary obligation is the competent and timely delivery of dental care within the bounds of clinical circumstances presented by the patient, with due consideration being given to the needs, desires, and values of the patient. The same ethical considerations apply whether the dentist engages in fee-for-service, managed care or some other practice arrangement. Dentists may choose to enter into contracts governing the provisions of care to a group of patients; however, contract obligations do not excuse dentists from their ethical duty to put the patient's welfare first.

(a) Community Service. Since dentists have an obligation to use their skills, knowledge and experience for the improvement of the dental health of the public and are encouraged to be leaders in their community, dentists involved in such service shall conduct themselves in such a manner as to maintain or elevate the esteem of the profession.

(b) Government of a Profession. Every profession owes society the responsibility to regulate itself. Such regulation is achieved largely through the influence of the professional societies. All dentists, therefore, have the dual obligation of making themselves a part of a professional society and of observing its rules of ethics.

(c) Research and Development. Dentists have the obligation of making the results and benefits of their investigative efforts available to all when they are useful in safeguarding or promoting the health of the public.

(d) Patents and Copyrights. Patents and copyrights may be secured by dentists provided that such patents and copyrights shall not be used to restrict research or practice.

(e) Abuse and Neglect. Dentists shall become familiar with the signs of abuse and neglect and to report suspected cases to the proper authorities, consistent with state laws.

Section 4. Justice. This principle expresses the concept that professionals have a duty to be fair in their dealings with patients, colleagues and society. Under this principle, the dentist's primary obligations include dealing with people justly and delivering dental care without prejudice. In its broadest sense, this principle expresses the concept that the dental professional shall actively seek allies throughout society on specific activities that will help improve access to care for all.

(a) Patient Selection. While dentists, in serving the public, may exercise reasonable discretion in selecting patients for their practices, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, color, sex or national origin.

(b) Patients with Bloodborne Pathogens. It is unethical to decline treatment to any individual based on the fact that they are infected with a bloodborne pathogen such as Human Immunodeficiency Virus, Hepatitis B virus, Hepatitis C virus or any others.

(c) Emergency Service. Dentists shall make reasonable arrangements for the emergency care of their patients of record. Specifically, dentists shall make it possible for their patients of record to contact them after business hours. Additionally, dentists shall make reasonable arrangements with a colleague to provide emergency care whenever they are unavailable for such service.

(d) Justifiable Criticism. Dentists shall report to the appropriate reviewing agency as determined by the local component society instances of gross or continual faulty treatment by other dentists. Patients shall be informed of their present oral health status without disparaging comment about prior services.

(e) Expert Testimony. Dentists may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.

(f) Rebate and Split Fees. Dentists shall not accept or tender "rebates" or "split fees."

Section 5. Veracity. This principle expresses the concept that professionals have a duty to be honest and trustworthy in their dealings with people. Under this principle, the dentist's primary obligations include respecting the position of trust inherent in the dentist-patient relationship, communicating truthfully and without deception, and maintaining intellectual integrity.

(a) Representation of Care. Dentists shall not represent the care being rendered to their patients in a false or misleading manner. A dentist who represents that treatment or

diagnostic techniques recommended or performed by the dentist has the capacity to diagnose, cure or alleviate diseases, infections or other conditions, when such representations are not based upon accepted scientific knowledge or research is acting unethically.

(b) Dental Amalgam. Based on current scientific data the Board has determined that the removal of amalgam restorations from the non-allergic patient for the alleged purpose of removing toxic substances from the body, when such treatment is performed solely at the recommendation or suggestion of the dentist is improper and unethical. The same principle of veracity applies to the dentist's recommendation concerning the removal of any dental restorative material.

(c) Representation of Fees. Dentists shall not represent the fees being charged for providing care in a false or misleading manner.

(d) Waiver of Copayment. A dentist who accepts a third party payment under a copayment plan as payment in full without disclosing to the third party that the patient's payment portion will not be collected, is engaged in overbilling. The essence of this ethical impropriety is deception and misrepresentation; an overbilling dentist makes it appear to the third party that the charge to the patient for services rendered is higher than it actually is.

(e) Overbilling. A dentist shall not increase a fee to a patient solely because the patient is covered under a dental benefits plan.

(f) Treatment Dates. A dentist who submits a claim form to a third party reporting incorrect treatment date for the purpose of assisting a patient -in obtaining benefits under a dental plan, which benefits would otherwise be disallowed, is engaging in making an unethical, false or misleading representation to such third party.

(g) Dental Procedures. A dentist who incorrectly describes on a third party claim form a dental procedure in order to receive a greater payment or reimbursement or incorrectly makes a non-covered procedure appear to be a covered procedure on such a claim form is engaged in making an unethical, false or misleading representation to such third party.

(h) Unnecessary Services. A dentist shall not recommend and perform unnecessary dental services or procedures.

(i) Devices and Therapeutic Methods. Except for formal investigative studies, dentists shall prescribe, dispense, or promote only those devices, drugs and other agents whose complete formulae are available to the dental profession. Dentists shall not hold out as exclusive any device, agent, method or technique if that representation would be false or misleading in any material respect.

(j) Marketing or Sale of Products or Procedures. Dentists who, in the regular conduct of their practices, engage in or employ auxiliaries in the marketing or sale of products or procedures to their patients shall take care not to exploit the trust inherent in the dentist-patient relationship for their own financial gain. Dentists shall not induce patients to purchase products

or undergo procedures by misrepresenting the product's value, the necessity of the procedure or the dentist's professional expertise in recommending the product or procedure. Dentist shall disclose to their patients all relevant information the patient needs to make an informed purchase decision.

(k) Professional Announcement. In order to properly serve the public, dentists shall represent themselves in a manner that contributes to the esteem of the profession. Dentists shall not misrepresent their training and competence in any way that would be false or misleading in any material respect.

(l) Advertising. Although any dentist may advertise, no dentist shall advertise or solicit patients in any form of communication in a manner that is false or misleading in any material respect.

(m) Referral Services. There are two basic types of referral services for dental care: not-for-profit and the commercial. The not-for-profit is commonly organized by dental societies or community services. It is open to all qualified practitioners in the area served. A fee is sometimes charged the practitioner to be listed with the service. A fee for such referral services is for the purpose of covering the expense of the service and has no relation to the number of patients referred. In contrast, some commercial referral services restrict access to the referral service to a limited number of dentists in a particular geographic area. Contractual arrangements whereby the dentist is paying the referral service for patients referred on a per patient basis shall be strictly prohibited. A dentist is allowed to pay for any advertising permitted by the Code, but is generally not permitted to make payments to another person or entity for the referral of a patient for professional services.

(n) Name of Practice. Since the name under which a dentist conducts his or her practice may be a factor in the selection process of the patient, the use of a trade name or an assumed name that is false or misleading in any material respect is unethical. Use of the name of a dentist no longer actively associated with the practice may be continued for a period not to exceed one (1) year.

(o) Dentist Leaving Practice. Dentists leaving a practice who authorize continued use of their names should seek advice on the legal implications of this action. With permission of a departing dentist, his or her name may be used for more than one year, if, after the one year grace period has expired, prominent notice is provided to the public through such mediums as a sign at the office and a short statement on stationery and business cards that the departing dentists has retired from the practice.

~~(p) Announcement of Specialization and Limitation of Practice. The special areas of dental practice approved by the ADA and the designation for ethical specialty announcement and limitation of practice are: dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics and prosthodontics. Dentists who choose to announce specialization shall use "specialist in" or "practice limited to" and shall limit their practice exclusively to the announced special area(s) of dental practice, provided at the time of~~

~~the announcement such dentists have met in each approved specialty for which they announce the existing educational requirements and standards set forth by the ADA. Dentists who use their eligibility to announce as specialists to make the public believe that specialty services rendered in the dental office are being rendered by qualified specialists when such is not the case are engaged in unethical conduct. The burden of responsibility is on the specialists to avoid any inference that general practitioners who are associated with specialists are qualified to announce themselves as specialists. A general dentist practicing within a specialty practice shall provide a written disclosure that indicates that services are being provided by a general dentist to be signed by the patient.~~

(p) Announcement of Specialization. A dentist shall not advertise or otherwise hold himself or herself out to the public as a specialist, or use any variation of the term, in an area of practice if the communication is false or misleading.

(i) It shall be false or misleading for a dentist to hold himself or herself out to the public as a specialist, or any variation of that term, in a practice area unless the dentist:

(A) has completed a qualifying postdoctoral educational program in that area as set forth in subsection (ii) of this rule; or

(B) holds a current certification by a qualifying specialty board or organization as set forth in subsection (iii) of this rule.

(ii) For purposes of this rule, a "qualifying postdoctoral educational program" is a postdoctoral advanced dental educational program accredited by an agency recognized by the U.S. Department of Education.

(iii) In determining whether an organization is a qualifying specialty board or organization, the Board shall consider the following criteria:

(A) whether the organization requires completion of an educational program with didactic, clinical, and experiential requirements appropriate for the specialty or subspecialty field of dentistry in which the dentist seeks certification, and the collective didactic, clinical and experiential requirements are similar in scope and complexity to a qualifying postdoctoral educational program. Programs that require solely experiential training, continuing education classes, on-the-job training, or payment to the specialty board shall not constitute a qualifying specialty board or organization;

(B) whether the organization requires all dentists seeking certification to pass a written or oral examination, or both, that tests the applicant's knowledge and skill in the specialty or subspecialty area of dentistry and includes a psychometric evaluation for validation;

(C) whether the organization has written rules on maintenance of certification and requires periodic recertification;

(D) whether the organization has written by-laws and a code of ethics to guide the practice of its members;

(E) whether the organization has staff to respond to consumer and regulatory inquiries; and

(F) whether the organization is recognized by another entity whose primary purpose is to evaluate and assess dental specialty boards and organizations.

(iv) A dentist qualifying under subsection (iii) of this rule and advertising or otherwise holding himself or herself out to the public as a specialist, or any variation of that term, shall disclose in the advertisement or communication the specialty board by which the dentist was certified and provide information about the certification criteria or where the certification criteria may be located.

(v) A dentist shall maintain documentation of either completion of a qualifying postdoctoral educational program or of his or her current specialty certification and provide the documentation to the Board upon request. Dentists shall maintain documentation demonstrating that the certifying board qualifies under the criteria in subsection (iii) of this rule and provide the documentation to the Board upon request.

(q) Superior Designation. A dentist shall not hold himself out as an expert or imply superiority.

(r) General Practitioner Announcement of Services. General dentists who wish to announce the services available in their practices are permitted to announce the availability of those services so long as they avoid any communication that express or imply specialization. General dentist shall also state that the specialty services are being provided by general dentists. That disclaimer shall appear in same font and size as the advertised specialty service. A dentist shall not announce available services in any way that would be false or misleading in any material respect.

(s) Dental Practice Ownership Disclosure. If the name or ownership of the dental practice differs from the dentist(s) providing the services, the dentist providing services shall provide a written disclosure that indicates any and all individuals with a financial interest in the dental practice to be signed by the patient.

Section 6. Compliance with Code of Ethics. Dentists shall comply with the provisions of this Chapter, the ADA's Principles of Ethics and Code of Professional Conduct, the ADHA's Bylaws and Code of Ethics, and the Centers for Disease Control's Summary of Infection Prevention Practices in Dental Settings as referenced in Chapter 1.

Section 7. Prescribing Opioids.

(a) When considering prescribing opioids, dentists shall conduct a medical and dental history to determine current medications, potential drug interactions and history of substance

abuse.

(b) Dentists shall register with and utilize prescription drug monitoring programs (PDMP) to promote the appropriate use of controlled substances for legitimate medical purposes, while deterring the misuse, abuse and diversion of these substances.

(c) Dentists shall have a discussion with patients regarding their responsibilities for preventing misuse, abuse, storage and disposal of prescription opioids.

(d) Dentists shall consider treatment options that utilize best practices to prevent exacerbation of or relapse of opioid misuse.

(e) Dentists shall consider nonsteroidal anti-inflammatory analgesics as the first-line therapy for acute pain management.

(f) Dentists shall recognize multimodal pain strategies for management for acute postoperative pain as a means for sparing the need for opioid analgesics.

(g) Dentists shall consider coordination with other treating doctors, including pain specialists when prescribing opioids for management of chronic orofacial pain.

(h) Dentists who are practicing in good faith and who use professional judgment regarding the prescription of opioids for the treatment of pain shall not be held responsible for the willful and deceptive behavior of patients who successfully obtain opioids for non-dental purposes.

Section 8. Morbidity/Mortality Reporting Requirements.

(a) All licensees shall report any morbidity, mortality, or other incident that results in temporary or permanent physical or mental injury of a patient requiring hospitalization to the Board within thirty (30) days.

(b) All licensees shall provide the following documents:

(i) Detailed description of dental procedures performed;

(ii) Names of all licensees involved in procedure;

(iii) All relevant patient records; and

(iv) Detailed description of sedation procedures used, if any.

(c) The Board may request other information or materials as it deems necessary.