

BOARD OF DENTAL EXAMINERS OF ALABAMA
ADMINISTRATIVE CODECHAPTER 270-X-5
ORGANIZATION AND PROCEDURE

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270-X-5-.01	<u>Description Of Organization Of Board Of Dental Examiners Of Alabama.</u>

(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 (Repealed 5/13/2024).

(Repealed)

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. **Repealed:** Published March 29, 2024; effective May 13, 2024.

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 8/28/09).

(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) In the absence of specific aggravating factors, the Board shall assess a non-disciplinary administrative penalty for the following violations:

(a) As to dentists only who allow a licensee under his or her direct supervision to practice without a current annual registration and/or permit after October 1 and before November 1.

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

(c) 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 after October 1 and before November 1.

(d) Failing to comply with the provisions of Board Rule 270-X-4.04 (Mandatory Continuing Education For Dentists And Dental Hygienists), but only if the licensee pays the applicable penalty and cures the violation by earning all of the deficient hours by the December 31 immediately following the continuing education cycle in which the violation occurred.

(e) As to dentists only, failing to comply with the provisions of Board Rule 270-X-2-.20 (Reporting Of Adverse Occurrences).

(2) The non-disciplinary administrative penalty shall be \$500.00.

(3) If any licensee, having been assessed a non-disciplinary administrative penalty pursuant to this rule, fails to pay the assessed amount within thirty (30) days of notice thereof or by such other deadline as prescribed by the Board, the Board will set aside the non-disciplinary administrative penalty and initiate disciplinary action through formal contested case proceedings.

(4) A licensee shall not qualify for a non-disciplinary administrative penalty more than once in any five-year period.

Author: Board of Dental Examiners of Alabama

Statutory Authority: Code of Ala. 1975, §34-9-18(16), 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. **Amended:** Filed December 13, 2018; effective January 27, 2019. **Amended:** Published April 30, 2024; effective June 14, 2024. **Amended:** Published February 28, 2025; effective April 14, 2025.

270-X-5-.10 Definition Of Gross Negligence (Repealed 4/23/13).

(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 7/31/16).

(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.

270-X-5-.13 Use Of Electronic Signatures.

(1) **Legal Basis:** The Alabama Uniform Electronic Transactions Act ("**UETA**"), Ala. Code §8-1A-1 et seq., enacted in 2002, is intended to facilitate the use of electronic documents in business, commercial, and governmental transactions. The Act promotes, but does not require, the use of electronic signatures and creation of electronic documents. Section 8-1A-18(a) provides that "each government agency of this state with rule-making authority...may determine by rule whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create generate, communicate, store, process, use, and rely upon electronic records and electronic signatures." Section 8-1A-12(a) provides that an electronic record meets other state law requirements for record retention if the electronic record both accurately reflects the original document and is accessible for later reference. Section 8-1A-13 provides that an electronic record may not be excluded from evidence in court solely because it is in electronic form.

(2) Use of Electronic Signatures and Electronic Records: In accordance with Ala. Code §8-1A-18(a), the Board of Dental Examiners of Alabama hereby establishes that to the fullest extent permitted by the Act, and except as otherwise provided in this Rule, the Board will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures. In accordance with Section 8-1A-18(b), the system selected and used for collection and validation of electronic signatures will, at a minimum:

(a) Provide an identical copy of the original signed and executed document to the signer.

(b) Ensure non-repudiation (i.e., that the signer cannot deny the fact that he or she electronically signed the document).

(c) Capture information about the process used to capture signatures (i.e., create an audit trail) including but not limited to Internet Protocol addresses; date and time stamps of all events; all web pages, documents, disclosures, and other information presented; and what each party acknowledged, agreed to, and signed.

(d) Encrypt, end-to-end, all communication within the signature process. Encryption technologies shall comply with state encryption standards, including the requirements that cryptographic modules be validated to the current Federal Information Processing Standards (FIPS).

(3) Selection of Digital Signature Platform. The Executive Director is authorized to select and contract with an appropriate provider for collection and validation of electronic signatures that meets the requirements of subparagraphs (2)(a)–(d) of this Rule. The Executive Director shall consult with the Office of Information Technology before making such selection.

(4) Exception-When Ink Signature is Still Required. Pursuant to Ala. Code §34-9-15(b)(1), the initial registration application requires a notarized, wet-ink signature.

Author: Board of Dental Examiners of Alabama

Statutory Authority: Code of Ala. 1975, §§ 8-1A-18 (a) (1), 34-9-43; State of Alabama, Office of Information Technology, Policy No. 115-01 (January 5, 2021).

History: New Rule: Published September 29, 2023; effective November 13, 2023.

270-X-5-.14 Rules Of Ethics For Board Members, Licensees.

(1) In General. The Alabama Ethics Law, Ala. Code § 36-25-1, et seq., provides for rules of ethical conduct applicable to all

public officials, public employees, lobbyists, and principals. The Dental Practice Act further provides that the Board "shall adhere to guidelines and proceedings of the State Ethics Commission as provided in Chapter 25 of Title 36," and authorizes the Board to "adopt rules for the purpose of establishing additional ethical guidelines." Ala. Code §34-9-43(b). This Rule incorporates key principles of the Alabama Ethics Law into the Board's administrative code, and provides that the Board may initiate disciplinary action against any licensee of the Board who violates this Rule. Nothing in this Rule supersedes the authority of the Alabama Ethics Commission, Attorney General, or District Attorneys to investigate or prosecute violations of the Alabama Ethics Law.

(2) Definitions. The following definitions apply to the following terms as used in this Rule:

(a) Business: as defined in Ala. Code §36-25-1(1), including nonprofit corporations and associations.

(b) Business with which the person is associated: as defined in Ala. Code §36-25-1(2).

(c) Confidential Information: Any information declared by Ala. Admin. Code r. 270-X-1-.08(3) to be privileged, confidential, and/or nonpublic.

(d) Conflict of Interest: as defined in Ala. Code §§36-25-1(8) and/or 36-25-5(f).

(e) Family Member of a Public Employee: as defined in Ala. Code §36-25-1(14). All persons employed by the Board are public employees.

(f) Family Member of a Public Official: as defined in Ala. Code §36-25-1(15). All Board members of the Board of Dental Examiners, all persons elected or appointed to the Board who have not yet been installed as Board members, and all former Board members appointed to serve in connection with a particular matter pursuant to Ala. Code § 34-9-41, are public officials.

(g) Lobbyist: as defined in Ala. Code §36-25-1(21).

(h) Principal: as defined in Ala. Code §36-25-1(24).

(i) Thing of Value: as defined in Ala. Code §36-25-1(34).

(3) Use of Official Position for Private Gain or Advantage.

(a) No Board member shall use his or her official position for the private gain or advantage of himself, herself, any family member, or any business with which he or she is associated.

(b) No licensee of the Board shall cause or attempt to cause any Board member to violate the preceding subsection (a).

(4) Use or Disclosure of Confidential Information for Private Gain or Advantage.

(a) No Board member shall use or disclose confidential information for the private gain or advantage of himself, herself, any family member, or any business with which he or she is associated.

(b) No licensee of the Board shall cause or attempt to cause any Board member to violate the preceding subsection (a).

(5) Conflict of Interest. Board members shall immediately recuse themselves, and shall take no action whatsoever, in connection with any matter in which they have a conflict of interest. If a Board member receives any inquiry, advocacy, request for information, request for assistance, or similar communication in connection with a matter as to which he or she has a conflict of interest, the Board member shall immediately inform the person making the communication that he or she cannot act on the communication and shall provide the person the name of another Board member or Board employee who does not have a conflict of interest.

(6) Gifts and Things of Value.

(a) No person shall offer or give anything, whether or not a thing of value, to any Board member, to any family member of any Board member, or to any business associated with any Board member, with the intention to influence the official actions of the Board member. No Board member shall request or accept any such gift.

(b) No licensee of the Board shall offer or give anything of value to any Board member, other than in the ordinary course of business.

(c) No lobbyist shall offer or give anything, whether or not a thing of value, to any Board member, to any family member of the Board member, or to any business associated with the Board member. No Board member shall request or accept any such gift.

(d) No lobbyist or principal shall offer or give a thing of value to any Board member, to any family member of the Board member, or to any business associated with the Board member. No Board member shall request or accept any such gift.

(7) Statement of Economic Interests. All Board members who are required to file the Statement of Economic Interests required by Ala. Code § 36-25-14, shall timely and accurately file such statements.

(8) Implementation of Ala. Code § 36-25-9(a). No person shall be employed by the Board who is associated with any business that is regulated by the Board.

(9) Ethics Law Awareness and Training. At the regular meeting of the Board held in November of each calendar year, the Board shall receive one hour of educational training regarding the requirements of the Ethics Law. All Board members and Board employees are encouraged to seek out and receive additional educational training on the requirements of the Ethics Law.

(10) Reporting; Retaliation Prohibited.

(a) The Executive Director shall, within 10 days of becoming aware of the relevant circumstances, make a report to the Alabama Ethics Commission on any matters that come to his or her attention in his or her official capacity which constitute a violation of the Ethics Law and/or this Rule. The Executive Director shall cooperate in every possible manner in connection with any investigation or hearing, public or private, which may be conducted by the Ethics Commission.

(b) The Board, or the Executive Director, as applicable, shall not discharge, demote, transfer, or otherwise discriminate against a Board employee regarding the employee's compensation, terms, conditions, or privileges of employment based on either the employee's reporting a violation of what he or she believes in good faith to be a violation of the Ethics Law and/or this Rule, or the employee's giving truthful statements or truthful testimony concerning an alleged ethics violation, regardless of whether the employee filed the complaint.

(11) Violations. Any licensee of the Board who violates any provision of this Rule may, after notice and hearing, be subject to disciplinary action pursuant to Ala. Code §34-9-18(a)(16), and, if found guilty, may be subject to any of the penalties prescribed in Ala. Code §34-9-18(b).

Author: Board of Dental Examiners of Alabama

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

History: New Rule: Published July 31, 2024; effective September 14, 2024.