

BOARD OF DENTAL EXAMINERS OF ALABAMA
ADMINISTRATIVE CODE

CHAPTER 270-X-5
ORGANIZATION AND PROCEDURE

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270-X-5-.01 Description Of Organization Of Board Of Dental
Examiners Of Alabama.

(1) The Board of Dental Examiners of Alabama is a
legislatively created board established pursuant to Code of Ala
1975, §34-9-1, et seq.

(2) A description of the Board and its general course
or method of its operations are found in Code of Ala 1975,
§34-9-1 et seq., and include as its main operations:

(a) The enforcement of Code of Ala 1975, §34-9-1, et
seq.

(b) The processing and determining the eligibility of applicants for dental/dental hygiene examinations.

(c) The conducting of these examinations and conducting hearings for the purpose of imposing those disciplinary penalties against dentists/dental hygienists set forth and outlined in Code of Ala 1975, §34-9-18(b), for a violation of the provisions of Code of Ala 1975, §34-9-1, et seq., including but not limited to Code of Ala 1975, §34-9-18.

(3) The description of the composition, government and operation of the Board is found generally in Code of Ala 1975, §§34-9-40 through 34-9-44.

(4) The power and duties of the Board are found in Code of Ala 1975, §34-9-43.

(5) Any member of the public may obtain information or make submissions or requests by notifying in writing the secretary-treasurer of the Board.

(6) This rule is adopted and intended to comply with Code of Ala 1975, §41-22-4(a).

Author: James S. Ward

Statutory Authority: Code of Ala. 1975, §§34-9-1, et seq.; 41-22-4.

History: Filed September 28, 1982. **Amended:** Filed April 19, 1989. **Amended:** Filed February 22, 2012; effective March 28, 2012.

270-X-5-.02 Procedure For Requesting Adoption, Amendment Or Repeal Of Rule And Submission. Pursuant to Code of Ala. 1975, §41-22-8, any person [as defined by Code of Ala. 1975, §41-22-3(6)] who wishes to request the adoption, amendment or repeal of any rule of the Board of Dental Examiners of Alabama shall be required to comply with the following:

(1) All requests shall be in writing and shall be sent to the secretary-treasurer of the Board of Dental Examiners of Alabama by registered mail with return receipt requested.

(2) If the request is submitted on behalf of a person who is an individual, it shall include the name, business and residence address, business and residence telephone number.

(3) If the request is submitted on behalf of an entity, it shall include the name, address and telephone number

of the said entity, and the name and title or position of the individual signing the request.

(4) The request shall identify with particularity the rule to be amended or repealed.

(5) The request shall explain in detail the reasons for the adoption, amendment, or repeal of any rule and shall set forth in detail the portion of the rule desired to be amended and shall set forth in detail the substance of any proposed amendment or new rule.

(6) The request shall state in detail how the person/entity is affected by the present rule and how they will be affected by the amendment or repeal of the existing rule or by the adoption of a new rule.

(7) At the discretion of the Board, the request shall either be considered and disposed of at a meeting of the entire Board or may be assigned to any member or members of the Board for consideration and disposition.

(8) Within sixty (60) days after receipt of the request by the Board the person/entity who made the request shall be notified in writing that the Board has denied the request on the merits, stating its reasons for the denial, or shall be notified that the Board will initiate rulemaking procedures in accordance with Code of Ala. 1975, §41-22-5.

(9) If the request does not meet the requirements set out above, the request shall be returned and the person/entity shall be notified in writing of this failure and shall further be notified of their right to resubmit the request.

Author: James S. Ward

Statutory Authority: Code of Ala. 1975, §§34-9-43, 41-22-8.

History: Filed September 28, 1982. **Amended:** Filed February 22, 2012; effective March 28, 2012.

270-X-5-.03 Administrative Determinations And Declaratory Rulings Of The Board. Pursuant to Code of Ala. 1975, §41-22-11, any person [as defined by Code of Ala. 1975, §41-22-3(6)] who wishes to petition the Board for a declaratory ruling with respect to the validity of a Board rule or with respect to the applicability to any person, property or state of facts of any rule of the Board or statute enforceable by the Board, or with respect to the means and scope of any order of the Board, shall comply with the following:

(1) All petitions shall be in writing and shall be sent to the secretary-treasurer of the Board of Dental Examiners of Alabama by registered mail with return receipt requested and shall specifically state that it is a "request for a declaratory ruling."

(2) The petition shall state with particularity facts sufficient to show the person/entity seeking relief is substantially affected by the rule and shall also state sufficient facts to permit the Board to make a valid determination.

(3) The petition shall state with particularity facts sufficient to show the person/entity seeking relief is substantially affected by the rule and shall also state sufficient facts to permit the Board to make a valid determination.

(4) Provided that the petition or the matters stated therein arise from an actual question or controversy, the petition shall then request that the Board do one or more of the following:

1. Issue a declaratory ruling with respect to the validity of one of the Board's rules; or
2. Issue a declaratory ruling with respect to the applicability to any person/entity, property or state of facts of any rule of the Board or statute enforceable by the Board; or
3. Issue a declaratory ruling with respect to the meaning and scope of any order of the Board.

(5) At the discretion of the Board, the petition shall either be considered at a meeting of the entire Board or may be assigned to any member or members of the Board for consideration, and in either case a declaratory ruling may be issued. The failure of the Board to issue a declaratory ruling on the merits within 45 days from the receipt of the request by the Board shall constitute a denial of the request as well as a denial of the merits of the request.

(6) If the petition does not meet the requirements set out above, the petition shall be returned and the party shall be notified in writing of this failure and shall further be notified of their right to submit the petition again.

Author: James S. Ward

Statutory Authority: Code of Ala. 1975, §§34-9-43, 41-22-11.

History: Filed September 28, 1982. **Amended:** Filed February 22, 2012; effective March 28, 2012.

270-X-5-.04 **Rule-Making Proceedings.**

(1) Notice.

(a) The Board shall give at least thirty-five (35) days notice of any proposed action on any rule by publication in the Alabama Administrative Monthly and shall otherwise comply with the notice requirements stated in Code of Ala. 1975, §41-22-5(a)(1).

(b) Any person who has made a timely request of the agency for advance notice of its rule-making proceedings and who has furnished the Board with a sufficient amount of money to cover the cost of mailing shall receive a copy of the notice referred to above.

(2) Public Hearings. The Board shall afford all interested persons reasonable opportunity to submit data, views or arguments, either orally or in writing. Any data, views, or arguments submitted in writing must be received by the secretary-treasurer of the Board at least seven (7) days before the date specified in the notice as the day of the public hearing. Those persons wishing to appear before the Board to present data, views, or arguments orally must submit a request to appear before the Board to the secretary-treasurer, and such request must be received by the secretary-treasurer at least seven (7) days before the scheduled public hearing. This request shall contain a complete summary of the data, views, or arguments which are to be orally presented.

(3) Board Decision. The Board shall fully consider all written and oral submissions concerning every proposed rule action. Upon adoption of a rule, the Board, if conflicting views are submitted on the proposed rule, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling any consideration urged against its adoption.

(4) Emergency Rules. In the event the Board finds that immediate danger to the public health, safety, or welfare requires adoption of a rule upon fewer than thirty-five 35 days notice, or that action is required by or to comply with a federal statute or regulation which requires adoption of a rule upon fewer than thirty-five 35 days notice, the Board may adopt an

emergency rule under the provisions of Code of Ala. 1975, §41-22-5(b).

(5) Compliance with the Alabama Administrative Procedure Act. All rules adopted by the Board shall otherwise substantially and procedurally comply with the provisions of the Alabama Administrative Procedure Act.

Author: James S. Ward

Statutory Authority: Code of Ala. 1975, §§34-9-43, 41-22-5.

History: Filed September 28, 1982. **Amended:** Filed February 22, 2012; effective March 28, 2012.

270-X-5-.05 Disciplinary Hearings For Dentists And Dental Hygienists.

(1) Conduct of Hearing.

(a) Hearing Examiner. The Board may in its discretion appoint some person to act as hearing examiner at disciplinary hearings. In the event a hearing examiner is appointed, he/she shall preside at the hearing and shall rule on all questions of evidence and procedure, notwithstanding any other provisions of these rules to the contrary.

(b) The procedure and format of a hearing shall be the same as that utilized in non-jury civil cases in the circuit courts of this state. Additionally, the Board shall be allowed the right to examine any witnesses called by either party.

(c) Order. The Board shall issue an order within thirty (30) days of the date of the final hearing, which shall include findings of fact, official notice taken, and conclusions of law, separately stated. The final order shall either be personally delivered or mailed by certified mail, return receipt requested, to each party or to his/her attorney of record.

(2) Evidence. Evidence shall be admitted in accordance with Code of Ala. 1975, §41-22-13. Further, in arriving at a determination upon dental issues in contested cases, the Board may consider the testimony of expert witnesses; however, the Board shall not be required to hear said expert testimony and may exercise its independent dental judgment in the resolution of dental issues.

(3) Emergencies. The Board may in an emergency situation, when danger to the public health, safety and welfare requires, suspend the license of a dentist/dental hygienist

without a hearing or with an abbreviated hearing in accordance with Code of Ala. 1975, §41-22-19(d).

(4) Other. The hearing shall otherwise be conducted in compliance with the provisions of the Alabama Administrative Procedure Act.

(5) Effective Date. Section 1(a) through 1(b) - October 1, 1982. Section 1(c), (2), (3) and (4) - October 1, 1983.

Author: James S. Ward

Statutory Authority: Code of Ala. 1975, §§34-9-2, 34-9-18, 34-9-24, 34-9-43, 41-22-12, 41-22-13, 41-22-16.

History: Filed September 28, 1982. **Amended:** Filed March 8, 2007; effective April 12, 2007. **Amended:** Filed February 22, 2012; effective March 28, 2012. **Amended:** Filed November 6, 2012; December 11, 2012.

270-X-5-.06 Complaints.

(1) The Board shall investigate complaints of alleged violations of the provisions of Code of Ala. 1975, §34-9-1 et seq. or of the drug or controlled substances laws by persons licensed pursuant to the provisions of Code of Ala. 1975, §34-9-1, et seq., following the complaint protocol approved by the Board vote and kept on file at the Board offices and effective at the time the complaint is received.

(2) In carrying out its investigations, the Board shall have the power to issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, records, documentary evidence and materials as set forth in Code of Ala. 1975, §34-9-46.

(3) At any time during the course of an investigation, the Board may, within its discretion, issue a Letter of Concern to the licensee who is the subject of the investigation. A Letter of Concern shall consist of a private, confident, written communication from the Board to the licensee, the contents of which shall be specified by the Board. A Letter of Concern shall not be considered a disciplinary action and is not intended to communicate a finding on the part of the Board that a licensee to whom the Letter of Concern is directed will be charged with or has been found guilty of wrong doing. The purpose of the Letter of Concern is to provide notice to the licensee under investigation that the Board has concluded that the alleged actions or conduct in question may not be in accord with provisions of Code of Ala. 1975, §34-9-1 et seq. The issuance of

a Letter of Concern shall not preclude the Board from taking any other action authorized by law. A Letter of Concern shall be deemed a nonpublic record under the provisions of Rule 270-X-1-.08. The Board shall notify the person or persons whose complaint led to the Board's decision to send a Letter of Concern. The Board may make public statistical reports concerning the number and type of Letters of Concern issued by the Board.

Author: James S. Ward

Statutory Authority: Code of Ala. 1975, §§34-9-2, 34-9-43, 41-22-12.

History: Filed September 28, 1982. **Amended:** Filed October 1, 2001; effective November 5, 2001. **Amended:** Filed February 22, 2012; effective March 28, 2012. **Amended:** Filed April 17, 2013; effective May 22, 2013.

270-X-5-.07 **Expense Recovery.** The Board shall be entitled to the following reimbursement or cost recovery:

(1) Insufficient check fund fee thirty dollars and 00/100 (\$30.000)

(2) Cost of supplying mailing twenty-five dollars and 00/100 (\$25.00)

(3) Reimbursement for mailing directories seven dollars and 00/100 (\$7.00)

(4) Copying of Drug Inventory/Dispensing Log seven dollars and 00/100 (\$7.00)

(5) Copy of records fifty cents (\$0.50) per page for pages over twenty (20) pages.

Author: James S. Ward

Statutory Authority: Code of Ala. 1975, §§34-9-10(e), 34-9-43(2), (10)

History: New Rule: Filed December 16, 2008; effective January 20, 2009. **Amended:** Filed February 22, 2012; effective March 28, 2012.

270-X-5.-08 **Authorized Fees.** **(Repealed)**

Author: James S. Ward

Statutory Authority: Code of Ala. 1975, §§34-9-10(a), 34-9-15, (2), 34-9-16, 34-9-61, 34-9-61, 34-9-63, 34-9-64, 34-9-81

History: **New Rule:** Filed December 16, 2008; effective January 20, 2009. **Repealed:** Filed July 24, 2009; effective August 28, 2009.

270-X-5-.09 Non-Disciplinary Administrative Penalties.

(1) Except as set forth in paragraph five (5), any licensee who is found to be in violation of the following requirements of the Alabama Dental Practice Act shall have imposed a non-disciplinary administrative penalty as set forth below :

(a) As to dentists only, failing to renew their DEA registration within one (1) year of the expiration thereof.

(b) As to dentists only, any practice owner who allows a licensee to practice up to one hundred-eighty (180) days without a current annual registration permit.

(c) As to dentists only, by failing to comply with the provisions of Code of Ala. 1975, §34-9-15.1.

(d) Failing to timely renew any license or permit required pursuant to the Alabama Dental Practice Act and performing activities which require the applicable license or permit up to one hundred-eighty (180) days during the time the same was expired.

(e) Failing to comply with the provisions of Board Rule 270-X-4.04. In addition to the applicable penalty, the licensee shall be required to make up the number of deficient hours by December thirty-first (31st) of the following renewal period.

(2) The non-disciplinary administrative penalty shall be:

(a) The penalty for a violation by dentists shall be up to five hundred dollars and 00/100 (\$500.00).

b) The penalty for a violation by licensed dental auxiliary shall be up to two hundred fifty dollars and 00/100 (\$250.00).

(3) Failure to pay the non-disciplinary administrative penalty within the time prescribed by the Board, unless otherwise notified, will result in disciplinary action.

(4) A licensee shall not qualify for the non-disciplinary administrative penalty referenced above for more than one (1) violation occurring within five (5) years of any prior application of this rule.

(5) Notwithstanding the provisions of this rule, the Board may take into account a licensee who self-reports any of the violations referenced above and said self-reporting may constitute mitigating circumstances such as to allow the imposition of a non-disciplinary administrative penalty.

Author: Board of Dental Examiners of Alabama

Statutory Authority: Code of Ala. 1975, §§34-9-18(17), Act 2009-18.

History: New Rule: Filed July 24, 2009; effective August 28, 2009. **Amended:** Filed February 22, 2012; effective March 28, 2012. **Amended:** Filed May 7, 2014; effective June 11, 2014. **Amended:** Filed July 14, 2015; effective August 18, 2015.

270-X-5-.10 Definition Of Gross Negligence. (REPEALED)

Author: Board of Dental Examiners of Alabama

Statutory Authority: Code of Ala. 1975, §34-9-18(a)(6).

History: New Rule: Filed July 24, 2009; effective August 28, 2009. **Amended:** Filed February 22, 2012; effective March 28, 2012. **Repealed:** Filed March 19, 2013; effective April 23, 2013.

270-X-5-.11 Definition Of The Active Practice Of Dentistry And Dental Hygiene.

The Active Practice of Dentistry shall mean the practice of dentistry as defined in Code of Ala. 1975, §34-9-6 and that the licensed dentist must be an owner, employee or independent contractor of a dental practice practicing no less than twenty (20) hours per week or one thousand (1,000) hours per year. Further, the active practice of dental hygiene shall mean the practice of dental hygiene as set forth in Board Rule 270-X-3.10 and that the licensed dental hygienist practices no less than twenty (20) hours per week or one thousand (1,000) hours per year

Author: Board of Dental Examiners of Alabama

Statutory Authority: Code of Ala. 1975, §34-9-40.

History: New Rule: Filed March 19, 2013; effective April 23, 2013.

270-X-5-.12 **Candidates For Board Election: Campaign
Procedures.** **(REPEALED)**

Author: Board of Dental Examiners of Alabama

Statutory Authority: Code of Ala. 1975, §34-9-40, 34-9-43.

History: New Rule: Filed April 17, 2013; effective April 22, 2013. **Repealed:** Filed June 16, 2016; effective July 31, 2016.