

## 234 CMR: BOARD OF REGISTRATION IN DENTISTRY

### 234 CMR 9.00: INVESTIGATION OF COMPLAINTS, DISPOSITION OF COMPLAINTS, GROUNDS FOR DISCIPLINE

#### Section

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#### 9.01: Purpose

234 CMR 9.00 sets forth the actions the Board may take on any complaint received by the Board concerning a Board licensee or the practice of dentistry, dental hygiene or dental assisting in the Commonwealth. The Board may take disciplinary action for any violation of M.G.L. c. 112, §§ 43 through 53 and 61 or 234 CMR, or any rule, advisory, or written policy adopted by the Board related to the practice of dentistry, dental hygiene, or dental assisting.

#### 9.02: Investigation of Complaints

(1) Response by Licensee. Upon receipt of a written complaint from the Board, a licensee shall submit to the Board a written response addressing the allegations set forth in the complaint. Said response shall include any information requested by the Board and shall be signed by the licensee. The response shall be submitted to the Board within the time frame specified by the Board.

(2) Complaint Committee. The Board may establish a Complaint Committee, comprised of a minimum of two members of the Board, one of whom must be a dentist, to review complaints alleging misconduct by a licensee and to make recommendations regarding disposition of the matter to the full Board.

(3) Investigative Conference. To facilitate disposition of any complaint, the Complaint Committee, acting on behalf of the Board, or the Board, may schedule an investigative conference at any time prior to the commencement of a formal adjudicatory proceeding. The Board shall give timely notice of the conference, including a general statement of the nature of the complaint and issues to be discussed.

(4) Ex Parte Communication with Board Members. Neither a party nor the representative of a party shall make or knowingly cause to be made an *ex parte* communication with Board members regarding a complaint and/or adjudicatory proceeding.

#### 9.03: Disposition of Complaints

The actions set forth in 234 CMR 9.03 constitute the non-disciplinary and disciplinary dispositions the Board may impose on a licensee or on a licensee's right to renew his or her license.

(1) Non-disciplinary Actions.

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- (a) Dismissal. The Board may dismiss a complaint by Dismissal with Prejudice, Dismissal without Prejudice, or Dismissal with an Advisory Letter where it determines that:
1. The Board lacks jurisdiction over the person named in the complaint;
  2. There is insufficient evidence to support the complaint;
  3. There are no violations of laws, rules and regulations governing the practice of dentistry;
  4. The conduct complained of does not warrant disciplinary or other remedial action.
- (b) Dismissal with Prejudice. A complaint may be dismissed with prejudice when the alleged conduct does not violate the Board's statutes or regulations or the Board lacks jurisdiction over the licensee.

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(c) Dismissal without Prejudice. A complaint may be dismissed without prejudice when the Board determines that the facts supporting the alleged conduct have not been or cannot be proven due to lack of evidence or insufficient evidence. The complaint may be revisited by the Board if new evidence becomes available.

(d) Dismissal with an Advisory Letter. Dismissal with an Advisory Letter is an official written notice retained in the Board's files delineating the Board's concerns with the licensee's professional practice. An advisory letter does not constitute formal disciplinary action.

(e) Stayed Probation. Stayed Probation is a non-disciplinary agreement between the licensee and the Board and consists of a period of time during which a dentist, registered dental hygienist, or dental assistant who holds a valid license may continue to practice in the Commonwealth under terms and conditions specified by the Board. Stayed Probation does not constitute formal discipline, but may include provisions for the Board to subject the licensee to disciplinary action if the Board finds that the licensee has failed to comply with the terms and conditions of his or her agreement with the Board.

(2) Disciplinary Actions. The disciplinary actions set forth in 234 CMR 9.03(2)(a) through (g) constitute disciplinary actions the Board may impose on a licensee of the Board, or on the right of a licensee to renew his or her license. The Board may only impose disciplinary action as part of a final decision and order issued in connection with the adjudication of a complaint, or under the terms of an agreement entered into between a licensee and the Board in resolution of any complaint or complaints.

Where the Board initiates adjudicatory proceedings, the Board shall conduct such proceeding in accordance with M.G.L. c. 30A: *State Administrative Procedure Act* and 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure*.

The Board may, after a hearing in accordance with the provisions of M.G.L. c. 30A and 801 CMR 1.00: *Standard Adjudicatory Rules of Practice and Procedure* or by agreement of the parties, reprimand, place on probation, censure, suspend, or revoke any license, registration or permit issued by the Board and/or otherwise limit the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth as the Board deems necessary and appropriate.

A disciplinary action against a license to practice dentistry, dental hygiene, or dental assisting in the Commonwealth constitutes a public record and is reportable by the Board to other licensing entities and to the appropriate national disciplinary reporting systems as a disciplinary action on a license to practice dentistry, dental hygiene, or dental assisting or on the right to renew such license.

(a) Reprimand. A Reprimand is a written statement issued by the Board which describes the manner in which the licensee has failed to comply with M.G.L. c. 112, §§ 43 through 53 and 61, or 234 CMR, or any rule, advisory or written policy adopted by the Board related to the practice of dentistry, dental hygiene, or dental assisting. A reprimand may include terms or conditions specified by the Board. Failure of a licensee to comply with such terms or conditions may result in further disciplinary action by the Board.

(b) Probation. Probation consists of a period of time during which a licensee who holds a valid license may continue to practice in the Commonwealth under terms and conditions specified by the Board. A licensee whose license is subject to probation must comply with the terms and conditions of probation in order to continue to practice dentistry, dental hygiene, or dental assisting in the Commonwealth. A licensee's failure to comply with terms and conditions may result in the imposition of a suspension or other discipline, as deemed appropriate by the Board.

(c) Censure. Censure is a severe reprimand.

(d) Voluntary Surrender. Pursuant to an agreement with the Board, a licensee may surren-

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der his or her license to practice dentistry, dental hygiene, or dental assisting in the Commonwealth. A licensee's Voluntary Surrender of a license to engage in the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth terminates the licensee's right to practice dentistry, dental hygiene, or dental assisting in the Commonwealth and to represent himself or herself by title or other designation as a licensed dentist, dental hygienist, and/or dental assistant.

(e) Suspension. Suspension of a license or the right to renew said license to engage in the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth, is the temporary denial by the Board of the right of a licensee to engage in the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth, and represent himself or herself by title or other designation as a licensed dentist, dental hygienist, or dental assistant.

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(f) Stayed Suspension. A stayed suspension is a period of suspension on a license to practice dentistry, dental hygiene, or dental assisting in the Commonwealth which suspension the Board does not activate pending compliance by a licensee with specified terms and conditions described in a Final Decision and Order or in a consent agreement between the licensee and the Board.

(g) Revocation. A revocation of a license or the right to renew said license to engage in the practice of dentistry, dental hygiene, or dental assisting in the Commonwealth terminates the licensee's right to practice dentistry, dental hygiene, or dental assisting in the Commonwealth, and to represent himself or herself by title or other designation as a licensed dentist, dental hygienist, and/or dental assistant.

9.04: Suspension Prior to a Hearing

If, based upon affidavits or other documentary evidence, the Board determines that a licensee is an immediate or serious threat to the public health, safety, or welfare, the Board may suspend or refuse to renew a license pending a final hearing on the merits of the allegations regarding the licensee. A hearing limited to the determination of the necessity of the summary action shall be afforded the licensee within seven days of the Board's action pursuant to M.G.L. c. 112, § 52F.

9.05: Grounds for Discipline

The Board may impose disciplinary action against an individual licensed by the Board to practice dentistry, dental hygiene, or dental assisting on one or more of the following grounds for discipline:

- (1) Engaging in misconduct in the practice of dentistry, unprofessional conduct, and/or conduct that undermines public confidence in the integrity of the dental profession.
- (2) Violating any of the duties and standards set out in 234 CMR or any rule, advisory, or written policy adopted by the Board pursuant to its authority under M.G.L. c. 112, §§ 43 through 53 and 61;
- (3) Failing to provide services and maintain the dental office, in compliance with the *CDC Guidelines* and the requirements of the Occupational Safety and Health Regulations at 29 CFR described in 234 CMR 5.05: *Infection Control, Occupational Safety and Health Standards, and Radiation Control Requirements*;
- (4) Practicing while the ability to practice is impaired by substance abuse, or any physical or mental condition;
- (5) Engaging in the illegal use or abuse of prescription drugs or controlled substances;
- (6) Continuing to practice dentistry, in the Commonwealth, after his or her license is expired, suspended, revoked or surrendered;
- (7) Violation of a consent agreement, Final Decision and Order, or any other order of, or agreement with, the Board;
- (8) Engaging in conduct that places the public health, safety, or welfare at risk;

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(9) Being convicted of any crime, except minor traffic offenses, including any guilty verdict or finding of guilt and any admission to or finding of sufficient facts, a continuance without a finding, and any plea of guilty or nolo contendere which has been accepted by the court, whether or not sentence has been imposed;

(10) Fraudulently procuring a certificate of licensure or a permit or its renewal;

(11) Providing false information on an application for registration or renewal of a license or permit;

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- (12) Cheating or attempting to compromise the integrity of any dental licensing or certification examination;
- (13) Failing to comply with a Board subpoena or failing to furnish the Board, its investigators, or representatives with records, documents, information, or testimony to which the Board is legally entitled;
- (14) Committing an act that violates recognized standards of care;
- (15) Failing to maintain professional dentist, dental hygienist, or dental assistant patient boundaries;
- (16) Engaging in conduct with a patient which is sexual or may be reasonably interpreted by the patient as sexual or engaging in behavior, gestures, or expressions, verbal or nonverbal, that are seductive, suggestive or sexually demeaning to a patient;
- (17) Failing to comply with established ethical standards of the profession and/or specialty;
- (18) Falsifying, altering or willfully making incorrect entries or failing to make essential entries in patient records;
- (19) Violating M.G.L. c. 94C: *Controlled Substances Act*;
- (20) Issuing a prescription for medication(s) or prosthesis (pursuant to M.G.L. c. 112, § 50), including but not limited to, internet or other electronic process, without a medical history or without conducting an appropriate dental examination or without recording a corresponding diagnosis and treatment plan;
- (21) Any disciplinary action against a licensee in another state or jurisdiction for conduct similar to conduct that would constitute grounds for discipline by the Board;
- (22) Charging a patient or third party payor for a service not performed;
- (23) Failing, without just cause, to refund a prepayment for treatment and services not completed and/or not performed;
- (24) Offering, giving or receiving commissions, rebates or other forms of remuneration for the referral of patients;
- (25) Failing to file any report required pursuant to M.G.L. chs. 19A, 19C, or 119, § 51A;
- (26) Failing to report or failing to accurately report to the Board in writing, within 30 days, any disciplinary action, as defined by 234 CMR 9.00, taken against the licensee by an entity or its agent, including but not limited to, a governmental authority, a health care facility, an employer, a dental insurance company, or a professional dental or medical society (international, national, state or local);
- (27) Failing to report to the Board, in writing, within 30 calendar days, any final action taken regarding one's license to practice dentistry, dental hygiene, dental assisting or other health care

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related professional license by any other governmental authority in this state or another jurisdiction;

(28) Failing to report to the Board, in writing, within 30 calendar days any criminal charge or conviction as defined in 234 CMR 2.03: *Definitions* in Massachusetts or any other jurisdiction.

(29) Failing to comply with a plan for corrective action required by an agreement with or an order of the Board;

(30) Nothing in 234 CMR 9.00 shall limit the Board's adoption of policies and grounds for discipline through adjudication and rule-making.



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9.06: Civil Administrative Penalties for Unlicensed Practice of Dentistry, Dental Hygiene, or Dental Assisting

A civil administrative penalty may be assessed for unlicensed practice of dentistry, dental hygiene, or dental assisting in the Commonwealth pursuant to M.G.L. c. 112, §§ 65(b) and 65A.

REGULATORY AUTHORITY

234 CMR 9.00: M.G.L. c. 13, § 19; c. 112, §§ 43 through 53, 61, 65 and 65A; c. 30A, § 13A.