

COLORADO DEPARTMENT OF REGULATORY AGENCIES  
OFFICE OF POLICY AND RESEARCH

# COLORADO STATE BOARD OF DENTAL EXAMINERS

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## 1995 SUNSET REVIEW



***Joint Legislative Sunrise/Sunset Review Committee  
1995-1996 Members***

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June 30, 1995

The Honorable Richard Mutzebaugh, Chair  
Joint Legislative Sunrise/Sunset Review Committee  
State Capitol Building  
Denver, Colorado 80203

Dear Senator Mutzebaugh:

The Colorado Department of Regulatory Agencies has completed the evaluation of the **State Board of Dental Examiners**. We are pleased to submit this written report, which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to §24-34-104 (8)(a), of the Colorado Revised Statutes, 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 such supporting materials as may be requested, to the Sunrise and Sunset Review Committee created by joint rule of the Senate and House of Representatives, no later than July 1 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 division and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia  
Executive Director

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## *EXECUTIVE SUMMARY*

The Department of Regulatory Agencies has concluded the 1995 sunset review of the State Board of Dental Examiners. This review recommends that the Board be continued. The Dental Board regulates dentists and dental hygienists. Dentists and unsupervised dental hygienists perform complex, often dangerous procedures that place patients at considerable risk. This review determined that the Board performs its functions effectively and is one of the top dental boards in the country in disciplining dentists.

This review makes a number of recommendations based on interviews with the regulated professions, educators, and other interested parties.

1. An additional dentist is recommended to be added to the Board when the next public member position is scheduled to be filled.
2. A recommendation is made to amend the statute to allow the Board to expand the scope of practice of unsupervised dental hygienists by rule and regulation. The recommendation includes specific areas and practices that the Board should address.
3. The Division of Registrations should increase the legal resources allocated to the Board to keep pace with the Board's heavy workload.
4. A recommendation is made to amend the statute to make it easier for qualified dentists licensed in other jurisdictions to come to Colorado to practice.

In addition to these recommendations, the report makes numerous recommendations to amend the practice act. The Board established a special subcommittee, which included the Assistant Attorney General, to review the practice act and make recommendations for change. Additional input was provided by numerous professional associations and individual practitioners. The statutory recommendations included in this review are based largely on the information received from these participants.

## *BACKGROUND*

### **Sunset Process**

The Colorado Board of Dental Examiners is scheduled to terminate on July 1, 1996, unless continued by the General Assembly. During the year prior to that date, it is the responsibility of the Department of Regulatory Agencies to conduct a sunset review and evaluation of the Board of Dental Examiners. During this review, the Board must demonstrate that there is a need for its continued existence and that the regulation it provides is the least restrictive consistent with the public interest. The Department's findings and recommendations are submitted via this report to the Joint Legislative Sunrise/Sunset Review Committee (statutory criteria used in this sunset review is found in the appendix of this report).

The Department wishes to recognize the efforts of the Division of Registration's staff, members of the Dental Board, the Assistant Attorney General representing the Dental Board, the Colorado Dental Hygienists Association, the Colorado Dental Association, the Colorado Dental Assistants Association, and the University of Colorado Health Sciences Center for their participation and support in the research phase of this sunset review.

### **History of Dental Licensing**

The Colorado State Board of Dental Examiners was established March 15, 1889, when the Legislature created a five-member board and up to a five hundred dollar fine for practicing dentistry without a license.

In 1891, a requirement was added that the dentists had to have graduated from a U.S. or foreign school of dentistry and the board was given revocation power. Interestingly, through the first quarter of a century, anyone could extract teeth without a license.

The first definition of dentistry came in 1919, with a list of tasks enumerating the practice. The Legislature also established a dental hygiene license. Signs of competition between dentists and denturists became apparent the same year, when the law stated that dentists could not interfere with the mechanical work of a dental lab technician. 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 keeping an unsanitary office. The statute also prohibited advertising free exams, 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 public and charitable institutions.

In 1929, the Colorado Supreme Court ruled against the corporate practice of dentistry. In 1935, the Legislature modified this decision to allow the practice of dentistry in a partnership, but in 1961 the statute was made very restrictive by the addition of language which included in the practice of dentistry anyone who employed dentists, or leased dental equipment or maintained ownership of dental equipment used by a dentist in his practice.

Also in 1961, the scope of dental practice was expanded in statute almost as it exists today. Exam subjects 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 began using the term "auxiliaries" and removed references to hygienists. The power of the dentists was strengthened by allowing only dentists to have diagnostic, treatment, planning, therapeutic or correctional duties. Dentists were also given their delegatory powers at this time. Disciplinary powers were expanded to include the right to reprimand or censure.

The last major changes to the dental practice law were made in 1979, including their current, expanded definition of dental hygiene. Dental hygienists were allowed for the first time to practice in various institutions and clinics run by corporations for their employees without the personal direction of a dentists. While the statute expanded the professional practice of dental hygienists, it clearly maintained a tight control over denturists and dental assistants to dentists.

Other changes since 1971 include: the Legislature provided for licensure of foreign-trained dentists in 1983 and the Legislature allowed dentists to utilize independent advertising or marketing agencies in 1985. Before this time dentists were not allowed to employ a solicitor or other agent to obtain a patronage.

The Board underwent sunset review in 1985 and legislation to terminate and re-establish the Board passed the 1986 General Assembly. The legislation established the present Board composition: 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.

## **SUMMARY OF STATUTE**

Section 12-35-101, C.R.S., et. seq. outlines the powers and duties of the regulatory body known as the Board of Dental Examiners. The Board is a policy making body which regulates the field of dentistry and dental hygiene. The main concerns of the Board are the licensure, regulation, and the discipline of dentists and dental hygienists in the state of Colorado. The Board consists of nine members: four are licensed dentists, two licensed dental hygienists, and the remaining three are from the public at large. Each member is appointed by the Governor for a four year term and may be removed by the Governor for misconduct, negligence, or incompetence.

### **Definitions**

Section 103 of article 35 contains definitions and terms that are helpful in understanding the statute.

1. “**Dental Auxiliary**” is defined as any person who is not a licensed dentist or dental hygienist that may be assigned or authorized to perform certain dental procedures.

1.5 “**Inactive License**” the status granted to a person according to §12-35-135, C.R.S. In this section, a person licensed to practice dentistry in Colorado may apply to the Board to be transferred to an inactive status. Persons wishing to be transferred to such a status must submit an application designated by the Board. To apply for such a license a person must:

- a) Provide an affidavit to the Board that they will not practice dentistry in Colorado unless he is issued a license.
- b) Pay the stipulated fee pursuant to §24-34-105, C.R.S.
- c) Comply with all financial responsibility standards in accordance with the rules and regulations of the Board.

The inactive status must be clearly indicated on the face of any inactive certificate issued by the Board. Persons wishing to resume the practice of dentistry must file an application with the Board, pay the stipulated fee, and meet all financial responsibilities set forth by the Board. The Board may then approve or deny the application.

4(a) “**Direct Supervision**” means the supervision of tasks or procedures that do not require the presence of a licensed dentist in the room, but do require the dentist to be on the premises for consultation and treatment when needed.

(b) “**General Supervision**” The supervision of tasks or procedures that do not require that the dentist be on the premises, but do require that they be performed with the prior knowledge and consent of the dentist.

5. “**Proprietor**” any person who:

- a) Employs dentists, dental hygienists, or dental auxiliaries in the operation of a dental office. Those exempt are defined in §12-35-110(1)(b) and §12-35-125(2), C.R.S.
- b) Places in possession of a dentist, dental hygienist, or dental auxiliary or another agent dental material or equipment that may be necessary to manage a dental office in accordance with a lease or any other agreement.
- c) Retains ownership or control of dental equipment, material, or an office that is available for the use by dentists, dental hygienists, dental auxiliaries, or other agents. Nothing in this paragraph shall apply to the bona fide sale of dental equipment or material that is secured by a chattel mortgage, retain-title agreement, or to the loan of articulators.

**What  
Constitutes  
Practicing  
Dentistry**

In article 35 subsection 110, there are clear guidelines of what constitutes practicing dentistry in the state of Colorado. Any person shall be deemed to be practicing the occupation of dentistry who:

- a) Performs any dental operation, oral surgery, or provides diagnostic or therapeutic services.
- b) Is a proprietor of a place where dental operation, oral surgery, or diagnostic and therapeutic services occur.
- c) Takes impressions of the tooth or jaw, or performs any phase of an operation meant to replace any part of the tooth or supply substitutes for natural teeth.
- d) Furnishes, supplies, reproduces, or repairs any prosthetic structure to be worn in the mouth (dentures, bridges etc.).
- e) Publicly professes to provide care and maintenance of any prosthetic structure for the mouth.
- f) Diagnoses or prescribes treatment for disease, pain, or injury regarding the human teeth or jaw.
- g) Extracts or corrects any malformations of the teeth or jaws.
- h) Fills or repairs cavities.
- i) Takes and interprets X-rays.
- j) Uses the title of dentist, oral surgeon, or any other title that would lead the public to believe that he/she is a licensed dentist.
- k) Is licensed to prescribe drugs, perform surgical operations, and administer local or general anesthetics.

## **Powers and Duties of the Board**

There are certain powers and duties of the Board outlined in the Dental Practice Law of Colorado. These powers and duties allow the Board to:

1. Conduct examinations to determine the qualifications of an applicant wishing to obtain a license to practice dentistry or dental hygiene in Colorado.
2. Promulgate rules and regulations that are reviewed annually at a public hearing. Rules created by the Board may concern, but are not limited to, the following things:
  - a) The administration of examinations.
  - b) The practice of dentistry or dental hygiene.

Tasks and procedures assigned to a dental hygienist or dental auxiliary.

- c) The revocation, suspension, or denial of a license by hearing.
- d) The ability to conduct investigations.
- e) Grant and issue licenses and the renewal of certificates to qualified applicants.

## **Powers of the President**

Under subsection 108 of article 35, the president of the Board has the power to administer oaths, take testimony of witnesses, and issue subpoenas. In a situation where the president is unable to perform these duties, the vice president may exercise these powers that, if necessary, may be transferred to the next officer.

## **Licensure**

Those entitled to practice dentistry or dental hygiene must have been licensed on or after April 21, 1961 and are licensed in accordance with the laws of Colorado.

Any applicant wishing to obtain a license to practice dentistry in Colorado must file an application with the Board that is verified by oath, and pay a stipulated fee. To be considered by the Board, the applicant must meet the following qualifications:

- Must be at least 21 years of age.
- Has listed any behavior that would be grounds for disciplinary action defined in §12-35-118, C.R.S., along with an explanation.
- Is a graduate of an accredited school of dentistry.
- Has not graduated within the twelve months preceding filing the application ... the applicant must demonstrate to the Board that he or she has maintained the necessary professional abilities and knowledge.

Applicants wishing to obtain a license to practice dental hygiene must also file an application with the Board and pay the stipulated fee, and must fulfill similar requirements to be considered by the Board. They are:

- Must not exhibit any behavior that would be grounds for disciplinary action under §12-35-118, C.R.S.

Must be a graduate of an accredited school of dental hygiene.

- Has not graduated within the twelve months preceding filing the application ... the applicant must demonstrate to the Board that he or she has maintained the necessary professional abilities and knowledge.

The request for a renewal of a license must be submitted to the Board on or before the first day of the month according to the rules and regulations adopted by the Board. A licensed dentist or dental hygienist wishing to renew his license must submit a form with the requested information, along with a specified fee, to the secretary of the board.

## **Foreign Graduates**

In section 113.5, the statute addresses the issue of graduates from foreign dental schools who wish to obtain a license to practice in Colorado. A graduate of such a dental school is eligible, and will be considered by the Board if he/she:

1. Has passed the examinations given by the national board of dental examiners of the American Dental Association.
2. Is recommended by the University of Colorado School of Dentistry to take the examination for licensure after passing a comprehensive preclinical dental exam that is Board approved.
3. Has passed the examinations approved for all applicants wishing to obtain a license.
4. Has completed a one-year probationary period of dental practice under the direct supervision of a licensed Colorado dentist, and is recommended by him to the Board for licensure. To complete the one-year period, a foreign graduate is issued a probationary license that expires when the applicant ceases to practice under the direct supervision of a licensed dentist or after one year.

### **Causes for Disciplinary Action**

The Dental Practice Law of Colorado clearly defines the type of behavior which would cause the Board to enact disciplinary action against a dentist or dental hygienist. They are: fraud; conviction of a felony; administering or prescribing controlled substances; intemperance or addiction; knowingly allowing or condoning the practice of dentistry by an unlicensed person; physical or mental disability which acts as a hindrance; false advertising; sexual misconduct; false billing; and providing a patient with substandard or grossly negligent dental care.

If a dentist or hygienist has exhibited behavior which are grounds for disciplinary action, the Board may revoke, suspend, or deny the renewal of a license. It may also issue a letter of admonition, reprimand, censure, or place the licensee on probation.

### **Types of Dental Hygienists**

There are two classifications of dental hygienists defined in this statute; unsupervised and supervised. The first applies to hygienists who are authorized to perform certain procedures without the supervision of a licensed dentist. They include:

- The removal of deposits, stains, and accretions on the surface of the tooth.
- The removal of granulation and buildup of degenerated tissue of the gingival wall that may lead to gum disease.
- Provide preventive measures to fight against tooth decay such as fluoride.
- Gathering of patient information such as medical history, periodontal charting, and oral inspection of the gums and teeth.
- Administers a topical anesthetic while performing dental care.



Supervised dental hygienists are under the supervision of a licensed dentist and can administer the following care and procedures:

- Removal of deposits, stains, and accretions on the surface of the tooth.
- Removal of granulation and buildup on the gingival wall using cutterage similar to procedures used by unsupervised hygienists, but also includes the removal of live epithelial tissue.
- Provides preventive measures against tooth decay.
- Gathers patient information which includes: patient history, periodontal charting, oral inspection, x-rays, and preparation of study casts.
- Administers a topical anesthetic.
- Administers a local anesthetic under the direct supervision of a licensed dentist.

## **Exemptions**

Those exempt from the rules and regulations stated in this article include medical physicians and surgeons who do not practice dentistry as a specialty. Other exemptions include:

1. Any registered nurse or anesthetist who administers an anesthetic under the direct supervision of a dentist for an operation.
2. Graduate dentists, dental hygienists, and dental surgeons in the Armed Forces, public health service, Coast Guard, or Veterans Administration.
3. Dental interns.
4. Instructors and students in an educational institution.

5. Dentists or dental hygienists from another state appearing in a program of dental education or research at the invitation of a licensed dentist or dental hygienist in this state.
6. The filling of laboratory work orders issued by a licensed dentist.
7. Authorized personnel under the personal direction of a licensed dentist pursuant to the rules and regulations of the Board.

## *PROGRAM DESCRIPTION AND ADMINISTRATION*

located in the Department of Regulatory Agencies, Division of Registrations. The following data show staffing and budget figures for the program.

<i><b>FY</b></i>	<i><b>LICENSEES</b></i>	<i><b>EXPENDITURES</b></i>
<b>89-90</b>	6216	\$302,308
<b>90-91</b>	5949	\$304,980
<b>91-92</b>	6585	\$495,680
<b>92-93</b>	5578	\$586,955
<b>93-94</b>	5716	\$580,589

Total FTE for administration of the program has remained fairly constant with only a slight downward trend over the last four fiscal years.

<i><b>YEAR</b></i>	<i><b>FTE</b></i>
91-92	3.7
92-93	3.7
93-94	3.3
94-95	3.3

In addition to issuing licenses to ensure that competent practitioners are permitted to practice in Colorado, the Board's effectiveness also can be measured by its enforcement actions.

In brief, 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). The following data compare complaints received over the last five fiscal years.

<i><b>Complaints Received</b></i>				
<i><b>89-90</b></i>	<i><b>90-91</b></i>	<i><b>91-92</b></i>	<i><b>92-93</b></i>	<i><b>93-94</b></i>
121	117	174	161	181

Beginning in FY 92-93, the Board staff has compiled complaint data by type. This is a most useful compilation to use in evaluating dental regulation because it shows in significant detail the type of harm experienced by patients. The following data represent the nature of complaints received by the Dental Board.

<b>Types of Complaints</b>	<b>92-93*</b>	<b>93-94</b>
Standard of Care	51	62
Release of Record	4	10
Advertising	3	3
Insurance Fraud	6	15
Sexual Misconduct	2	4
Abandonment	3	9
Practice Beyond Scope	5	3
Practice w/o License	7	6
Billing Practices	11	10
Informed Consent	5	3
Unprofessional Conduct	1	7
Fee Dispute	5	22
Overutilization	1	3
Prescribing Practices	3	3
Infection Control	1	0
Pediatric Management	0	2
Drugs	0	5
Failure to Refer	0	1
Denturist	0	5
Other	9	8
<b>TOTAL</b>	<b>117</b>	<b>181</b>

\* NOTE: For 92-93, 44 of the complaints were not classified by type because it was prior to the system being initiated.

Most important is reviewing 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 the board received from patients. 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 following data reflect final action on complaints for the last five fiscal years.

<b>Final Actions</b>					
	<b>90</b>	<b>91</b>	<b>92</b>	<b>93</b>	<b>94</b>
<b>Dismissed</b>	122	130	171	200	157
<b>Letter of Admonition</b>	8	17	41	53	35
<b>Probation</b>	1	6	30	8	31
<b>Suspension</b>	2	2	2	5	1
<b>Revocation</b>	0	0	0	1	7
<b>Other</b>	19	12	2	2	4

Data from FY 92-93 to FY 93-94 show that 92 investigated complaints have been referred to the Attorney General, which constitutes a large number of referrals. To make a comparison, the Board of Medical Examiners (BME) regulates more than 13,000 licensed physicians. In 1992, the BME received 599 complaints resulting in 66 disciplinary actions and in 1993 received 694 complaints resulting in 95 disciplinary actions.

Part of the reason for this increased activity is an attempt to address a backlog of cases. While a number of these cases have been settled by stipulation, a large number will no doubt be resolved by litigation.

In addition to enforcement through disciplinary actions against the license, the Board is empowered to place and monitor licensees into the Colorado Dental Peer Assistance Program.

This section of the sunset review discusses that enforcement alternative in some detail including a description of the program, a review of the theory behind peer assistance, an explanation of how the public continues to be protected during treatment, and a discussion of the possibility of privatizing the peer assistance program in its entirety.

The Colorado Dental Peer Assistance Program (program) was created in 1990, and is used by the Colorado Board of Dental Examiners (Board) to provide assistance and treatment for chemical dependency, mental illness and psychological problems, or physical problems that may impair a dentists' ability to practice his or her profession. The most common problem among health care professionals is chemical dependency. Since a large proportion of treatment goes to chemical dependency, it is the main focus of this summary. Section 12-35-123.5, C.R.S pertains to the formation of the Dental Peer Assistance Program. In subsection 1(b), the Board has the power to perform the duties and responsibilities of the rehabilitation committee, and to transfer funds to the administering entity chosen by the Board. The statute goes on to state that the Board must designate one or more peer health assistance programs as providers. The program has a specific set of goals outlined in the statute. They are:

1. Provide education to dentists regarding their personal well being.
2. Provide assessment services to dentist to identify physical, psychological, or emotional problems.
3. Provide referral services to dentists and their families.
4. Monitor the progress of dentists receiving treatment.
5. Provide interventions, if necessary, to dentists referred by the Board.

6. Provide evaluations to the Board at its request.

The provider designated by the Colorado Board of Dental Examiners is Peer Assistance Services (provider). The Program is funded by renewal fees paid by dentists wishing to renew their licenses. Each dentist wishing to continue practicing in Colorado must pay a fee to renew the license. Thirty dollars of the fee are appropriated to fund the program.

### ***Theory Behind the Program***

The Colorado Dental Peer Assistance Program is based upon the philosophy that chemical dependency is a chronic primary disease that is progressive in nature. A chronic primary disease is defined as an illness that persists over a long period of time and is not a symptom of another disease. Like many diseases there is predictable clinical course, or pattern that the disease takes and can therefore be classified as progressive. In 1986, the American Dental Association adopted the "ADA Policy Statement on Chemical Dependency." Resolution 64H formally recognized chemical dependency as a disease that affects all of society. Studies have shown that a significant amount of health care professionals come from families with a history of chemical dependency. Another factor is the availability of controlled substances and habit forming drugs. Once out of dental school, dentists are in an environment where drugs are readily available. For most, this is the first time such substances can be obtained so easily. The Colorado Dentists' Peer Assistance Program's goal is to provide help and treatment to dentists that are chemically dependent, or may need psychological/psychiatric assistance. The two main philosophies of the program are early intervention, and maintaining the dignity of the individual by acknowledging that they suffer from an illness that is treatable. The idea of early intervention contends that the treatment of a dentist with a chemical dependency, when the disease is in its infancy, may deem disciplinary action unnecessary. The other facet of the program is the idea

that the person needing help is afflicted with a disease. Chemical dependency is a disease like diabetes and cancer. All three are illnesses that cause a large degree of human suffering. The program gives another option to chemical dependent dentists other than the revocation or suspension of their license to practice dentistry, and the possible end of their professional career

### **Program**

From October 1 - December 31, 1994, there were a total of 13 licensees enrolled in the program. Of those, five had willingly entered the program and nine were referred by the Board. Licensees that enter the program voluntarily participate in a two year treatment program that is facilitated by the provider contracted by the Board. Voluntary licensees enter the program on their own, and are willing to seek help for their problem. Their records are kept confidential and they are identified by a case number only. The second type of licensee is an involuntary participant who referred to the program by the Board because of a complaint. If the Board receives a complaint, the dentist is given the option of treatment in lieu of disciplinary action. A complaint must be written and submitted to the Board. Verbal complaints are accepted, but must be followed up by a written statement. Once the complaint is received, the Program notifies the president of the Board and it is put on the agenda for the next meeting. Recommendations from Peer Assistance Services and the Attorney General's office are taken under consideration, and the Board decides the course of action. Unlike those who enter the program voluntarily, their identity becomes public knowledge. If the situation is serious and can be classified as an emergency, the Board may hold an emergency phone meeting.

The contractual agreement between Peer Services and the Program require that they submit quarterly reports that are submitted to the Board. Because voluntary participant's names are not public knowledge, their name does not appear on the reports and their identity is kept confidential.



Once enrolled in the program, a dentist will begin to receive treatment. Treatment may include Peer groups, individual therapy, outpatient and inpatient therapy, drug diversion, and family or psychiatric counseling, peer monitoring, and routine urinalysis and blood tests. The licensee agrees to comply with the program by signing the Rehabilitation Contract that sets up the following criteria for compliance with the program:

- Name, date, and time period agreement is in effect (2 year minimum).
- Abstain from any mood altering drugs, alcohol, or potentially addicting medications.
- Notification to personal physician of disease.
- Agree to provide copies of all prescriptions to the Peer Health Assistance Organization (PHAO).
- Contact assigned PHAO staff member weekly for the first 90 days.
- Participate in a treatment program or any formal evaluation as recommended by the PHAO.
- Licensee must obtain necessary releases of information.
- Enter into a Return to Practice Agreement with employer.
- Utilize Antabuse/Naltrexone as a deterrent to alcohol/drug abuse as deemed necessary.
- Provide a self-status report at least quarterly.

The Return to Practice Agreement is another method of setting up criteria for compliance within the program. The contract is between the employer and licensee and is very similar to the Rehabilitation Contract.

An integral part of the program is the dentist monitor. The dentist monitor allows another professional to determine 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 and is designated by the Board. The monitor must be licensed in Colorado and not be subject to any current licensure action. Under the provisions of the agreement, a monitor must provide; competency reviews that are based on interviews with the staff; reviews of all DEA order forms; and site visits. Any indication of non-compliance is reported to Peer services who immediately notifies the program and the Board within 72 hours. All information is submitted to the Board regarding noncompliance and the Board considers recommendations made by the provider as to the seriousness of the situation. Situations where the licensee is a clear danger to the public or himself may be removed immediately from practice, or another emergency measure may be instituted. The direct monitoring of the licensee is done by the provider. Any non-compliance is reported to the Board.

### ***Public protection***

The question arises about the protection of the public while the licensee is receiving treatment. 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 72 hours keep the risks to a minimum. As mentioned before, if a licensee poses a threat to the public or him or herself, emergency measures are taken. Some are: cancellation of patients, hospitalization of licensee, or disciplinary actions taken by the Board. The constant monitoring and emergency measures all aid in protecting the public from harm.

### **Peer Assistance Program vs. Dental Board**

The Peer Assistance Program's main objective is to treat those afflicted with the disease of chemical dependency. The definition of chemical dependency is not in question. The provider is mainly concerned with the treatment of the individual and restoring the person's life. The philosophy of the provider is that the licensee has a disease that is treatable. Punishment and disciplinary actions are not the answer. Early intervention and help provide a means for the licensee to regain control of their life without completely destroying their professional career. The individual seeking treatment has rights and all resources should be geared towards providing support and treatment. The provider or contractor is an advocate for those who are chemically dependent on alcohol or drug or the combination of the two. It is concerned with the individual, treatment, and process of recovery.

The objective of the Colorado Board of Dental Examiners is very different. The Board is a regulatory body whose main purpose is to regulate and promulgate rules for the profession of dentistry. The rules and regulations are meant to achieve its primary goal: to protect the public. The level of expertise needed to practice dentistry is extremely high. Dentists must go through many years of schooling and training. Unless a person goes through the training to become a dentist, it is impossible to assume that the dentist is privy to all the information that would help him make an informed decision about personal dental health. In many ways, the health and well being of the public is put in the hands of those that they believe are qualified. Because of this, the Board regulates these professions and its main concern is the protection of the public.

On the surface, the two ideologies are completely at odds with one another. One would wonder why the relationship even exists. The Board is concerned with protecting the people and the Program is concerned with the licensee and treatment. A productive relationship between two entities is dependent on both participants achieving certain goals. The Board is mainly concerned with the protection of the public. Its focus is on the general population and it's well being. It is difficult to determine how a peer assistance program may help it achieve its goal of protecting the public.

A health care provider is a highly trained professional. As a health care provider, the public benefits from the provider's expertise and knowledge. A shortage of doctors or dentists will lower the standard of care that the public receives. With less health care providers, some of the population may not be able to receive the care that they need. By installing a peer assistance program the Board is able to help dentists to receive help for their diseases, whether they are chemical dependence or psychological problems. By providing another avenue for dentists, the Board is able to help and not just punish. The revocation or suspension of a license is the last resort for the Board. While preventing public harm is their main concern, so is the public well being. By putting a dentist out of practice, the Board creates a lose-lose situation. The dentists lose because they can no longer practice and the continuation of their career is improbable. The public loses a health care provider that could have been treated and gone on to serve the public.

There are many arguments against this theory. Some would say that a health care provider who abuses drugs is a danger to those he or she is helping. The argument presented does not disagree with that. Yes, a dentist abusing a substance may not be able to provide adequate care. Chemical dependency is a progressive disease, and will worsen as it time goes on. The goal of the Peer assistance program is to catch the illness in its early stages. When a dentist becomes a danger to the public, the dentist has many times hit rock bottom. The Board will then take the appropriate disciplinary actions to ensure that the dentist is not able to practice. The program allows the Board to achieve two goals, protect the public from harm and maintain it's well being.

The Peer Assistance program is concerned with the treatment of the individual. As an advocate, the program continuously works to treat those with the disease. Treatment is the ideal method, not punishment. In the past, the health care profession had been very difficult to reach and give the help it needs. In being able to reach them, the program needs the help of the regulatory agency. The board is able to provide the extra motivation for dentists to get the help they need. The threat of losing their license adds extra incentive to seek out the treatment needed. The program is able to reach a population that has, in the past, been ignored. The relationship between the board and the peer assistance program one that combines a disciplinary body and an advocacy program.

### ***Private. vs. Public***

The question arises whether or not the program should be placed in the hands of a private treatment care facility. The Peer assistance program is currently a part of the CBDE and is overseen by the state. The main question is whether or not the private sector can provide the care and treatment to health care professionals effectively. Earlier in this summary, it was mentioned that many health care professionals are difficult to reach. Because of the stigmatism of chemical dependency, many go untreated until there is no other option than to take disciplinary action. By providing a peer assistance program through

the CBDE, it is able to regulate the treatment of the licensee. If the treatment process were to be placed in the hands of the private sector, the Board would not be able to monitor the progress, or lack of progress, made with the individual licensee.

Currently, the Board is able to receive updated reports by the provider and can monitor, in an objective manner, the licensee in the program. Another advantage to having the program a part of the Board is that the perception of the Board as a disciplinary entity may provide an incentive to seek out treatment. The fear that the licensees may lose their licenses to practice in Colorado provides strong incentive to adhere to the program and continue to receive treatment. If treatment were to be received in the private sector, the licensee may not perceive the threat of losing his license to be as great. It is likely that the licensee who entered the program voluntarily would take the initiative and seek out help from the private sector. The problem lies with the licensee that is referred to the Board because of a complaint. These are the ones to be concerned with. In these situations there is no structured program established. In order to ensure that the licensee is receiving the proper treatment, the Board would have to review and approve each individual treatment program. This would create an incredible burden for the Board and it would hinder its ability to do its job; regulate dentists and protect the public. Too much of its time would be used reviewing and approving individuals' programs and progress. The Dental Peer Assistance Program alleviates much of the backlog and allows the board to protect the public and help dentists receive treatment.

## *SUNSET ANALYSIS*

### **Should the Board of Dental Examiners be Continued?**

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

Furthermore, the complexity of this profession can be reasonably expected to increase. Expanded access to medical services, practitioner competency, health care ethics, educational and training requirements, expanding technology and quality of care are all issues involved with the profession under review.

Under such scenarios, government plays an important role in aiding dental care consumers.

Every state and territory in the United States regulates dentists and dental hygienists. This sunset review finds the Colorado Board's performance to be of high quality, particularly in the area of discipline of practitioners.

The above arguments to continue licensing generally hold true for the practice of dental hygiene but only to the extent that Colorado permits unsupervised dental hygiene practice. Complaints against dental hygienists, supervised or unsupervised, are insignificant. Absent this independent scope of practice, it appears that dental hygienists, by statutory definition, are supervised by dentists. The reasoning would follow that if dentists can supervise and assume the responsibility for the care provided by dental hygienists, then the dentist could certainly choose dental hygienists without screening by the state.

The sum of this reasoning concludes that if the General Assembly abolished the unsupervised dental hygiene scope of practice, which accounts for approximately twelve practitioners, the entire state regulatory scheme could be abolished and allow the free market through the dentist-employer relationship to ensure quality.

The one drawback to such deregulation would be a probable difficulty in Colorado dental hygienists being able to practice in other states. It is likely that other states would require re-examination. Similarly, it is possible that the unlicensed dental hygiene profession in Colorado would deter some hygienists from choosing to practice in this state.

***Recommendation 1 - The General Assembly should continue regulation of dentists and dental hygienists by the Board of Dental Examiners.***



## RECOMMENDATIONS

### Should the Composition of the Dental Board Change?

This section of the 1995 sunset review discusses four major issues that guided part of the review's scope of evaluation. The four areas are:

1. Board Composition;
2. Dental Hygiene Scope of Practice;
3. Legal Resources of the Board; and
4. Prohibition Against Sexual Misconduct by Licensees.

The Board is presently composed of four licensed dentists, two licensed dental hygienists and three consumer members. Composition of the board is arguably the most contentious issue involving dental regulation.

DORA has been presented with two proposals to change the composition as part of this sunset review.

The Colorado Dental Association (CDA) proposes that two licensed dentists be added to the board. This would increase the size of the board to eleven members.

#### **PROPOSITION #1 - ADD TWO DENTISTS TO THE BOARD.**

#### **Arguments for Change**

1. Since very few complaints are made against hygienists, almost all of the board's enforcement responsibilities are directed at licensed dentists. Dentists currently are a minority on the board. Therefore, it follows that they are not judged fairly if three public members and two hygienists can impose discipline by out-voting the four dentists. Public protection is compromised in such a situation and, as an added negative result, the profession is dissatisfied. In theory, at least, this dissatisfaction could eventually lead to a reduction in the supply of dentists in Colorado.

2. Related to the first argument, proponents for change state that the board could gain by having more dental expertise. After all, the skills, knowledge, and training of dentists encompasses the entire dental scope of practice. This is demonstrated by the fact that dentists supervise all of the staff in the dental office.

Presently, the Board uses consultants to render and review opinions of certain difficult and technical areas, particularly specialties. The Board could handle its docket more expeditiously if board member's expertise were used instead of paying for consultants.

Board members receive \$50.00 a day compensation while consultants are paid \$50.00 an hour. Therefore, building expertise into the board composition is cost efficient.

Further, proponents claim that cases presented to the board typically end up attempting to define standard of care. Put bluntly, in an environment of increasing technology and complexity, consumer members should not be expected to be able to digest this detailed, scientific information and render a judgment that protects the public, and is fair to licensees. Even dental hygienists who have some training and are licensed by the state, cannot understand all of these cases.

To conclude, the practice act requires that a quorum of dentists be present to vote. With only four dentists on the board, an absent member or a member who must be recused from a particular case impedes the board's ability to carry out its functions.

**PROPOSITION #2 - ADD A CERTIFIED DENTAL ASSISTANT TO THE BOARD.**

This position holds that board decisions would benefit from input from all members of the dental team. Dental assistants play an important role in dental care delivery.

In order to accomplish this, the Dental Practice Act would have to be amended to define “certified dental assistant” because that title is not recognized by Colorado law at this time.

The agreed-upon terminology among the Colorado professional dental communities appears to be the following:

- A) *Clinical dental assistant means a dental assistant who is a certified dental assistant through the Dental Assistant National Board and/or a graduate of an American Dental Association accredited dental assistant training program; or*
- B) *Expanded functions dental assistant/expanded duty dental assistant means a dental assistant who has successfully completed the EFDA/EDDA examination administrated by the Dental Assistant National Board.*

Under this scenario, one consumer position would be eliminated and that seat filled by a Certified Dental Assistant. Such composition could be created in tandem with the first proposed re-configuration as follows:

- 6 dentists
- 2 dental hygienists
- 1 certified dental assistant
- 2 public members
- 11 total members

Or, one public member position could be eliminated from the present configuration which would create the following composition:

4 dentists  
2 dental hygienists  
1 certified dental assistant  
2 public members  
9 total members

### ***Analysis of the Proposals and Sunset Recommendation***

The composition of the Dental Board is somewhat unusual by design because the Board exercises regulatory authority over two professions, dentistry and dental hygiene. The Board's uniqueness is furthered by the presence of three members from the general public, a configuration that is not common but also is not confined strictly to the Dental Board as will be discussed in more depth later in this section.

This section of the sunset review has attempted to lay out the arguments for change to the board composition as fairly as possible. Proponents of the two changes, to be fair, also would acknowledge that other reasons for change exist as well. One, dentists do not like the fact that only four dentists sit on the Colorado Dental Board because their profession deserves more respect and a greater voice in regulatory matters. Two, dental assistants want a seat on the Board because it creates a greater perception of professionalism to vote on an occupational licensing board.

The purpose of the sunset review is to, among other goals, examine the regulatory scheme and determine if that scheme protects the public health, safety, and welfare. That being the primary concern, the review also questions if the regulatory authority treats licensees fairly and carries out board duties in an efficient and consistent manner.

Under these criteria, the Board of Dental Examiners performs its mission effectively. This report finds no performance reasons to change the board composition.

In fact, Colorado's Dental Board is one of the most aggressive in the nation in disciplining dentists.

The data presented in Appendix C, compiled by the Association of Dental Board Administrators, shows Colorado in comparison to other states. As these charts present, the Colorado Board for a number of years has been very active in protecting consumers/patients in this state.

This information may be somewhat misleading because it measures a time period when the Board sought to clean up a backlog of disciplinary actions and because Colorado's Board issues Letters of Admonition for failure to renew licenses. It is possible that some states do not take such action.

Still, this sunset review is convinced that Colorado's Board is one of the top boards nationwide in protecting the public because the backlog of cases still represents aggressive board action. It is simply that final action has not been completed. And issuing a minor disciplinary action for failure to renew a license is focused on public protection, not heavy handed regulation. If a dentist's license has not been renewed and a patient sues the dentist, the practitioner's insurance company may choose not to cover the dentist. In such cases, the public is at significant risk.

***Public Member Composition is not a Singular Occurrence in Colorado Regulatory Schemes***

There is no doubt that the Colorado Board is held to a high and rigorous standard of excellence because of the presence of three members of the general public. It should be noted, that three public members sit on two other Colorado boards: the seven member Nursing Home Administrator Board, and the nine member Motor Vehicle Dealer Board.

**Sunset  
Analysis of  
the Need to  
Change the  
Composition  
of the Dental  
Board**

Some may object to this comparison because the two boards used in the comparison are not professional boards regulating direct delivery of health care to patients. This objection is not convincing. Licensing boards in Colorado exist to protect the public and are not intended, according to legislative intent, to be extensions of the professional association. In terms of public protection, then, the comparison establishes that a greater consumer voice in occupational regulation is often required to adequately protect the public.

**Would adding two dentists to the Board decrease the Board's use of consultants?** In FY 92-93, the Board used consultants in 11 cases; in FY 93-94, the Board used consultants in 12 cases. The Board received 160 and 176 complaints, respectively, during the same period. We cannot reasonably argue that the Board uses consultants excessively.

There are presently four dentists on the Board. Certainly, some of the cases referred to consultants concern an area of dentistry practiced by at least one of the Board members. It is likely that the Board will always have to use consultants because of complex cases and because of the need to prepare for litigation in more serious cases.

***Non-Dentists Can Understand Complaints***

There are certain limitations of the data because of internal management changes in the Division of Registrations during the period under review but it can safely be said that in FY 92-93 standard of care complaints represented 51 of 117 complaints (43.6%); in FY 93-94, standard of care complaints represented 62 of 181 (33.7%) complaints. Therefore, it appears that the Board does not receive a substantial percentage of cases that are standard of care cases as compared to non-standard of care cases.

It is also important to remember that two members of the Board are dental hygienists with considerable knowledge of certain aspects of dental health. This brings the total to 6 out of 9 members with some dental background/education. This report concludes that the composition of the Board is well suited to review patient complaints without the addition of two dentists. In cases of abandonment, release of record, or sexual misconduct, three consumer members (currently a pharmacist, an attorney, and a retired teacher), present a necessary balance to the professional members.

***Adding Certified Dental Assistant Would Not Increase Public Protection***

Although dental assistants are, by all accounts, very important members of the dental team, there is no compelling reason to require their membership on the Board. The Board does not examine or license dental assistants. Dentists can train assistants in their office without any state standard applied to the assistant's qualifications.

There is little doubt though, that some dental assistants would make excellent board members. One option would be for the General Assembly to amend the statute permitting one public member to be a dental assistant. This way, the dental assistant profession could attempt to appoint a dental assistant to the Board.

It is the conclusion of this sunset review that the Colorado Board of Dental Examiners works well and protects Colorado dental patients as well, or better, than many other state's dental boards.

It was clear during this review, however, that Colorado's dental profession is quite unhappy with the composition of the Board. This lays the groundwork for a general distrust of the Board and potential antagonism towards policies or actions of the Board.

Even though this section of the 1995 sunset review has attempted to respond to specific concerns, it is unlikely that the profession's perception will change. It is more likely that the profession will re-double its efforts to substantiate its perception, so strong is the feeling on this issue.

A strict sunset performance evaluation would yield the conclusion that the General Assembly not change board composition because the Board is effective and because the Board represents the public of Colorado and not the dental profession. However, it is clear that Board performance would not be seriously compromised if an additional dentist were appointed to the Board. This review found a high public protection consciousness among all board members and there is no reason to suspect that another dental member would not uphold that standard.

Such a change by the General Assembly would not be predicated upon any performance factor, in the view of this sunset report. Rather, it would be an effort to strengthen the credibility of the Board in the eyes of the major profession that it regulates.

What reasoning could be employed to determine the correct member, dental hygiene or consumer, to replace with a dentist? The single caveat to all of the arguments presented in this report to continue the status quo composition of the Board concerns attendance by board members. The following data, compiled for this sunset review, shows absenteeism from 1993 until April, 1995.

<b>1993</b>		<b>1994</b>		<b>1995</b>	
<i>April</i>	1 dentist	<i>January</i>	0 absent	<i>January</i>	0 absent
<i>May</i>	No meeting	<i>February</i>	1 consumer	<i>February</i>	1 consumer
<i>June</i>	0 absent	<i>March</i>	1 consumer 1 dentists	<i>March</i>	2 consumers 1 DH
<i>July</i>	1 consumer	<i>April</i>	1 consumer	<i>April</i>	0 absent
<i>August</i>	1 consumer	<i>May</i>	No meeting		
<i>September</i>	1 dentist	<i>June</i>	1 dentist 1 DH		
<i>October</i>	1 DH	<i>July</i>	No meeting		
<i>November</i>	1 consumer	<i>August</i>	0 absent		
<i>December</i>	1 dentist	<i>September</i>	0 absent		
		<i>October</i>	No meeting		
		<i>November</i>	2 consumers		
		<i>December</i>	No meeting		

Information regarding appointments was forwarded to the Governor's Office in December, 1994. The absent DH



member fully expected that the re-appointment would be made prior to the March meeting.

It can be seen that during this period, there have been eleven absences by consumer members, five absences by dental members and three absences by dental hygienist members with one of those absences under the expectation that a replacement member had been appointed.

There is no statutory criteria or administrative policy that dictates what does and does not constitute proper attendance, though Division of Registrations officials report that full attendance is expected at every meeting.

Therefore, there is no compliance issue. However, this sunset review identified that consumer absenteeism is more than double that of dentists.

It is only fair to point out, that if the situation were reversed, and dentist absenteeism greatly exceeded other groups, this review would not likely recommend replacing a dental member with yet another consumer member based on that attendance record alone. Indeed, the function of a good board is more often dependent on the quality of the appointments and not the various professions represented.

Composition of regulatory boards is a legislative policy matter in many respects. There are three primary arguments, in addition to those forwarded by dentists, that have led to this report's recommendation of changing board composition of the Division of Registrations.

1. The last sunset review, approximately ten years ago, recommended that the Dental Board be comprised of 5 dentists, 2 public members, and 2 consumers. The present composition came about as a result of certain issues caused by the board at that time as the sunset bill moved through the process. Since that time, these issues no longer exist, and this present report remains consistent with the previous report's recommendation.
2. Other than the Nursing Home Administrators Board, no board in the Division of Registrations has more than two public members., including the 11 member Medical Board and the 9 member Board of Nursing. The Division states that consistency among health care regulatory boards is desirable unless a strong reason exists to configure a particular board differently.
3. Strong and effective public members are sometimes difficult to recruit. Presently, the Dental Board boasts the most effective members one would hope to find on a regulatory board. This may not always be true, and future board performance could suffer.

This review concludes that the arguments of the Division are compelling and, when coupled with the lack of increased public harm that would result from a dental board composed of 5 dentists, 2 public members, and dental hygienists, the case for change is stronger than the case for *status quo*.

However, another statutory change should be made at the same time that the board composition is changed. Section 12-35-106, C.R.S. requires that, "for disciplinary matters concerning a dentist, a majority of dentist members is required for a quorum." This creates a double standard that, in effect, relegates public members and dental hygienist members to a second class member category. If the Dental Board is truly a public protection board, then all members should have equal voting rights. .

***Recommendation 2(a) - The General Assembly should amend §12-25-104 to change the composition of the Dental Board to 5 dentists, two public members and two dental hygienists.***

***Recommendation 2(b) - The General Assembly should amend §12-35-106 to repeal the requirement that a majority of dentists members be required to discipline a dentist.***

### **Should the Dental Hygiene Scope of Practice be Expanded?**

The Colorado Dental Hygiene Association has proposed that the dental hygiene scope of practice be expanded. The CDHA proposes adding the following language to the scope of unsupervised dental hygiene.

*"Root Planing" removes deposits, accretions, and stains by scaling, root planing, with hand, ultrasonic, or other devices from all surfaces of the tooth and smoothes and polishes natural and restored tooth surfaces.*

*Justification: Root planing is an intricate component of the practice of dental hygiene. It is an essential part of restoring a diseased pocket to health. Root planing is necessary to provide comprehensive care and is at the heart of any dental hygienist's clinical skill.*

*"Sealants" provide preventative measures including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease.*

*Justification: Sealants are a simple, cost-effective, preventative measure for dental decay and is an intricate component of the practice of dental hygiene. Sealants can even be placed by uncertified dental assistants. In order to provide comprehensive care, sealants must be performed in any dental hygiene practice setting.*

*"Radiographic surveys and impressions" gather and assemble information including, but not limited to, fact-finding and patient history, oral inspection, dental and periodontal charting, radiographic surveys, and impressions.*

*Justification: Radiographic surveys and impressions constitute practicing dental hygiene. Radiographic surveys are essential in recognition of oral disease and further preventative treatments. Impressions are used today to provide sport splints for the protections of and prevention of injury to teeth and oral tissues.*

*"Administers local anesthetic pursuant to rules and regulations of the board, which rules shall include minimum education requirements and procedures for such administration."*

*Justification: The administration of local anesthetic is provided for the comfort of the patient in the treatment, prevention, and progression of periodontal disease. It is widely administered across the nation by dental hygienists. It should be performed in any dental hygiene practice setting.*

*"Administers Nitrous Oxide 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."*

*Justification: Although there is no supporting data, dental hygienists and assistants are requested to administer and monitor nitrous oxide every day in dental practices by their employers. The use of nitrous oxide is widely used, especially in pedodontic and periodontal offices. Hygienists and assistants are frequently asked to perform this duty illegally. It has placed the staff in an awkward position of making the decision to follow the dentist's directions or possible losing their jobs. Twelve other states currently delegate the administration and monitoring of nitrous oxide by hygienists and assistants. Four other states are pursuing this in legislation by properly trained hygienists and assistants.*

Most dentists appear to be opposed to this expansion in its entirety. Dentists believe that dental hygiene training is not adequate to practice these tasks unsupervised. Dentists believe that acts or omissions by unsupervised hygienists in performing these functions may lead to significant harm to patients. Most dentists argue that some functions that appear to be simple, like sealants, are often complex and are therapeutic and not preventative and are, therefore, outside of the hygienists level of competence.

Scientific dental arguments abound on the efficacy of expanding the hygienists scope of practice; an illustrative example follows.

Elizabeth S. Barr, D.M.D. and Examiner, American Board of Pediatric Dentistry, submitted the following information (summarized by the author of this report) to the sunset review concerning use of sealants:

- 1. Placement of a sealant requires competency in the diagnosis of dental caries, clinically and radiographically.*
- 2. Sealant material science is not static but actively evolving. It requires the ability to evaluate the scientific literature and research in this fast paced changing area of dentistry.*

3. *Sealant placement is very technique sensitive. It requires a dry field to place a sealant which will have a life of 8-10 years.*
4. *Teeth which are found to have caries after enamelplasty often must be anesthetized in order to complete the caries removal in a comfortable manner for the patient.*
5. *Sealants which are placed over carious fissures without removing the caries will allow the caries to grow unabated.*
6. *Sealants which are placed and not periodically evaluated can leak and/or chip a niche into which bacteria can colonize and will provide a protected area where caries will grow more rapidly than in the original fissure. This is because natural fissures are open to partial cleansing with a toothbrush and to the minerals in saliva but a leaky sealant cannot be cleansed naturally. Broken or leaky sealants have resulted in the unnecessary loss of tooth structure through demineralization.*
7. *In order not to damage tooth structure and to prevent additional decay and recurrent caries, sealants must be properly placed on sound tooth structure using a sterile, isolated technique with excellent lighting, clinically evaluating the absence of decay using enamelplasty with a handpiece and continuing to periodically evaluate the restorations for defects and recurrent caries.*

This argument concludes that sealants are part of the therapeutic treatment of caries, or decay. Therefore, treatment of caries involves diagnosis and follow-up and an understanding of dental medicine that far exceeds the knowledge of dental hygienists.

As already pointed out, dental hygienists believe that sealants are simple, preventative measures that are often performed by dental hygienists and dental assistants in today's dental offices. They further argue that the proposed use of sealants by dental hygienists will be often limited to settings where the recipients, particularly the low-income children, would receive no care at all absent the services of the dental hygienist.

***Are Dental Hygienists Properly Trained to Perform These Services?***

One argument opposing expanding the dental hygiene scope of practice contends that some dental hygienists may have proper training to accomplish these procedures but others do not possess adequate skills and qualifications. This argument stresses that there is a great deal of variation between graduates of schools like the University of Colorado (a four year curriculum), which has a highly respected program and other schools (most notably in other states and usually offering two-year degrees).

Contact with the American Dental Association shows that a comparative study between four-year dental hygiene programs and two-year dental hygiene programs showed no significant differences in national board examinations. Some variance occurred between the two groups in clinical scores, but even that difference was not significant.

Therefore, it seems reasonable to conclude that graduates of dental hygiene programs are similarly qualified as measured by success on the national board examinations.

The second question regarding training lies in curriculum content. Dentists point out that diagnosis is not included in dental hygiene curricula (because diagnosis is outside the scope of practice). This argument continues that the proposed expansion of practice includes *defacto* diagnosis. How else, it is argued, can dental hygienists determine that a sealant is needed to the exclusion of other oral care? Dentists, obviously, have this level of training and qualifications. One finds no less than four courses in the second and third years of the CU dental curricula devoted to diagnosis.

The argument against expansion does not stop with a counting of diagnostic training hours, however. It expands to knowledge of oral pathology and a general ability to apply the necessary scope of reasoning to choose a specific procedure over another. This is a general whole person approach to supplying oral care that takes into account the patient in his/her entirety.

### ***Is There a Public Need for this Expansion?***

Opponents of this expansion also question the lack of public input on this issue. They point out that Colorado has the most liberal dental hygiene practice law (in terms of scope of unsupervised practice) in the nation. Since the law's inception in 1985, though, Colorado has seen only approximately twelve unsupervised dental hygiene practices emerge. Given the public's lukewarm response to the initial creation of unsupervised dental hygiene practice, it hardly seems reasonable to expand a practice further that isn't well received in a limited capacity.



### **Discussion/Conclusion**

While it is true that the practice of unsupervised dental hygiene has not expanded as proponents might have originally envisioned, there have been cases of merit.

For instance, one dental hygiene practice in rural Colorado has a client base of about 2,500 out of an 8,000 person population. This hygienist competes with a number of dentists. One can conclude, then, that an adequate market demand exists in some situations.

To continue, dental hygienists identify two factors that contribute to the small number of unsupervised practices.

1. Start-up costs can be about as much as is required to open a dental practice or around \$25-30 thousand dollars. Since the dental hygiene practice offers only a fraction of the services provided by a dental practice, it is harder to realize profits.
2. Some hygienists report that local dentists compete unfairly. Hygienists report that competing dentists often attempt to bully patients into not returning to the dental hygienists or the dentist will not see the patient in the future. Others report that dentists simply tell patients that the care being received places the patient at greater oral health risk.

This review concludes that public demand is a market function and not a regulatory function requiring government intrusion into the market. In other words, a practitioner should be able to practice legally to the full extent of his or her skills, qualifications, and experience. Regulation exists only to protect consumers who cannot make informed choices.

Similarly, it is up to the market to determine ways to finance the expansion of dental hygiene practices. Regarding competition, one should expect that dentists will compete strongly for dental hygiene clients. While the allegations of some hygienists may, if true, offend our sensibilities of fair play, a certain amount of this competition can probably be expected in any market. Therefore, this sunset review does not conclude that the dental hygiene scope of practice cannot be expanded based on an argument of no public demand.

Absent the above objection, dental hygiene training and the pure science of causing serious or permanent harm to consumers remain to be resolved.

This review concludes that there is reasonable evidence to hypothesize that some hygienists may be able to perform the functions they requested be included in the unsupervised scope of practice; indeed, they appear to perform these functions in dental offices every day as employees of dentists. Hygienists insist that the dentist/employer rarely supervises or even checks the delegated task, dentists insist otherwise.

As stated earlier, this report cannot reach proper scientific conclusions concerning the ability of hygienists to provide the level of care proposed. The objective data does not appear to exist to substantiate the proposal. No other state permits such practice although it probably does occur in European nations and elsewhere.

This review concludes that the proper resolution of this issue lies with the Board of Dental Examiners. The Board has the regulatory experience and the dental/scientific background to explore this issue further. The General Assembly should empower the Board by statute to determine the dental hygiene scope of practice and to establish the necessary skills, experience and qualifications needed to perform these practices.

If the Board chooses to address these issues, both arguments will be subjected to the rigors of the regulatory hearing process. If regulations are adopted that prove to be problematic, the regulations can be repealed or amended much easier than statute.

Section 12-35-107 (f), C.R.S. empowers the Board to make reasonable rules and regulations regarding minimum training and equipment requirements for the administration of local anesthetics, general anesthetics, conscious sedation, and nitrous oxide/oxygen inhalation sedation.

The Board has successfully accomplished this through the promulgation of Rule XIV. It is reasonable to expect that the Board could promulgate similar regulations concerning the proposed scope of practice.

***Recommendation 3 - The General Assembly should empower the Dental Board to expand the Dental Hygiene Scope of Practice, if such expansion is indicated, by amending the rulemaking authority in §12-35-107, C.R.S. subsection II as follows:***

***(II) The practices of dentistry and dental hygiene including, if appropriate, the unsupervised practice by dental hygienists of root planing, sealant use, taking of radiographic surveys and impressions, administration of local anesthesia, use of emerging technologies and administration of nitrous oxide.***

**Is the Current  
Legal  
Resources  
Budget for the  
Dental Board  
Adequate to  
Meet the  
Board's  
Regulatory  
Mission?**

As this report stated, Colorado's Board of Dental Examiners is one of the most prolific in the nation in disciplining dentists. This appears to have been accomplished through enormous efforts by the Assistant Attorney General assigned to the Board.

Consider these data that show legal expenditures and disciplinary actions for the Board of Medical Examiners which is considered to be one of the top eight medical boards in the nation regarding consumer protection measurements.

<i>FY</i>	<i>DISCIPLINARY ACTIONS</i>	<i>LEGAL SERVICES EXPENDITURES</i>
1990	67	\$387,000
1991	68	\$441,000
1992	66	\$445,000
1993	95	\$373,000

***Comparative data for the Dental Board:***

<i>FY</i>	<i>DISCIPLINARY ACTIONS</i>	<i>LEGAL SERVICES EXPENDITURES</i>
1990	37	\$28,367
1991	75	\$76,466
1992	67	\$115,075
1993	78	\$141,789

There are, of course, factors that impact legal costs of course. Serious actions, like revocations, will generally be expensive to litigate. Although when a dentist is disciplined, one can expect complex litigation in most disciplinary actions.

It does not appear that the near future will show any decrease in the Board's legal activity. Presently, the Board has six revocation cases pending and a most serious hearing that the Board's Assistant Attorney estimates will take at least a year to litigate.

Further, recommendations of this sunset report may result in expanding Board rulemaking functions pertaining to dental hygiene scope of practice. This increased rulemaking will probably result in additional legal expenditures. It can be safely assumed that approximately .5 FTE will be needed for general counsel duties for this board. The litigation workload and additional rulemaking looming in the future demand an increase in legal resources.

***Recommendation 4 - The Division of Registrations should request and devote more resources to legal costs for the Dental Board.***

**Amend the  
Endorsement  
Provisions of  
the Dental  
Practice Act**

This section of the 1995 sunset review contains recommendations for changes to the Dental Practice Act. The goal of these recommendations, assuming continued regulation by the Board, is significant enhancement of Colorado's law resulting in improved administration, enforcement and clarity.

The Board is a member of a testing organization that administers dental examinations to eleven regional states. The Board has further determined that the regional exam is equivalent to another regional examination thus bringing to a total of approximately 25 states, the number of states providing an examination that the Colorado Board finds acceptable.

This means that dentists licensed and practicing in other states not administered by this testing agency cannot come to Colorado unless they re-examine at the entry level. This population of practitioners also includes dentists who were licensed in another state before the regional examination was initiated and Colorado's exclusion also includes the approximately fourteen states that continue their own examination administration process.

This 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 entity. After all, some Colorado dentists were probably licensed before the state Board subscribed to the regional testing service it now belongs to; it is unlikely, perhaps remote, in fact, that Colorado dentists re-examined.

This sunset review argues 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 competencies of safe practice by students just out of dental school.

This review finds that it is the responsibility of the State Board of Dental Examiners to determine if applicants meet the criteria to practice in this state. It used to be that licensed practitioners moved between states by a process known as reciprocity. In these cases, state boards made agreements. You accept licensees from our state and we'll accept licensees from your state. Obviously, highly qualified practitioners were often denied entry into a state's market simply because no reciprocal agreement, for whatever reason, had been established.

Significant regulatory reform has all but ended this type of mobility restriction in Colorado. The General Assembly has chosen repeatedly to accept applicants whose skills and qualifications to practice are substantially similar to those requirements to obtain a license by examination. There is no plausible reason why the Dental Board cannot achieve this goal.

This somewhat theoretical regulatory discussion has a very practical application. This sunset review received several communications from dentists in Colorado who are licensed in other states, practicing here in an otherwise exempt capacity - military service, for instance, and who wish to practice part-time in Colorado. Of course, this increases the supply of dentists.

The State Board requires these individuals to take the basic examination. Some of these dentists are highly skilled, board certified specialists and have not practiced general dentistry in decades.

Oddly, the practice act contains the exact language to open the Colorado dental market, but unfortunately, this language, §12-35-124(4)(a) and (b), applies only to dental hygienists.

This review recommends that the General Assembly amend the act by the creation of a new §12-35-114.5, C.R.S., incorporating the endorsement provisions of §12--35-124(4)(b), C.R.S. and making conforming amendments by the deletion of references to dental hygiene and the various sections of the article relating to dental hygiene.

***Recommendation 5 - The General Assembly should amend the Dental Act by creation of a new endorsement section setting forth requirements for licensure of dentists licensed in another jurisdiction.***

**Practice Act  
Should be  
Gender  
Neutral**

The Board has requested that the practice act be rewritten using gender neutral language.

***Recommendation 6 - Make the entire statute gender neutral.***

**Clarify  
Definitions**

The Board's sunset review task force and the Colorado Dental Association provided input for updating and clarifying a number of definitions in the Practice Act.

***Recommendation 7 - Amend specific definitions of §12-35-103, C.R.S.***

- a) Subsection (1.3) should be amended by deleting: **in the field in which he/she is licensed under this article.**
- b) "Premises" should be amended to read: **within the same building, dental office or treatment facility and within close enough proximity to respond to an emergency or the need for assistance in a timely manner.**
- c) "Retired status" should be amended to read: **a status granted to a person pursuant to §12-35-136, C.R.S.**

Discussion - this definition will need to be added to the statute if a retired status is added to the statute.



- a) "Dentistry" should be amended to read: ***the healing art which is concerned with the examination, diagnosis, treatment planning and care of conditions within the human oral cavity and its adjacent tissues and structures, as specified in this act.***
- b) "Direct Supervision" should be amended to read: ***that a licensed dentist is in the dental office or treatment facility; personally diagnosis the condition to be treated; personally authorized the procedures on the premises of the dental office or treatment facility; and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienists or dental auxiliary; evaluates the performance of the dental hygienists or dental auxiliary.***
- c) "General Supervision" should be amended to read: ***that a licensed dentist has personally diagnosed the condition to be treated and authorized the procedures to be performed while the dentist may or may not be on the premises of the dental office or treatment facility at the time the authorized procedures are performed. The dentist may evaluate the performance of the dental hygienist or dental auxiliary.***

**Repeal  
Outdated  
Requirements  
of Dental  
Board  
Appointees**

Present statutory requirements set up potentially burdensome and problematic membership criteria. If an applicant could not be found from a certain congressional district, and of a predetermined political party, it is possible that a board seat could be unfilled for a long period of time. During that time, board performance and, hence, public protection suffers. This also conforms the Dental Practice Act with other health care acts and ensures a healthy change of membership from time to time.

***Recommendation 8 - Amend the following provisions of §12-35-104, C.R.S., State Board of Dental Examiners - Subject to termination - repeal of article.***

- a) AMEND (1) by adding that: **No member may serve more than two consecutive terms of four years.**
- b) AMEND subsection (1) by removing all of the requirements regarding political affiliation and geographic location.

Further, these criteria are obsolete. It is more important for consumer protection if the board is composed of a mixture of dental specialties and representatives of diverse ethnic backgrounds. Any group can attempt to persuade the Governor to appoint a certain applicant to the Board.

- c) AMEND §12-35-104(2) by deleting **and treasurer.**

Discussion: This is an outdated provision. There is a treasurer in name only. All fiscal duties are managed by the staff of the Division of Registrations.

- d) AMEND subsection 104(2) by deleting the requirement that the Board meet at least once a year and change that requirement **to the Board must meet at least quarterly.**

Discussion: The Dental Board presently meets approximately ten times a year. The existing language is outdated.

- e) AMEND subsection 104 by the addition of a new (6)to read: **members of the board shall be immune from suit in any action, civil or criminal, based upon any disciplinary proceedings or other official acts performed in good faith as members of such board.**

Discussion: The General Assembly has granted good faith immunity to almost all other regulatory boards. This immunity is imperative in investigatory and complaint processes.

**Update  
Qualifications  
for Board  
Members**

The following language updates the statute, places the qualification requirements in the positive rather than the negative, and expands the requirement to disallow dentists who have violated practice laws in other states or who have committed felonies in other states from serving on the Colorado board.

***Recommendation 9 - Amend §12-35-105 Qualifications for members of the Board to read:***

***Persons shall be appointed to the Board who are legal residents of Colorado, dentists or dental hygienists who are currently licensed and actively engaged in clinical practice in Colorado for at least five years immediately preceding the appointment. A person convicted of a violation of any of the provisions of this or any prior dental practice laws or convicted of a felony shall not be appointed to the Board.***

**Powers and  
Duties of the  
Board**

The following recommendation updates and clarifies the powers and duties of the Board.

***Recommendation 10 - Amend §12-35-107 Powers and duties of board to read:***

***Conduct examinations to ascertain the qualifications and fitness of applicants for licensure to practice dentistry and dental hygiene. To assist in the conducting of examinations, only dentist members or proctors may participate in the examination of candidates for dental licensure. Dentists and dental hygienist members or proctors may participate in the examination of candidates for dental hygiene licensure.***

***Make, publish, declare, and periodically review 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, 1996, shall be subject to sections 24-4-103(8)(c) and (8)(d) and 24-34-104 (9)(b)(II), C.R.S. All such rules shall be subject to public hearing in the manner prescribed by section 24-4-103, C.R.S. Rules and Regulations of the board may concern but not be limited to:"***

- (I) The conduct and 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 hygienists, clinical dental assistants or other auxiliaries;***
- (IV) The specification of essential instructions to be included in a laboratory work order.***

**Add  
Confidential  
Letter of  
Concern**

The General Assembly has consistently added the authority to issue a confidential letter of concern to regulatory boards under sunset review. This increases the board's flexibility in responding to public complaints against licensees when a less serious violation of the act exists. By making the letter confidential, the letter does not become part of formal disciplinary statistics.

***Recommendation 11 - Amend subsection (c) of §12-35-107 as follows:***

***(c) Conduct hearings to revoke, suspend, or deny the issuance of a license or license renewal granted under the authority of this article or of previous laws or to **issue a confidential letter of concern**, or to reprimand. . .***

**Add Power to  
Issue  
Temporary  
Licenses**

The Board has been approached by representatives of the Colorado Department of Public Health and the Environment's Colorado Migrant Health Program (CMHD) to seek to devise a method whereby dentists from other states may come to Colorado and participate in migrant health care delivery. Of course, obtaining a license to practice in Colorado is burdensome to those dentists or hygienists because they do not seek to offer services for fees in this state.

There could be other unforeseen situations that may evolve in the future requiring the state board to quickly attract and temporarily license practitioners for limited applications of dental service in Colorado.

The Board's powers should be expanded broadly so that temporary licenses can be granted expeditiously. Since the details of temporary licensure will be subject, under this recommendation, to the oversights of the regulatory rules hearing process, it is assured that Colorado's licensed resident dentists and hygienists will have the opportunity for sufficient input into the creation of the temporary license rules.

***Recommendation 12 - Amend (e) of §12-35-107, C.R.S. to empower the Board to issue temporary licenses by the addition of the following language:***

***(e) The Board may grant and issue temporary licenses. The Board may promulgate rules and regulations concerning the granting of temporary licenses. Such regulations shall include but shall not be limited to the establishment of restrictions on the temporary license regarding effective dates, areas to be served by the dentist, and fees to be charged.***

**Clarify that  
Dental  
Auxiliaries  
may Place and  
Monitor  
Nitrous Oxide**

It is becoming more common for dental assistants or dental auxiliaries to place and monitor nitrous oxide under the direction of a dentist. The amendment proposed by this recommendation gives the Board the authority to promulgate important rules and regulations governing the practice of the delegation of this responsibility.

***Recommendation 13 - Amend §12-35-107 (f), as follows to include dental auxiliaries' ability to place and monitor nitrous oxide.***

***(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, dental hygienists AND DENTAL AUXILIARIES. The general assembly declares that rules relating to anesthesia are not intended to permit administration of local anesthetics, general anesthesia, conscious sedation,{DELETE or nitrous oxide/oxygen inhalation sedation} by dental auxiliaries nor to reduce competition or restrain trade with respect to dentistry needs of the public.***

**Remove  
Outdated  
Language**

Statutory references to Board Treasurer is outdated. Staff of the Division of Registrations perform fiscal duties for the Board.

***Recommendation 14 - Amend §12-35-108 Power of board to administer oaths-issue subpoenas-service-penalty for refusing to obey subpoena as follows:***

Amend (1) (a) to delete "***and Treasurer***"

**Permit Program  
Administrator  
to Issue  
Administrative  
Subpoenas**

During the course of investigating complaints, the Board may wish to direct the program administrator to issue administrative subpoenas subsequent to the investigation and by order of the Board.

This authority and practice would help the Board expedite cases. There are safeguards built into the administrative subpoena process preventing abuse of the process. For instance, recipients of a subpoena may simply refuse to comply with the subpoena forcing the Board to petition the district court for an order to comply. In such cases, the court will consider all of the evidence before issuing such an order. Recipients may also challenge the subpoena by petitioning the district court for a protective order.

***Recommendation 15 - Amend §12-35-108 (1)(a), C.R.S. by adding after the first complete sentence "The Board may authorize the program administrator to issue subpoenas".***

**Clarify  
Statutory  
Section  
Headings  
Regarding  
Hygienists  
and  
Auxiliaries**

Subsection 109 does not accurately represent the regulatory scope of the practice act.

***Recommendation 16 - Amend §12-35-109, C.R.S., to add the practice of dental hygiene to the title and to the subsection as follows:***

- (a) Who, may be duly licensed as dentists or dental hygienists pursuant to the provisions of this article.***
- (b) Who, are designated by this article as dental auxiliaries but only to the extent of the procedures authorized by this article and the rules and regulations adopted by the board.***

**Update Dental  
Scope of  
Practice**

This revision updates and clarifies the scope of dental and dental hygiene practice in Colorado. The language speaks more directly to the practice of prescribing radiation as opposed to simply using radiation, and the revision expands the definition of practicing dentistry to include interpretations and the making of changes to patient treatment plans.

***Recommendation 17 - Amend §12-35-110, C.R.S. which sets forth what constitutes practicing dentistry as follows:***

***(1) ADD to the end of the first sentence after who - IN THE COURSE OF LEGITIMATE PROFESSIONAL PRACTICE:***

***(a) Represents him/her self to an individual or the general public using the words dentists, dental surgeon, or uses the letters D.D.S. or D.M.D. or D.D.S./D.M.D.; except that nothing in this section shall be construed as prohibiting a dental hygienist or a dental auxiliary from performing tasks and procedures consistent with section 12-35-125 (2) (a) and***

***(b) Examines, diagnoses, plans treatment, and/or treats natural or artificial structures or conditions adjacent to, or functionally related to the oral cavity;***



**(c) ADD after the ; except that nothing in this section shall be construed as prohibiting a dental hygienist or a dental auxiliary from performing tasks and procedures consistent with section 12-35-122.5 (d), and 12-35-122.6 (d), and 12-35-125 (4) (a) (1)**

**Add the following subsections to section 110**

**Prescribes such drugs or medications and administers such general or local anesthetics as may be necessary for the proper practice of dentistry.**

**Prescribes, induces and sets dosage levels for inhalation analgesia. Monitoring may be delegated to appropriately trained personnel.**

**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.**

**ADD after the; except that nothing in this section shall be construed as prohibiting a dental hygienist from performing tasks and procedures consistent with sections 12-35-122.5 and 122.6.**

**ADD: Gives or professes to give interpretations or readings of dental charts or records, or gives treatment plans or gives interpretations of treatment plans derived from examinations, patient records, dental X-rays or roentgenograms; except that nothing in this section shall be construed as prohibiting a dental hygienist or a dental auxiliary from performing tasks and procedures consistent with sections 12-35-125 (2) & (3), 12-35-122.5, and 12-35-122.6.**

**ADD: administers anesthesia and analgesia, except that nothing in this section shall prohibit a dental hygienist from performing those tasks and procedures consistent with sections 12-35-122.5 (e), 12-35-122.6 (e) & (f), and 12-35-125 and in accordance with the rules and regulations promulgated by the Board.**

**Update and Clarify Exemptions from the Practice Act**

This revision updates and clarifies the practice act in a variety of ways including exemption from licensure requirements of examiners who come into Colorado for the sole purpose of conducting examinations used by the State Board.

***Recommendation 18 - Amend §12-35-111, C.R.S., Persons exempt from the operations of this article as follows:***

***AMEND 111 (a) by deleting registered nurse and adding certified nurse anesthetist***

***AMEND 111 (d) by adding a nationally recognized accrediting agency as recognized by the United States Department of Education.***

***AMEND 111(e) by adding the same language as added to 111 (d).***

***AMEND 111(h) to read: The rendering of services in this state by a dentist lawfully practicing dentistry in another state or territory, but if any such dentist does not limit such services to an occasional case or if the dentist has any established or regularly used hospital or dental office connections in this state or if he/she maintains or is provided with for his/her regular use any office or other place for the rendering of such services, he/she shall possess a license to practice dentistry in this state. The board may adopt rules and regulations to clarify the terms of this paragraph including, but not limited to “occasional case” and “regularly used hospital or dental office connections”.***

***AMEND 111(i) by adding: The practice of dentistry or dental hygiene by any examiners representing a testing agency approved by the board during the administration of the examination.***

**Add  
Professional  
Service  
Corporation  
Practice of  
Dental  
Hygiene**

At this time the statute does not address dental hygienists working in partnership, which is a possibility when considering that dental hygienists can work independently.

***Recommendation 19 - Amend §12-35-112 Names and status under which dental practice or dental hygiene practice may be conducted as follows:***

***(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 . . .***

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

**Broaden  
Recognized  
Accrediting  
Agency  
Language  
Provisions**

This recommendation clarifies the statute including enabling the Board to ensure that applicants disciplined in other jurisdictions are not moving freely into Colorado and by expanding provisions on accreditation. The existing language is unduly narrow. Although, in fact, the Council on Dental Education is the existing accreditation entity, this may not always be the case. The language should be expanded and made more flexible so that the Board can approve other accreditation entities if needed in the future.

***Recommendation 20 - Amend §12-35-113, C.R.S. Applications for license - fee as follows:***

***(1) Every person who desires to practice dentistry in this state shall file with the board an application for licensure on a form to be provided by the board, 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:***

**(b) ADD: a nationally recognized accrediting agency as recognized by the United States Department of Education.**

**(e) ADD: Has verification of licensure from other jurisdictions where the applicant has held a dental or other health care license.**

**(4) REVISE the first sentence as follows: An applicant for licensure who has not graduated from a dental school or college accredited by a nationally recognized accrediting agency as recognized by the United States Department of Education within the . . .**

### **Improve Provisions Concerning Graduates of Foreign Dental Schools**

The current statutory provisions are almost unworkable. In reviewing other jurisdictions almost all have moved to these types of requirements for foreign graduates. Presently, the dental licensing statute states "... who has studied dentistry and has received a degree doctor of dental medicine or doctor of dental surgery ..". Only three countries in the world grant these specific degrees. Every country uses different titles and establishes different educational standards and these titles and standards may not be the equivalent of Colorado's provisions.

**Recommendation 21 - Amend §12-35-113.5 Graduates of nonaccredited dental schools, by repealing the entire section and replacing it with the following:**

**A applicant who is a graduate of a nonaccredited dental school shall meet the following requirements:**

- 1. Present evidence of completion of a program in clinical dentistry and obtain a Doctor of Dental Surgery or a Doctor of Dental Medicine at a dental school accredited by a nationally recognized accrediting agency as recognized by the United States Department of Education;**
- 2. Pass the examination administered by the Joint Commission on National Dental Examinations;**

3. **Pass an examination which is 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; and**
4. **Demonstrate to the satisfaction of the Board an ability to read, write, speak, understand and be understood in the English language.**

**Revise  
Examination  
Provisions**

The present statutory provisions concerning examination requirements are outdated and need to be improved in order to make them consistent with other health care regulatory programs.

**Recommendation 22 - Amend §12-35-114 Examinations - how conducted - certificates issued to successful applicants as follows:**

**(1) DELETE and ADD: Applicants for dental licensure shall submit to the Board proof of successful passage of the following:**

**(a) the examination administered by the Joint Commission on National Dental Examinations;**

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

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

**(2) DELETE**

**(3) DELETE**

**(4) REVISE - 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.**

**Revise  
Renewal  
Provisions**

**(6) (a) REVISE** *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 to test clinical skills and knowledge; and*

**(b) REVISE** *The maximum number of times an applicant may fail to successfully complete the examination to test clinical skills and knowledge before the board . . .*

The existing statutory language has been an ongoing problem and became a significant point of discussion in this sunset review. In particular, the Dental Practice Act was one of an extreme minority of regulatory statutes that required the Board to make more than one notification of pending renewal.

**Recommendation 23 - Amend §12-35-116, C.R.S. Renewal of license - fees to read as follows:**

***A person licensed to practice dentistry or dental hygiene in this state who is eligible to have his or her license renewed shall receive a renewal license upon:***

***Payment of a renewal fee established by the board pursuant to sections 24-34-102 (8) and 24-34-105, C.R.S.***

***Any dentist or dental hygienist whose application for renewal of an active license indicates that the dentist or dental hygienist has not actively practiced dentistry or dental hygiene or has not been engaged in teaching dentistry or dental hygiene in an accredited dental or dental hygiene program for at least one year during the five years immediately preceding the application shall be issued a renewal license 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 and 12-35-123. 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.***

***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. The failure to receive the renewal application does not excuse a failure to renew as required by this section.***

***A renewal fee paid pursuant to subsection (1) of this section shall not be refunded.***

The revised language contains a provision for reinstatement within one year subject to rules of the Board.

***Recommendation 24 - Repeal §12-35-117 Failure to renew license - forfeiture - effect on disciplinary proceedings***

If the legislature adopts Recommendation 24 of this report, section 117 of the article will become obsolete.

**Suspension  
Provisions are  
Outdated**

The existing provisions limiting the Board to one year suspensions is too restrictive. Certain violations by licensees may require suspensions for longer than one year.

***Recommendation 25 - Amend §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 as follows:***

***(1) DELETE in first sentence OF NOT MORE THAN ONE YEAR***

## **Revise Letter of Admonition Requirements**

Letters of admonition are sent by the Board in the least serious of complaints that result in disciplinary action. If the Board is granted the authority to issue a letter of concern, it is likely that letters of admonition will be used even less frequently. If the Board is required to wait thirty days after receipt of a letter of admonition, an administrative burden is created.

During this lengthy wait, while the Board jumps through administrative hoops to determine that the practitioner received the letter of admonition, the public remains at risk. If the practitioner refuses to acknowledge receipt of the letter of admonition, it is returned to the Board thus exposing the public to even greater risk as the process enters the next phase.

The revised language, thirty days from mailing, has been incorporated into other practice acts by the General Assembly and should be a part of the Dental Practice Act.

***Recommendation 26 - REVISE Letter of Admonition - Allow the Board thirty days from date of mailing to contest the letter of admonition.***

## **Revise General Grounds for Discipline**

This lengthy revision updates the general grounds for discipline or other adverse actions section of the practice act. In many ways, this section is the teeth of the public protection component of the act. It has not been reviewed in its entirety since the last sunset review almost a decade ago. The revisions suggested are essentially self-explanatory, not objected to by the profession, and are mostly already at work successfully in other regulatory practice acts.



**Recommendation 27 - Revise §12-35-118 as follows:**

**(a) DELETE and ADD: 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) DELETE and ADD: Any conviction of a felony or any crime that would constitute a violation of this article or any previous article. For purposes of this paragraph (b) conviction includes the entry of a plea of guilty or nolo contendere or during a deferred sentence.**

**(c) Administering, dispensing, using, or prescribing any habit-forming drug, as defined in section 12-22-102 (13), or any controlled substance, as defined in ADD: 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. section 812, other than in the course of legitimate professional practice.**

**(g) Add dental hygiene to the existing language.**

**(q) Failure to report a dental ADD: OR DENTAL HYGIENE malpractice judgment or settlement to the board by the licensee within ninety days**

**(u) Sharing any professional fees with anyone except those with whom he 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 ADD: OR DENTAL HYGIENIST pays to . . .**

**Continue to revise §12-35-118 by the addition of the following new sections:**

**(bb) 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 acts or conduct that would constitute grounds for discipline pursuant to this article.**

**(cc) Failing to provide adequate or proper supervision when employing unlicensed persons in a dental or dental hygiene practice.**

**(dd) Has engaged in any conduct which would constitute a crime as defined in Title 18, C.R.S. and which conduct relates to such persons practice as a dentist or dental hygienist.**

**(ee) Practicing outside the scope of legitimate dental or dental hygiene practice**

**(1.5) REVISE: The discipline of a licensee to practice dentistry in another state or territory or country shall be deemed to be unprofessional conduct. This subsection 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.**

**(3) DELETE: by mail**

**(5)(a) REVISE as follows:**

**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, or 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.**

**(c) DELETE: physician's and ADD: qualified professional's**

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

**AD: (5)(g) The Board may include in any disciplinary order which allows the dentist or dental hygienist to continue to practice such conditions as the board may deem appropriate to assure that the dentist is physically, mentally, and otherwise qualified to practice dentistry or dental hygiene in accordance with generally accepted professional standards of practice, including any or all of the following:**

**(I) Submission by the respondent to such examinations as the board may order to determine his physical or mental condition or his professional qualifications.**

**(II) The taking by the respondent of such therapy or courses of training or education as may be needed to correct deficiencies found either by the board or by such examinations.**

**(III) The review or supervision of the respondent's practice as may be necessary to determine the quality the respondent's practice and to correct deficiencies therein; and**

**(IV) The imposition of restrictions upon the nature of the respondent's practice to assure that the respondent does not practice beyond the limits of the respondent's capabilities.**

**Revise Change  
of Address  
Provisions**

The current statute requires licensees report any change in business address. All the board needs is a current mailing address.

***Recommendation 28 - Amend §12-35-119 Change of address - duplicate license and certificates as follows:***

***(1) Every person licensed under this article, upon changing his MAILING address, shall furnish the administrative assistant of the board his new MAILING address within thirty days.***

**Delete  
Obsolete  
Report  
Requirements**

The statute requires that each member of the Board be provided a complete list of licensees annually. There is no apparent reason for this statutory mandate and board members have expressed no interest in receiving this list.

***Recommendation 29 - Amend §12-35-120 Records to be kept by the board as follows:***

***DELETE On July 1 of each even numbered year, the secretary shall mail to each member of the board a complete list of licensees, corrected to the previous January 1, including the name, license number, and business address of each licensee entitled to practice in this state and.***

***Capitalize "Upon"***

**Revise  
Controlled  
Substances  
Language**

The following language clarifies the statutory prohibition against dentists misusing prescription drugs and controlled substances.

***Recommendation 30 - Amend §12-35-122 Dentists may prescribe drugs, etc. as follows:***

***ADD***

***A dentist may not prescribe, distribute, or give to a family member or himself or herself any drugs or controlled substances, other than in the course of legitimate dental practice and pursuant to the rules and regulations promulgated by the board regarding controlled substance record keeping.***

**Add  
Recognized  
Accrediting  
Agency for  
Dental  
Hygiene  
Education**

The statute needs to be clarified by adding a specific accrediting agency regarding dental hygiene application procedures.

***Recommendation 31 - Amend §12-35-123 Dental hygienist - application fees as follows:***

(1) Add: ***was accredited by a nationally recognized accrediting agency as recognized by the United States Department of Education.***

**Correct Dental  
Peer  
Assistance  
Requirements**

Additional language is needed to close a loophole that permits a person who voluntarily participates in the Peer Assistance Program from being subject to Board sanctions if he/she violates the Peer Assistance Program. A volunteer participant can be equally as dangerous as someone referred by the Board. Therefore, the Board should have jurisdiction over those participants who fail the Peer Assistance Program.

**Recommendation 32 - Amend §12-35-123.5 Dentist peer health assistance fund as follows:**

**(2)(b) REVISE Effective July 1, 1994, as a condition of licensure RENEWAL in this state every DENTIST shall. . .**

**(5)(a) ADD to the first sentence or voluntarily participates**

**Every dentist who is a referred participant OR VOLUNTARILY PARTICIPATES shall**

**(b) CHANGE The first sentence to read as follows:**

**. . . the board may immediately suspend the license of any dentist who is referred to OR VOLUNTARILY PARTICIPATES in the peer health assistance program by the board and who fails to attend, TO COMPLY WITH, or to complete . . .**

**Revise  
Examination  
Requirements**

Dental hygiene application requirements and administrative provisions need to be updated for a more efficient administration of the program.

**Recommendation 33 - Amend §12-35-124 Examinations - license as follows:**

**(1) DELETE AND ADD Applicants for dental hygiene licensure shall submit to the Board proof of successful passage of the following:**

**(a) the examination administered by the Joint Commission on National Dental Examinations;**

**(b) an examination which is 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; and**

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

**Revise Dental  
Auxiliaries'  
Tasks  
Provisions**

**(2) DELETE AND ADD 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 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.**

**(1) DELETE AND ADD verification of licensure from other jurisdictions where the applicant has held a dental hygiene or any other health care license.**

**(5) DELETE**

The use of dental auxiliaries in the office has been increasing over a number of years. Some groups and practitioners contacted as a part of this sunset review stated that there is often confusion about appropriate use of dental auxiliaries. The following recommendation amends the practice act to clarify and update the dental auxiliary scope of practice.

**Recommendation 34 - Amend §12-35-125 Tasks authorized to be performed by dental auxiliaries of dental hygienists as follows:**

**Revise as follows:**

**(4)(a) A dental auxiliary shall not do the following:**

- 1) diagnosis;**
- 2) Treatment planning;**
- 3) Prescription of therapeutic measures;**
- 4) Any procedure that contributes to or results in an irreparable alteration of the oral anatomy;**
- 5) Administration of local anesthesia;**
- 6) Scaling (supra and sub-gingival);**
- 7) Root planing;**
- 8) Soft tissue curettage.**
- 9) Periodontal Probing**

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

- 1) Smoothing and polishing natural and restored tooth surfaces;**
- 2) Provision of preventive measures including the application of fluorides and other recognized topical agents for the prevention of oral disease;**
- 3) Gathering and assembling information including but not limited to fact-finding and patient history, oral inspection, and dental and periodontal charting;**
- 4) Administering topical anesthetic to a patient in the course of providing dental care;**
- 5) Any other task and procedure which does not require the professional skill of a licensed dentist.**

**(4)(c) An Auxiliary may perform the following tasks under the direct supervision of a licensed dentist in accordance with rules and regulation promulgated by the board:**

- 1) Administer and monitoring the use of nitrous oxide on a patient.**

**(4)(d) An Auxiliary may perform the following tasks under the general supervision of a licensed dentist:**

- 1) Intraoral and extraoral tasks and procedures necessary for the construction of a full denture. These tasks and procedures shall include:**

**I. Taking of preliminary and final impressions;**

**II. Bite-registration and determination of vertical dimensions;**

**III. Tooth selection;**

**IV. 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;**

**V. 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.**



**4(e) The tasks and procedures in paragraph (1) of this subsection (4) shall be performed in the regularly announced office location of a licensed practicing dentist, and he 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 paragraph (1) of this subsection (4). 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 he can reasonably supervise.**

**(c) Prior to any work being performed pursuant to paragraph (1) of this subsection (4), 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 subparagraph (IV) of paragraph (1) 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. ~~DELETE THIS LAST SENTENCE~~ Both examinations shall be included in the dentist's fee.**

**(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 and regulations as may be necessary to implement and enforce the provisions of this section.**

**Technical  
Change to  
Dental  
Hygienists'  
Renewal  
Provision**

The provisions of this section are now contained in §12-35-116, C.R.S. and section 127 is therefore redundant.

**Recommendation 35 - Repeal §12-35-127 Dental hygienist - renewal of license - fee**

**DELETE entire section. SEE 12-35-116 which includes this section.**

**Expand  
Provisions  
Against Using  
Forged  
Documents**

The statute prohibits use of forged diplomas or certificates. This should be expanded to prohibit filing any forged document required or requested by the Board in order to assess a candidate's qualifications.

**Recommendation 36 - Amend §12-35-128 Use of a forged or invalid diploma or certificate as follows:**

**ADD or any document required or requested by the board.**

**Revise Penalty  
for Minor  
Infraction**

Presently, §12-35-130(2), C.R.S. states that a dentist's license will be suspended or revoked for infraction of recordkeeping requirement. Suspension or revocation of a license for this action is an inappropriately harsh response by the regulatory board. The following language allows the Board appropriate flexibility in determining the appropriate disciplinary response based on the nature of the violation.

**Recommendation 37 - Amend §12-35-130 Employment of unlicensed person by dentist - penalty as follows:**

**(1) DELETE and registered from the first sentence.**

**(2) REVISE - 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**

**Update  
Advertising  
Provisions**

Presently, the statute contains a list of advertising mediums. This specific list should be replaced by a more general provision to allow the Board to respond to other types of advertisements by entities not authorized to advertise under this article.

***Recommendation 38 - Amend §12-35-131 Soliciting or advertisements by unlicensed persons as follows:***

***REVISE It is unlawful for any unlicensed person, corporation, entity, partnership, or group of person to solicit or advertise to the general public to construct, reproduce, or repair . . .***

**Add New  
Section  
Authorizing  
Retired  
License Status  
for Dentists**

Discussion: Many dentists have requested a retired license status. There is no public protection argument supporting this new level of regulation. Rather, it allows retired dentists to maintain membership in professional dental associations without paying the regular licensing fee required for an active or inactive license.

***Recommendation 39 - Amend to create §12-35-136 Retired license as follows:***

***ADD THIS ENTIRE SECTION***

***(1) Any person license to practice dentistry or dental hygiene pursuant to this article who holds a license may apply to the board to be transferred to a retired status. 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 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 or dental hygiene in this state and is no longer earning income as a dental or dental hygiene administrator, or consultant or is performing any activity which 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 as authorized pursuant to section 24-35-105, C.R.S. Such fee shall not exceed fifty (\$50.00) dollars.**

**(3) Such retired status 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 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.**

**(5) Any person license under this section who wishes to resume the practice of dentistry or dental hygiene shall file an application in the form and manner the board shall designate pursuant to section 12-35-113, pay the license fee as set 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 dental hygiene or may deny the application for any of the causes set forth in section 12-35-118.**

*APPENDICES*

## 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 of the Department of Regulatory Agencies 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 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;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

## **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 he 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.

(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 his 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.

(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, L. 79, p. 506, 17, effective July 19, 1979.



**12-35-104. State board of dental examiners - subject to termination - 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 four dentist members, two dental hygienist members, 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 1, 1989, and one member shall serve a term ending January 1, 1990. There shall be at least one member from each congressional district, but no more than two members of the board may reside in the same congressional district at the same time. No more than five members of the board shall be members of the same major political party. A vacancy on the board occurs whenever any member moves out of the congressional district from which he was appointed. A member who moves out of such congressional district shall promptly notify the governor of the date of such move, but such notice is not a condition precedent to the occurrence of the vacancy. 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 president, one as vice-president, and one as secretary and treasurer. 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, L. 79, p. 912, 16, effective July 1, 1979.

(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.

(b) This article is repealed, effective July 1, 1996.

**12-35-105. Qualifications of members of board.** No person shall be appointed to the board who is not a legal resident of Colorado, and no dentist or dental hygienist shall be appointed to the board who has not been licensed to practice dentistry or dental hygiene, respectively, in Colorado for at least five years immediately preceding his appointment. No person shall be eligible for appointment to the board who has been convicted of a violation of any of the provisions of this or any prior dental practice laws or has been convicted of a felony.

**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.

**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 licenses to practice dentistry and for licenses to practice dental hygiene;

(b) Make, publish, and declare reasonable rules and regulations after public hearing thereon. All rules and regulations of the board shall be reviewed annually at a public hearing. Notice of such hearing shall be given at least thirty days prior to the date set for the hearing in the manner prescribed by section 24-4-103, C.R.S. Rules and regulations of the board may concern but not be limited to:

(I) The conduct and administration of examinations 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 or to 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;

(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.

(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.

(2) Repealed, L. 86, p. 636, 20, effective July 1, 1986.

**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 his absence, the vice-president and, in the latter's absence, the secretary and treasurer, 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.

**12-35-109. Persons entitled to practice dentistry.** (1) It is unlawful for any person to practice dentistry or dental hygiene in this state except those:

(a) Who, on or after April 21, 1961, were duly licensed dentists, pursuant to the laws of this state;

(b) Who, on or after April 21, 1961, were duly licensed dental hygienists, pursuant to the laws of this state;

(c) Who may be duly licensed as dentists or dental hygienists, pursuant to the provisions of this article;

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

**12-35-110. What constitutes practicing dentistry.** (1) Any person shall be deemed to be practicing dentistry who:

(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) and (3);

(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;

(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) Diagnoses, or professes to diagnose, prescribes for or professes to the public to prescribe for, treats or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws or adjacent structure;
- (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) Uses a roentgen or X-ray machine for the purpose of taking dental X-rays or roentgenograms;
- (j) Gives, or professes to give, interpretations or readings of dental X-rays or roentgenograms;
- (k) Uses the words dentist, dental surgeon, oral surgeon, or the letters D.D.S., D.M.D., or any other words, letters, title, or descriptive matter which in any way represents to the general public that he is able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the teeth or jaws or adjacent structures; or
- (l) States, permits to be stated, or professes by any means or method whatsoever that he can perform or will attempt to perform dental operations or render a diagnosis connected therewith.

**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 profession by a physician or surgeon licensed as such under the laws of this state unless he 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;
- (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; or

(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.

**12-35-112. Names and status under which dental practice may be conducted.** (1) The conduct of the practice of dentistry in a corporate capacity is prohibited, but such prohibition shall not be construed to prevent the practice of dentistry 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) Group practice of dentistry is permitted

**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 his 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, L. 86, p. 636, 20, effective July 1, 1986.

(2) Repealed, L. 86, p. 636, 20, effective July 1, 1986.

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

(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) Notwithstanding anything in section 12-35-113 (1) (b) to the contrary, an applicant for a license to practice dentistry who has studied dentistry and received a degree of doctor of dental medicine or doctor of dental surgery from a foreign dental school shall be eligible for licensure if he:

(a) Prior to acceptance into the certification program described in paragraph (b) of this subsection (1), has passed the examinations given by the national board of dental examiners of the American dental association;

(b) Has been recommended for examination for licensure by the school of dentistry at the university of Colorado following satisfactory completion of a comprehensive preclinical dental examination, developed with the approval of the board, certifying that the applicant meets the standards established for students of the school of dentistry in those areas specified by the board; such an evaluation will be administered on an annual basis at the expense of the applicant and at the written request of the board;

(c) Has achieved a passing score on the examinations specified by the board for other applicants for licensure, pursuant to section 12-35-114; and

(d) Has completed, subsequent to meeting the requirements of paragraphs (a) to (c) of this subsection (1) and within two years after meeting such requirements, a one-year probationary period of dental practice under the direct supervision of a dentist licensed in accordance with this article and has been recommended for licensure to the board by the supervising dentist. The applicant shall register with the board in advance of the one-year probationary period and submit quarterly reports in accordance with the rules and on forms provided therefor by the board. Upon registration, the applicant shall be issued a probationary license, which shall expire when the applicant ceases practicing under the direct supervision of the licensed dentist or after one year, whichever is earlier.

**12-35-114. Examinations - how conducted - certificates issued to successful applicants - conditions on reexamination.** (1) When the application and accompanying proof, as required by section 12-35-113, are found satisfactory, the board shall notify the applicant to submit to an examination at a time and place to be fixed by the board.

(2) Such examination shall be written, theoretical, practical, and clinical and of such a character as to thoroughly test the qualification of the applicant to practice dentistry. Such examination may be given at any accredited dental school or other facility approved by the board within or without the state of Colorado and may be on a regional basis. Every applicant, however, must be examined for knowledge of the provisions of this article.

(3) The board may accept, in lieu of examination upon theory subjects, the certificate of the council of the national board of dental examiners of the American dental association evidencing the successful passing of examinations given by said council. The board may also accept, in accordance with reasonable rules and regulations, in lieu of examination upon theoretical subjects, results of examinations conducted by a school or college of dentistry accredited by the American dental association evidencing the successful passing of examinations given in the program of the school or college.

(4) All examination papers given by the board, with the grades affixed thereto, shall be filed with the secretary of the board and kept for reference and inspection 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 a majority of the board including the president and the secretary.

(5) Repealed, L. 86, p. 636, 20, effective July 1, 1986.

(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 clinical examination; and

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

**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, his signature, post-office address, office address, the number of his 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 him 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.

**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 he 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 of not more than one year, 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 receipt thereof, 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 or in securing a license or in taking the examination provided for in this article;
- (b) Conviction of a felony or pleading guilty or nolo contendere to a felony;

- (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;
- (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);
- (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 as a partner, agent, or employee of or in joint venture with any person who does not hold a license to practice dentistry within this state or practicing dentistry 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 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 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;
- (u) Sharing any professional fees with anyone except those with whom he 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 pays to an independent advertising or marketing agent compensation for the advertising or marketing services rendered on the licensed dentist'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.

(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.

(1.5) A revocation or suspension of a license to practice dentistry or dental hygiene in any other state, territory, or country for disciplinary reasons shall be deemed to be prima facie evidence of grounds for action under subsection (1) of this section.

(2) Repealed, L. 86, p. 636, 20, effective July 1, 1986.

(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 by mail.

(4) Repealed, L. 79, p. 506, 17, effective July 1, 1979.

(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 condition described in paragraph (d) of subsection (1) of this section or because of a physical or mental disability 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 physicians designated by it.

(b) Upon the failure of such licensed dentist or dental hygienist to submit to such mental or physical examinations, unless due to circumstances beyond his 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 he 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 his license to practice dentistry or dental hygiene in this state, to have given his 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 physician'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.

(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 he acts, and acts in the reasonable belief that the action taken by him 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 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 him 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 his knowledge, but the said witness cannot be asked about his testimony before such a committee or opinions formed by him 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 his place of business, shall furnish the secretary of the board his new 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. On July 1 of each even-numbered year, the secretary shall mail to each member of the board a complete list of licensees, corrected to the previous January 1, including the name, license number, and business address of each licensee entitled to practice in this state, and, 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 - reports.** (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) The board may prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to the provisions of section 24-1-136, C.R.S., a report accounting to the governor and the general assembly for the efficient discharge of all responsibilities assigned by law or directive to the board.

(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.

**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.

**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.

(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 his written application for a license, on which application he 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 that he is a graduate of a school of dental hygiene which, at the time of the applicant's graduation, was accredited by the council on dental education of the American dental association. 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;
  - (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 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) When the application and accompanying proof as required by section 12-35-123 are found satisfactory, the board shall notify the applicant to submit to an examination at a time and place to be fixed by the board. Such examination shall be written, theoretical, practical, and clinical. The examination may be given at any accredited dental school or other facility approved by the board within or without the state of Colorado and may be given on a regional basis. Every applicant, however, must be examined for knowledge of the provisions of this article.

(2) All examination papers, with the grades affixed thereto, shall be filed with the secretary of the board and kept for reference and inspection for a period of not less than two years. Should the applicant successfully complete such examinations, the applicant shall be granted a license by the board which shall be evidence of the applicant's right to practice as a dental hygienist in this state.

(3) Repealed, L. 77, p. 676, 18, effective July 1, 1977.

(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) Evidence of all current, valid, and active health care licenses, including dental hygiene licenses, held by the applicant;

(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) The board may accept, in lieu of examination upon theoretical subjects, the certificate of the council of the national board of dental examiners of the American dental association which evidences that the applicant successfully passed the examinations administered by the council for dental hygiene.

**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 or dental auxiliary. 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 him 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 in the office of a licensed dentist, or as provided elsewhere in this section.

(b) and (c) Repealed, L. 86, p. 636, 20, effective July 1, 1986.

(3) Except as provided in subsection (1) of this section, a dental auxiliary may perform any dental tasks and procedures, whether constituting dental hygiene pursuant to section 12-35-122.5 or not, except the administration of local anesthesia, scaling, root planing, and soft tissue curettage, assigned to him by a licensed dentist that do not require the professional skill of a licensed dentist but only under the personal direction of the licensed dentist. Any dental auxiliary who performs any task set forth in subsection (4), (5), or (6) of this section may perform such task under the general supervision of a licensed dentist.

(4) (a) A dental auxiliary may perform intraoral and extraoral tasks and procedures necessary for the construction of a full denture. These tasks and procedures shall include:

(I) Taking of preliminary and final impressions;

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

(III) Tooth selection;

(IV) 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;

(V) 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.

(b) The tasks and procedures in paragraph (a) of this subsection (4) shall be performed in the regularly announced office location of a licensed practicing dentist, and he 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 paragraph (a) of this subsection (4). 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 he can reasonably supervise.

(c) Prior to any work being performed pursuant to paragraph (a) of this subsection (4), 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 subparagraph (IV) of paragraph (a) 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. Both examinations shall be included in the dentist's fee.

(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 and regulations 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)

Repealed, effective July 1, 1979.

**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 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.

**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 and registered 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 suspension or revocation of his license to practice dentistry.

(3) Failure of any such unlicensed person to have in his 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 by mail, card, newspaper, pamphlet, radio, or otherwise 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 18-1-106, 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 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 his 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.

(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.

**12-35-201. 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.

(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.



**Disciplinary Actions - 1993**

**Disciplinary Actions - 1992**

**Disciplinary Actions - 1990**

