

## 234 CMR: BOARD OF REGISTRATION IN DENTISTRY

### 234 CMR 5.00: REQUIREMENTS FOR THE PRACTICE OF DENTISTRY AND DENTAL HYGIENE

#### Section

- 5.01: Purpose
- 5.02: General Requirements for the Conduct of a Dental Practice
- 5.03: Dental Specialties
- 5.04: Posting of Licenses and Permits, and Identification of Personnel
- 5.05: Infection Control, Occupational Safety and Health Standards, and Radiation Control Requirements
- 5.06: Controlled Substances
- 5.07: Dental Hygiene Practice and Public Health Dental Hygienist Practice
- 5.08: Collaborative Agreement with a Public Health Dental Hygienist
- (5.09: Dental Assistants: Reserved)
- 5.10: Requirements for Training in Radiology
- 5.11: Delegation of Duties
- 5.12: Delegable Procedures
- 5.13: Non-delegable Dental Duties
- 5.14: Patient Records: Content, Confidentiality, Retention, and Availability
- 5.15: Content of Patient Records
- 5.16: Emergency Protocol
- 5.17: Reporting of Patient Deaths in Dental Facilities
- 5.18: Inspection of Facilities and Requirements for Corrective Action
- 5.19: Advertising
- 5.20: Principles of Ethics and Code of Professional Conduct
- 5.21: Prohibited Practices

#### 5.01: Purpose

The purpose of 234 CMR 5.00 is to set forth the standards and requirements that licensees of the Board must comply with in the practice of dentistry and dental hygiene in the Commonwealth.

#### 5.02: General Requirements for the Conduct of a Dental Practice

(1) Any person who owns, leases, maintains, or operates a dental practice in any facility or room(s) where dental services are provided, or directly or indirectly is director, proprietor or conductor of same, is required to conduct such dental practice in accordance with M.G.L. c. 112, §§ 43 through 53 and 234 CMR.

(2) A dental practice not wholly owned by a dentist or dentists licensed to practice dentistry in the Commonwealth shall be licensed as a dental clinic or hospital pursuant to M.G.L. c. 111, § 51 unless it is exempt from such licensure pursuant to M.G.L. c. 111, § 52.

(3) The owner(s) of a dental practice where any non-owner dentist practices dentistry shall designate a dentist who holds a valid license issued pursuant to M.G.L. c. 112, § 45 to act as Dental Director. The appointment of a Dental Director shall not absolve any owner or other licensee practicing at the site from ensuring that the dental practice is established, maintained and operated in accordance with statutes and regulations governing the practice of dentistry or dental hygiene in the Commonwealth. A non-owner dentist includes, but is not limited to, a dentist who works full-time, part-time or on a temporary basis or as an independent contractor.

(a) The name of the Dental Director and at least one of the owners who is a dentist licensed to practice dentistry in the Commonwealth shall be posted at each practice site in a public place where a patient can observe such notice.

(b) The Dental Director shall, at a minimum, be responsible for implementing policies and procedures to ensure compliance with local ordinances and state and federal statutes and regulations governing the practice of dentistry in areas including, but not limited to:

1. Licensure and qualifications of dentists and dental auxiliaries;
2. Delegation of duties to dental auxiliaries pursuant to 234 CMR;
3. Anesthesia administration as permitted by the Board

## 234 CMR: BOARD OF REGISTRATION IN DENTISTRY

### 5.02: continued

4. State and federal controlled substances rules and regulations;
5. CDC guidelines, including weekly spore testing;
6. OSHA standards;
7. Radiation control requirements;
8. Posting dental licenses in the practice;
9. Advertising dental services or fees;
10. Schedule of equipment and drugs to ensure timely inspections, maintenance and current drugs; and
11. Compliance with applicable local, state and federal regulations and statutes, including, but not limited to, occupancy codes, fire safety codes, and disposal of hazardous waste.

### 5.03: Dental Specialties

- (1) A dentist may hold him/herself out as an ADA specialist in a particular area of practice only if he/she:
  - (a) Has completed a specialty education program approved by the American Dental Association (ADA) and the Commission on Dental Accreditation or the Commission on Dental Accreditation of Canada; and
  - (b) Is eligible for examination by a national specialty board recognized by the ADA; or
  - (c) Is a diplomate of a national specialty board recognized by the ADA.
- (2) A dentist is prohibited from holding him/herself out in directories, listings or other written or electronic publications as a practitioner in any specialty recognized by the ADA unless his/her practice is limited only to the specialty area(s) that is being advertised, listed, or otherwise noted or published.

### 5.04: Posting of Licenses and Permits and Identification of Personnel

- (1) A licensee shall post his/her name and current license, or copy of said license in each location of practice in a place where it can be observed by the public.
- (2) A licensee shall post his/her individual anesthesia and Facility Permit, if applicable, in each practice site in a place where they can be observed by the public.
- (3) All licensees and dental auxiliaries providing dental services to a patient, or assisting a dentist in the direct care or treatment of a patient, shall wear a name tag with the individual's name and professional title and function.

### 5.05: Infection Control, Occupational Safety and Health Standards, and Radiation Control Requirements

- (1) Infection Control Practices. All persons licensed by the Board and all practices providing dental services are required to operate in compliance with the current *Recommended Infection Control In Dental Health-Care Settings-2003*, Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, Atlanta.
- (2) Occupational Health and Safety Practices. All persons licensed by the Board and all practices providing dental services are required to operate in compliance with the Occupational Safety and Health Administration Standards at 29 CFR: *OSHA Standards*.
- (3) Radiation Control. All persons licensed by the Board and all dental practices providing dental services utilizing radiological equipment are required to operate and maintain such equipment in compliance with Massachusetts Radiation Control Program statutes and regulations.

5.06: Controlled Substances

- (1) Dentists registered to dispense, administer and prescribe any controlled substances shall do so in accordance with M.G.L. c. 94C and 105 CMR 700.00 and all applicable state and federal statutes and regulations pertaining to controlled substances.
- (2) Dentists are limited to writing prescriptions for controlled substances for legitimate dental purposes in the usual course of practice and are prohibited from prescribing controlled substances in Schedules II-IV for personal use.
- (3) Except in an emergency, a dentist is prohibited from prescribing Schedule II controlled substances to a member of his/her immediate family including a spouse (or equivalent), parent, child, sibling, parent-in-law, son/daughter-in-law, brother/sister-in-law, step-parent, step-child, step-sibling, or other relative permanently residing in the same residence as the licensee.
- (4) Prior to prescribing a hydrocodone-only extended release medication that is not in an abuse deterrent form, a licensee must
  - (a) Thoroughly assess the patient, including an evaluation of the patient's risk factors, substance abuse history, presenting condition(s), current medication(s) and a check of the online Prescription Monitoring Program;
  - (b) Discuss the risks and benefits of the medication with the patient;
  - (c) Enter into a Pain Management Treatment Agreement with the patient that shall appropriately address drug screening, pill counts, safe storage and disposal and other requirements based on the patient's diagnoses, treatment plan, and risk assessment;
  - (d) Supply a Letter of Medical Necessity as required by the Board of Registration in Pharmacy that includes the patient's diagnoses and treatment plan, verifies that other pain management treatments have failed, indicates that a risk assessment was performed and that the licensee and the patient have entered into a Pain Management Treatment Agreement; and
  - (e) Document 234 CMR 5.06(4)(a)-(d) in the patient's medical record.

The purpose of 234 CMR 5.06(4) is to enhance the public health and welfare by promoting optimum therapeutic outcomes, avoiding patient injury and eliminating medication errors. Nothing in 234 CMR 5.06(4) shall alter the standard of care a licensee must use when prescribing any Schedule II, III or IV controlled substance.

5.07: Dental Hygiene Practice and Public Health Dental Hygienist Practice

- (1) A dental hygienist may provide dental services which are educational, therapeutic, prophylactic and preventive in nature as may be authorized by the Board and may perform all tasks performed by a dental assistant under the specific type of supervision set forth in 234 CMR 5.07. A dental hygienist or public health dental hygienist may not perform acts or services which require diagnosis and treatment planning for non-dental hygiene services, surgical or cutting procedures on hard or soft tissue, and/or the prescription of medications, unless specifically authorized in 234 CMR 5.07 and 5.12.
- (2) Educational Requirements for Public Health Dental Hygiene Practice.
  - (a) Prior to practicing as a public health dental hygienist pursuant to 234 CMR 2.03 and 5.08, a dental hygienist shall successfully complete a minimum of ten hours of continuing education as follows:
    1. A minimum of six hours of hands-on experience in a public health setting. A dental hygienist who has documentation demonstrating a minimum of six hours of hands on experience in a public health setting between January 1, 2005 and August 20, 2010 shall be deemed to have fulfilled this requirement.
    2. Successful completion, within 24 months prior to commencement of practice as a public health dental hygienist, of continuing education in each of the following areas:
      - a. CDC Guidelines (234 CMR 2.00);
      - b. Risk Management for practice in a public health setting; and
      - c. Management of medical emergencies.
  - (b) The public health dental hygienist shall permanently retain documentation demonstrating compliance with 234 CMR 5.07(2)(a) and 5.08.

## 5.07: continued

(3) A public health dental hygienist practicing in a public health setting may perform those dental services which are authorized by the Board pursuant to M.G.L. c. 112, § 51, to be provided in a public health setting, pursuant to a written collaborative agreement that complies with requirements described in 234 CMR 5.08 including a signed affidavit that confirms successful completion of the continuing education required in 234 CMR 5.07(2).

(4) A registered dental hygienist practicing in a public health setting may provide dental hygiene services, including placement of sealants, without first having a dentist examine the patient, either pursuant to a written collaborative agreement that complies with requirements described in 234 CMR 5.08, or pursuant to a standing order under the general supervision of a dentist licensed pursuant to M.G.L. c. 112, § 45.

5.08: Collaborative Agreement with a Public Health Dental Hygienist

A public health dental hygienist who holds a valid license to practice dental hygiene in the Commonwealth issued pursuant to M.G.L. c. 112, § 51, and who has completed the appropriate training required by the Board and has either three years of full-time or an equivalent 4,500 hours of clinical experience shall practice in accordance with Board statutes and regulations and shall enter into a written collaborative agreement with a dentist who holds a valid license issued pursuant to M.G.L. c. 112, § 45 or with the appropriate local or state government agency or institution pursuant to M.G.L. c.112, § 51, where a dentist licensed pursuant to M.G.L. c. 112, § 45, is available to provide the appropriate level of communication and consultation with the dental hygienist to ensure patient health and safety.

(1) A public health dental hygienist shall:

- (a) Enter into a written collaborative practice which complies with the requirements at 234 CMR 5.08 before rendering treatment, advertising, or soliciting patients to provide any dental hygiene services in a public health setting pursuant to a collaborative agreement;
- (b) Maintain contact and document communication with the dentist with whom the public health dental hygienist has entered into a collaborative agreement;
- (c) Practice in accordance with Board rules and regulations;
- (d) Practice in accordance with systems, policies and procedures established pursuant to Board statute and regulations;
- (e) Obtain written, signed informed consent of the patient or legal representative which complies with Board regulations contained in 234 CMR 5.08, informs the patient or legal representative that the services provided by the public health dental hygienist are not a substitute for a dental examination by a dentist and informs the patient that the patient or legal representative that the patient should obtain, or should have had a dental examination by a dentist within 90 days;
- (f) Provide each patient with a written Information Sheet at the conclusion of the patient's visit. Said Information Sheet shall, at a minimum, include the following:
  1. Results of the dental hygiene evaluation;
  2. The name(s) of the public health dental hygienists and any licensed dentist and other dental auxiliaries who provided services;
  3. A description of the treatment rendered including, but not limited to, billed service codes and fees associated with treatment, and tooth numbers when appropriate;
  4. Information on how to contact the public health dental hygienist, dental health services program director, mobile dental facility or portable dental operation permit holder (*See* 234 CMR 7.00);
  5. If necessary, provide a referral for emergency assessment by a dentist;
  6. When a referral is made, the patient or legal representative shall be referred to the patient's regular dentist if one is identified. If none is identified, then the patient or legal representative must be provided with the names of dentist(s), community health center(s) or dental school clinic(s) located within a reasonable geographic distance from the patient's home and with whom the public health dental hygienist or dental health services program had communicated with regarding the acceptance of referrals;
  7. The name and signature of the public health dental hygienist; and
  8. If the patient or legal representative has given consent for an institutional facility (*e.g.* school, nursing home) to access the patient's dental health records, then the dental hygienist shall also provide the institution with a copy of the information sheet.

5.07: continued

- (2) A dentist entering into a collaborative agreement with a public health dental hygienist, may, but is not required to, provide subsequent dental treatment to patients served under said agreement.
- (3) Written Collaborative Agreement. A collaborative agreement between a public health dental hygienist and a municipality or state agency or institution, or with a licensed dentist who holds a valid license issued pursuant to M.G.L. c. 112, § 45 shall, at a minimum, address all of the following:
- (a) Identify by name(s) the dentist(s) who shall be available to provide the appropriate level of communication and consultation with the public health dental hygienist to ensure patient health and safety;
  - (b) Describe, with specificity, how communication and consultation between the dentist and public health dental hygienist will be accomplished, including the frequency and arrangements for back-up coverage when the dentist is not accessible to provide communication and consultation (e.g., during vacation, illness);
  - (c) Provide the names, license numbers, addresses, telephone and facsimile numbers, and emergency contact information for the dentist(s) and public health dental hygienist;
  - (d) Include an attestation from the public health dental hygienist which is signed under the pains and penalties of perjury that describes the public health dental hygienist's qualifications to practice as a public health dental hygienist and explicitly states that the dental hygienist has a minimum of three years of full-time or an equivalent of 4,500 hours of clinical experience as a registered dental hygienist and has completed all training required by the Board;
  - (e) Identify entity(ies) and geographic area(s) where public health dental hygienist services will be provided pursuant to the collaborative agreement;
  - (f) Specify the dental hygiene procedures to be provided and the populations to be served pursuant to the collaborative agreement;
  - (g) Specify and describe responsibilities for creating, maintaining, storing, retrieving and providing for the confidentiality of patient records;
  - (h) Specify and describe responsibilities for establishing systems, policies and procedures to ensure compliance with Board regulations, including but not limited to requirements of 234 CMR 5.00 and 7.00 as may be applicable;
  - (i) Specify and describe responsibilities for developing, implementing, and maintaining emergency medical protocols and for the provision of periodic review and training on same;
  - (j) Include any considerations for age- or procedure- specific protocols as may be deemed necessary by the dentist or public health dental hygienist;
  - (k) Include any considerations for medically-compromised patients as may be deemed necessary by the dentist or public health dental hygienist;
  - (l) Outline responsibilities for billing and reimbursement for services rendered by the dental hygienist in the public health setting, if indicated;
  - (m) Identify a process for the public health dental hygienist to legally obtain prescription products (e.g. chemotherapeutics, fluoride varnish) pertinent to the provision of dental hygiene services and which are to be utilized when rendering services in a public health setting; and
  - (n) Term of the collaborative agreement, if applicable.
- (4) The dentist and public health dental hygienist shall review and update the written collaborative agreement at least annually.
- (5) The dentist and public health dental hygienist shall immediately notify each other and, if applicable, the municipality, state agency or institution involved in the collaborative agreement of any disciplinary action imposed by the Board or any other governmental agency against his/her license to practice dentistry or dental hygiene in the Commonwealth.
- (6) A copy of the written collaborative agreement shall be maintained by the municipality, state agency or institution, licensed dentist, and the public health dental hygienist. Upon written request, said agreement shall be made available to the Board, or to a patient who received treatment pursuant to the agreement or his/her legal representative.

234 CMR: BOARD OF REGISTRATION IN DENTISTRY

5.08: continued

- (7) Each public health dental hygienist shall maintain the following data to be reported to the Massachusetts Department of Public Health's Office of Oral Health on forms and in accordance with procedures and timelines established by that office:
- (a) The dates of each session with name and address of the site where public health dental hygiene services were provided; and
  - (b) The number of patients served and the type(s) and quantity(ies) of each service provided.

(5.09: Dental Assistants: Reserved)

5.10: Requirements for Training in Radiology

(1) A Registered Dental Hygienist (RDH), Public Health Dental Hygienist (PHDH), Expanded Function Dental Assistant (EFDA), Certified Dental Assistant (CDA) or Formally-trained Dental Assistant (FTDA) may take dental radiographs only under the supervision of a dentist provided that the dental auxiliary has successfully completed a course with a curriculum that complies with CODA-standards for radiological techniques and safeguards in dentistry.

(2) An On-the-job Trained Dental Assistant (OJT) may take radiographs only under the direct supervision of a dentist and must have completed a course in radiological techniques and safeguards and successfully passed the DANB Radiation Health and Safety Examination (RHS), or other examination as approved by the Board, within one year of the course completion.

5.11: Delegation of Duties

(3) A dentist licensed to practice dentistry in the Commonwealth pursuant to M.G.L. c. 112, § 45 may delegate certain dental duties set forth in this section to a dental auxiliary who is properly educated, trained, and qualified as specified in Board statutes and regulations.

(4) The supervising dentist shall be responsible for all delegated acts and procedures performed by the dental auxiliary. Any dentist who delegates a procedure to an auxiliary who does not meet the requirements necessary to perform that procedure may be subject to disciplinary action by the Board.

5.12: Delegable Procedures

Registered Dental Hygienists (RDH), Public Health Dental Hygienist (PHDH), Expanded Function Dental Assistant (EFDA), Certified Dental Assistant (CDA), Formally-Trained Dental Assistant (FTDA), and On-the-Job Trained Dental Assistant(OJT) and may perform the following dental procedures pursuant to the designated level of supervision or direction: General Supervision (G), Collaborative Agreement (CA), Direct Supervision (D), Immediate Supervision (I) or Delegation Not Allowed (N/A).

	DELEGATED DUTY	RDH	PHDH	EFDA	CDA	FTDA	OJT
(1)	Review medical and dental history and consult when necessary with medical practitioner	G	CA	G	G	G	G
(2)	Perform preliminary evaluation to determine needed dental hygiene services	G	CA	N/A	N/A	N/A	N/A
(3)	Make referrals to dentists, physicians, and other practitioners in consultation with a dentist	G	CA	N/A	N/A	N/A	N/A
(4)	Provide oral health instruction	G	CA	G	G	G	G
(5)	Perform dietary screening for dental disease prevention and control	G	CA	G	G	G	G
(6)	Conduct dental screenings	G	CA	N/A	N/A	N/A	N/A
(7)	Record dental screenings	G	CA	D	D	D	D
(8)	Expose radiographs	G	CA	G	G	D	D
(9)	Evaluate radiographs for provision of dental hygiene services	G	CA	N/A	N/A	N/A	N/A
(10)	Take intra-oral photographs	G	CA	G	G	G	G
(11)	Perform and record charting of the oral cavity and surrounding structures, including but not limited to, existing dental restorations, lesions and periodontal probing depths	G	CA	N/A	N/A	N/A	N/A

234 CMR: BOARD OF REGISTRATION IN DENTISTRY

5.12: continued

	DELEGATED DUTY	RDH	PHDH	EFDA	CDA	FTDA	OJT
(12)	Record charting of the oral cavity and surrounding structures, including but not limited to, dental restorations, lesions and periodontal probing depths	G	CA	D	D	D	D
(13)	Take and record vital signs	G	CA	G	G	G	G
(14)	Perform minor emergency denture adjustments to eliminate pain and discomfort in nursing homes and other residential or long term care facilities	G	CA	N/A	N/A	N/A	N/A
(15)	Perform pulp testing	D	N/A	N/A	N/A	N/A	N/A
(16)	Apply anti-cariogenic agents, including fluoride varnish	G	CA	G	G	G	D
(17)	Apply topical anesthetic agents	G	CA	I	I	I	I
(18)	Apply and adjust dental sealants	G	CA	I	I	I	N/A
(19)	Take impressions for study casts, bite registrations, including for identification purposes, night guards, and custom fluoride and bleaching trays pursuant to a dentist's prescription or order	G	CA	G	G	G	I
(20)	Take impressions for athletic mouth guards	G	CA	G	G	G	I
(21)	Retract lips, cheek, tongue and other oral tissue parts	G	CA	G	G	G	G
(22)	Irrigate and aspirate the oral cavity	G	CA	D	D	D	D
(23)	Re-cement and adjust intact temporary restorations intra-orally	G	CA	G	D	D	N/A
(24)	Place temporary restorations (not including temporization of inlays, on-lays, crowns, and bridges) to provide palliative treatment	G	CA	G	D	D	I
(25)	Assist or monitor nitrous oxide analgesia	I	I	I	I	I	I
(26)	Place and remove gingival retraction materials	D	D	D	D	D	D
(27)	Apply cavity varnish, liner(s) and bonding agents	I	I	I	I	I	I
(28)	Apply desensitizing agents	G	CA	G	D	D	D
(29)	Place restorative materials in tooth for condensation and finishing by the dentist	I	I	I	I	I	I
(30)	Remove temporary restorations with hand instruments	G	CA	G	I	I	N/A
(31)	Place and remove wedges	G	CA	G	D	D	I
(32)	Place and remove matrix bands	G	CA	G	D	D	I
(33)	Place and remove dental dams	G	CA	G	G	G	D
(34)	Place and remove periodontal dressings	G	CA	G	G	G	N/A
(35)	Remove sutures	G	CA	G	G	G	D
(36)	Removal of implant healing caps/cover screws for restorative procedures	I	I	I	I	I	I
(37)	Irrigate and dry root canals with paper points	I	I	I	I	I	I
(38)	Place cotton pellets and temporary restorative materials into endodontic openings	G	CA	G	D	D	D
(39)	Remove excess cement and bonding agents from bridges and appliances with hand instruments	G	CA	G	D	D	I
(40)	Cement and remove temporary crowns and bridges	G	CA	G	G	G	I
(41)	Insert and/or perform minor adjustment of night mouth guards, athletic mouth guards, and custom	G	CA	G	G	G	I
(42)	Select and adapt stainless steel crowns or other pre-formed crown for insertion by dentist	I	I	I	I	I	I
(43)	Perform sub-gingival and supra-gingival scaling	G	CA	N/A	N/A	N/A	N/A
(44)	Polish teeth, after dentist or dental hygienist has determined that teeth are free of calculus, with slow	G	CA	G	G	G	N/A
(45)	Administer local anesthesia pursuant to 234 CMR 6.00	D	D	N/A	N/A	N/A	N/A

234 CMR: BOARD OF REGISTRATION IN DENTISTRY

5.12: continued

	DELEGATED DUTY	RDH	PHDH	EFDA	CDA	FTDA	OJT
(46)	Perform gross debridement and/ or scaling and root planing	G	CA	N/A	N/A	N/A	N/A
(47)	Prepare and perform oral cytological smears or studies	D	N/A	N/A	N/A	N/A	N/A
(48)	Use diagnostic and periodontic non-cutting lasers	G	CA	N/A	N/A	N/A	N/A
(49)	Perform any other procedure approved by the Board						
	Orthodontic Procedures: Performed only pursuant to an orthodontic treatment plan developed by a dentist.						
(50)	Take impressions for orthodontic retainers	G	CA	G	G	G	D
(51)	Preliminary intra-oral fit of bands	G	CA	G	G	G	D
(52)	Preliminary oral fit of arch wire	G	CA	G	G	G	D
(53)	Select size of headgear	G	CA	G	G	G	D
(54)	Place and remove orthodontic separators	G	CA	G	G	G	D
(55)	Place and remove orthodontic arch wires	G	CA	G	G	G	D
(56)	Etch appropriate enamel surfaces before bonding of orthodontic appliances by a dentist	G	CA	G	G	G	D
(57)	Place elastics and ligature wires	G	CA	G	G	G	D
(58)	Remove fixed orthodontic appliances	G	CA	G	G	G	D
(59)	Remove excess cement and bonding agents from orthodontic appliances with hand instruments	G	CA	G	G	G	D
(60)	Perform minor emergency palliative orthodontic adjustments to eliminate pain and discomfort	G	CA	G	G	G	D

5.13: Non-delegable Dental Duties

Only licensed dentists shall:

- (1) Perform final diagnoses and treatment planning;
- (2) Perform surgical or cutting procedures on hard or soft tissue;
- (3) Prescribe or parenterally administer drugs or medicaments;
- (4) Prescribe dental lab work orders for any appliance or prosthetic device or restoration to be inserted into a patient's mouth;
- (5) Operate high speed rotary instruments in the mouth;
- (6) Perform pulp-capping procedures;
- (7) Take final impressions for fixed and removable prosthetic restoration of teeth or oral structures;
- (8) Perform final positioning and attachment of orthodontic bonds and bands;
- (9) Perform final cementation of crowns and bridges

5.14: Patient Records: Content, Confidentiality, Retention, and Availability

- (1) Content of Patient Record. Patient records include, but are not limited to, dental charts, photographs, patient histories, examination and test results, diagnoses, treatment plans, progress notes, anesthesia charts, orthodontic models, prescriptions, radiographs, patient consents, and billing records.



## 5.14: continued

(2) Confidentiality of Patient Records. All patient records including, but not limited to, dental charts, photographs, patient histories, examination and test results, diagnoses, treatment plans, progress notes, anesthesia charts, orthodontic models, prescriptions, radiographs, patient consents, and billing records of any patient treated shall be maintained in a manner that ensures confidentiality and access for patients and authorized practitioners who may wish to obtain a copy of patient records.

(3) Record Retention Requirement. The licensee shall maintain a patient's original dental record and original radiographs (x rays) for a minimum of seven years from the date of the last patient treatment. In addition, the patient record of a minor shall be retained for a minimum of seven years from the date of the last patient treatment or three years from when the patient has reached the age of majority, whichever is later.

(4) Availability of Dental Records.

(a) Request for Copy of Dental Record. The licensee shall provide upon request by a patient or another specifically authorized person, a complete copy of the patient's dental record in accordance with M.G.L. c. 112, § 12CC. A copy of the patient record, including radiographs, shall be provided within a reasonable amount of time not to exceed 30 calendar days from the date of the request. The licensee may charge a reasonable fee for the expense of providing a patient's dental record, not to exceed the cost of either labor and/or materials incurred in the copying of the patient record, radiographs and models. The licensee shall not require payment for dental services rendered as a condition of providing a copy of the dental record. A dentist may offer to provide the patient with a summary of the patient's record, but the summary shall not be in *lieu* of the complete patient record if requested.

(b) Treatment in a School Setting. Where consent has been granted by the patient or legal representative, a copy of the patient's Information Sheet or other written summary of the screening, examination, or treatment shall be provided to the official designated by the school.

(c) Treatment in a Nursing Home or Residential Treatment Facility. A copy of the patient's information sheet or other written summary of the screening, examination, or treatment shall be provided to the official designated by the facility or institution and shall be made part of the patient record pursuant to the applicable state and federal statutes and regulations.

(d) If the licensee dies and the practice is closed, the estate may notify patients treated within the two years prior to the date of passing. Said notice shall inform patients of how they may obtain a copy of their patient record, including radiographs. Notice may be by a written letter to each patient, by electronic notice, public notice in the appropriate newspaper, and/or by other means which is widely disseminated. A copy of said notice must be submitted to the Board upon issuance and/or publication.

(e) Electronic patient records shall comply with the requirements of 234 CMR 5.14 and 5.15 and shall be unalterable and producible in paper form upon request.

5.15: Content of Patient Records

(1) The patient record shall be a complete record of all patient contact, including, but not limited to, a general description of the patient's medical and dental history and status at time of examination, diagnoses, patient education, treatment plan, referral for specialty treatment, medications administered and prescribed, pre- and post- treatment instructions and information conveyed to the patient pursuant to M.G.L. c. 112, §§ 43 through 53 and 234 CMR 2.00.

(2) Patient records shall be legible and clear in meaning to a subsequent examining or treating dentist, the patient, dental auxiliaries or other authorized persons.

(3) At a minimum, a patient's record must include:

(a) Patient Information

1. Name, address and date of birth of the patient;
2. If the patient is not of the age of majority, the name of the parent or legal representative;

5.15: continued

3. If the parents of the minor child are separated or divorced, the name of the custodial parent;
  4. If the patient has a legal representative pursuant to 234 CMR 2.00, the name and address of the legal representative.
  5. Whether the patient is an emancipated minor; and
  6. Patient's telephone numbers(s) and electronic mail addresses, except if the patient declines to provide this information.
- (b) Medical and Dental History Form. The patient's medical history and dental history shall include, but not be limited to:
1. A review of past and present illnesses, diseases and disabilities;
  2. Systemic disease(s) that may affect the oral cavity;
  3. Current prescription and non-prescription medications as well as any known drug allergies;
  4. Documentation of consultation with the patient's medical physician(s) as appropriate; and
  5. Date of the patient's last dental examination, frequency of dental visits, current home care regime and documentation of the patient's primary dental complaint, if any.
  6. Upon review of the patient's medical and dental history, any licensee or dental auxiliary in the practice treating the patient shall sign and date the medical and dental history;
  7. At each patient visit, the licensee shall inquire and document and initial in the patient record, whether there are any changes in the patient's medical history, including but not limited to, changes in prescription medications.
- (c) Record of Dental Examination. Each patient record shall include documentation of the results of a comprehensive clinical examination of the following areas:
1. Head and neck;
  2. Radiographic images as necessary and appropriate to facilitate a comprehensive diagnosis of the patient. Radiographs shall be clearly identified with the patient name, date of examination and the name of the dentist;
  3. Intra-oral and extra-oral soft tissue examination, including charting of existing restorations and current status of patient's hard and soft tissue;
  4. Comprehensive periodontal screening;
  5. Oral cancer screening;
  6. Examination of the teeth;
  7. The results of any other examination performed by the licensee and/or dental auxiliary as necessary and appropriate to facilitate comprehensive diagnoses of the patient's dental status; and
  8. Findings which are within or outside of normal limits.
- (d) Diagnoses. The patient record shall include written diagnoses of the patient's current dental status based on the evaluation of the patient's medical and dental history, dental clinical examination and radiographic findings.
- (e) Treatment Plan. The patient record shall include a written treatment plan describing in detail the proposed treatment. The proposed treatment plan and information regarding estimated fees must be reviewed with the patient prior to the commencement of treatment. The treatment plan shall also include referrals to specialists as necessary. If there is no treatment plan this must be explained and documented in the patient record.
- (f) General and Specific Informed Consent. General and/or specific informed consent must be obtained in writing, signed and dated from the patient or legal representative prior to treatment and shall not be obtained fraudulently from a patient under duress or who is not mentally competent, the age of majority or an emancipated minor.
1. General Informed Consent. Each licensee shall obtain from the patient or legal representative general informed consent allowing the licensee to examine, diagnose and treat the patient. Procedures covered by a general informed consent include basic restorative or preventive procedures and permission to bill patient's insurer, if any. The general informed consent may remain in effect until treatment is terminated either by the licensee and/or the patient and the patient is no longer regarded as a patient of record.

## 5.15: continued

2. Specific Informed Consent. Each licensee shall obtain from the patient or the patient's legal representative a specific informed consent allowing the licensee to perform specialized treatment including, but not limited to: administration of anesthesia other than local anesthesia, periodontal, endodontic, orthodontic, prosthetic and oral and maxillofacial procedures, and specialized treatment for pediatric patients, including behavior management techniques.
3. Additional Requirements for Mobile Dental Facilities, Portable Dental Operations, and for Licensees Providing Dental Services in a Public Health Setting. An MDF, PDO as defined in 234 CMR 7.03 or licensee providing dental services in a public health setting shall obtain a signed written consent from the patient or legal representative which conforms to 234 CMR 5.15(3)(f) and also includes the following:
- a. An explanation of the scope of services that may be rendered;
  - b. Notice that the patient may continue to obtain dental care through any other provider;
  - c. Notice that the treatment of the patient may affect the future rights and benefits due the patient under private insurance, Medicaid, or the children's health insurance program;
  - d. If applicable, a request for permission to allow the patient's dental insurance carrier to be billed for treatment provided to the patient;
  - e. If applicable for services rendered in a public health setting, a request for permission to provide the official designated by the school, nursing home, residential facility, or institution with a written summary of the examination; and
  - f. Information on how the patient or legal representative can contact the MDF or PDO permit-holder, or public health dental services program.
- (g) Progress Notes. The patient record shall include written documentation of the treatment provided by the dentist and/or dental auxiliary including but not limited to:
1. Administration of medicines and medicaments including the type, amount, and route of administration;
  2. A statement of services provided including patient reaction, if any, during the treatment visit, procedures performed and diagnoses;
  3. A description of the pre- and post- treatment instructions including, if applicable, plans for subsequent treatment;
  4. Documentation of any referral for specialty treatment, including the name of the specialist the patient is referred to; and
  5. A dated written or electronic signature by the dentist or dental auxiliary who treated the patient.
- (h) Prosthetic and Orthodontic Prescriptions. All prosthetic and orthodontic prescriptions, whether filled by the licensee or other laboratory, shall be written in accordance with M.G.L. (copy to be retained by dentist) and include:
1. Name and address of the dental laboratory;
  2. Name, initials or identifying number for the patient;
  3. Date;
  4. Description of the treatment and procedures, including placement of the patient's name and/or identifying patient number;
  5. Specification of the type and quality of materials to be used; and
  6. Signature and license number of the dentist.
- (i) Patient Financial Record. The patient's financial record shall include, but not be limited to, the name of the patient's dental insurer, documentation of fees for treatment and payment schedule, and claims submitted to third parties.

5.16: Emergency Protocol

All dental practices shall:

- (1) Have a written protocol for managing medical or dental emergencies;
- (2) Maintain a current emergency drug kit;

## 234 CMR: BOARD OF REGISTRATION IN DENTISTRY

### 5.16: continued

- (3) Have communication equipment that ensures rapid access to emergency responders and others as necessary; and
- (4) Ensure that all staff are trained when hired, and at least annually thereafter, to implement the emergency protocols.

### 5.17: Reporting of Patient Deaths in Dental Facilities

- (1) Purpose. All dental patient deaths that occur in a dental facility or that are pronounced in another facility, *e.g.* hospital to which the dental patient has been transported from a dental facility, must be reported to the Board. The dentist who was treating and/or responsible for said patient must submit a written report describing the event to the Board by certified mail, electronic mail, or facsimile within seven days.
- (2) Failure to Comply. The license, permit, or registration of the dentist responsible for said patient may be revoked, suspended, or placed on probation for failure to comply with this reporting requirement.

### 5.18: Inspection of Facilities and Requirements for Corrective Action

- (1) Inspection of Dental Facilities. The Board or its designee(s) may visit a dental practice at any time without prior notice and conduct an inspection to determine compliance with state law M.G.L. c. 112, §§ 43 through 53 and § 61 and 234 CMR 2.00 or both, or any state or federal statutes or regulations relating to the practice of dentistry and dental hygiene.
- (2) Deficiency Statement. Following a Board inspection during which any violation of M.G.L. c. 112, §§ 43 through 53 and 234 CMR 2.00 is found, the Board or its designee(s) may prepare a deficiency statement citing any and all violations observed, a copy of which shall be sent to the licensee for response.
- (3) Plans of Correction. The licensee shall submit to the Board a written plan of correction for violations cited in a deficiency statement within the time specified by the Board. The plan of correction shall set forth, with respect to each deficiency, the specific corrective step(s) to be taken, a timetable for such steps, and the date by which compliance will be achieved. The timetable and the compliance dates shall be consistent with achievement of compliance in the most expeditious manner possible. A plan of correction which does not meet the requirements of this section shall be considered unacceptable by the Board and may be returned to the licensee for further correction.

### 5.19: Advertising

- (1) Illegal Advertising Practices. A dentist may advertise truthful and accurate information pertaining to dental services. Unfair, misleading, deceptive and fraudulent advertising is prohibited.
- (2) Advertising Dental Services and Dental Fees.
  - (a) A dental service is one that a dentist and/or dental auxiliary performs for a specific fee.
  - (b) Dental services advertised as free or no charge must describe the specific services offered and the comparative monetary value.
  - (c) The period of time during which the advertised fees will be in effect must be included in the advertisement. Advertised fees for all dental services must be in effect for a reasonable period of time from the initial date of the advertisement.
- (3) Content of Advertisements.
  - (a) Any advertisement for dental services, regardless of medium, must include the following:
    1. The name of at least one owner of the practice who is currently licensed to practice dentistry in the Commonwealth; and

## 234 CMR: BOARD OF REGISTRATION IN DENTISTRY

### 5.19: continued

2. If the dental practice is organized as a professional corporation pursuant to M.G.L. c. 156A, the name of at least one of the owners who is licensed to practice dentistry in the Commonwealth.
- (b) The information disclosed by the advertising dentist in a publication or a broadcast shall comply with M.G.L. c. 112, § 52A, and other provisions of 234 CMR 2.00.

### 5.20: Principles of Ethics and Code of Professional Conduct

All dentists licensed by the Board and all practices providing dental services shall comply with the *Principles of Ethics and Code of Professional Conduct, January 2004* of the *American Dental Association*, and all registered dental hygienists shall comply with the *Code of Ethics, 2006 of the American Dental Hygienists Association, Inc.*

### 5.21: Prohibited Practices

Licensees are prohibited from engaging in the following practices:

- (1) Associating or cooperating with any person, firm or corporation in any manner in an effort to avoid or circumvent the intent or provisions of M.G.L. c. 112, §§ 43 through 53 and § 61;
- (2) Paying or accepting fees in any form or manner as compensation for referring patients to any person for professional services, written work orders, or other services or articles supplied to the patient;
- (3) Entering into an agreement or other arrangement with a person who does not hold a valid license to practice dentistry in the Commonwealth which allows said person final decision-making authority over any of the following:
  - (a) Selection of a course of treatment for a patient;
  - (b) Procedures for materials to be used as part of such treatment;
  - (c) Manner in which treatment is carried out by the licensee;
  - (d) Professional practice decision-making;
  - (e) Patient records;
  - (f) Policies and decisions relating to pricing, credit, refunds, warranties and advertising;
  - (g) ) Decisions related to delegation of dental duties; and
  - (h) Control and maintenance of dental equipment, materials and supplies.
- (4) Operating or owning a commercial dental laboratory and continuing in the active practice of dentistry except where a dentist owns or operates a private, non-commercial dental laboratory for his/her own use and benefit. Where the licensee owns or operates a private, non-commercial dental laboratory and employs a dental technician, the licensee shall provide the dental technician a written work order which contains the date, information identifying the patient (*e.g.* name, initials, or social security number), the description of the work to be done, and a specification of the type and quality of materials to be used. The work order shall be in duplicate, signed by the dentist and a copy be retained in the patient record.

#### REGULATORY AUTHORITY:

234 CMR 5.00: M.G.L. c. 112, §§ 12CC, 43 through 53, 61; c. 94C and c. 111, §§ 51 and 52.

NON-TEXT PAGE