

## **Amended 22 Tex. Admin. Code §108.9 – Dishonorable Conduct**

### **Preamble**

The State Board of Dental Examiners (Board) adopts on an emergency basis an amendment to 22 TAC §108.9, in response to the COVID-19 disaster declaration. The amendment is being made pursuant to Executive Order GA 15, and expands dishonorable conduct to include failure to postpone all surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's dentist.

The amended rule is adopted on an emergency basis due to the imminent peril to the public health, safety and welfare caused by unnecessary exposure of both patients and health care professionals in undertaking and performing non-urgent elective surgeries and procedures during the COVID-19 pandemic.

The amended definitions are applicable only for purposes of the COVID-19 disaster declaration and shall only remain effective until the COVID-19 disaster declaration is terminated.

The emergency rule amendment is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

In addition, the emergency rule amendment is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The statutes affected by this rule: Dental Practice Act, Chapters 251 and 263, Texas Occupations Code.

Legal counsel for the Board has reviewed the proposed rule and has found it to be within the Board's authority to adopt.

### **§108.9 Dishonorable Conduct** *(yellow, underlined text indicates new sections)*

The dishonorable conduct section is intended to protect the public from dangerous, unethical, and illegal conduct of licensees. The purpose of this section is to identify unprofessional or dishonorable behaviors of a licensee which the Board believes are likely to pose a threat to the public. Actual injury to a patient need not be established for a licensee to be in violation of this section. Behavior constituting dishonorable conduct includes, but is not limited to:

(1) Criminal conduct--including but not limited to conviction of a misdemeanor involving fraud or a felony under federal law or the law of any state as outlined in Chapter 101 of this title.

(2) Deception or misrepresentation--engages in deception or misrepresentation:

(A) in soliciting or obtaining patronage; or

(B) in obtaining a fee.

(3) Fraud in obtaining a license--obtains a license by fraud or misrepresentation or participates in a conspiracy to procure a license, registration, or certification for an unqualified person.

(4) Misconduct involving drugs or alcohol--actions or conduct that include, but are not limited to:

(A) providing dental services to a patient while the licensee is impaired through the use of drugs, narcotics, or alcohol;

(B) addicted to or habitually intemperate in the use of alcoholic beverages or drugs;

(C) improperly obtained, possessed, or used habit-forming drugs or narcotics including self-prescription of drugs;

(D) grossly over prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances;

(E) prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances to or for a person who is not his or her dental patient; or

(F) prescribes, dispenses, or administers narcotic drugs, dangerous drugs, or controlled substances to a person for a non-dental purpose, whether or not the person is a dental patient.

(5) Assisting another in engaging in the unauthorized practice of dentistry or dental hygiene--holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice dentistry to practice dentistry in an office of the dentist that is under the dentist's control or management.

(6) Failure to comply with applicable laws, rules, regulations, and orders or remedial plans--violates or refuses to comply with a law relating to the regulation of dentists, dental hygienists, or dental assistants; fails to cooperate with a Board investigation; or fails to comply with the terms of a Board Order or remedial plan.

(7) Inability to practice safely--is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients.

(8) Discipline of a licensee by another state board--holds a license or certificate to practice dentistry or dental hygiene in another state and the examining board of that state:

(A) reprimands the person;

(B) suspends or revokes the person's license or certificate or places the person on probation; or

(C) imposes another restriction on the person's practice.

(9) Failure to comply with Medicaid, insurance, or other regulatory laws--knowingly provides or agrees to provide dental care in a manner that violates a federal or state law that:

(A) regulates a plan to provide, arrange for, pay for, or reimburse any part of the cost of dental care services; or

(B) regulates the business of insurance.

(10) Improper delegation--improperly delegates any task to any individual who is not permitted to perform the task by law, this chapter, or practice restrictions imposed by Board Order.

(11) Unprofessional conduct--engages in conduct that has become established through professional experience as likely to disgrace, degrade, or bring discredit upon the licensee or the dental profession.

(12) Failure to postpone all dental surgeries and procedures that are not medically necessary to diagnose or correct a serious medical condition of, or to preserve the life of, a patient who without timely performance of the dental surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient's dentist;

(A) Provided, however, that this prohibition shall not apply to any dental procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 disaster; or

(B) Any dental surgery or procedure performed in a licensed health care facility that has certified in writing to Texas HHSC both (1) that it will reserve at least 25% of its hospital capacity for treatment of COVID-19 patients, accounting for the range of clinical severity of COVID-19 patients, and (2) that it will not request any PPE from any public source — whether federal, state, or local — for the duration of the COVID-19 disaster as determined by the Governor.