

COLORADO DEPARTMENT OF REGULATORY AGENCIES  
OFFICE OF POLICY AND RESEARCH

# COLORADO STATE BOARD OF DENTAL EXAMINERS

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## 2002 SUNSET REVIEW



# STATE OF COLORADO

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Bill Owens  
Governor

October 15, 2002

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado Board of Dental Examiners. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2003 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

*The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...*

*The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....*

The report discusses the question of whether there is a need for the regulation provided under Article 35 of Title 12, C.R.S. The report also discusses the effectiveness of the Board and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

A handwritten signature in black ink that reads "M. Michael Cooke".

M. Michael Cooke  
Executive Director

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## **Background**

### *The Sunset Process*

The regulatory functions of the Colorado Board of Dental Examiners (Board) in accordance with Article 35 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2003, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the Board pursuant to section 24-34-104(9)(b), C.R.S.

The purpose of this review is to determine whether the Board should be continued for the protection of the public and to evaluate the performance of the Board and staff of the Division of Registrations. During this review, the Board must demonstrate that there is still a need for the licensing program and that the regulation is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 59.

### *Methodology*

During the review of the Board, DORA staff:

- Interviewed agency staff.
- Attended Board meetings and met with Board members.
- Met with a representative from the Dentist Peer Health Assistance Program.
- Interviewed staff from the State Board of Medical Examiners, State Board of Nursing, and the State Board of Pharmacy.
- Conducted interviews and solicited comments from state and local interest groups.
- Met with educators from dental and dental hygiene schools in Colorado.
- Met with representatives from dental professional associations including the Colorado Dental Association, the Metropolitan Denver Dental Society, the Colorado Dental Hygiene Association, and the Colorado Dental Assistant's Association.

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- Reviewed reports by the American Association of Dental Examiners, American Dental Association, and the Centers for Disease Control and Prevention.
  - Researched the functions of, and spoke with representatives from dental regulatory agencies in other states.
  - Reviewed Board documents and reports, state statutes, legislative reports, previous legislation, literature on dental issues, and performed background and comparative research using the Internet.

### *Profiles of the Professions*

#### **Dentists**

According to the U.S. Department of Labor's *Occupational Outlook Handbook, 2002-2003* dentists diagnose, prevent, and treat teeth and tissue problems. They remove decay, fill cavities, examine x-rays, place protective plastic sealants on children's teeth, straighten teeth, and repair fractured teeth. They also perform corrective surgery on gums and supporting bones to treat gum diseases. Dentists extract teeth and make models and measurements for dentures to replace missing teeth. They provide instruction on diet, brushing, flossing, the use of fluorides, and other aspects of dental care, as well. They also administer anesthetics and write prescriptions for antibiotics and other medications.

Dentists use a variety of equipment, including x-ray machines, drills, and instruments such as mouth mirrors, probes, forceps, brushes, and scalpels. Dentists may employ and supervise dental hygienists, dental assistants, and dental laboratory technicians.

The American Dental Association (ADA) defines the practice of dentistry as follows:

The evaluation, diagnosis, prevention and/or treatment (nonsurgical, surgical or related procedures) of diseases, disorders and/or conditions of the oral cavity, maxillofacial area and/or the adjacent and associated structures and their impact on the human body, provided by a dentist, within the scope of his/her education, training and experience, in accordance with the ethics of the profession and applicable law.

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Nine out of 10 dental practitioners are in private practice managing a variety of dental needs. Dentists also practice in nine specialty areas identified by the ADA as orthodontia, oral and maxillofacial surgery, oral and maxillofacial radiology, oral and maxillofacial pathology, pediatric dentistry, prosthodontics (making artificial teeth or dentures), periodontics (treating gums and bone supporting the teeth), endodontics (root canal therapy), and public health.

Educational programs for specialties require at least two years of additional education and training beyond the four years of dental school, with four exceptions: programs in oral and maxillofacial surgery are at least four years in duration; oral and maxillofacial pathology are at least three years in duration; prosthodontic programs are a minimum of 33 months in duration; and periodontic programs require a minimum of 30 months of instruction.

All 50 states and the District of Columbia require dentists to be licensed. In most states, including Colorado, a candidate for licensure must have graduated from a dental school accredited by the ADA's Commission on Dental Accreditation, and passed written and clinical examinations. Candidates fulfill the written examination requirement by passing the National Board Dental Examinations.

The Commission on Dental Accreditation has the responsibility for the evaluation of dental education programs and the listing of programs that are conducted in accordance with published accreditation standards. The Commission on Dental Accreditation is recognized by the U.S. Department of Education to accredit dental education programs. There are 54 accredited dental programs in the United States. Of the 54 programs, there are 24 dental hygiene programs associated with the dental program.

### **Dental Hygienists**

Dental hygienists examine patients' teeth and gums, recording the presence of diseases or abnormalities and instruct patients how to practice good oral hygiene. They remove calculus, stains, and plaque from teeth; take and develop dental x-rays; and apply cavity preventive agents such as fluorides and pit and fissure sealants. Dental hygienists use hand and rotary instruments and ultrasonics to clean teeth and x-ray machines to take radiographs.

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To qualify for licensure in most states, including Colorado, a candidate must graduate from an accredited dental hygiene school and pass both a written and clinical examination. The ADA Joint Commission on National Dental Examinations administers the written examination accepted by all states and the District of Columbia. State and regional testing agencies administer the clinical examination.

In 1999, the Commission on Dental Accreditation accredited approximately 250 programs in dental hygiene. Although some programs lead to a bachelor's degree, most grant an associate degree. Thirteen universities offer master's degree programs in dental hygiene.

### **Dental Assistants**

Dental assistants or dental auxiliaries (as referred to in the Dental Practice Law) perform a variety of patient care, office, and laboratory duties. A dental assistant works under the supervision of a dentist and duties may include performing such chairside functions as instrument exchange, exposing and processing radiographs, sterilizing instruments, preparing tray set-ups, and preparing materials for making impressions and restorations.

They may also remove sutures, apply anesthetics and cavity preventive agents to teeth and gums, remove excess cement used in crowns and bridges, and place rubber dams on the teeth to isolate them for individual treatment. Often dental assistants maintain patient records and perform administrative office procedures.

Formal education in dental assisting is available in the United States. Some dental assistant programs are accredited by the Commission on Dental Accreditation. Graduates of the program receive a certificate upon completion and are eligible to sit for the Certified Dental Assistant Examination administered by the Dental Assisting National Board, Inc. This written examination includes such topics as radiation health and safety, infection control, and general chairside duties. Neither formal education nor licensure is required by law for employment in Colorado and in most other states.

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## *History of Regulation*

The Colorado State Board of Dental Examiners (Board) and the Dental Practice Law of Colorado (Law) were established on March 15, 1889, when the General Assembly created a five-member board and up to a \$500 fine for practicing dentistry without a license.

In 1891, a requirement was added that dentists had to graduate from a U.S. or foreign school of dentistry. Through the first quarter of the 20<sup>th</sup> century, there was no restriction on who could extract teeth.

Dentistry was first defined in 1919 and included a list of tasks enumerating the practice. The General Assembly also established a dental hygiene license. Hearings were required for complaints, and grounds for discipline were fraud, drug use, intemperance, and immorality. These were expanded in 1935 to include negligent malpractice, disobeying the Board, and maintaining an unsanitary office. The statute also prohibited advertising free examinations; public demonstrations of dental work; or employing “steerers, cappers, and touters” to secure patronage. For the first time, dental hygienists were allowed to examine teeth in schools and in public and charitable institutions.

In 1929, the Colorado Supreme Court ruled against the corporate practice of dentistry. In 1935, the General Assembly responded to this decision by allowing the practice of dentistry in a partnership. In 1961, the statute was made very restrictive by adding language that included in the practice of dentistry, anyone who employed dentists, or leased dental equipment, or maintained ownership of dental equipment used by dentists in their practice. Furthermore in 1961, subjects for examination and a lengthy list of advertising restrictions were added and dentists were given the right to prescribe drugs and administer general and local anesthesia.

In 1971, the statute defined dental assistants using the term “auxiliaries” as “any person not a dentist or dental hygienist licensed in Colorado who may be assigned or delegated to perform dental tasks or procedures as authorized by this article or by rules and regulations of the board.” The scope of practice for dentists was strengthened by allowing only dentists to have diagnostic treatment, planning, and therapeutic or correctional duties. Dentists were also given their delegatory powers at this time. The Board’s disciplinary powers were expanded to include the right to reprimand or censure.

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A major change to the Law in 1979 included allowing dental hygienists to practice in various institutions and clinics run by corporations for their employees without the personal direction of a dentist.

The Board underwent sunset review in 1985 and legislation to repeal and re-establish the Board passed the 1986 General Assembly. The legislation modified the composition of the eight-member Board from five dentists, two dental hygienists and one public member to nine members consisting of four dentists, two dental hygienists and three public members. The legislation also empowered the Board to determine by rule, minimum training and equipment requirements for the administration of anesthesia and certain forms of sedation.

Changes in 1996 were a result of recommendations made in the 1995 sunset review. The amended Law increased the number of dentists on the Board to five. In addition, Senate Bill 96-087 amended the Law by creating a new endorsement section setting forth licensure requirements for dentists licensed in another jurisdiction. It also granted the Board authority to issue a confidential letter of concern against licensees for less serious violations of the Law.

The scope of practice for dental and dental hygiene practice in Colorado was updated and clarified by expanding the definition of practicing dentistry to include interpretations and the making of changes to patient treatment plans. In addition, the bill updated the general grounds for discipline including failure to report adverse action against a license from another entity, failure to provide proper supervision, practicing outside the scope of dental or dental hygiene practice, and engaging in a crime that relates to the licensee's practice.

Lastly, the amended Law granted the Board the power to issue temporary licenses and retired licenses, clarified the statutory prohibition against dentists misusing prescription drugs and controlled substances, and clarified and updated the dental auxiliary scope of practice.

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## **Legal Framework**

The Dental Practice Law of Colorado (Law) found in section 12-35-101, et seq., Colorado Revised Statutes (C.R.S.), creates the State Board of Dental Examiners (Board) that is responsible for administering and enforcing the provisions of the Law. The ten-member Board consists of five dentists, two dental hygienists, and three public members. The Board is located in, and administered by, the Division of Registrations in the Department of Regulatory Agencies.

The Board is empowered to perform a variety of general regulatory functions including administering examinations, granting licenses, conducting investigations, holding hearings and disciplining licensees.

The Law empowers the Board to promulgate rules and regulations, and administer oaths and issue subpoenas. In particular, the Board is authorized to issue anesthesia permits to licensed dentists and develop criteria and procedures for office inspection programs.

### **Requirements for Licensure**

All persons applying for a license to practice dentistry, whether by examination or credentials, must be 21 years of age, possess a degree from an accredited school or college, and have passed the examination on the provisions of the Law. In addition, applicants must demonstrate to the Board that they have maintained the necessary professional abilities and knowledge if they have not graduated within the 12 months preceding filing the application.

An applicant for licensure by examination must also submit evidence of having successfully passed written examinations administered by the Joint Commission on National Dental Examinations and the clinical examination administered by the Central Regional Dental Testing Service, Inc. (CRDTS) or the Western Regional Examining Board (WREB).

An applicant for a license by credentials who is licensed as a dentist in another state or territory of the United States must provide proof of such licensure and proof of practice for a minimum of five years prior to application. Additionally, an applicant must not have failed the clinical examination accepted by the Board within the last three years and must have passed a state or regional clinical examination acceptable to the Board.

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Graduates from foreign non-accredited dental schools seeking to obtain a license to practice dentistry must have passed the examinations required of all applicants, successfully completed a program in clinical dentistry, and have a doctorate in dentistry from a dental school accredited by a nationally recognized accrediting agency.

To obtain a license to practice dental hygiene, applicants must have graduated from a school of dental hygiene that is accredited by a nationally recognized accrediting agency. In addition, they must have successfully completed an examination administered by the Joint Commission on National Dental Examinations and a clinical examination accepted by the Board. If applicants have not graduated within the 12 months preceding the application submittal, they must demonstrate to the Board that they have maintained the necessary professional abilities and knowledge.

Inactive license status is available to dentists licensed to practice in Colorado. Inactive licensees pay a fee and provide an affidavit to the Board declaring they are not practicing dentistry in the state.

To be eligible for a retired status license, any person currently holding a Colorado license as a dentist or dental hygienist must pay a fee and provide an affidavit stating the date when the practice will cease. The applicant must agree to no longer earn income as a practicing dentist or dental hygienist or consultant. A dentist in retired status may provide free dental services on a voluntary basis to indigent persons, if such services are provided on a limited basis.

The Board may issue a temporary license that includes restrictions regarding effective dates of practice and areas of practice that may be performed.

### **Title Protection**

The Law protects the titles “dentist” and “dental surgeon,” and the initials D.D.S., D.M.D, D.D.S/M.D., and D.M.D./M.D. Only individuals licensed as dentists by the Board may use these terms in Colorado.

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## **Scope of Practice**

Title 12, Article 35, Section 110, C.R.S., defines the practice of dentistry in the State of Colorado. Such functions include performing any dental operation, oral surgery, or providing diagnostic or therapeutic services; taking impressions of the tooth or jaw, or performing any phase of an operation meant to replace any part of the tooth or supply substitutes for natural teeth; diagnosing, examining or prescribing treatment related to the oral cavity or the maxillofacial area. Dentists are authorized to prescribe drugs, perform surgical operations, and administer local or general anesthetics.

There are two modes of practice for dental hygienists defined in statute: unsupervised and supervised. The first applies to hygienists who are authorized to perform certain procedures without the supervision of a licensed dentist and the second applies to procedures that require the direction of a licensed dentist.

Dental auxiliaries are defined as any person not a licensed dentist or dental hygienist, who may be assigned dental tasks or procedures as authorized by the Law under the orders of a licensed dentist.

## **Exemptions**

Dentists, dental hygienists, and dental surgeons serving in the United States Armed Forces, public health service, Coast Guard or Veterans Administration are exempt from the requirements of the Law as are all licensed physicians who do not practice dentistry as a specialty. The Law further exempts dental interns, any registered nurse or qualified anesthetist who administers an anesthetic under the direct supervision of a licensed dentist, and instructors and students in an educational institution. Furthermore, dentists or dental hygienists from another state or country appearing in a program of dental education or research at the invitation of a licensed dentist or dental hygienist in this state are exempt from the Law. Finally, examiners representing testing agencies during the administration of dental or dental hygiene examinations are exempt.

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## **Discipline**

The Dental Practice Law of Colorado defines the type of behavior that would cause the Board to take disciplinary action against a licensed dentist or licensed dental hygienist. The Law establishes over 30 designations of unprofessional conduct or grounds for discipline. They include such actions as fraud; conviction of a felony; administering or prescribing controlled substances other than in the course of legitimate professional practice; knowingly allowing or condoning the practice of dentistry by an unlicensed person; physical or mental disability that acts as a hindrance; false advertising; sexual misconduct; false billing; and providing a patient with substandard or grossly negligent dental care.

The Board is authorized to refuse to renew, suspend, reprimand, or revoke the license of any licensed dentist or dental hygienist or deny a license to any applicant. The Board is also empowered to issue letters of admonition and letters of concern, and impose probation and public censure on any licensee.

## **Dentist Peer Health Assistance Program**

In addition to enforcement through disciplinary actions against licensees, the Board is empowered to place and monitor licensees in the Colorado Dentist Peer Health Assistance Program (Program). The Program was created in 1990 and is utilized by the Board to provide assistance and treatment for chemical dependency, mental illness, and psychological and physical problems that may impair a dentist's ability to practice his or her profession. The Program is primarily funded through the dental licensure renewal process. Twenty-eight dollars a year of each license fee is authorized to finance the Program.

## **Summary of Rules and Regulations**

The general authority for the promulgation of rules and regulations is set forth in section 12-35-107(1)(f), C.R.S. Currently there are 25 rules that have been promulgated by the Colorado State Board of Dental Examiners. A listing of these rules may be found in Appendix F on page 89.

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## **Program Description and Administration**

### Licensing

The State Board of Dental Examiners (Board) in the Department of Regulatory Agencies (DORA) administers and enforces the Dental Practice Law of Colorado (Law). There are 5.7 full-time equivalent (FTE) employees allocated to the program that include a program administrator and support staff to address such activities as licensing, Board correspondence, monitoring probation, complaint analysis, and administrative functions. Fees are established annually to cash fund administrative expenses and for the Dentist Peer Health Assistance Program. Table 1 details the Board's expenditures for the past six fiscal years.

**Table 1  
State Board of Dental Examiners Budget**

<b>Fiscal Year</b>	<b>Total Expenditures</b>
FY 96-97	\$610,767
FY 97-98	\$758,144
FY 98-99	\$797,838
FY 99-00	\$812,666
FY 00-01	\$954,109
FY 01-02	\$975,026

Sections 12-35-113 and 12-35-123, Colorado Revised Statutes (C.R.S.), provide that, upon application for a dental or dental hygienist license from the Board, payment of a fee and fulfillment of minimum qualifications, a license will be issued. The application fee is currently \$300 for a two-year dental license that includes \$56 for the Dentist Peer Health Assistance Fund (Fund). Dental hygienists are required to pay \$150 upon application but do not pay into the Fund. There are currently 3,701 licensed dentists and 3,205 licensed dental hygienists in Colorado. As indicated in the table on the following page, the number of new licensed dentists has decreased slightly over the course of the last six fiscal years while the number of dental hygienists has slightly increased.

**Table 2**  
**Number of Licensed Dentists and Dental Hygienists**

Fiscal Year	Licensed Dentists					Licensed Dental Hygienists		
	New	Active Total	Retired	Inactive	Temporary	New	Active Total	Retired
FY 96-97	174	n/a	n/a	n/a	n/a	129	n/a	n/a
FY 97-98	197	n/a	n/a	n/a	1	170	n/a	n/a
FY 98-99	175	3,785	n/a	n/a	3	142	3,115	n/a
FY 99-00	150	3,568	n/a	n/a	0	223	3,011	n/a
FY 00-01	157	4,353	n/a	n/a	0	200	3,183	n/a
FY 01-02	177	3,701	183	423	0	186	3,205	94

A person may become a licensed dentist in Colorado either by passing an examination or by satisfying the statute's credentialing requirements. A person may become a licensed dental hygienist in Colorado either by passing an examination or by satisfying the statute's endorsement requirements. The processes of credentialing and endorsement are similar and both require licensure and practice in another state. Appendix B on page 60 summarizes the requirements for licensure by examination and by credentialing/endorsement.

In fiscal year 01-02, the Board issued, through examination or credentialing/endorsement, 177 dental licenses and 186 dental hygiene licenses. An average of 171 new licenses are issued each year to dentists and 173 to dental hygienists. Overall, the percentage of licenses issued to dentists by examination is 61 percent and those issued by credentialing account for 39 percent. An average of 59 percent of dental hygiene licenses are issued by examination and 41 percent by endorsement (see Table 3 below).

**Table 3**  
**Licenses Issued to Dentists and Dental Hygienists Through Examination, Credentials and Endorsement**

Fiscal Year	Dental Licenses Issued by Exam	Dental Licenses Issued by Credentials*	Dental Hygienist Licenses Issued by Exam	Dental Hygienist Licenses Issued by Endorsement	Total Number of Licenses Issued
FY 96-97	111 (64%)	63	79 (61%)	50	303
FY 97-98	100 (51%)	97	99 (58%)	71	367
FY 98-99	98 (56%)	77	71 (50%)	71	317
FY 99-00	99 (66%)	51	151 (68%)	72	373
FY 00-01	107 (68%)	50	115 (57%)	85	357
FY 01-02	126 (71%)	51	107 (57%)	79	363

\* Dental licenses were first issued by credentialing on February 28, 1997, so the statistics for that fiscal year reflect activity from March – June only.

**Table 4**  
**Total Temporary, Active, and Denied Licenses**  
**Dentists and Dental Hygienists**

<b>Fiscal Year</b>	<b>Temporary Licenses</b>	<b>Active Licenses</b>	<b>Denied Licenses</b>
FY 96-97	N/A	7,225	0
FY 97-98	1	7,013	0
FY 98-99	3	6,900	3
FY 99-00	0	6,579	1
FY 00-01	0	7,536	2
FY 01-02	0	6,906	0

Provisions for granting a license by credentials require that the applicant be licensed and in good standing in another state; be a graduate from an accredited dental school; and successfully pass a written, clinical, and Colorado jurisprudence examination. In addition, the applicant must have been in practice for a minimum of five years immediately prior to applying for licensure.

This licensure by credentials requirement of active, continuous practice for a specified period of time should not be confused with the authority that the Board possesses in granting initial licensure. For initial licensure as a dentist, the requirements include successful completion of the written examination administered by the Joint Commission on National Dental Examinations, the Colorado jurisprudence examination, and a clinical examination administered by the Western Regional Examining Board (WREB) or the Central Regional Dental Testing Service, Inc. (CRDTS). CRDTS was the only examination accepted until February 2002, when WREB was designated as an accepted regional examination.

Licensure requirements for foreign-trained dental graduates require proof of graduation from a dental school accredited by a nationally recognized agency, passage of the examination administered by the Joint Commission on National Dental Examinations, and passage of the clinical examination administered by CRDTS or WREB.

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Applicants for dental hygiene licensure by examination are required to have graduated from a school of dental hygiene accredited by a nationally recognized accrediting agency and successfully completed the written examination administered by the Joint Commission on National Dental Examinations, a clinical examination administered by CRDTS or WREB, and a Colorado jurisprudence examination. Licensure by endorsement requires that dental hygienists have successfully fulfilled the above-mentioned requirements plus verification of licensure from another jurisdiction. Also, there must be verification that the applicant has been engaged in either clinical practice or teaching within at least one year during the past three years immediately preceding the application.

### Examinations

The most standardized aspect of the licensing process is the written examination requirement. The Board requires evidence that a candidate for dental licensure has passed Parts I and II of the National Board Dental Examinations (NBDE). Part I consists of four sections covering basic biomedical sciences and dental anatomy and is administered in dental schools. Part I is usually taken after two years of dental school. Part II, offered in both paper and computer format, consists of one comprehensive examination covering clinical dental subjects, pharmacology, behavioral science, dental public health, and occupational safety. Part I must be passed before Part II is attempted. The ADA Joint Commission on National Dental Examinations administers the NBDE Parts I and II.

In addition to the written examination, there are four regionally administered clinical exams: CRDTS, Northeast Regional Examining Board (NERB), Southern Regional Testing Agency (SRTA), and WREB. These regional examinations are used by 41 jurisdictions. In addition, there are 10 independent state administered exams in Alabama, California, Delaware, Florida, Hawaii, Indiana, Louisiana, Mississippi, North Carolina, and Nevada.

Most clinical examinations involve performing dental procedures on patients. Specific procedures are typically identified in advance, and the candidate is normally responsible for furnishing patients in need of these procedures. Although dental equipment is ordinarily furnished, the candidate is typically expected to bring instruments and materials to be used.

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The National Board Dental Hygiene Examination is a comprehensive examination consisting of two components. Component A addresses three major areas including Scientific Basis for Dental Hygiene Practice, Provision of Clinical Dental Hygiene Services, and Community Health Activities. Component B includes 150 case-based items that refer to 12 to 15 dental hygiene patient cases. This examination is offered three times a year at designated testing sites in the United States and Canada.

A third examination requirement for licensure in Colorado is the jurisprudence examination, an open-book type examination that consists of 40 true-false questions with a passing score of 70 percent. Since fiscal year 96-97, only three persons have been unsuccessful in passing the jurisprudence examination the first time. The purpose of the jurisprudence examination is to require the applicant to demonstrate a beginning level familiarity and exposure to the Colorado Law.

### Inspections

Section 12-35-107(1)(i), C.R.S., requires the Board to develop criteria and procedures for an office inspection program by designating qualified inspectors who are experts in dental outpatient general anesthesia and deep-conscious sedation. In addition, the Law requires each licensee inspected to bear the cost of the inspection. The Board has promulgated rules and regulations that define qualifications for being an inspector. The inspector is required to notify the Board in writing of the results of an inspection. Successful inspections have been reported to the Board.

The following table illustrates the number of inspections that have occurred during the past five years.

**Table 5**  
**Office Inspection Program**

<b>Fiscal Year</b>	<b>Number of Inspections</b>
FY 96-97	77
FY 97-98	36
FY 98-99	20
FY 99-00	16
FY 00-01	39
FY 01-02	82

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The statute requiring inspections was enacted in 1996. The statistics indicate that there were a large number of applicants/inspections in the first year with a significant decrease after that first fiscal year. However, offices are required to be inspected again after five years, so the number increases in fiscal years 00-01 and 01-02 when re-inspections are being added to the number of initial inspections.

### *Complaints/Disciplinary Actions*

In addition to issuing licenses to ensure that competent practitioners are permitted to practice in Colorado, the Board's effectiveness can be measured by its enforcement actions. The Board is charged with receiving complaints from the public, investigating those complaints if the allegation falls within the Board's jurisdiction, and determining final action (disciplinary action or dismissal).

Written complaints against a practitioner are conveyed to the Board from many sources including the public, other dental practitioners, and malpractice insurance carriers. The Board also has the authority to initiate complaints upon its own motion.

From April 1997 through fiscal year 99-00, the Board reviewed all complaints upon their receipt. The Board then determined whether the matter should be dismissed with no investigation, be referred for full investigation by the centralized Complaints and Investigations Unit (C&I), or if Board staff should send the licensee a 30-day letter regarding the complaint. [A 30-day letter provides a copy of the complaint to the licensee and requests a response to the complaint in addition to patient records relevant to the issue.]

In fiscal year 00-01, the process was changed to improve efficiency. In addition, the Board was concerned that it might be inappropriately dismissing complaints since only the complaint document was reviewed. Therefore, the Board developed a "triage" protocol whereby certain types of complaints, such as those involving allegations of sexual or child abuse, are identified and sent directly to C&I to expedite the investigation. All other complaints are now sent to the practitioner for a response and to request patient records. As a result of this procedural change, the number of 30-day letters sent by staff increased almost 100 percent. The statistics in Table 6 on the following page relate to the number of cases investigated by C&I and the number of cases receiving 30-day letters.

**Table 6  
Complaint Investigations**

	Number of Complaints Investigated by Complaints and Investigations Unit	Number of Complaints with 30-Day Letters Sent by Staff
FY 96-97	172	16
FY 97-98	131	114
FY 98-99	136	119
FY 99-00	85	128
FY 00-01	82	244
FY 01-02	74	296
Total	680	917

As evidenced by the table above, the use of 30-day letters sent by staff decreased the number of cases requiring investigation. The change also impacted those that went on to formal investigation by providing more information to investigators, decreasing both the time spent per case and subsequently the cost of investigations. Table 7 below illustrates the expenditures for C&I for the past five years. There was a decline in costs associated with the implementation of staff initiating the 30-day letter.

**Table 7  
Dental Board  
Complaints and Investigations Expenditures**

	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02
Cost of C&I	\$112,171	151,759	145,798	114,321	115,879	112,868

The Board has the latitude to allow dentists or dental hygienists to continue to practice by placing them on probation or by otherwise subjecting them to conditions as the Board deems appropriate. Such conditions may include the Dentist Peer Health Assistance Program, education or training, periodic review, or supervised or restricted practice. When making its disciplinary order, the Board may take the practitioner's prior disciplinary record into account.

The following table compares the number of complaints against dentists and dental hygienists over the last six fiscal years.

**Table 8**  
**Complaints Received Regarding Dentists and Dental Hygienists**

	FY 96-97	FY 97-98	FY 98-99	FY99-00	FY 00-01	FY 01-02
Dentists	323	333	314	304	315	336
Dental Hygienists	18	13	11	4	4	4

It is important to review the Board's final actions on complaints. A board that is lax in meeting its public protection mandate may have very few disciplinary actions relating to the number of complaints received. Total final action comparisons between years may not equal total number of complaints because complaints are not always resolved in the same year that they are received by the Board, especially if complex litigation is required. The data in the table below reflects final actions on complaints against dentists for the last six fiscal years.

**Table 9**  
**Dentists - Final Actions**

	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02
Dismissed	194	237	219	126	139	122
Letter of Concern	25	42	43	35	49	31
Letter of Admonition	31	35	33	19	9	16
Probation	19	21	32	24	19	11
Suspension	1	6	6	4	6	1
Revocation / Relinquishment	1	1	3	2	8	3
Cease and Desist	0	2	1	1	2	2
Injunction	0	1	0	0	0	0

The data in the table below reflects final actions on complaints taken against dental hygienists for the last six fiscal years. The only disciplinary actions imposed or taken were for substandard care and failure to renew a license.

**Table 10**  
**Dental Hygienists - Final Actions**

Fiscal Year	Substandard Care					Failure to Renew License	Total
	LOA*	Revocation	Cease and Desist	Suspension	Probation	LOA*	
FY 96-97	0	0	0	0	0	0	0
FY 97-98	1	1	0	0	0	2	4
FY 98-99	1	0	0	0	2	1	4
FY 99-00	1	0	0	0	0	2	3
FY 00-01	1	1	0	0	0	1	3
FY 01-02	1	0	1	1	0	1	4

\* Letter of Admonition

### *Dentist Peer Health Assistance Program*

The Dentist Peer Health Assistance Program (Program) was created in 1990, and is used by the Board to provide assistance and referral to treatment to dentists who are chemically dependent, or who may need psychological/psychiatric assistance or assistance with physical problems. The program's role is to assess, educate, intervene, identify and diagnose the practitioner's problems, and then refer the practitioner for appropriate treatment. Pursuant to the Law and state rules, the vendor providing the Program services is selected by a formal bid process. Peer Assistance Services, Inc., a nonprofit corporation, has contracted with the Board since 1993 to provide the service.

A review of the literature demonstrates that such assistance programs are being used with increasing frequency throughout private industry and in regulation of a number of health care professionals. The underlying rationale for such programs is that addictions, substance abuse, and mental health problems are conditions that impair people's abilities to be effective at home and at work; drain health care systems in treatment costs; and negatively impact business systems in productivity. Thus, long-term investment in rehabilitation should benefit many aspects of society.

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The two primary philosophies of the Program are public protection and licensee rehabilitation for those who acknowledge that they suffer from a condition that is treatable. The Program offers a possible disciplinary option to chemically dependent dentists rather than the revocation or suspension of their license to practice dentistry, and the possible end of their professional careers.

All dentists are assessed a \$56 fee that is included in their biennial license renewal. Services offered to dentists by the Program include assessment and referral, short-term problem resolution, intervention, case management/monitoring, facilitated peer support groups, prevention education programs, and 24-hour seven-day-a-week toll-free telephone assistance.

Dentists are personally responsible for fees associated with mental health or substance abuse treatment and drug screenings.

The contractual agreement between Peer Assistance Services, Inc. and the Board requires the submittal of quarterly reports to the Board. Monthly reports to the Program regarding participants include treatment and therapy reports, manager or practice monitor reports, self-help group attendance verification, drug screen reports, and self-status reports. Because voluntary participants' names are not public knowledge, their names do not appear on the reports and their identities are kept confidential unless there is noncompliance or the dentists are unable to practice with reasonable skill and safety.

Licensees enter the Program either voluntarily or as agreed upon in a Board disciplinary stipulation. All licensees who enter the Program participate in a five-year rehabilitation program. Records of voluntary participants are kept confidential and are identified by case number only. However, the identity of the licensee who has agreed to participate in the Program through a Board disciplinary stipulation is public knowledge. All participants in the Program enter into contracts with Peer Assistance Services, Inc. that provides terms to be fulfilled designed to rehabilitate the licensee.

The licensee agrees to comply with the Program by signing the Rehabilitation Contract that sets up compliance requirements. The Return to Practice Agreement is an additional component that provides terms so that dentists may demonstrate compliance.

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An integral component of the Program is the practice monitor (another professional dentist) who monitors whether or not the licensee is practicing accepted standards of dental care. The monitor agrees to be a party to the Rehabilitation Contract and the Return to Practice Agreement. Under the provisions of the agreement, the practice monitor must provide competency reviews that are based on interviews with staff, review U.S. Drug Enforcement Administration order forms, and perform site visits. Any indication of noncompliance is reported to the Program that then reports to the Board within 24 hours.

A question arises concerning the protection of the public while the licensee is monitored. There is the possibility that the licensee may relapse and resume previous behavior of chemical dependency and may be a danger to the public. The Rehabilitation Contract, Return to Practice Agreement, dentist monitoring, quarterly reports, frequent urinalysis and blood tests, and notifications of non-compliance within 24 hours keep the risks to a minimum.

From fiscal year 96-97 through fiscal year 01-02, there were a total of 13 dentists who entered the Program voluntarily and 11 dentists mandated to the Program by the Board through stipulation. For this same time period, 28 dentists were successfully discharged after contract completion and seven were terminated because of the inability to practice with reasonable skill and safety. During this time period, an additional 46 dentists or immediate family members (non-diversion clients) were provided with a variety of early intervention services that include relationship issues, health/emotional welfare, health and physical welfare, professional career issues, and answers to regulatory questions. These short-term problem resolution sessions may consist of a telephone call, or two to three meetings with a staff member of Peer Assistance Services, Inc. The table on the following page, provided by Peer Assistance Services, Inc., illustrates the activity of the Program.

**Table 11**  
**Dentist Peer Health Assistance Program Statistics (DPAP)**

Criteria	FY96-97	FY97-98	FY98-99	FY99-00	FY00-01	FY01-02**	Totals
New Dentists Coming into DPAP on Voluntary Basis	2	4	4	1	0	2	13
New Dentists Coming into DPAP Because Mandated Through Stipulation	1		4	4	2	0	11
Total Number of New Participants	3	4	8	5	2	2	24
Reason for Entry							
Alcohol Only	1	0	0	0	0	0	1
Chemical Dependency	0	0	3	4	1	2	10
Dual Diagnosis*	2	1	2	1	0	0	6
Mental Health Only		2	1	0	0	0	3
Physical Disability	0	0	1	0	0	0	1
Other	0	1	1	0	1	0	3
Number Successfully Completed	5	3	3	5	5	7	28
Number Terminated	1	3	0	0	2	1	7
Number in Program at End of Each Fiscal Year	16	16	20	18	13	8	N/A
Number of Non Diversion Clients	1	8	2	6	9	20	46
Money Awarded to Peer Assistance Services, Inc.	\$70,182	\$75,095	\$99,000	\$103,950	\$124,740	\$114,000	\$586,967

**Source: Peer Assistance Services, Inc.**

\*Dual Diagnosis (mental health + chemical dependency)

Please note that the amount of money awarded to the program decreased in fiscal year 00-01 as a result of the declining number of dentist license renewals.

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## **Analysis and Recommendations**

### ***Recommendation 1 - Continue the State Board of Dental Examiners until 2012.***

This sunset review assessed the Board of Dental Examiners (Board) to determine whether its oversight structure and enforcement activities sufficiently protect the public. Specifically, the review studied the adequacy of the Board's enforcement function to determine whether it has the proper tools and uses them to bring violators in line with the Dental Practice Law of Colorado (Law). Finally, the review examined the Board's licensing function to ensure that it adequately protects the public through the least restrictive means necessary.

The Board performs an important mission: to regulate the dental industry and ensure that safe practices exist. The Board plays a vital role in protecting the public by ensuring that only qualified dental professionals practice in Colorado and by sanctioning those practitioners who violate the Law. To ensure that licensees comply with the Law, the Board investigates and resolves complaints that arise about dental professionals. The Board also contracts with an organization to provide a Dentist Peer Health Assistance Program for dentists needing assistance in dealing with physical, emotional, or psychological problems that may be detrimental to their ability to practice dentistry.

Dentists perform complex, invasive and potentially life-threatening procedures. Even procedures that are not life-threatening are often complex and require a great deal of skill to perform. As is the case in many health professions, consumers may not have sufficient knowledge to make informed choices. Since such choices are a prerequisite to a functional competitive market, an argument is made for governmental regulation absent that choice.

The practice of dentistry can put patients at risk. For example, the administration of anesthesia is an inherently risky procedure. In addition, certain procedures can cause a great deal of pain and irreversible damage to teeth, gums, nerves, and sinus cavities if not performed properly.

Furthermore, the complexity of this profession can be reasonably expected to increase. Expanded access to medical services, practitioner competency, health care ethics, education and training requirements, expanding technology and quality of care are all issues involved with the profession under review. For these reasons, the Department of Regulatory Agencies recommends the continuance of the Board of Dental Examiners with a new sunset date of 2012.

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Due to the large number of changes and statutory clean-up recommendations, the following recommendations have been made in the order of the current Law for easier identification.

***Recommendation 2 - Add the definition of dentistry to section 12-35-103(1.2), C.R.S., to read as follows:***

**12-35-103(1.2) "DENTISTRY" MEANS THE EVALUATION, DIAGNOSIS, PREVENTION AND/OR TREATMENT (NONSURGICAL, SURGICAL OR RELATED PROCEDURES) OF DISEASES, DISORDERS AND/OR CONDITIONS OF THE ORAL CAVITY, MAXILLOFACIAL AREA AND/OR THE ADJACENT AND ASSOCIATED STRUCTURES AND THEIR IMPACT ON THE HUMAN BODY; PROVIDED BY A DENTIST WITHIN THE SCOPE OF HIS/HER EDUCATION, TRAINING, AND EXPERIENCE, IN ACCORDANCE WITH APPLICABLE LAW.**

The scope of contemporary dental practice has changed remarkably over the past several years. This definition would define dentistry in a way that is consistent with the contemporary practice of the profession. The above American Dental Association (ADA) definition keeps pace with evolving educational, professional, ethical, and practice trends.

***Recommendation 3 - Grant the Board the authority to convene panels to be effective January 1, 2004. Increase the size of the Board to 11 members to include an academician and limit the terms of Board members. Sections 12-35-104, and 12-35-118, C.R.S., should be amended to read as follows:***

**12-35-104. . . The board shall consist of five dentist members, two dental hygienist members, ONE FULL-TIME ACADEMICIAN FROM A COLORADO DENTAL SCHOOL THAT IS ACCREDITED BY A RECOGNIZED ACCREDITING AGENCY OF THE U.S. DEPARTMENT OF EDUCATION, and three members from the public at large, each member to be appointed by the governor for a term of four years and to have the qualifications provided in this article. ~~except that the dentist member first appointed on or after July 1, 1986 shall serve for a term ending January 1, 1989. Of the two new public members appointed on July 1, 1986, one member shall serve a term ending January~~**

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~~1, 1989, and one member shall serve a term ending January 1, 1990. NO MEMBER MAY SERVE MORE THAN TWO CONSECUTIVE TERMS OF FOUR YEARS. Due consideration shall be given....The terms of existing board members serving on the board as of July 1, 1986, shall not be disturbed by the provisions of this subsection (1), except as necessary to comply with the requirements governing composition of the board.~~

12-35-118(9)(a) THE PRESIDENT OF THE BOARD SHALL DIVIDE THOSE MEMBERS OF THE BOARD OTHER THAN THE PRESIDENT INTO TWO PANELS OF FIVE MEMBERS EACH EFFECTIVE JANUARY 1, 2004.

12-35-118(9)(b) EACH PANEL SHALL ACT AS BOTH AN INQUIRY AND A HEARINGS PANEL. MEMBERS OF THE BOARD MAY BE ASSIGNED FROM ONE PANEL TO THE OTHER BY THE PRESIDENT. THE PRESIDENT MAY BE A MEMBER OF BOTH PANELS, BUT IN NO EVENT SHALL THE PRESIDENT OR ANY OTHER MEMBER WHO HAS CONSIDERED A COMPLAINT AS A MEMBER OF A PANEL ACTING AS AN INQUIRY PANEL TAKE ANY PART IN THE CONSIDERATION OF A FORMAL COMPLAINT INVOLVING THE SAME MATTER.

12-35-118(9)(c) ALL MATTERS REFERRED TO ONE PANEL FOR INVESTIGATION SHALL BE HEARD, IF REFERRED FOR FORMAL HEARING, BY THE OTHER PANEL OR A COMMITTEE OF SUCH PANEL. HOWEVER, IN ITS DISCRETION, EITHER INQUIRY PANEL MAY ELECT TO REFER A CASE FOR FORMAL HEARING TO A QUALIFIED ADMINISTRATIVE LAW JUDGE IN LIEU OF A HEARINGS PANEL OF THE BOARD, FOR AN INITIAL DECISION PURSUANT TO SECTION 24-4-105, C.R.S.

12-35-118(9)(d) THE INITIAL DECISION OF AN ADMINISTRATIVE LAW JUDGE MAY BE REVIEWED PURSUANT TO SECTION 24-4-105 (14) AND (15), C.R.S., BY THE FILING OF EXCEPTIONS TO THE INITIAL DECISION WITH THE HEARINGS PANEL WHICH WOULD HAVE HEARD THE CASE IF IT HAD NOT BEEN REFERRED TO AN ADMINISTRATIVE LAW

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**JUDGE OR BY REVIEW UPON THE MOTION OF SUCH HEARINGS PANEL. THE RESPONDENT OR THE BOARD'S COUNSEL SHALL FILE SUCH EXCEPTIONS.**

**12-35-118(9)(e) INVESTIGATIONS SHALL BE UNDER THE SUPERVISION OF THE PANEL TO WHICH THEY ARE ASSIGNED. THE PERSONS MAKING SUCH INVESTIGATION SHALL REPORT THE RESULTS THEREOF TO THE ASSIGNING PANEL FOR APPROPRIATE ACTION.**

The composition of the Board as set forth in section 12-35-104(1), C.R.S., is somewhat unusual by design because the Board exercises regulatory authority over two professions, dentistry and dental hygiene. Since very few complaints are made against dental hygienists, almost all of the Board's enforcement responsibilities are directed at licensed dentists.

Over the past six fiscal years, the number of complaints received by the Board has doubled and in some cases tripled from the number of complaints reported in the 1995 sunset review. Because of the increase in complaints, the Board's workload has substantially increased as illustrated in the following table.

**Table 12  
Complaints Received**

<b>Complaint Statistics from 1995 Sunset Review</b>				
<b>FY 89-90</b>	<b>FY 90-91</b>	<b>FY 91-92</b>	<b>FY 92-93</b>	<b>FY 93-94</b>
121	117	174	161	181
<b>Complaint Statistics from 2002 Sunset Review</b>				
<b>FY 96-97</b>	<b>FY 97-98</b>	<b>FY 98-99</b>	<b>FY 99-00</b>	<b>FY 00-01</b>
341	346	325	308	319

This review found that adding one member to the Board would provide for a majority of dentists on the Board and allow for the formation of panels to address complaints similar to the Board of Medical Examiners (BME) and the Board of Nursing. When disciplinary matters are undertaken, the BME divides into two panels of seven members each. Each panel may act as an inquiry panel or hearing panel, but to avoid conflict and to protect the practitioner's right of due process, neither panel may act in both capacities in a given case.

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When a complaint comes before the BME the practitioner-respondent is notified of the complaint and given 30 days to respond to the allegation. Thereafter, the matter is referred to an inquiry panel for investigation. After reviewing the complaint, the response, and the results of further investigation, the panel may dismiss the complaint for lack of merit or for lack of reasonable cause to warrant further action.

In addition to the ability to establish panels to review complaints, the addition of an educator would contribute in a variety of ways to the Board of Dental Examiners' decision-making process. Educators are often exposed to the latest research in fields that impact dental practice and review periodicals and keep abreast of national and regional trends. Furthermore, their employment setting allows for maximum integration of practice and theory. Their views and analyses would be very helpful to the Board's major work - that of establishing and enforcing the standards of practice in dentistry and ensuring the public safety.

Recommendation 3 also addresses term limitation for Board members. Limiting the terms that Board members can serve conforms the Dental Practice Law of Colorado to other health care acts and ensures a healthy change of membership from time to time.

***Recommendation 4 - Amend exemptions to the Law. Section 12-35-111(1)(f), C.R.S., should be amended to read as follows:***

**12-35-111(1)(f) The practice of dentistry or dental hygiene by dentists or dental hygienists of other states or countries while appearing in programs of dental education or research IN SCHOOLS OR COLLEGES OF DENTISTRY OR SCHOOLS OF DENTAL HYGIENE OR SCHOOLS OF DENTAL AUXILIARY EDUCATION ACCREDITED BY A RECOGNIZED ACCREDITING AGENCY OF THE U.S. DEPARTMENT OF EDUCATION ~~at the invitation of any group of licensed dentists or dental hygienists in this state who are in good standing;~~**

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The current broad language in the Law permits individuals to deliver services without being licensed in the State of Colorado if they meet certain conditions. In this portion of the statute, a person could practice at the invitation of any group of licensed dentists or hygienists in this state who are in good standing. The Law only requires that they appear in programs of dental education or research. It does not state that the dental education or research be part of an accredited school. Thus, any group of individuals could set up a research team or education team, even if the research or education involved dental practice treatments that are not legitimate, and bring in individuals not licensed in the state to practice. Section 12-35-111(1)(d) and (e), C.R.S., both contain some limitations as well, so this would be consistent with those sections of the Law.

***Recommendation 5 - Provide an exemption for foreign-trained dentists who are educators at an accredited dental school in Colorado to provide dental services to patients expressly in the dental school clinic facility. Section 12-35-111(1)(j), C.R.S., should be enacted to read as follows:***

**12-35-111(1)(j) FOREIGN-TRAINED DENTISTS WHO ARE EDUCATORS AT A DENTAL SCHOOL IN COLORADO ACCREDITED BY A RECOGNIZED ACCREDITING AGENCY OF THE U.S. DEPARTMENT OF EDUCATION TO PROVIDE DENTAL SERVICES TO PATIENTS EXPRESSLY IN THE DENTAL SCHOOL CLINIC FACILITY.**

Dental educators offer valuable services, not only to the students they teach, but also to Coloradans who visit school-run clinics for their dental healthcare needs. Yet because the Law places restrictions on foreign-trained dentists, the accredited dental school at the University of Colorado Health Sciences Center has difficulty recruiting highly qualified foreign-trained dental educators to their program.

This sunset review assessed how the state should balance regulation of dental professionals with the need to recruit quality dental educators to Colorado schools. Dental schools must compete internationally for top faculty members, and prohibiting faculty from practicing dentistry within the dental school hinders recruitment efforts. This exemption does not authorize a foreign

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trained dentist to enter into private practice. The following conditions are recommended as requirements for the exemption and should be promulgated by rules and regulations. Applicants should fulfill the following requirements by:

- Obtaining authorization from the dean or program director.
- Verifying at least three years of clinical dental experience.
- Practicing dentistry only at established teaching sites in the school's academic programs.
- Having been appointed to a full-time salaried faculty position at a dental school accredited by a recognized accrediting agency of the U.S. Department of Education.
- Passing the Board's jurisprudence exam.
- Successfully passing the Test of English as a Foreign Language (TOEFL).
- Having the exemption valid for a period up to five-years.

The five-year exemption period was chosen as a realistic time period whereby a foreign trained dentist could successfully pass Parts 1 and 2 of the written examination administered by the Joint Commission on National Dental Examinations, pass a clinical examination approved by the Board, and complete a program in dentistry at a dental school accredited by a recognized accrediting agency of the U.S. Department of Education.

This recommendation does not require international faculty to pass a clinical exam or complete additional educational requirements to receive an exemption and therefore would not limit a school's efforts to recruit foreign trained dentists. The dental school would maintain control and responsibility for the educators they recruit and for the standard of care provided by foreign trained dentists.

***Recommendation 6 - Require that the Board accept the results of an examination administered by regional testing bodies. Sections 12-35-113(1)(e), 12-35-114(1)(c), 12-35-114.5(2)(a), (b) and (g), and 12-35-124(1)(b), C.R.S., should be amended to read as follows:***

**12-35-113(1)(e) Has verification of licensure from other jurisdictions where the applicant holds a ~~current~~-dental or other health care license.**

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**12-35-114(1)(c) An examination designed to test the applicant's clinical skills and knowledge. Such examination ~~may~~ SHALL be administered by a REGIONAL testing agency ~~of which the board is a participating member~~ COMPOSED OF A MINIMUM OF FOUR STATES THAT IS DESIGNED TO TEST THE APPLICANT'S CLINICAL SKILLS AND KNOWLEDGE;**

**12-35-114.5 (2)(a) Proof of graduation from a dental school accredited by A RECOGNIZED ACCREDITING AGENCY OF THE U.S. DEPARTMENT OF EDUCATION ~~the American dental association commission on dental education~~;**

**12-35-114.5 (2)(b) Proof the applicant ~~is currently licensed~~ HOLDS A CURRENT LICENSE in another state or United States territory;**

**12-35-124(1)(b) An examination designed to test the applicant's clinical skills and knowledge, which ~~may~~ SHALL be administered by a REGIONAL testing agency ~~of which the board is a participating member~~ COMPOSED OF A MINIMUM OF FOUR STATES THAT IS DESIGNED TO TEST THE APPLICANT'S CLINICAL SKILLS AND KNOWLEDGE;**

Colorado, like most other states, is concerned about access to dental healthcare. Many Coloradans, particularly in rural and underserved areas, do not have access to dental care, and dental industry experts predict a nationwide shortage of dentists in the future.<sup>1</sup> As the agency responsible for licensure of dentists in the State of Colorado, the Board plays a role in addressing Coloradans' dental healthcare needs through its licensing and examination policies. Currently, some of the Board's policies may be unnecessarily burdensome on dental professionals and may discourage or even prevent dentists from moving to Colorado to practice. By removing some of the barriers to licensure, the Board can be more active in dealing with a shortage of dental professionals in Colorado.

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<sup>1</sup> Eric S. Solomon, *A Study of the Relationship Between the University of Colorado, Dental School and the Supply of Dentists in Colorado* (Dallas: Texas A&M University System Health Science Center, 2001) 14.

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To practice in Colorado, dentists and dental hygienists may be licensed either by examination or by credentials, based on criteria determined by the Board. The most common method is licensure by examination.

The Board's policy may limit the number of license by examination applicants by not accepting test results from two regional examining boards; the Northeast Regional Board of Dental Examiners (NERB) and the Southern Regional Testing Agency (SRTA), which together include 20 states and Washington, D.C. Appendix B found on page 69 outlines each examining board's member states. Four states now accept results of all state and regional testing agencies, and 19 states accept results from one or more regional testing agency.

The Board is currently a member of a testing organization, Central Regional Dental Testing Services (CRDTS) that administers clinical examinations to dentists and dental hygienists in 12 states. In 2002, the Board further determined that results of the Western Regional Examining Board (WREB) that administers examinations in 11 states would be accepted. This brings the total number of states to 23 that provide an examination that the Colorado Board finds acceptable.

Statutory requirements for licensure by credentials for out-of-state dentists moving to Colorado are restrictive. To practice in Colorado, a dentist from another state must have had five years of continuous experience immediately preceding the application to practice in Colorado. An out-of-state applicant who took a regional exam other than WREB or CRDTS and who has practiced for less than five years cannot receive a license by credentials in Colorado. The dentist would have to take the WREB or CRDTS exam and apply for licensure by examination. This requirement may also create a burden for recent dental school graduates who want to move to Colorado, have not taken WREB or CRDTS, and have not yet worked for five years.

This sunset review is not convinced that practicing dentists in select states (about half) are not competent to practice in Colorado because that state does not subscribe to a particular testing service. It could be argued that dentists licensed and practicing in other states or jurisdictions should be allowed to secure a license in Colorado without meeting the regulatory burden of taking an examination designed to measure minimal competences of safe practice by recent graduates just out of dental school.

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For example, there are dentists who temporarily reside in Colorado because of their spouse's military obligation. They would like to practice in Colorado but are prohibited because they passed an examination not accepted by the Board and/or do not have five years experience. Some of these dentists are highly skilled, board certified specialists. By only accepting examination results from two of the four regional testing services, the Board may be imposing an unnecessary and unreasonable burden.

***Recommendation 7 - Require professional review committees to report all findings to the Board of Dental Examiners. The Board of Dental Examiners shall promulgate rules and regulations setting forth what information shall be reported. Section 12-35-118(6)(c), C.R.S., should be added to read as follows:***

**12-35-118(6)(c) A PROFESSIONAL REVIEW COMMITTEE SHALL PROVIDE THE BOARD OF DENTAL EXAMINERS WITH THE COMPLETE RECORD OF ALL PROFESSIONAL REVIEW PROCEEDINGS, INCLUDING, BUT NOT LIMITED TO, THE FINDINGS, RECOMMENDATIONS, AND ACTIONS TAKEN.**

Currently, the Law authorizes the formation of a professional review committee (committee) to investigate the quality of care being given by licensed dentists. The membership of such committee must include at least three Colorado licensed dentists. The Board of Dental Examiners may create a professional review committee, or a society or association of licensed dentists whose membership includes at least one-third of licensed dentists in Colorado may also create a committee. The Law affords the committee authorized by the Board immunity from suit in any civil action brought by a licensee who is the subject of a professional review proceeding. Additionally, the Law provides immunity to members of a professional review committee of a society or association.

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The Board of Dental Examiners has never created a professional review committee. However, the Colorado Dental Association (CDA) has created a committee that has been operating for over 20 years. The CDA argues that the purpose of their professional review committee is to offer an alternative dispute resolution mechanism that is beneficial to patient, dentist and the Board while at the same time, adequately protecting the people of the State of Colorado.<sup>2</sup> CDA has established criteria for case acceptance that include the following:

**Appropriateness of Treatment:** This is defined as professional acceptability of planned or completed treatments to include the necessity of treatment and consistency with diagnosis.

**Quality of Care:** This is defined as an evaluation of the treatment provided using the standards which generally prevail within the profession by those who routinely perform the treatment in question.

**Fees:** Questions of fees shall be limited to a review of “usualness.” Usualness cases will be concerned with whether the fee charged by a dentist is the fee he/she generally accepts as payment in full for a given procedure. If the fee charged appears not to be the dentist’s usual fee, the committee can determine whether it is reasonable concerning the degree of difficulty or complexity of the dental procedure employed.

CDA reports that their professional review committee process commences with a patient filing a complaint to the CDA. The complaint is forwarded to that dentist’s locally affiliated society whereby the component professional review committee assigns the complaint to one of its committee members. The member subsequently contacts both the complainant and the dentist to determine whether mediation is an option. If mediation is successful, both parties sign an agreement outlining the conditions, and once completed, the complaint is considered resolved. Both the dentist and the complainant sign a mediation liability release statement that absolves the provider from any further costs or future liability regarding the involved dental services.

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<sup>2</sup> Pasco W. Scarpella, “Colorado Dental Association ‘P.R.’ “. Journal of the Colorado Dental Association, Spring 2002.

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If the parties cannot reach an agreement, the process moves to arbitration where each side agrees to be bound by the decision of the component professional review committee. A dentist does not have the option of withdrawing during the mediation or arbitration portion. If the dentist refuses to continue with the process, his/her Colorado Dental Association/American Dental Association membership could be in jeopardy.

This sunset review questions the public policy implications of a private association conducting mediation and arbitration to determine quality of care issues without being required to report outcomes to the Board. In addition, this private association has been granted immunity for such acts. The CDA and the Board have long held opposing views on the reporting of results from mediation and arbitration. The Board has determined that any agreement reached through this mediation process that includes a payment by the dentist that exceeds what the patient originally paid the dentist constitutes a “malpractice judgment or settlement” and must be reported to the Board within 90 days pursuant to section 12-35-118(1)(q), C.R.S.

On the other hand, the Colorado Dental Association recommended language to amend section 12-35-118, C.R.S., that reflects their oppositional view on professional review committees. The language that they recommended as part of this sunset review reads as follows:

(1)(q) Failure to report a dental or dental hygiene malpractice judgment or settlement to the board by the licensee within ninety days. MEDIATED AGREEMENTS BETWEEN A LICENSED DENTIST OR DENTAL HYGIENIST AND A PATIENT WHICH ARE MEDIATED BY A PROFESSIONAL REVIEW COMMITTEE AS SPECIFIED BY CRS 12-35-118(6)(A)(II) ARE NOT CONSIDERED MALPRACTICE JUDGMENTS OR SETTLEMENTS.

The legislative declaration in section 12-29.1-101, C.R.S., regarding professional review proceedings states the following:

The general assembly hereby finds and declares that the proper practice of the healing arts professions requires the supervision and discipline of licensed practitioners for the benefit of the public, and, to this, the licensing boards and their duly constituted professional review committees shall have the power, duty and responsibility to conduct

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proceedings to determine facts so that the boards may invoke discipline fairly and progressively where required, (emphasis added) and that such proceedings shall accommodate the requirements of full professional and technical disclosure, as well as due process of law for the licensee under investigation.

Although the General Assembly authorizes the formation of professional review committees, it also specifically states in the legislative declaration (section 12-29.1-101, C.R.S.) that the facts determined by the committee are attained so that **boards**, not the committees, may impose discipline fairly and progressively where required. The question arises, how can the Board fulfill its statutory mandate when the proceedings of the professional review committees of the Colorado Dental Association do not report findings of fact to the Board.

An examination of the health care practice acts located in the Division of Registrations in the Department of Regulatory Agencies reveals the authority to create professional review committees in the following professions: chiropractors; dentists; nurses; nursing home administrators; optometrists; physical therapists; physicians; podiatrists and mental health professionals including social workers, marriage and family therapists, licensed professional counselors, and psychologists.

The administrator for each health care board was surveyed to determine whether the board utilizes a professional review committee and to what extent they assist the board in their investigations of quality of care issues for licensees. Survey questions included the following:

1. Does your board or program utilize a professional review committee?
2. If so, for what purposes?
3. Has the licensees' professional association created a professional review committee?
4. If your board or program needs assistance determining quality of care, have they ever called upon a professional review committee for assistance?

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The results of the survey (Table 14 on the following page) indicate that none of the health care programs or boards have ever utilized a professional review committee created either by the board or by an association to assist with quality of care issues. In addition, except for the Colorado Dental Association, they are not aware of any professional occupational associations who have created professional review committees. The survey respondents unanimously reported that they would refer quality of care issues that cannot be determined by their board to an advisory committee created by their board or to consultants retained by their board. The Board of Nursing (BON) has established an advanced practice advisory committee that reviews the complaints of the various advanced practice specialists and recommends to the BON whether the complaint should be dismissed or investigated. Because the BON composition does not require appointees with expertise to make judgments on advanced practice issues, this committee was formed by the BON as an adjunct to the BON. However, the BON makes the final decision regarding disposition.

The Board of Medical Examiners (BME) reports that there have been no professional review committees created by an association or society whose membership includes not less than one-third of their licensees. Additionally, the Medical Practice Act, pursuant to section 12-36.5-104(11), C.R.S., requires that professional review committees, at the request of the BME, provide a complete record of all professional review proceedings, including, but not limited to, the findings, recommendations, and actions taken. For assistance in determining quality of care issues, the BME identifies their own experts. The BME only receives reports from peer review committees in hospitals if they have taken action against a physician's privileges.

**Table 14**  
**Professional Review Committees Authorized by Statute in the Division of Registrations**

Occupation	Reporting Requirements	Professional Review Committees Established?	Entity Given Authorization to Act
Chiropractor	None	No	Board/or Society or Association whose membership includes not less than 1/3 of licensed chiropractors
Dentist	None	Yes Colorado Dental Association	Board/or Society or Association whose membership includes not less than 1/3 of licensed dentists
Licensed Professional Counselor	None	No	Board/or Society or Association whose membership includes not less than 1/3 of licensed LPCs
Marriage and Family Therapist	None	No	Board/or Society or Association whose membership includes not less than 1/3 of licensed MFTs
Nurse	Reviews complaints of various advance practice specialties and makes recommendations to the Board	No	Board appoints. Must include three licensed nurses. Board created an Advanced Practice Advisory Committee that reviews complaints. Board makes final decisions
Nursing Home Administrator	None	No	May be authorized to act only by the board. Must include three licensees
Optometrist	None	No	Not mentioned
Physical Therapist	Shall report any adverse findings to the Director of the Division of Registrations	No	Board/or Society or Association whose membership includes not less than 1/3 of licensed physical therapists
Physician	At the request of the Board, findings and recommendations and actions must be submitted	No	Board/or Society or Association whose membership includes not less than 1/3 of licensed physicians
Podiatrist	None	No	Board/or Society or Association whose membership includes not less than 1/3 of licensed podiatrists
Psychologist	None	No	Board/or Society or Association whose membership includes not less than 1/3 of licensed psychologists
Social Worker	None	No	Board/or Society or Association whose membership includes not less than 1/3 of licensed social workers

In reviewing and researching professional review committees created by professional organizations or associations, this sunset report concludes that it is not in the public's best interest that the regulatory entity responsible for the public's health, safety and welfare is not informed of the confidential decisions made regarding quality of care and appropriateness of treatment.

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***Recommendation 8 - Require a time period before a licensee can apply for a new license after revocation. Section 12-35-118(1.2), C.R.S., should be amended to read as follows:***

**12-35-118(1.2) ANY PERSON WHOSE LICENSE TO PRACTICE IS REVOKED IS RENDERED INELIGIBLE TO APPLY FOR ANY LICENSE UNDER THIS ARTICLE UNTIL MORE THAN TWO YEARS HAVE ELAPSED FROM THE DATE OF SURRENDER OR REVOCATION OF THE LICENSE. ANY REAPPLICATION AFTER SUCH TWO-YEAR PERIOD SHALL BE TREATED AS A NEW APPLICATION.**

Under the current Law, a licensee can apply the following day after a revocation and demand a new hearing on the basis of denial of a license. The reason a license is revoked first and foremost is that the licensee represents a significant threat to the public. Revocation cases are quite lengthy and expensive. In practice, it often takes the Board anywhere from nine to 18 months, or longer, to revoke a license, depending upon whether or not the case goes to hearing or is settled. There is a tremendous investment of staff resources and dollars to discipline the practitioner.

Most other practice acts in the Department of Regulatory Agencies require a period of years before reapplication of a revoked license may be considered. Because of the significant threat that dentists who have lost their license pose to the public, the longer period is justified to protect public safety. For example, the Board of Medical Examiners, Board of Registration of Professional Engineers and Professional Land Surveyors, Electrical Board, Examining Board of Plumbers, and the Board of Optometric Examiners require a two-year wait; while the four Mental Health Boards and the State Grievance Board require a three-year wait before licensees are eligible for reapplication after revocation.

***Recommendation 9 - Extend immunity to office inspectors and to practice monitors. Sections 12-35-118(1.3) and 12-35-107(1)(h), C.R.S., should be amended to read as follows:***

**12-35-118(1.3) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding, OR IN REVIEWING OR SUPERVISING A LICENSEE'S PRACTICE, pursuant to this section shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.**

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**12-35-107(1)(h)(III) A LICENSEE, WHO PARTICIPATES AS AN OFFICE INSPECTOR PURSUANT TO THIS SECTION SHALL BE IMMUNE FROM ANY LIABILITY, CIVIL OR CRIMINAL, THAT OTHERWISE MIGHT RESULT BY REASON OF SUCH ACTION.**

The Board finds it difficult to retain practice monitors for the Dentist Peer Health Assistance Program and office inspectors who review compliance standards for the anesthesia office inspection program because they are not afforded immunity from civil liability. The dentists who serve as office inspectors and the practice monitors serve the citizens of Colorado at the request of the Board, and so long as their actions and decisions are made in good faith, they should be granted immunity as are members of the Board. Without the ability to grant immunity, such consultants acting as practice monitors and inspectors may become unavailable and the ability to protect the public would be greatly impaired.

***Recommendation 10 - Require full-denture construction tasks and procedures performed by dental auxiliaries to be under the direct supervision of a dentist. In addition, revise the language regarding procedures necessary for the construction of a full denture to reflect current terminology and practice. Sections 12-35-125(4)(d)(I) and 12-35-125(5) should be amended to read as follows:***

**12-35-125(4)(d)(I) A dental auxiliary may perform intraoral and extraoral tasks and procedures necessary for the ~~construction~~ FABRICATION of a full COMPLETE denture DENTURES under the DIRECT general supervision of a licensed dentist. These tasks and procedures MAY shall include:**

- (A) ~~Taking~~ MAKING of preliminary and final impressions;**
- (B) ~~Bite-registration~~ JAW RELATION RECORDS and determination of vertical dimensions;**
- (C) Tooth selection;**
- (D) A preliminary try-in of the wax-up trial denture prior to and subject to a try-in and approval in writing of the wax-up trial denture by the licensed dentist;**
- (E) Denture adjustments that involve the periphery, occlusal, or tissue-bearing surfaces of the denture prior to the final examination of the denture ~~pursuant to subsection (5) of this section.~~**

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**(II) The tasks and procedures in subparagraph (I) of this paragraph (d) shall be performed in the regularly announced office location of a licensed practicing dentist, and the dentist shall be personally liable for all treatment rendered to the patient. ~~No licensed dentist may maintain or utilize more than two announced office locations in which auxiliary personnel are utilized to perform tasks and procedures authorized in subparagraph (I) of this paragraph (d).~~ A dental auxiliary performing these tasks and procedures shall be properly identified as a dental auxiliary. No dentist shall utilize more than the number of dental auxiliaries the dentist can reasonably supervise.**

**~~12-35-125(5) At the time of a preliminary try-in of a wax-up trial denture as provided by sub-subparagraph (D) of subparagraph (I) of paragraph (d) of subsection (4) of this section, the dental auxiliary shall advise the patient that the dentist will examine the wax-up trial denture and make a vertical and occlusal check and that, within one month after delivery of the denture, the patient shall be examined by the licensed dentist for a certification in the patient chart that the denture is satisfactory.~~**

Dentists should have direct supervision over auxiliaries performing the above-mentioned tasks for the dental auxiliaries are not qualified to perform such intricate procedures on patients without being directly supervised by the dentist. These procedures require a great deal of training and require that individuals have experience treating patients prior to engaging in this highly technical clinical function.

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## ***Technical Changes to the Dental Practice Law of Colorado***

These revisions update and clarify the Law.

***Recommendation 11 - Delete section 12-35-102(2), C.R.S., as follows:***

~~12-35-102(2) The general assembly further finds, determines, and declares that effective July 1, 1994, the dentist peer health assistance fund shall be terminated, the balance of moneys in the fund shall be transferred prior to June 30, 1994, to an administering entity selected by the board, which entity shall administer the programs of board selected designated providers, and that the fiscal year beginning July 1, 1993, shall be used by the department of regulatory agencies as a transition year to plan for the transfer of responsibilities for such program.~~

The content of this language is outdated and unnecessary.

***Recommendation 12 - Amend specific definitions and make conforming amendments throughout the Dental Practice Law of Colorado. Section 12-35-103, C.R.S., should be amended to read as follows:***

**12-35-103(1) "Dental auxiliary ASSISTANT"** means any person not a dentist or dental hygienist licensed in Colorado who may be assigned or delegated to perform dental tasks or procedures as authorized by this article or by rules and regulations of the board.

**12-35-103(4) "Personal direction"** means the THE orders of a dentist licensed in Colorado, which shall be classified as follows:

**12-35-103(4)(a) "Direct supervision"** means the supervision of those tasks or procedures that do not require the presence of the dentist in the room where performed but require the dentist's presence on the premises and availability for prompt consultation and treatment.

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**12-35-103(4)(b) “General INDIRECT supervision” means the supervision of those tasks or procedures that do not require the presence of the dentist in the office or on the premises at the time such tasks or procedures are being performed but require the tasks be performed with the prior knowledge and consent of the dentist.**

Currently as referenced in the Dental Practice Law, a dentist can either employ direct or general supervision over a dental assistant or hygienist. The term “indirect supervision” more accurately reflects the type of supervision being defined than the term “general supervision.”

The term “dental assistant” is generally used throughout the industry.

***Recommendation 13 - Amend section 12-35-103 (1.8), C.R.S., to further clarify the practice of dentistry and make conforming amendments in section 12-35-110, and section 12-35-111, C.R.S., to read as follows:***

**12-35-103(1.8) "Laboratory work order" means the written instructions of a dentist licensed in Colorado authorizing another person to construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure ~~to be worn in the human mouth~~ TO FUNCTION IN THE ORAL CAVITY, MAXILLOFACIAL AREA AND/OR ADJACENT AND ASSOCIATED REGIONS.**

**12-35-110(1)(c) Directly or indirectly, by any means or method, takes impression of the human tooth, teeth, ~~or~~ jaws, MAXILLOFACIAL AREA AND/OR ADJACENT AND ASSOCIATED STRUCTURES or performs any phase of any operation incident to the replacement of a part of a tooth, ~~or~~ supplies artificial substitutes for the natural teeth, JAWS AND/OR ADJACENT AND ASSOCIATED STRUCTURES; except that nothing in this section shall prohibit or be construed as prohibiting a dental hygienist or dental auxiliary from performing tasks and procedures consistent with sections 12-35-122.5(1)(d), 12-35-122.6(1)(d), and 12-35-125(4)(a)(I);**

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**12-35-110(1)(d) Furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth OR UPON THE JAWS, MAXILLOFACIAL AREA AND/OR ADJACENT AND ASSOCIATED STRUCTURES other than on the written laboratory work order of a duly licensed and practicing dentist, or places such appliance or structure in the human mouth, or adjusts or attempts or professes to adjust the same, or delivers the same to any person other than the dentist upon whose laboratory work order the work was performed;**

**12-35-110(1)(e) Professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth, OR UPON THE JAWS, MAXILLOFACIAL AREA AND/OR ADJACENT AND ASSOCIATED STRUCTURES;**

**12-35-110(1)(f) Examines, diagnoses, plans treatment, or treats natural or artificial structures or conditions associated with, adjacent to, functionally related to the oral cavity, or JAWS, the maxillofacial area AND/OR ADJACENT AND ASSOCIATED STRUCTURES, AND THEIR IMPACT ON THE HUMAN BODY;**

**12-35-110(1)(j) Gives, or professes to give, interpretations or readings of dental X-rays or roentgenograms, CT SCANS, OR OTHER DIAGNOSTIC METHODOLOGIES; except that nothing in this section shall prohibit or be construed as prohibiting a dental hygienist from performing tasks and procedures consistent with section 12-35-122.5 and 12-35-122.6;**

**12-35-111(g) The filling of laboratory work orders of a licensed dentist, as provided by section 12-35-130, by any person, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth or for ~~regulation~~ RESTORATION of natural teeth, OR REPLACEMENT OF STRUCTURES RELATING TO THE JAWS, MAXILLOFACIAL AREA AND/OR ADJACENT AND ASSOCIATED STRUCTURES; or**

This recommended language updates and clarifies the practice of dentistry.

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**Recommendation 14 - Update current practices of the Board. Section 12-35-104(2), C.R.S., should be amended to read as follows:**

**12-35-104(2) The board shall organize annually by electing one of its members as chairperson AND one as vice-chairperson and ~~one as secretary~~. It may adopt such rules for its government as it may deem proper and ~~shall adopt and use a seal~~. The Board shall meet at least ~~once a year~~ QUARTERLY, and more often if necessary...**

The Dental Board is required to meet once a year but in practice actually meets 11 times a year. The existing language is outdated. The requirements for electing a secretary and for adopting a seal are outdated and unnecessary.

**Recommendation 15 - Clarify qualifications of board members. Section 12-35-105(1)(b), C.R.S., should be amended to read as follows:**

**12-35-105(1) A person shall be qualified to be appointed to the board if such person is:**

- (a) A legal resident of Colorado;**
- (b) Currently licensed as a dentist or dental hygienist IF FULFILLING THAT POSITION ON THE BOARD; and**
- (c) Has been actively engaged in a clinical practice in this state for at least five years immediately preceding the appointment IF FULFILLING THE POSITION OF DENTIST OR DENTAL HYGIENIST ON THE BOARD.**

Literally, this statutory provision requires that all board members be licensed as dentists or dental hygienists. This conflicts with the legislative intent to include public members on the Board.

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***Recommendation 16 - Update powers and duties of the Board to include the authority to issue letters of admonition. Section 12-35-107(1)(c) and (g), C.R.S., should be amended to read as follows:***

**12-35-107(1)(c) Conduct hearings to revoke, suspend, or deny the issuance of a license, license certificate, or renewal certificate granted under the authority of this article or of previous laws, issue a LETTER OF ADMONITION, confidential letter of concern, or reprimand, censure, or place on probation a licensee when evidence has been presented showing violation of any of the provisions of this article by a holder of or an applicant for a license, license certificate, or renewal certificate. ...**

**12-35-107(1)(g) Through the department of regulatory agencies and subject to appropriations made to the department of regulatory agencies, employ hearing ~~or~~ law officers OR ADMINISTRATIVE LAW JUDGES on a full-time or part-time basis to conduct any hearings required by this article. The hearing or law officers shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.**

Currently, the power of the Board to issue a letter of admonition is found in section 12-35-118(1), C.R.S., that addresses disciplinary action and unprofessional conduct. For clarification, this authority should be listed in the powers and duties of the Board along with the other disciplinary actions.

***Recommendation 17 - Amend the power of the Board to administer subpoenas by replacing “necessary” with “relevant to any inquiry or hearing”. Section 12-35-108(1)(a), C.R.S, should be amended to read as follows:***

**12-35-108(1)(a) The president and, in the president’s absence...the secretary, or an administrative law judge, shall have the power to administer oaths, take affirmations of and issue subpoenas to compel the attendance of witnesses and the production of all necessary papers, books, records, documentary evidence and materials RELEVANT TO ANY INQUIRY OR HEARING in any hearing, investigation....**

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The word "necessary" as utilized in this section has impeded the Board in obtaining information in investigations or hearings. Normally, information is subpoenaed that will assist in a disciplinary action. Sometimes, however, specific information that will be provided pursuant to the subpoena is not known. The recommended amended language found in the Medical Practice Act and other health care statutes would assist the Board in its investigations and hearings.

***Recommendation 18 - Clarify "persons exempt from operation of this article". Section 12-35-111(1)(b), C.R.S., should be amended to read as follows:***

**12-35-111(1)(b) The giving OF AN ANESTHETIC by a qualified anesthetist or registered nurse ~~of an anesthetic~~ for a dental operation under the direct supervision of a licensed dentist;**

The phrase "of an anesthetic" is moved for greater clarification.

***Recommendations 19 - Update the procedures for the application process for a license in section 12-35-113, C.R.S., to read as follows:***

**12-35-113(1) Every person not currently holding a license to practice dentistry in this state who desires to practice dentistry in this state shall file with the ~~secretary of the board~~ an application for a license on a form to be provided by the board....**

**12-35-113(1)(b) Is a graduate of a dental school or college which at the time of the applicant's graduation was accredited by ~~the council on dental education of the American dental association~~. It shall be sufficient for the applicant to attach to the applicant's application a certified photostatic copy of a transcript of credits prepared by the dental college or school attended by the applicant. A RECOGNIZED ACCREDITING AGENCY OF THE U.S. DEPARTMENT OF EDUCATION. AN OFFICIAL TRANSCRIPT PREPARED BY THE DENTAL COLLEGE OR SCHOOL ATTENDED IS REQUIRED;**

Section 12-35-113, C.R.S., outlines the ministerial procedures with which the Board must adhere when establishing an application process. However, some of these procedures are obsolete while others require updated language to reflect current practices.

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Also, subsection (b) permits the applicant to submit a photocopy of their college transcript. Transcripts can be altered and when a copy is made alterations may not be apparent.

***Recommendation 20 - Throughout the statute, replace references to the American Dental Association Commission on Dental Education and other educational accreditation terminology with the language that reads as follows:***

**ACCREDITED BY A RECOGNIZED ACCREDITING AGENCY OF THE U.S. DEPARTMENT OF EDUCATION**

The current accrediting agency for dental education is the American Dental Association Commission on Dental Accreditation. The intent of the Law is to recognize an accrediting agency recognized by the U.S. Department of Education, not a specific entity. Therefore, for consistency and continuity it is recommended that the phrase “accredited by a recognized accrediting agency of the U.S. Department of Education be used throughout the Law to include all educational programs meeting their requirements.

***Recommendation 21 - Section 12-35-113(4), C.R.S., should be amended to read as follows:***

**{previously 12-35-113(4)} 12-35-114(7) An applicant for licensure who has not graduated from an accredited A dental school or college ACCREDITED BY A RECOGNIZED ACCREDITING AGENCY OF THE U.S. DEPARTMENT OF EDUCATION within the twelve months immediately preceding the application, ~~or~~ AND who has not engaged in the active clinical practice of dentistry, in teaching dentistry in an accredited program, or in service as a dentist in the military, for at least one year of the five years immediately preceding the application, shall demonstrate to the board that the applicant has maintained the professional ability and knowledge required by this article.**

Both conditions need to be present before applicants for licensure by examination are required to demonstrate that they have maintained the professional ability and knowledge required by the Law.

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***Recommendation 22 - Clarify the statutory requirements for licensure of foreign graduates. Section 12-35-113.5 (1)(a), C.R.S., should be amended to read as follows:***

**~~12-35-113.5 (1)(a) Present evidence of having completed a program in clinical dentistry and having obtained a doctorate of dental surgery or a doctorate of dental medicine at a dental school accredited by a nationally recognized accrediting agency. MUST HAVE SATISFACTORY EVIDENCE OF THE SUCCESSFUL COMPLETION OF A POSTDOCTORAL ACADEMIC PROGRAM OF DENTAL SCHOOL EDUCATION AT A DENTAL SCHOOL ACCREDITED BY A RECOGNIZED ACCREDITING AGENCY OF THE U.S. DEPARTMENT OF EDUCATION OR A CERTIFICATION BY THE DEAN OF THAT SCHOOL THAT THE APPLICANT HAS OBTAINED A DDS OR DMD FROM THAT INSTITUTION.~~**

Currently, 16 states grant licensure to graduates of programs outside the U.S. or Canada once they have completed a two-year supplementary education program in an accredited dental school in addition to successful completion of the written and clinical licensure examinations. A few states have provisions for international graduates to obtain licensure without further education. The revised language clarifies that the program in clinical dentistry must be accredited by a U.S. Department of Education recognized accrediting agency and not another country's recognized accrediting entity.

***Recommendation 23 - Amend section 12-35-114(1)(b), C.R.S., to read as follows:***

**12-35-114(1)(b) An examination on the provisions of this article; THE EXAMINATION FOR KNOWLEDGE OF THE PROVISIONS OF THIS ARTICLE SHALL BE ACCOMPLISHED BY THE USE OF A MAIL-IN JURISPRUDENCE EXAMINATION ADMINISTERED BY THE BOARD.**

This language conforms to the dental hygiene language found in section 12-35-124(4)(a).

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***Recommendation 24 - Revise credentialing requirements to require the applicant to have been in practice for a minimum of five of the seven years immediately prior to applying for licensure. Section 12-35-114.5(2)(c), C.R.S., should be amended to read as follows:***

**12-35-114.5(2)(c) Proof the applicant has been in practice OR TEACHING DENTISTRY IN A DENTAL SCHOOL ACCREDITED BY A RECOGNIZED ACCREDITING AGENCY OF THE U.S. DEPARTMENT OF EDUCATION for a minimum of five years OF THE SEVEN YEARS immediately prior to applying for licensure.**

The Law requires dentists to be in practice for a minimum of five years immediately prior to applying for licensure by credentials. Accordingly, circumstances may arise such as pregnancy or medical leave that would disrupt five years of continuous practice. Any new dentist seeking to relocate who does not meet this minimum practice requirement would not qualify for licensure by credentials. The recommended revision to the Law would provide clinical competency but offer flexibility for persons who must cease practice for a period of time.

***Recommendation 25 - Delete section 12-35-114.5(2)(e), C.R.S., as follows:***

**~~12-35-114.5(2)(e) Proof the applicant has not failed the clinical examination accepted by the board in the last three years;~~**

Because the results of clinical examinations are confidential, there is no way to ascertain proof of failure.

***Recommendation 26 - Update the Review of Board Action section to include the issuance of a letter of admonition. Section 12-35-115, C.R.S., should be amended to read as follows.***

**12-35-115 Any final action of the board undertaken to deny the issuance or renewal of, or to suspend, or to revoke a license to practice dentistry or dental hygiene or to censure, to reprimand, TO ISSUE A LETTER OF ADMONITION, or to place on probation a licensee of dentistry or dental hygiene may be reviewed by the court of appeals by appropriate proceedings under section 24-4-106(11), C.R.S.**

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The General Assembly granted the Board the authority to issue a reprimand or censure in section 12-35-118(1), C.R.S., but through an oversight did not include a letter of admonition in section 12-35-115, C.R.S., review of board action. The intent of the General Assembly is that if a licensee is disciplined in any manner, there should be an opportunity for judicial review

***Recommendation 27 - Delete unnecessary and unenforceable language and combine the sections for clarification. Sections 12-35-116, 12-35-117, and 12-35-127, C.R.S., should be amended to read as follows:***

~~12-35-116 Renewal of license - fees. (1) On or before the first day of the month designated pursuant to rules and regulations promulgated by the board, every dentist licensed to practice dentistry in this state shall transmit to the secretary of the board, upon a form prescribed by the board, the dentist's signature, post-office address, office address, the number of the dentist's license certificate, and such other pertinent information as may be requested, together with a fee required by section 12-35-123.5 (2) (b) or established pursuant to section 24-34-105, C.R.S., and all fees then in arrears, and shall receive therefor a renewal certificate authorizing the dentist to continue the practice of dentistry in this state. The board shall establish renewal fees and schedules subject to the provisions of section 24-34-102 (8), C.R.S.~~

~~(2) Five years after April 21, 1961, any dentist whose application for renewal of an active license indicates that the dentist has not actively practiced dentistry or has not been engaged in teaching dentistry in an accredited dental program for at least one year during the five years immediately preceding the application shall be issued a renewal certificate by the board only after the applicant has demonstrated to the board that the applicant has maintained the qualifications set out in section 12-35-113. No reexamination shall be required unless the board finds good cause to believe that the person has not maintained the professional ability and knowledge required of an original licensee by this article.~~

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**(1) A PERSON LICENSED TO PRACTICE DENTISTRY OR DENTAL HYGIENE IN THIS STATE WHO IS ELIGIBLE TO HAVE HIS OR HER LICENSE RENEWED MAY RECEIVE A RENEWAL LICENSE UPON:**

**(a) TIMELY SUBMISSION OF A RENEWAL APPLICATION ON A FORM PRESCRIBED BY THE BOARD; AND**

**(b) PAYMENT OF A RENEWAL FEE ESTABLISHED BY THE BOARD PURSUANT TO SECTIONS 24-34-102(8) AND 24-34-105, C.R.S.**

**(1.2) IF A LICENSEE FAILS TO RENEW HIS OR HER LICENSE PRIOR TO ITS EXPIRATION, SUCH LICENSE SHALL AUTOMATICALLY EXPIRE. A DENTIST OR DENTAL HYGIENIST FORMERLY LICENSED IN THIS STATE MAY HAVE AN EXPIRED LICENSE REINSTATED PURSUANT TO RULES ESTABLISHED BY THE BOARD.**

**(1.3) A RENEWAL FEE PAID PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL NOT BE REFUNDED.**

**(2) ANY DENTIST OR DENTAL HYGIENIST WHOSE APPLICATION FOR RENEWAL IS RECEIVED BY THE BOARD AFTER THE DEADLINE FOR RENEWAL SHALL IN ADDITION TO THE RENEWAL FEE TRANSMIT TO THE BOARD WITH HIS OR HER APPLICATION AN ADDITIONAL SUM WHICH SHALL BE DETERMINED AND COLLECTED PURSUANT TO SECTION 24-34-105, C.R.S.**

~~**12-35-117. Failure to renew license - forfeiture - effect on disciplinary proceedings. (1) Upon the failure of any dentist to file the application and to pay the renewal fee provided for in section 12-35-116 within three months after the renewal date designated by the board in its rules and regulations, a penalty fee established pursuant to section 24-34-105, C.R.S., shall be assessed in addition to the renewal fee. The secretary shall notify the dentist in writing by first-class mail that the application has not been made, that the fee has not**~~

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~~been paid, and that the penalty has been assessed. If such application and fee are not received within thirty days, it is the duty of the secretary to refer the delinquency to the board.~~

~~(2) Failure of any licensee to pay the annual registration fee prescribed by subsection (1) of this section shall automatically suspend the practitioner's license while the practitioner is so delinquent, and the name of any delinquent licensee shall be omitted from the list kept by the secretary of the board pursuant to section 12-35-120.~~

~~12-35-127. Dental hygienist – renewal of license – fee. All licensed dental hygienists who engage in the practice of dental hygiene shall be registered with the board and have issued to them a renewal certificate by the board. The board shall establish renewal fees and schedules subject to the provisions of section 24-34-102 (8), C.R.S. The renewal fee shall be as established pursuant to section 24-34-105, C.R.S. The form and method and all provisions relating to the renewal of licenses of dentists as provided in sections 12-35-116 and 12-35-117, insofar as applicable, shall apply to dental hygienists.~~

The revised section allows the Board greater flexibility in determining the rules and regulations for the renewal process. In addition many of the requirements of this process are redundant and difficult to enforce. The Dental Practice Law of Colorado is the only regulatory statute that requires the Board to send more than one notification of pending renewal. It is the responsibility of licensees to ensure that their license is renewed in a timely manner.

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**Recommendation 28 - Clarify grounds for discipline. Section 12-35-118(1), C.R.S., should be amended to read as follows:**

**12-35-118(1)(c) Administering, dispensing, or prescribing any habit-forming drug, as defined in section 12-22-102(13) or any controlled substance as defined in part 2 of article 18 of title 18, CR.S. or as contained in schedule II of 21 U.S.C. sec 812 ~~section 12-22-303(7)~~ TO ANY PERSON INCLUDING HIMSELF OR HERSELF other than in the course of legitimate professional practice; ~~administering, dispensing, using or prescribing to himself or herself except on an emergency basis any controlled substance as defined in part 2 of article 18 of title 18, CR.S. or as contained in schedule II of 21 U.S.C. sec 812, other than in the course of legitimate professional practice;~~**

Section 12-35-118(1)(c) is currently in conflict with section 12-35-122, which authorizes dentists to prescribe drugs, but prohibits them from prescribing or distributing any habit-forming drug or any controlled substance to a family member, or himself or herself other than in the course of legitimate dental practice. In addition, this recommendation clarifies that dentists may not prescribe any habit forming drug or controlled substance to any person unless it is prescribed during the course of legitimate professional practice.

**12-35-118(1)(e) Habitual intemperance or excessive use of any habit-forming drug, as defined in section 12-22-102 (13), or any controlled substance, as defined in section ~~12-22-303 (7)~~ 18-18-102(5);**

Section 12-22-303(7), C.R.S., a section of the Drugs and Druggists Act (Drug Act), defines a controlled substance as “a drug, substance, or immediate precursor included in schedules I to IV of Part 2 of Article 18 of Title 18, C.R.S.”

Section 18-18-102(5), C.R.S., a section of the Colorado Criminal Code (Criminal Code) defines a controlled substance in an identical manner except that it goes on to state, “including cocaine, marihuana, and marihuana concentrate.”

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Tetrahydrocannabinols, commonly referred to as “THC”, is listed as a Schedule I Controlled Substance at section 18-18-203(2)(c)(XXIII), C.R.S. Section 12-22-303(32)(a), C.R.S., of the Drug Act defines “THC” as,

synthetic equivalents or the substances contained in the plant, or in the resinous extractives of, cannabis, sp., or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity . . .

Thus, THC is a part of the marihuana plant, but an individual could potentially test positive for marihuana and not THC, which is the controlled substance under the Drug Act.

In 2001, the Board of Nursing sought to take disciplinary action against a Certified Nurse Aide (CNA) who reported to work in an intoxicated state and tested positive for cocaine, alcohol and marihuana. Because the nurse aide practice act references the Drug Act, which includes THC as a controlled substance, but not marihuana specifically, the administrative law judge (ALJ) requested the Board of Nursing’s Assistant Attorney General, to establish the relationship between THC and marihuana in order to proceed to hearing whether the marihuana in the CNA’s system was grounds for disciplinary action. This involved research, legal analysis of the relevant statutes and obtaining an affidavit from a pharmacist.

Since THC is listed as a Schedule I Controlled Substance, and the Criminal Code specifically includes marihuana in its definition of a controlled substance, it is clear that the General Assembly intended that a practitioner who is found to have abused or excessively or habitually used marihuana be subject to disciplinary action. The recommended amendment will more clearly state the General Assembly’s intention.

Two other points are worth noting in relation to this issue. First, most, if not all, of Colorado’s professional practice acts contain language similar to that at issue here – they reference the Drug Act. In order to achieve consistency across the practice acts, Recommendation 8 in the Board of Pharmacy Sunset Report that is being presented during the current legislative session recommends that the Drug Act’s definition of “controlled substance” be amended to conform to the Criminal Code’s definition.

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Finally, in 2000, the Colorado Constitution was amended to legalize the use of marihuana for people suffering from debilitating medical conditions. Colo. Const. art. XVIII, §14. This recommendation will not infringe upon an individual's opportunity to exercise the rights granted under this constitutional provision so long as the dentist does not report to work while under the influence of marihuana, just as a dentist could receive discipline for reporting to work while under the influence of alcohol. For an individual who has obtained the necessary approvals and permissions to use marihuana for medicinal purposes, a showing of abuse, or habitual or excessive use would be similar to such a showing for alcohol.

**12-35-118(1)(l) Engaging in a sexual act with a patient during the course of patient care OR WITHIN SIX MONTHS IMMEDIATELY FOLLOWING THE TERMINATION OF THE LICENSEE'S PROFESSIONAL RELATIONSHIP WITH THE PATIENT. Sexual act, as used in this paragraph (l) means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.**

This provision helps clarify that the statutory prohibition of engaging in sexual acts with patients is ongoing. The specific issue is to prevent a professional from taking advantage of a professional relationship for an extended period of time after the professional relationship is terminated. This restriction is also found in the practice acts for physicians, chiropractors, podiatrists, and mental health professionals.

**12-35-118(1)(hh) FAILING TO ESTABLISH AND CONTINUOUSLY MAINTAIN FINANCIAL RESPONSIBILITY, AS REQUIRED IN SECTION 13-64-301, C.R.S.;**

The revisions suggested conform the administration of the Dental Practice Law of Colorado more closely and consistently to other regulatory practice acts.

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**Recommendation 29 - Delete archaic and obsolete language. Sections 12-35-119(2), 12-35-120, 12-35-123(1), 12-35-127, and 12-35-128, C.R.S., should be amended to read as follows:**

**12-35-119(2) The board may issue a duplicate of any license certificate upon satisfactory proof of LICENSEE ATTESTATION of loss or destruction and shall charge a fee established pursuant to section 24-34-105, C.R.S., for a duplicate. of any certificate.**

~~**12-35-120. Records to be kept by secretary of the board. The secretary of the board shall keep a record book in which shall be entered the names of all persons to whom licenses and license renewal certificates have been granted under this article, the numbers of such licenses and renewal certificates, the dates of granting the same, and other matters of record. The book so provided and kept shall be a book of records which shall be open to public inspection during ordinary office hours. A copy of any part or all of the book of records certified by the secretary, or a certified statement of the contents of the book of records, shall be prima facie evidence of the same in any court of this state. Upon payment of a fee to cover the cost of duplication, the secretary shall furnish the list of licensees to any person.**~~

**12-35-123 Dental hygienists - application fees. (1) Every person who desires to qualify for practice as a dental hygienist within this state shall file with the secretary of the board a written application for a license, on which application such applicant shall list any act, the commission of which would be grounds for disciplinary action under section 12-35-118 against a licensed dental hygienist, along with an explanation of the circumstances of such act, and shall furnish satisfactory proof of graduation from a school of dental hygiene which, at the time of the applicant's graduation, was accredited by a nationally recognized accrediting agency OF THE U.S. DEPARTMENT OF EDUCATION. Such application must be on the form prescribed and furnished by the board, verified by the oath of the applicant, and accompanied by a fee established pursuant to section 24-34-105, C.R.S.**

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**12-35-127 Dental hygienist - renewal of license - fee.** All licensed dental hygienists who engage in the practice of dental hygiene shall be registered with the board and have issued to them a renewal certificate by the board. The board shall establish renewal fees and schedules subject to the provisions of section 24-34-102 (8), C.R.S. The renewal fee shall be as established pursuant to section 24-34-105, C.R.S. The form and method and all provisions relating to the renewal of licenses of dentists as provided in sections 12-35-116 and ~~12-35-117~~, insofar as applicable, shall apply to dental hygienists.

~~12-35-128. Use of forged or invalid diploma or certificate. It is unlawful for any person to use or attempt to use as his or her own a diploma of a dental college or school, or a license or license renewal certificate of any other person, or to use or attempt to use a forged diploma, license, license renewal certificate, or identification. It is also unlawful for any person to file with the board a forged document, which document has been required or requested by the board for use in assessing an applicant's qualifications for licensure.~~

***Recommendation 30 - Amend section 12-35-122, C.R.S., to read as follows:***

**12-35-122.** Dentists may prescribe drugs, etc. A dentist has the right to prescribe such drugs or medicine, perform such surgical operations, administer such general or local anesthetics, and use such appliances as may be necessary to the proper practice of dentistry. A dentist shall not prescribe, distribute, or give to a family member ANY PERSON INCLUDING himself or herself any habit-forming drug, as defined in section 12-22-102 (13), or any controlled substance, as defined in part 2 of article 18 of title 18, C.R.S., or as contained in schedule II of 21 U.S.C. sec. 812, other than in the course of legitimate dental practice and pursuant to the rules promulgated by the board regarding controlled substance record keeping.

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Section 12-35-122, C.R.S., is amended to conform to the recommended language for section 12-35-118(1)(c), C.R.S. Additionally, it clarifies that dentists may not prescribe any habit forming drug or any controlled substance to any person unless it is prescribed in the course of legitimate professional practice.

***Recommendation 31 - Reorganize the Dental Practice Law.***

The current Law is not in a logical order. The Law has been amended several times since its enactment and provisions regarding dentists and dental hygienists are intermingled. Statutory provisions addressing dentists and dental hygienists should be organized by profession for clarity and ease of usage. The recommended revised organization of the Dental Practice Law is found in Appendix D on page 62.

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## **Appendix A - Sunset Statutory Evaluation Criteria**

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action; and
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

# Appendix B - License and Permit Requirements

## Summary of License Requirements

License Type	Requirements	Fees
Dental licensure by examination	<ul style="list-style-type: none"> <li>graduation from Council on Dental Accreditation (CODA) –approved dental school</li> <li>completion of Western Regional Examining Board (WREB) or Central Regional Dental Testing Service (CRDTS) clinical examination</li> <li>completion of National Boards Parts 1 &amp; 2</li> <li>completion of Colorado jurisprudence exam</li> </ul>	\$300 plus WREB or CRDTS fee.
Dental licensure by credentials	<ul style="list-style-type: none"> <li>graduation from Council on Dental Accreditation (CODA) –approved dental school</li> <li>completion of National Boards Parts 1 &amp; 2</li> <li>proof of dental practice for 5 years immediately preceding application to Colorado</li> <li>licensure in another state</li> <li>no disciplinary actions or felony convictions (by Board review)</li> <li>completion of Colorado jurisprudence exam</li> <li>completion of state or regional general dentistry clinical exam</li> <li>favorable report from National Practitioner Data Bank (by Board review)</li> <li>Board review malpractice insurance history</li> </ul>	\$350
Dental hygiene licensure by examination	<ul style="list-style-type: none"> <li>completion of Colorado jurisprudence exam</li> <li>completion of WREB or CRDTS exam</li> <li>completion of National Boards</li> <li>completion of Colorado jurisprudence exam</li> </ul>	\$150
Dental hygiene licensure by endorsement	<ul style="list-style-type: none"> <li>completion of Colorado jurisprudence exam</li> <li>completion of National Boards</li> <li>completion of Colorado jurisprudence exam</li> <li>licensure in another state</li> <li>no disciplinary actions or felony convictions</li> <li>proof of dental hygiene practice</li> </ul>	\$200

# Appendix C - State and Regional Clinical Dental Testing Agencies

## State and Regional Clinical Dental Testing Agencies

### Central Regional Dental Testing Services (CRDTS) Members

Colorado	Minnesota	South Dakota
Illinois	Missouri	Washington (dental only)
Iowa	Nebraska	Wisconsin
Kansas	North Dakota	Wyoming

**Other States Accepting CRDTS:** AK, CT<sup>1</sup>, ID, KY, ME<sup>2</sup>, MT, NH<sup>3</sup>, NM, OH<sup>4</sup>, OK, OR, TX, UT, VT<sup>5</sup>, WV

### Northeast Regional Board of Dental Examiners (NERB) Members

Connecticut <sup>1</sup>	Maryland	New Jersey
Rhode Island	District of Columbia	Massachusetts
New York	Vermont <sup>5</sup>	Illinois
Michigan	Ohio <sup>4</sup>	West Virginia
Maine <sup>2</sup>	New Hampshire <sup>3</sup>	Pennsylvania

**Other States Accepting NERB:** KS, KY, MO, NE, UT

### Southern Regional Testing Agency (SRTA) Members

Arkansas	South Carolina
Georgia	Tennessee
Kentucky	Virginia

**Other States Accepting SRTA:** CT<sup>1</sup>, IL, KS, ME<sup>2</sup>, MO, NE, ND, NH<sup>3</sup>, OH<sup>4</sup>, UT, VT<sup>5</sup>, WV

### Western Regional Examining Board (WREB) Members

Alaska	New Mexico	Utah
Arizona	Oklahoma	Washington
Idaho	Oregon	Wyoming
Montana	Texas	

**Other States Accepting WREB:** CO, CT<sup>1</sup>, IL, IA, KS, KY, ME<sup>2</sup>, MN, MO, NE, NH<sup>3</sup>, ND, OH<sup>4</sup>, SD, VT<sup>5</sup>, WV, WI

### Jurisdictions That Administer Their Own Clinical Dental Exams

Alabama	Florida	Louisiana	North Carolina
California	Hawaii	Mississippi	Puerto Rico
Delaware	Indiana	Nevada	Virgin Islands

**Other States Accepting Independent Testing Agencies:** KS, MO, NE, NH<sup>3</sup>, ND, WV

<sup>1</sup> CT will consider other regional exams on a case-by-case basis.

<sup>2</sup> ME will consider other regional exams if raw scores are provided.

<sup>3</sup> NH accepts all regional exams but candidates must also pass the NERB written exam. State exams accepted on a case-by-case basis.

<sup>4</sup> OH accepts other regional exams if candidate passes all parts of the specific exam taken. The candidate must also pass the NERB written exam.

<sup>5</sup> VT accepts CRDTS, SRTA and WREB but candidates must also pass the NERB written exam.

**Source: American Association of Dental Examiners, August 8, 2002.**

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## **Appendix D – Revised Order of the Dental Practice Law of Colorado**

Section 101	Short title
Section 102	Legislative declaration
Section 103	Definitions
Section 104	State board of dental examiners –subject to termination – immunity – repeal of article
Section 105	Qualifications of board members
Section 106	Quorum of board
Section 107	Powers and duties of board
Section 107.5	Limitation on authority
Section 108	Power of board to administer oaths – issue subpoenas – service – penalty for refusing to obey subpoena
Section 109	Disposition of fees (formerly 12-35-121)
Section 110	Change of address – duplicate licenses and certificates (formerly 12-35-119)
Section 111	Persons entitled to practice dentistry or dental hygiene (formerly 12-35109)
Section 112	What constitutes practicing dentistry (formerly 12-35110)
Section 113	Dentists may prescribe drugs, etc. (formerly 12-35-122)
Section 114	Persons exempt from operations of this article (formerly 12-35111)
Section 115	Names and status under which dental practice may be conducted (formerly 12-35112)
Section 116	Application for dental license – fee (formerly 12-35113)
Section 117	Graduates of foreign dental schools (formerly 12-35-113.5)
Section 118	Examinations for dental licensure –how conducted – certificates issued to successful applicants – conditions on re-examination (formerly 12-35-114)
Section 119	Licensure by credentials (formerly 12-35-114.5)
Section 120	Renewal of dental and dental hygiene license (formerly 12-35-116 and 117 and 12-35-127)
Section 121	Inactive license (formerly 12-35-135)
Section 122	Retired licenses (formerly 12-35-136)
Section 123	What constitutes practicing unsupervised dental hygiene (formerly 12-35-122.5)
Section 124	What constitutes practicing supervised dental hygiene (formerly 12-35-122.6)
Section 125	<del>Dental hygienists – application fee</del> Application for dental hygiene license – fee (formerly 12-35-123)
Section 126	Examinations for dental hygiene licensure (formerly 12-35-124)
Section 127	Retired licenses (formerly 12-35-136)
Section 128	Tasks authorized to be performed by dental auxiliaries or dental hygienists (formerly 12-35-125)
Section 129	Causes for denial of issuance or renewal – suspension or revocation of licensees – other disciplinary action – unprofessional conduct defined – immunity in professional review (formerly 12-35-118)
Section 130	Review of board action (formerly 12-35-115)
Section 131	Use of forged or invalid diploma or certificate (formerly 12-35-128)
Section 132	Sale of forged or invalid diploma or license certificate (formerly 12-35-129)
Section 133	Employment of unlicensed person by dentist – penalty (formerly 12-35-130)
Section 134	Soliciting or advertisements by unlicensed persons (formerly 12-35-131)
Section 135	Penalty for violations – injunction (formerly 12-35-132)
Section 136	Attorney general shall represent board and members (formerly 12-35-133)
Section 137	Independent advertising or marketing agent – injunctive proceedings (formerly 12-35-134)
Section 138	Dentist peer health assistance fund (formerly 12-35-123.5)

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## **Appendix E – Dental Practice Law of Colorado**

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

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

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

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

(2) The general assembly further finds, determines, and declares that effective July 1, 1994, the dentist peer health assistance fund shall be terminated, the balance of moneys in the fund shall be transferred prior to June 30, 1994, to an administering entity selected by the board, which entity shall administer the programs of board selected designated providers, and that the fiscal year beginning July 1, 1993, shall be used by the department of regulatory agencies as a transition year to plan for the transfer of responsibilities for such program.

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

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

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

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

(1.5) "Inactive license" means a status granted to a person pursuant to section 12-35-135.

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

(1.8) "Laboratory work order" means the written instructions of a dentist licensed in Colorado authorizing another person to construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

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(2) "License" means the grant of authority by the board to any person to engage in the practice of dentistry or dental hygiene. Such license shall be a privilege personal to the licensee and may be revoked, suspended, or subjected to disciplinary conditions by the board for violation of any of the provisions of this article and shall be null and void upon the failure of the licensee to file an application for renewal and to pay the fee as required by section 12-35-116 or 12-35-117 for dentists and section 12-35-127 for dental hygienists.

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

(4) "Personal direction" means the orders of a dentist licensed in Colorado, which shall be classified as follows:

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

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

(c) For purposes of this subsection (4) only, "premises" means within the same building, dental office, or treatment facility and within close enough proximity to respond in a timely manner to an emergency or the need for assistance.

(5) "Proprietor" includes any person who:

(a) Employs dentists, dental hygienists, or dental auxiliaries in the operation of a dental office, except as provided in sections 12-35-110 (1) (b) and 12-35-125 (2);

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

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

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

(7) Repealed.

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

(1) The state board of dental examiners, referred to in this article as the "board", in existence on July 1, 1986, is continued as the agency of this state for the regulation of the practice of dentistry in this state and to carry out the purposes of this article. The board shall be under the supervision and control of the division of registrations as provided by section 24-34-102, C.R.S. The board shall consist of five dentist members, two dental hygienist members, and three members from the public at large, each member to be appointed by

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the governor for a term of four years and to have the qualifications provided in this article; except that the dentist member first appointed on or after July 1, 1986, shall serve for a term ending January 1, 1989. Of the two new public members appointed on July 1, 1986, one member shall serve a term ending January 1, 1989, and one member shall serve a term ending January 1, 1990. Due consideration shall be given to having a geographical, political, and urban/rural balance among the board members. Should a vacancy occur in any board membership before the expiration of the term thereof, the governor shall fill such vacancy by appointment for the remainder of such term in the same manner as in the case of original appointments. The terms of existing board members serving on the board as of July 1, 1986, shall not be disturbed by the provisions of this subsection (1), except as necessary to comply with the requirements governing composition of the board. Any member of the board may be removed by the governor for misconduct, incompetence, or neglect of duty.

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

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

(4) Repealed.

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

(b) This article is repealed, effective July 1, 2003.

(6) Members of the board shall be immune from suit in any civil action based on any disciplinary proceedings or other official acts performed in good faith as members of such board.

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

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

(a) A legal resident of Colorado;

(b) Currently licensed as a dentist or dental hygienist; and

(c) Has been actively engaged in a clinical practice in this state for at least five years immediately preceding the appointment.

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

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

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

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

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

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

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

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

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

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

(II) The practices of dentistry and dental hygiene;

(III) The tasks and procedures which may be assigned to dental auxiliaries and dental hygienists;

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

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

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

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

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

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

(h) (I) Issue anesthesia permits to licensed dentists that shall be valid for a period of five years and that allow permit-holding licensees to administer deep conscious sedation or both general anesthesia and deep-conscious sedation;

(II) Set and collect a fee for the issuance of an anesthesia permit;

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

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

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

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

(2) Repealed.

**12-35-107.5. Limitation on authority.**

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

**12-35-108. Power of board to administer oaths - issue subpoenas - service - penalty for refusing to obey subpoena.**

(1) (a) The president and, in the president's absence, the vice-president and, in the latter's absence, the secretary, or an administrative law judge, shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all necessary papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board. The sheriffs of the several counties of the state or other officers authorized to serve process shall serve any subpoena or other order issued by such officer or officers of said board and shall receive for such services the fees provided for like service to be paid on certification of such officer from any funds in the hands of the board.

(b) In addition, the program administrator shall have the power to administer oaths and take affirmations of witnesses.

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

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**12-35-109. Persons entitled to practice dentistry or dental hygiene.**

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

(a) and (b) (Deleted by amendment, L. 96, p. 1399, § 6, effective July 1, 1996.)

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

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

**12-35-110. What constitutes practicing dentistry.**

(1) A person shall be deemed to be practicing dentistry if, in the course of legitimate professional practice, such person:

(a) Performs, or attempts or professes to perform, any dental operation or oral surgery or dental diagnostic or therapeutic services of any kind. Nothing in this paragraph (a) shall be construed as prohibiting a dental hygienist or dental auxiliary from providing preventive dental or nutritional counseling, education, or instruction services.

(b) Is a proprietor of a place where dental operation, oral surgery, or dental diagnostic or therapeutic services are performed; except that nothing in this section shall be construed as prohibiting a dental hygienist or dental auxiliary from performing those tasks and procedures consistent with section 12-35-125 (2);

(c) Directly or indirectly, by any means or method, takes impression of the human tooth, teeth, or jaws or performs any phase of any operation incident to the replacement of a part of a tooth or supplies artificial substitutes for the natural teeth; except that nothing in this section shall prohibit or be construed as prohibiting a dental hygienist or dental auxiliary from performing tasks and procedures consistent with sections 12-35-122.5 (1) (d), 12-35-122.6 (1) (d), and 12-35-125 (4) (a) (I);

(d) Furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth other than on the written laboratory work order of a duly licensed and practicing dentist, or places such appliance or structure in the human mouth, or adjusts or attempts or professes to adjust the same, or delivers the same to any person other than the dentist upon whose laboratory work order the work was performed;

(e) Professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) Examines, diagnoses, plans treatment, or treats natural or artificial structures or conditions associated with, adjacent to, or functionally related to the oral cavity or the maxillofacial area;

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

(h) Repairs or fills cavities in the human teeth;

(i) Prescribes ionizing radiation or the use of an X ray for the purpose of taking dental X rays or roentgenograms. These procedures may be delegated to appropriately trained personnel.

(j) Gives, or professes to give, interpretations or readings of dental X-rays or roentgenograms; except that nothing in this section shall prohibit or be construed as prohibiting a dental hygienist from performing tasks and procedures consistent with sections 12-35-122.5 and 12-35-122.6;

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(k) Represents himself or herself to an individual or the general public as practicing dentistry, by using the words "dentist" or "dental surgeon", or by using the letters "D.D.S.", "D.M.D.", "D.D.S./M.D.", or "D.M.D./M.D.". Nothing in this paragraph (k) shall prohibit or be construed as prohibiting a dental hygienist or dental auxiliary from performing tasks and procedures consistent with section 12-35-125 (2) (a) or (4) (a).

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

(m) Prescribes such drugs or medications and administers such general or local anesthetics, anesthesia, or analgesia as may be necessary for the proper practice of dentistry; except that nothing in this section shall prohibit or be construed as prohibiting a dental hygienist from performing those tasks and procedures consistent with sections 12-35-122.5 (1) (e), 12-35-122.6 (1) (e) and (1) (f), and 12-35-125, and in accordance with rules promulgated by the board;

(n) Prescribes, induces, and sets dosage levels for inhalation analgesia. Monitoring and administration may be delegated to appropriately trained personnel.

(o) Gives or professes to give interpretations or readings of dental charts or records or gives treatment plans or interpretations of treatment plans derived from examinations, patient records, dental X rays, or roentgenograms; except that nothing in this section shall prohibit or be construed as prohibiting a dental hygienist or dental auxiliary from performing tasks and procedures consistent with sections 12-35-125 (2) and (4), 12-35-122.5, and 12-35-122.6.

**12-35-111. Persons exempt from operations of this article.**

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

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

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

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

(d) Dental interns regularly employed by a private hospital or by a city, county, city and county, or state hospital under an internship approved by the council on dental education of the American dental association and registered as such by the board;

(e) The practice of dentistry or dental hygiene by instructors and students in schools or colleges of dentistry or schools of dental hygiene or schools of dental auxiliary education accredited by the American dental association while participating in programs of such schools or colleges;

(f) The practice of dentistry or dental hygiene by dentists or dental hygienists of other states or countries while appearing in programs of dental education or research at the invitation of any group of licensed dentists or dental hygienists in this state who are in good standing;

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(g) The filling of laboratory work orders of a licensed dentist, as provided by section 12-35-130, by any person, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth or for regulation of natural teeth;

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

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

**12-35-112. Names and status under which dental practice may be conducted.**

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

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

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

**12-35-113. Application for license - fee.**

(1) Every person not currently holding a license to practice dentistry in this state who desires to practice dentistry in this state shall file with the secretary of the board an application for a license on a form to be provided by the board, verified by the oath of the applicant, and accompanied by a fee required by section 12-35-123.5 (2) (b) or established pursuant to section 24-34-105, C.R.S., in which application it shall appear that the applicant:

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

(b) Is a graduate of a dental school or college which at the time of the applicant's graduation was accredited by the council on dental education of the American dental association. It shall be sufficient for the applicant to attach to the applicant's application a certified photostatic copy of a transcript of credits prepared by the dental college or school attended by the applicant.

(c) Has listed any act, the commission of which would be grounds for disciplinary action under section 12-35-118 against a licensed dentist, along with an explanation of the circumstances of such act;

(d) Repealed.

(e) Has verification of licensure from other jurisdictions where the applicant holds a current dental or other health care license.

(2) Repealed.

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

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

**12-35-113.5. Graduates of foreign dental schools.**

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

(a) Present evidence of having completed a program in clinical dentistry and having obtained a doctorate of dental surgery or a doctorate of dental medicine at a dental school accredited by a nationally recognized accrediting agency;

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

(c) Pass an examination designed to test the applicant's clinical skills and knowledge. Such examination may be administered by a testing agency of which the board is a participating member.

(d) (Deleted by amendment, L. 96, p. 1402, § 11, effective July 1, 1996.)

**12-35-114. Examinations - how conducted - certificates issued to successful applicants - conditions on reexamination.**

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

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

(b) An examination on the provisions of this article;

(c) An examination designed to test the applicant's clinical skills and knowledge. Such examination may be administered by a testing agency of which the board is a participating member.

(2) and (3) (Deleted by amendment, L. 96, p. 1403, § 12, effective July 1, 1996.)

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

(5) Repealed.

(6) The board shall adopt rules to establish:

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

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

**12-35-114.5. Licensure by credentials.**

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

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

(a) Proof of graduation from a dental school accredited by the American dental association commission on dental education;

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

(c) Proof the applicant has been in practice for a minimum of five years immediately prior to applying for licensure;

(d) Proof the applicant has not been subject to final or pending disciplinary action by any state in which the applicant is or has been previously licensed; however, if the applicant has been subject to disciplinary action, the board may review such disciplinary action to determine if it warrants grounds for refusal to issue a license;

(e) Proof the applicant has not failed the clinical examination accepted by the board in the last three years;

(f) Proof the applicant has passed an examination on the provisions of this article;

(g) Proof the applicant has passed an entry level examination acceptable to the board; and

(h) Proof the applicant has met any more stringent criteria established by the board.

**12-35-115. Review of board action.**

Any final action of the board undertaken to deny the issuance or renewal of, or to suspend, or to revoke a license to practice dentistry or dental hygiene or to censure, to reprimand, or to place on probation a licensee of dentistry or dental hygiene may be reviewed by the court of appeals by appropriate proceedings under section 24-4-106 (11), C.R.S.

**12-35-116. Renewal of license - fees.**

(1) On or before the first day of the month designated pursuant to rules and regulations promulgated by the board, every dentist licensed to practice dentistry in this state shall transmit to the secretary of the board, upon a form prescribed by the board, the dentist's signature, post-office address, office address, the number of the dentist's license certificate, and such other pertinent information as may be requested, together with a fee required by section 12-35-123.5 (2) (b) or established pursuant to section 24-34-105, C.R.S., and all fees then in arrears, and shall receive therefor a renewal certificate authorizing the dentist to continue the practice of dentistry in this state. The board shall establish renewal fees and schedules subject to the provisions of section 24-34-102 (8), C.R.S.

(2) Five years after April 21, 1961, any dentist whose application for renewal of an active license indicates that the dentist has not actively practiced dentistry or has not been engaged in teaching dentistry in an accredited dental program for at least one year during the five years immediately preceding the application shall be issued a renewal certificate by the board only after the applicant has demonstrated to the board that the applicant has maintained the qualifications set out in section 12-35-113. No reexamination shall be required unless the board finds good cause to believe that the person has not maintained the professional ability and knowledge required of an original licensee by this article.

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**12-35-117. Failure to renew license - forfeiture - effect on disciplinary proceedings.**

(1) Upon the failure of any dentist to file the application and to pay the renewal fee provided for in section 12-35-116 within three months after the renewal date designated by the board in its rules and regulations, a penalty fee established pursuant to section 24-34-105, C.R.S., shall be assessed in addition to the renewal fee. The secretary shall notify the dentist in writing by first-class mail that the application has not been made, that the fee has not been paid, and that the penalty has been assessed. If such application and fee are not received within thirty days, it is the duty of the secretary to refer the delinquency to the board.

(2) Failure of any licensee to pay the annual registration fee prescribed by subsection (1) of this section shall automatically suspend the practitioner's license while the practitioner is so delinquent, and the name of any delinquent licensee shall be omitted from the list kept by the secretary of the board pursuant to section 12-35-120.

**12-35-118. Causes for denial of issuance or renewal - suspension or revocation of licenses - other disciplinary action - unprofessional conduct defined - immunity in professional review.**

(1) The board may deny the issuance or renewal of, suspend for a specified time period, or revoke any license provided for by this article or may reprimand, censure, or place on probation any licensed dentist or dental hygienist after notice and hearing, which may be conducted by an administrative law judge, pursuant to the provisions of article 4 of title 24, C.R.S., or it may issue a letter of admonition without a hearing (except that any licensed dentist or dental hygienist to whom such a letter of admonition is sent may, within thirty days after the date of the mailing of such letter by the board, request in writing to the board a formal hearing thereon, and the letter of admonition shall be deemed vacated, and the board shall, upon such request, hold such a hearing) for any of the following causes:

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

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

(c) Administering, dispensing, or prescribing any habit-forming drug, as defined in section 12-22-102 (13), or any controlled substance as defined in section 12-22-303 (7) other than in the course of legitimate professional practice; administering, dispensing, using, or prescribing to himself or herself except on an emergency basis any controlled substance as defined in part 2 of article 18 of title 18, C.R.S., or as contained in schedule II of 21 U.S.C. sec. 812, other than in the course of legitimate professional practice;

(d) Conviction of violation of any federal or state law regulating the possession, distribution, or use of any controlled substance, as defined in section 12-22-303 (7), and, in determining if a license should be denied, revoked, or suspended or if the licensee should be placed on probation, the board shall be governed by the provisions of section 24-5-101, C.R.S.;

(e) Habitual intemperance or excessive use of any habit-forming drug, as defined in section 12-22-102 (13), or any controlled substance, as defined in section 12-22-303 (7);

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

(g) Except as otherwise provided in section 25-3-103.7, C.R.S., practicing dentistry or dental hygiene as a partner, agent, or employee of or in joint venture with any person who does not hold a license to practice dentistry or dental hygiene within this state or practicing dentistry or dental hygiene as an employee of or in joint venture with any partnership, association, or corporation except as provided in section 12-35-112. Any licensee holding a license to practice dentistry or dental hygiene in this state may accept employment from any person, partnership, association, or corporation to examine, prescribe, and treat the employees of such person, partnership, association, or corporation.

(h) Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this article or lawful rule or order of the board;

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

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

(k) Advertising which is misleading, deceptive, or false;

(l) Engaging in a sexual act with a patient during the course of patient care. "Sexual act", as used in this paragraph (l), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.;

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

(n) False billing in the delivery of dental or dental hygiene services, including, but not limited to, performing one service and billing for another and billing for any service not rendered and committing a fraudulent insurance act, as defined in section 10-1-127, C.R.S.;

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

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

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

(r) The failure to furnish unlicensed persons with laboratory work orders pursuant to section 12-35-130;

(s) Employing a solicitor or other agent to obtain patronage, except as provided in section 12-35-134;

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

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

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

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

(x) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; in addition to the provisions of paragraph (w) of this subsection (1), the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to recognized standards of the practice of dentistry or dental hygiene as interpreted by the board;

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

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

(aa) Any violation of the provisions of section 12-35-202 or any rule or regulation of the board adopted pursuant to said section;

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

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

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

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

(ff) Practicing outside the scope of dental or dental hygiene practice.

(1.3) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this section shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

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(1.5) The discipline of a license to practice dentistry in another state, territory, or country shall be deemed to be unprofessional conduct; except that this subsection (1.5) shall apply only to discipline that is based upon an act or omission in such other state, territory, or country that is defined substantially the same as unprofessional conduct pursuant to this article.

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

(b) Nothing in paragraph (a) of this subsection (1.7) shall be construed to prevent disciplinary action against a dentist for practicing dentistry in violation of this article.

(2) Repealed.

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

(4) Repealed.

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

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

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

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

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

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

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

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

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

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

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

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

(I) The board; or

(II) A society or an association of persons licensed to practice dentistry pursuant to this article whose membership includes not less than one-third of the persons licensed to practice dentistry pursuant to this article residing in this state if the licensee whose services are the subject of review is a member of such society or association.

(b) Any member of the board or a professional review committee authorized by the board and any witness or consultant appearing before the board or such professional review committee shall be immune from suit in any civil action brought by a licensee who is the subject of a professional review proceeding if such member, witness, or consultant acts in good faith within the scope of the function of the board or such committee, has made a reasonable effort to obtain the facts of the matter as to which such member, witness, or consultant acts, and acts in the reasonable belief that the action taken by such member, witness, or consultant is warranted by the facts. The immunity provided by this paragraph (b) shall extend to the members of an authorized professional review committee of a society or an association of persons licensed pursuant to this article and witnesses or consultants appearing before such committee if such committee is authorized to act as provided in subparagraph (II) of paragraph (a) of this subsection (6).

(7) The proceedings and records of a review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action against a dentist arising out of the matters which are the subject of evaluation and review by such committee. However, records of closed proceedings and investigations shall be available to the particular licensee under review and the complainant involved in the proceedings. No person who was in attendance at a meeting of such committee shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such committee or as to any findings, recommendations, evaluations, opinions, or other actions of such committee or any members thereof. However, information, documents, or records otherwise available from original sources are not to be construed as immune from discovery or use in any such civil

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action merely because they were presented during proceedings of such committee, and any documents or records which have been presented to the review committee by any witness shall be returned to the witness, if requested by the witness or if ordered to be produced by a court in any action, with copies thereof to be retained by the committee at its discretion. Any person who testifies before such committee or who is a member of such committee shall not be prevented from testifying as to matters within such person's knowledge, but the said witness cannot be asked about the witness' testimony before such a committee or opinions formed by the witness as a result of said committee hearings.

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

**12-35-119. Change of address - duplicate licenses and certificates.**

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

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

**12-35-120. Records to be kept by secretary of the board.**

The secretary of the board shall keep a record book in which shall be entered the names of all persons to whom licenses and license renewal certificates have been granted under this article, the numbers of such licenses and renewal certificates, the dates of granting the same, and other matters of record. The book so provided and kept shall be a book of records which shall be open to public inspection during ordinary office hours. A copy of any part or all of the book of records certified by the secretary, or a certified statement of the contents of the book of records, shall be prima facie evidence of the same in any court of this state. Upon payment of a fee to cover the cost of duplication, the secretary shall furnish the list of licensees to any person.

**12-35-121. Disposition of fees.**

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

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

(3) Repealed.

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

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**12-35-122. Dentists may prescribe drugs, etc.**

A dentist has the right to prescribe such drugs or medicine, perform such surgical operations, administer such general or local anesthetics, and use such appliances as may be necessary to the proper practice of dentistry. A dentist shall not prescribe, distribute, or give to a family member or himself or herself any habit-forming drug, as defined in section 12-22-102 (13), or any controlled substance, as defined in part 2 of article 18 of title 18, C.R.S., or as contained in schedule II of 21 U.S.C. sec. 812, other than in the course of legitimate dental practice and pursuant to the rules promulgated by the board regarding controlled substance record-keeping.

**12-35-122.5. What constitutes practicing unsupervised dental hygiene.**

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

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

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

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

(d) Gathers and assembles information including, but not limited to, fact-finding and patient history, oral inspection, and dental and periodontal charting;

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

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

(3) Notwithstanding the provisions of section 12-35-103 (5) or 12-35-110 (1) (b), a dental hygienist may be the proprietor of a place where supervised or unsupervised dental hygiene is performed and may purchase, own, or lease equipment necessary to perform supervised or unsupervised dental hygiene.

**12-35-122.6. What constitutes practicing supervised dental hygiene.**

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

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

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

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

(d) Gathers and assembles information including, but not limited to, fact-finding and patient history, radiographic and X-ray survey, preparation of study casts, oral inspection, and dental and periodontal charting;

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

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

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

**12-35-123. Dental hygienists - application fees.**

(1) Every person who desires to qualify for practice as a dental hygienist within this state shall file with the secretary of the board a written application for a license, on which application such applicant shall list any act, the commission of which would be grounds for disciplinary action under section 12-35-118 against a licensed dental hygienist, along with an explanation of the circumstances of such act, and shall furnish satisfactory proof of graduation from a school of dental hygiene which, at the time of the applicant's graduation, was accredited by a nationally recognized accrediting agency. Such application must be on the form prescribed and furnished by the board, verified by the oath of the applicant, and accompanied by a fee established pursuant to section 24-34-105, C.R.S.

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

**12-35-123.5. Dentist peer health assistance fund.**

(1) (a) Repealed.

(b) Prior to June 30, 1994, the board shall transfer the balance in the fund, if any, to the administering entity chosen by the board pursuant to paragraphs (d) and (e) of subsection (2) of this section, and the board shall perform the duties and responsibilities of the rehabilitation evaluation committee, as described in paragraph (b) of subsection (6) of this section, as said provision existed prior to July 1, 1994.

(2) (a) Repealed.

(b) Effective July 1, 1994, as a condition of licensure in this state, every applicant shall pay to the administering entity that has been

selected by the board pursuant to the provisions of paragraph (e) of this subsection (2) an amount not to exceed twenty-eight dollars per year, which amount shall be used to support designated providers that have been selected by the board to provide assistance to dentists needing help in dealing with physical, emotional, or psychological problems which may be detrimental to their ability to practice dentistry.

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

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

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

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

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(IV) Monitor the status of a dentist who has been referred for treatment;  
(V) Provide counseling and support for the dentist and for the family of any dentist referred for treatment;

(VI) Agree to receive referrals from the board;

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

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

(e) The responsibilities of the administering entity shall be:

(I) To collect the required annual payments;

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

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

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

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

(3) and (4) Repealed.

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

(b) Notwithstanding the provisions of section 12-35-118 and section 24-4-104, C.R.S., the board may immediately suspend the license of any dentist who is referred to a peer health assistance program by the board and who fails to attend or to complete such program. If such dentist objects to such suspension, he may submit a written request to the board for a formal hearing on such suspension within ten days of receiving notice of such suspension, and the board shall grant such request. In such hearing the dentist shall bear the burden of proving that his license should not be suspended.

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

(6) Repealed.

(7) Nothing in this section shall be construed to create any liability on behalf of the board or the state of Colorado for the actions of the board or the committee members in making grants to peer assistance programs, and no civil action may be brought or maintained against the board, the committee members, or the state for an injury alleged to have been the result of the activities of any state-funded peer assistance program or the result of an act or omission of a dentist participating in or referred by a state-funded peer

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assistance program. However, the state shall remain liable under the provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., if an injury alleged to have been the result of an act or omission of a dentist participating in or referred by a state-funded peer assistance program occurred while such dentist was performing duties as an employee of the state.

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

(9) Repealed.

**12-35-124. Examinations - license.**

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

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

(b) An examination designed to test the applicant's clinical skills and knowledge, which may be administered by a testing agency of which the board is a participating member;

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

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

(3) Repealed.

(4) (a) The board shall provide for licensure upon application of any person licensed in good standing to practice dental hygiene in another state or territory of the United States who has met the requirements of section 12-35-123 and subsections (1), (2), and (4) (b) of this section and provides the credentials and meets the qualifications set forth in subsection (4) (b) of this section in the manner prescribed by the board. The examination for knowledge of the provisions of this article shall be accomplished by the use of a mail-in jurisprudence examination administered by the board.

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

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

(II) Evidence of the applicant's successful completion of the national board dental hygiene examination;

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

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

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

(5) (Deleted by amendment, L. 96, p. 1410, § 22, effective July 1, 1996.)

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**12-35-125. Tasks authorized to be performed by dental auxiliaries or dental hygienists.**

(1) The responsibility for diagnosis, treatment planning, or the prescription of therapeutic measures in the practice of dentistry shall remain with a licensed dentist and may not be assigned to any dental hygienist. No dental procedure that will contribute to or result in an irremediable alteration of the oral anatomy may be assigned to anyone other than a licensed dentist.

(2) (a) Except as provided in subsection (1) of this section, a dental hygienist may perform any dental task or procedure assigned to the hygienist by a licensed dentist that does not require the professional skill of a licensed dentist but only under the general supervision of a licensed dentist on the premises, or as provided elsewhere in this section.

(b) and (c) Repealed.

(3) (Deleted by amendment, L. 96, p. 1411, § 23, effective July 1, 1996.)

(4) (a) A dental auxiliary shall not perform the following tasks:

(I) Diagnosis;

(II) Treatment planning;

(III) Prescription of therapeutic measures;

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

(V) Administration of local anesthesia;

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

(VII) Root planing;

(VIII) Soft tissue curettage;

(IX) Periodontal probing.

(b) An auxiliary may perform the following tasks under the personal direction of a licensed dentist:

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

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

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

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

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

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

(d) (I) A dental auxiliary may perform intraoral and extraoral tasks and procedures necessary for the construction of a full denture under the general supervision of a licensed dentist. These tasks and procedures shall include:

(A) Taking of preliminary and final impressions;

(B) Bite-registration and determination of vertical dimensions;

(C) Tooth selection;

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

(E) Denture adjustments that involve the periphery, occlusal, or tissue-bearing surfaces of the denture prior to the final examination of the denture pursuant to subsection (5) of this section.

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(II) The tasks and procedures in subparagraph (I) of this paragraph (d) shall be performed in the regularly announced office location of a licensed practicing dentist, and the dentist shall be personally liable for all treatment rendered to the patient. No licensed dentist may maintain or utilize more than two announced office locations in which auxiliary personnel are utilized to perform tasks and procedures authorized in subparagraph (I) of this paragraph (d). A dental auxiliary performing these tasks and procedures shall be properly identified as a dental auxiliary. No dentist shall utilize more than the number of dental auxiliaries the dentist can reasonably supervise.

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

(5) At the time of a preliminary try-in of a wax-up trial denture as provided by sub-subparagraph (D) of subparagraph (I) of paragraph (d) of subsection (4) of this section, the dental auxiliary shall advise the patient that the dentist will examine the wax-up trial denture and make a vertical and occlusal check and that, within one month after delivery of the denture, the patient shall be examined by the licensed dentist for a certification in the patient chart that the denture is satisfactory.

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

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

**12-35-126. Causes for denial of issuance or renewal - suspension or revocation of licenses - other disciplinary action. (Repealed)**

**12-35-127. Dental hygienist - renewal of license - fee.**

All licensed dental hygienists who engage in the practice of dental hygiene shall be registered with the board and have issued to them a renewal certificate by the board. The board shall establish renewal fees and schedules subject to the provisions of section 24-34-102 (8), C.R.S. The renewal fee shall be as established pursuant to section 24-34-105, C.R.S. The form and method and all provisions relating to the renewal of licenses of dentists as provided in sections 12-35-116 and 12-35-117, insofar as applicable, shall apply to dental hygienists.

**12-35-128. Use of forged or invalid diploma or certificate.**

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

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**12-35-129. Sale of forged or invalid diploma or license certificate.**

It is unlawful to sell or offer to sell a diploma conferring a dental or dental hygiene degree or a license or license renewal certificate granted pursuant to this article or prior dental practice laws or to procure such diploma or license or license renewal certificate with intent that it shall be used as evidence of the right to practice dentistry or dental hygiene by a person other than the one upon whom it was conferred, or to whom such license or license renewal certificate was granted, or with fraudulent intent to alter a diploma or license or license renewal certificate or to use or attempt to use it when it is so altered.

**12-35-130. Employment of unlicensed person by dentist - penalty.**

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

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

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

**12-35-131. Soliciting or advertisements by unlicensed persons.**

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

**12-35-132. Penalty for violation - injunction.**

(1) Any person who violates any of the provisions of this article commits a class 3 misdemeanor and shall be liable to prosecution by the attorney general or the district attorney of the district in which the violation is alleged to have occurred and shall be punished as provided in section 18-1.3-501, C.R.S.

(2) If the board has reasonable cause to believe that any person is violating any provisions of this article, or any lawful rule or regulation issued under this article, in addition to all other actions provided for in this article and without prejudice thereto, it may enter an order requiring such person to cease and desist from violating this article, or such rule or regulation and, in addition, may request that an action be brought on relation of the people of the state of Colorado by the attorney general or by the district attorney of the district in which the violation is alleged to have occurred, to enjoin such person from

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engaging in or continuing such violation or from doing any act in furtherance thereof. In any such action, an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.

**12-35-133. Attorney general shall represent board and members.**

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

**12-35-134. Independent advertising or marketing agent - injunctive proceedings.**

(1) Notwithstanding the provisions of section 12-35-118 (1) (s), a licensed dentist or dental hygienist may employ an independent advertising or marketing agent to provide advertising or marketing services on the dentist's or dental hygienist's behalf, and the same shall not be considered unprofessional conduct.

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

**12-35-135. Inactive license.**

(1) Any person licensed to practice dentistry pursuant to this article may apply to the board to be transferred to an inactive status. Such application shall be in the form and manner designated by the board. The board may grant such status by issuing an inactive license or it may deny the application for any of the causes set forth in section 12-35-118.

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

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

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

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

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

(4) The board is authorized to conduct disciplinary proceedings as set forth in section 12-35-117 or 12-35-118 against any person licensed under this section for any act committed while the person was licensed pursuant to this article.

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(5) Any person licensed under this section who wishes to resume the practice of dentistry shall file an application in the form and manner the board shall designate, pay the license fee promulgated by the board pursuant to section 24-34-105, C.R.S., and meet the financial responsibility requirements promulgated by the board pursuant to section 13-64-301 (1), C.R.S. The board may approve such application and issue a license to practice dentistry or may deny the application for any of the causes set forth in section 12-35-118.

**12-35-136. Retired licenses.**

(1) Any person licensed to practice dentistry or dental hygiene pursuant to this article may apply to the board for retired licensure status. Any such application shall be in the form and manner designated by the board. The board may grant such status by issuing a retired license or it may deny the application if the licensee has been disciplined for any of the causes set forth in section 12-35-118.

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

(a) Provide an affidavit to the board stating that, after a date certain, the applicant shall not practice dentistry or dental hygiene, shall no longer earn income as a dentist or dental hygiene administrator or consultant, or shall not perform any activity that constitutes practicing dentistry or dental hygiene pursuant to sections 12-35-110, 12-35-122.5, and 12-35-122.6, unless said applicant is issued a license to practice dentistry or dental hygiene pursuant to subsection (5) of this section;

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

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

(4) The board is authorized to conduct disciplinary proceedings pursuant to section 12-35-117 or 12-35-118 against any person licensed under this section for an act committed while such person was licensed pursuant to this article.

(5) Any person licensed under this section may apply to the board for a return to active licensure status by filing an application in the form and manner the board shall designate pursuant to section 12-35-113, paying the appropriate license fee established pursuant to section 24-34-105, C.R.S., and meeting the financial responsibility requirements issued by the board pursuant to section 13-64-301 (1), C.R.S. The board may approve such application and issue a license to practice dentistry or dental hygiene or may deny the application if the licensee has been disciplined for any of the causes set forth in section 12-35-118.

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

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

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

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

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

**12-35-202. Board authorized to issue regulations.**

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

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

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

(3) The required number of hours of training and education for all unlicensed persons operating machine sources of ionizing radiation and administering such radiation to patients shall be established by the board by rule on or before July 1, 1992. This standard shall apply to all persons in dental settings other than hospitals and similar facilities licensed by the department of public health and environment pursuant to section 25-1-107, C.R.S. Such training and education may be obtained through programs approved by the appropriate authority of any state or through equivalent programs and training experience including on-the-job training as determined by the board.

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## **Appendix F – List of Rules and Regulations**

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**Effective 10/1/02**