

Readopt with amendment Den 102.01, effective 12/9/98 (Doc #6908), as amended effective 4/4/02 (Doc #7671), to read as follows:

Den 102.01 Organization of Board.

(a) The board of dental examiners consists of 9 members: 6 dentists, 2 hygienists, and one public member. One of these serves as president and one as vice-president. It is the duty of the board to examine, register and license applicants whom they find to be qualified to practice dentistry or dental hygiene in this state. All board members are required by RSA 317-A:3 to be residents of the state. The 6 dentist members are licensed to practice dentistry in this state. The 2 dental hygienist members are licensed to practice dental hygiene in this state. The board is also responsible for the administration of the practice of dental auxiliaries assisting licensed dentists practicing in the state.

(b) Members of the board are appointed as their terms expire by the governor, with the advice and consent of the council, for a period of 5 years and a limit of 2 consecutive terms, or until their successors are appointed and qualified. Members of the board receive a per diem allowance for meetings and hearings. Members are reimbursed for expenses of travel.

(c) The board meets annually and at such times as its business requires. A president is chosen at the annual meeting from the membership of the board. A true record of all their official acts is preserved by the board's executive secretary. The records are public and open to inspection on the board's web site and during office hours in the office of the board of dental examiners, 2 Industrial Park Drive, Concord. Notice of board meetings is posted in the board's administrative office and on the board's website, www.nh.gov/dental.

(d) The board rules govern the conduct and qualifications of dentists, dental hygienists and dental assistants and establish requirements for continuing education as a prerequisite for renewal of licenses of dentists and dental hygienists. The board is a member of the Northeast Regional Board of Dental Examiners and the American Association of Boards of Dental Examiners.

(e) The board establishes standing committees and ad hoc committees to facilitate meeting the requirements of RSA 317-A. Standing committees shall include a:

- (1) Malpractice committee which reviews insurance claims and legal judgments for medical injury and refers them to the full board pursuant to RSA 317-A:17 V;
- (2) Statutory Committee which suggests amendments to RSA 317-A for the protection of the public health, safety and welfare in a changing environment; and
- (3) Anesthesia and sedation evaluation committee to ensure that dentists who have a permit to administer general anesthesia and/or sedation meet the requirements of Den 304.02.

Adopt Den 102.02 to read as follows:

Den 102.02 Financial Interests. Pursuant to RSA 15-A, board members shall file a statement of financial interest within 14 days of becoming a board member and thereafter annually by the third Friday of January.

Readopt with amendment Den 207.01 and Den 207.02, effective 5/17/07 (Doc#8884-A), to read as follows:

Den 207.01 Pleadings.

(a) The only pleadings permitted shall be petitions and motions. Complaints against licensees and applications for licenses shall not be considered pleadings.

(b) Petitions shall contain:

- (1) The name and address of the petitioner;
- (2) The name and address of the petitioner's representative, if any;
- (3) A concise statement of the facts which warrant the relief requested from the board;
- (4) The description of the action which the petitioner wishes the board to take;
- (5) A citation to any statutes, rules, orders, or other authority which entitles the petition to the relief requested; and
- (6) The signature and date required by Den 206.02(a).

Den 207.02 Complaints of Licensee Misconduct.

(a) Complaints alleging misconduct by licensees in violation of RSA 317-A:17 or Den 500 shall be in writing and filed at the board's offices in Concord, New Hampshire.

(b) A complaint shall contain the following information:

- (1) The name and address of the complainant;
- (2) The name and business address of the licensee against whom the complaint is directed; and
- (3) The specific facts and circumstances which are believed to constitute professional misconduct.

(c) A complaint shall be treated as an ex parte request for the initiation of disciplinary proceedings by the board and shall be a confidential document subject to public disclosure only as provided by Den 212.04 (f).

- (d) A complaint shall be dismissed at any time upon a determination that it:
- (1) Fails to state a cause of action;
 - (2) Alleges a time-barred cause of action; or
 - (3) The complainant has unreasonably failed to respond to a request for further information or has otherwise failed to cooperate with a board investigation or hearing.
- (e) The dismissal or withdrawal of a complaint shall not preclude the board from independently pursuing some or all of the allegations of misconduct alleged by the complainant.
- (f) Replies to complaints shall contain:
- (1) The name and address of the respondent;
 - (2) The name and address of the representative of the respondent, if any;
 - (3) A statement admitting or denying each fact alleged in the complaint pursuant to Den 205.01(b)(3);
 - (4) A statement admitting or denying the authority identified by the complainant pursuant to Den 205.01(b)(5);
 - (5) A concise statement of any additional or different facts which warrant the board acting in the manner requested by the respondent;
 - (6) A citation to any statutes, rules, orders or other authority, not identified in the complaint, having a bearing upon the subject matter of the complaint;
 - (7) A description of the action which the respondent wishes the board to take; and
 - (8) The signature and date required by Den 206.02 (a).
- (g) Replies shall be filed within 20 days from the date the complaint was received by the respondent unless otherwise ordered by the board.
- (h) Any fact contained in the complaint which is not denied in the reply, shall be deemed admitted by the respondent. A statement that the respondent lacks sufficient knowledge to admit or deny shall be treated as a denial. The complainant shall be presumed to deny all allegations in the reply, and no response shall be permitted to the reply.
- (i) A dental record submitted with a reply to a complaint shall be a copy of the original record and shall be accompanied by a typed rendition of the handwritten parts of the original record.
- (j) At any stage of the board's evaluation of the allegations in a complaint, the board may, with the consent of the licensee, issue a final settlement decree or consent order which imposes discipline upon the licensee and terminates further disciplinary action in whole or in part.
- (k) Action under (j) above, shall not be taken unless:
- (1) The complainant receives notice and an opportunity to submit written comments concerning the proposed settlement or consent decree;

(2) There are no material facts in dispute between the licensee and the complainant;
or

(3) The complainant's view of the facts, if true, would not, in the discretion of the board, result in the imposition of a greater disciplinary sanction against the licensee than that imposed by the proposed settlement or consent decree.

(l) At any time during the board's evaluation of the allegations in a complaint, the board may elect to defer further disciplinary action while the licensee and the complainant participate in confidential mediation on a timely and good faith basis with a qualified mediator who is not affiliated with the board.

(m) When mediation is conducted under (l), above, the mediator shall attempt informal resolution of the dispute between the complainant and the licensee, and, within 60 days from the issuance of a mediation order, shall submit a written report to the board which contains either:

(1) A written settlement agreed to by the parties; or

(2) A report of the circumstances which appear to prevent settlement of the issues between the parties.

(n) Upon receiving the mediator's report, the board shall discontinue its investigation or proceed with adjudicatory proceedings.

(o) Information concerning the substantive misconduct issues alleged by the complainant which either party discloses to the mediator during good faith mediation shall be accorded the same privilege available to settlement negotiations under NH Rule of Evidence 408 not withstanding Den 208.09.

(p) Unless previously dismissed or settled, a complaint shall be granted, denied, or deferred, in whole or in part, by the board based upon the board's confidential evaluation of the information available to it and the value of potential disciplinary sanctions.

(q) A complaint which raises substantial issues of professional misconduct which might warrant disciplinary sanctions shall be granted by incorporating those issues into a notice of hearing which commences an adjudicatory hearing pursuant to Den 201.01. In which case, disciplinary action against the licensee shall be taken or not taken based upon the board's evaluation of the evidence of professional misconduct submitted during the hearing.

(r) A complainant is not a party to a disciplinary hearing, but may petition the board to intervene. When some or all of the allegations in a complaint are the subject of a disciplinary hearing, the notice of hearing shall inform the complainant that he or she may intervene in the proceeding subject to appropriate conditions or shall include findings demonstrating that the complainant has forfeited this right by failing to cooperate with previous board orders or investigatory requests.

(s) Anonymous Complaints

(1) Pursuant to RSA 317-A:18 I and III, the board shall investigate anonymous complaints when it believes:

a. The allegations have merit;

b. The public welfare may be at risk; and

- c. The complainant has legitimate reasons for acting anonymously.
- (2) Pursuant to Den 203.02, the board shall waive or suspend procedural rules in Den 207.02 that require the name and address of the complainant.
- (t) Complaints shall be retained in the board's files as follows:
 - (1) Complaints which result in discipline shall be retained in perpetuity; and
 - (2) All other complaints shall be retained for 10 years, or longer if they are part of a developing pattern of behavior that may constitute professional misconduct pursuant to RSA 317-A:17 II (d).

Amend Den 208.15 (c), effective 5/17/07 (Doc #8884-A), cited and to read as follows:

Den 208.15 Adjudicatory Proceedings.

(c) Upon the filing of a complaint which complies with the provisions of Den 207.02, the presiding officer shall order the licensee or registrant to respond in writing to stated misconduct allegations by admitting or denying each allegation within 20 days of the filing of such allegations with the board. The failure by the licensee or registrant to so respond within the specified time period shall result in the issuance of an order of default, and disciplinary sanctions shall be imposed against the licensee or registrant.

Amend Den 209.02(b) and (c), effective 5/17/07 (Doc #8884-A), cited and to read as follows:

Den 209.02 Authority of Presiding Officer.

(b) Except as provided by Den 209.04, the presiding officer shall receive no testimony or oral argument on the merits of the case unless a majority of the board members eligible to participate in the proceeding, including the presiding officer, are present. Board members need not be present during prehearing conferences or arguments on discovery or other procedural motions.

(c) Except in proceedings conducted pursuant to Den 209.04, the presiding officer shall, consistent with the fair and orderly conduct of the proceeding, permit board members who are present during any stage of an adjudicative proceeding to make reasonable inquiries of the parties and witnesses.

Amend Den 209.03 (b), effective 5/17/07 (Doc #8884-A), cited and to read as follows:

Den 209.03 Exceptions to Interlocutory Rulings By The Presiding Officer.

(b) The parties may include objections to an adverse ruling of a presiding officer in any exceptions taken to a proposed decision under Den 209.04. When a proposed decision is not issued, such objections shall be presented to the board as a motion or as part of a closing memorandum submitted within 10 days from the close of the hearing or such further period as the presiding officer shall allow.

Amend Den 209.04, effective 5/17/07 (Doc #8884-A), by amending (d) and deleting (e), cited and to read as follows:

Den 209.04 Proposed Decisions By Presiding Officer.

(d) When the board has directed a presiding officer to receive evidence and enter a proposed decision, there shall be no communications between the presiding officer and the board members concerning the merits of the case, and the board members shall not participate in the questioning of witnesses at the hearing, as would otherwise be permitted by Den 208.12.

Amend Den 210.01 (a), effective 5/17/07 (Doc #8884-A), cited and to read as follows:

Den 210.01 Motion for Reconsideration or Rehearing

(a) Final adjudicative orders of the board, and orders denying petitions for declaratory rulings or rulemaking, shall take effect on the date they are served upon the parties pursuant to Den 206.03 (c).

Adopt Den 210.04 to read as follows:

Den 210.04 Retention of Adjudicatory Decisions. Board decisions which result from adjudicatory proceedings shall be retained by the board in perpetuity.

Amend Den 213.04 (b), effective 5/17/07 (Doc #8884-A), cited and to read as follows:

Den 213.04 Deficiencies in Petitions.

(b) Upon receipt of a corrected petition, the board shall take action as outlined in Den 213.02.

Amend Den 214.01 (a) intro., effective 5/17/07 (Doc #8884-A), cited and to read as follows:

Den 214.01 Petitions for Declaratory Rulings

(a) Petitions for a declaratory ruling on matters within the jurisdiction of the board shall be filed as a petition which meets the requirements of Den 207.01 (b) and also contains the following information:

Amend Den 214.02 (a), effective 5/17/07 (Doc #8884-A), cited and to read as follows:

Den 214.02 Action on Petitions for Declaratory Rulings

(a) If a petition for declaratory ruling indicates that other persons may be substantially affected by the proposed ruling, the board shall require service of the petition on such persons and advise them of their right to file a reply pursuant to Den 207.01(c).

Amend Den 215.01 (c), effective 5/17/07 (Doc #8884-A), cited and to read as follows:

Den 215.01 Petitions for Waiver

(c) If examination of the petition reveals that other persons would be substantially affected by the proposed relief, the board shall require service of the petition on such person and advise them of their right to the petition pursuant to Den 207.01 (c).

Amend Den 301.01, effective 3/9/07 (Doc #8838), as amended effective 8/16/07 (Doc #8963), as amended effective 9/10/08 (Doc #9256), by amending (i), inserting new (l), and readopting and renumbering existing (l) and (m) as (m) and (n), cited and to read as follows:

Den 301.01 Application for Dental Hygiene Licensure

(i) Applicants for endorsement certification shall have successfully completed the Northeast Regional Board examination, or other regional or state board clinical examination for dental hygienists.

(l) After passage of the test in (k) above, the board shall issue an active New Hampshire dental hygiene license upon payment of the full registration fee adopted in Den 301.06.

(m) Required materials that are subject to change shall be updated if more than 4 months old at time of completion of application.

(n) After 6 months, the board shall discard the applications of applicants who choose not to complete the application process.

Amend Den 301.02, effective 3/9/07 (Doc #8838), as amended effective 8/16/07 (Doc #8963), as amended effective 9/10/08 (Doc #9256), by amending (h) (1), inserting new (l), and readopting and renumbering existing (l) and (m) as (m) and (n) cited and to read as follows:

Den 301.02 Application for Dental Licensure

(h)

(1) The applicant has successfully completed the Northeast Regional Board examination, or other regional or state board clinical examination for dentists, and .

(l) After passage of the test in (k) above, the board shall issue an active New Hampshire dental license upon payment of the full registration fee adopted in Den 301.06.

(m) Required materials that are subject to change shall be updated if more than 4 months old at the time of completion of application.

(n) After 6 months, the board shall discard the applications of applicants who choose not to complete the application process.

Readopt with amendment Den 301.06, effective 1/11/08 (Doc #9069), to read as follows:

Den 301.06 Board Fees. The board of dental examiners shall establish the following fees cited in Table 3.1.1 below:

Table 3.1.1 Fees

Type of Fee	Fee
Application and examination fee for dental license	\$200.00
Application and examination fee for dental hygiene license	100.00
Active dental registration fee	340.00
Reinstatement fee for lapsed active dental license	200.00
Inactive dental registration fee	135.00
Active dental hygiene registration fee	160.00
Reinstatement fee for lapsed active dental hygiene license	100.00
Inactive dental hygiene registration fee	60.00
Duplicate license certificate	20.00
Duplicate registration certificate	20.00
List of dentists or dental hygienists	50.00
Other copying per page	0.25
Letter of good standing	20.00
Application to administer general anesthesia and sedation	10.00
Application for dental hygienist to administer local anesthesia	10.00
Late biennial registration fees:	
Active dentists	200.00
Active hygienists	100.00
Inactive dentists and hygienists	40.00

Adopt Den 301.10 and Den 301.11 to read as follows:

Den 301.10 Reinstatement of Lapsed Inactive Licenses – When an inactive license has lapsed as a result of failure of the applicant to submit a completed renewal application, the board shall reinstate the lapsed license to inactive status if the applicant:

- (a) Meets eligibility requirements for renewal;
- (b) Pays the registration fee and late fee; and
- (c) Submits a written request for reinstatement by November 1st of the year the license lapsed.

Den 301.11 Restricted License. A restricted license limits a dentist or dental hygienist to performing those procedures specified by the board. Restricted licenses shall be issued:

- a. To dentists and dental hygienists who are limited to performing some, but not all, procedures to acceptable professional standards thereby protecting the public; and
- b. To dentists and dental hygienists who are in need of remedial training in specific areas to reach professional standards that protect the public welfare.

Readopt with amendment Den 302.03, effective 3/9/07 (Doc #8838), to read as follows:

Den 302.03 Dental Hygienist Qualifications. In addition to the qualifications included in RSA 317-A:21, an applicant for examination and registration as a dental hygienist in the state of New Hampshire shall have successfully completed the Northeast Regional Board clinical examination, or other regional or state board clinical examination for dental hygienists within the 3 year period prior to the completion of the licensing process in New Hampshire, unless the applicant seeks licensure by endorsement certification as provided in Den 301.01(i) pursuant to RSA 317-A:12 III, in which circumstance the 3 year period shall be waived.

Amend Den 302.05, effective 3/9/07 (Doc #8838), as amended effective 8/16/07 (Doc #8963), as amended effective 9/10/08 (Doc #9256), by readopting (a) by inserting (a)(1) and amending (c), (l)(2), (m)(3), (o), and (s)(3), and amending and renumbering (v) as (x), cited and to read as follows:

Den 302.05 Qualification in Specific Area

- (a) Any dental assistant who is 18 years of age or older, or dental hygienist shall be considered qualified in a specific area if he or she has successfully completed an expanded duty course, or successfully challenged an examination in same, or both, as stated in Den 302.05(a) through (t). Approval of a course or exam given by an entity other than the board itself shall include approval of the passing grade or other standard for successful completion of said course or exam set by the entity giving said course or exam. Course records, pursuant to Den 403.06, and a certificate of course completion shall be retained by the course participant and provided to the board upon request by the board.

(1) Dental assistants, other than graduate dental assistants, shall qualify to perform a preliminary inspection of the oral cavity as stated in Den 302.05 (m) before qualifying in any other area addressed in Den 302.05.

(c) No dental hygienist or dental assistant shall be considered qualified prior to the date that he or she is officially informed by the course or examination provider that he or she has successfully completed an expanded duty course approved by the Board.

(l) If qualification in orthodontics is determined, the duty shall be performed with the following conditions:

(2) Any dental assistant other than a graduate or certified dental assistant shall have at least 400 hours work experience in clinical dental assisting in order to qualify to take this course.

(m) Any dental assistant shall be qualified in performing a preliminary inspection of the oral cavity after successfully completing an expanded duty course in preliminary inspection of the oral cavity as follows:

(3) Any dental assistant other than a certified dental assistant or graduate dental assistant shall have - 400 hours of experience in clinical dental assisting in order to qualify to take a course in preliminary inspection of the oral cavity.

(o) Any dental assistant other than a graduate dental assistant, who has work experience consisting of at least 400 hours in clinical dental assisting, shall be considered qualified in coronal polishing after meeting the eligibility requirements and successfully completing an expanded duty course in coronal polishing, as follows:

(s) Any dental hygienist or dental assistant shall be considered qualified to monitor the administration of nitrous oxide (N₂O) to patients after successfully completing an expanded duty course in monitoring the administration of nitrous oxide, as follows:

(3) Dental assistants shall be certified or graduate dental assistants as defined in Den 401.02 or have 400 hours experience in clinical dental assisting prior to taking an expanded duty course in monitoring the administration of nitrous oxide anesthesia;

(x) The following shall apply to in-office tooth whitening:

(1) Any dental assistant other than a graduate or certified dental assistant shall have at least 400 hours in clinical dental assisting in order to qualify to take a course in in-office whitening;

(2) Any dental assistant qualified in in-office whitening shall perform this service only under the direct supervision of a licensed dentist; and

(3) Any dental hygienist qualified in in-office whitening shall perform this service under the direct or indirect supervision of a licensed dentist.

Readopt with amendment Den 303.03, effective 3/9/07 (Doc#8838), to read as follows:

Den 303.03 Time of Examinations. Dental examinations and dental hygiene examinations shall be held at least monthly at the administrative office of the board of dental examiners, 2 Industrial Park Drive, Concord, NH at 9:30 am and 1:30 pm by appointment only.

Amend Den 304.02 (g), effective 9/10/08 (Doc #9256), cited and to read as follows:

Den 304.02 Permits for Use of General Anesthesia, Deep Sedation and Moderate Sedation

(g) To determine if the requirements of this section have been met by dentists with permits to administer general anesthesia, deep sedation and moderate sedation, or moderate sedation only:

- (1) The board shall require an initial on-site evaluation of the facility, equipment and drugs as they relate to general anesthesia and sedation prior to the issuance of the initial permit;
- (2) A comprehensive evaluation including personnel, records and patient treatment as they relate to general anesthesia and sedation shall be required within six months of the issuance of the initial permit:
- (3) The evaluation shall be carried out by a team of dental consultants acting as agents of the board, as follows:
 - a. Dentists with permits to administer general anesthesia, deep sedation and moderate sedation shall be evaluated by dental consultants who satisfy (b)(3) b. 1. or 2. above; and
 - b. Dentists with permits to administer moderate sedation only shall be evaluated by dental consultants who satisfy (b)(3) b. 1. or 2. above or (c)(3) a. above.
- (4) If more than one office location is used by the dentist, then each office shall have an on-site evaluation;
- (5) If the results of an initial evaluation are unsatisfactory to the board, upon written request of the applicant, a second evaluation shall be conducted by a different team of consultants;
- (6) Upon completion of a satisfactory evaluation, evaluations shall be held at least once every 5 years; and
- (7) Such evaluation shall be carried out in the same manner as the initial evaluation.

Amend Den 401.02, effective 3/9/07 (Doc #8838), as amended 9/10/08 (Doc #9256), by amending amend (l) and (m), cited and to read as follows:

Den 401.02 Certified Dental Assistants' and Graduate Dental Assistants' Duties

- (l) After at least 400 hours work experience in clinical dental assisting
- (m) After at least 400 hours work experience in clinical dental assisting

Amend Den 402.01, effective 3/9/07 (Doc #8838), as amended effective 9/10/08 (Doc #9256), by inserting new (b) (16) to read as follows:

Den 402.01 Hygienists' Duties. A dental hygienist shall perform the following duties:

- (b)
 - (16) Administer nitrous oxide if qualified pursuant to Den 302.05.

Amend Den 403.07, effective 3/9/07 (Doc #8838), as amended effective 8/16/07 (Doc #8963), as amended effective 9/10/08 (Doc #9256), by amending 403.07 (a)(3), cited and to read as follows:

Den 403.07 Categories of Credit

(a) A licensee shall be entitled to obtain up to 100% of the required CEUs in any or all of the following categories:

- (3) A licensee shall receive credit for 100% of required CEUs for passing the written portion of the Northeast Regional Board Examination.

Amend 501.01, effective 3/9/07 (Doc #8838), as amended effective 8/16/07 (Doc #8963), as amended effective 9/10/08 (Doc #9256), by amending (e), inserting (e)(1) and amending (j), cited and to read as follows:

Den 501.01 Ethical Duties

(e) Upon request of a patient, dentists shall provide a copy of the patient's records within 20 days for a nominal fee not to exceed \$15 for up to 30 pages and \$0.50 per page thereafter, pursuant to RSA 332-I. Radiographs and models shall be provided at a reasonable cost.

1.) This obligation exists whether or not the patient's account is paid in full or whether the patient has paid for his or her records.

(j) Dentists and dental hygienists shall inform the board within 30 days in writing of any sanction pursuant to Den 301.01 (a)(10) and Den 301.02 (a)(11) imposed by any jurisdiction.