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# Colorado Revised Statutes 2018

## TITLE 12

### **Professions and Occupations**

#### ARTICLE 35

### **Dentists and Dental Hygienists**

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TITLE 12  
**Professions and Occupations**

ARTICLE 35  
**Dentists and Dental Hygienists**

**Editor's note:** This article was numbered as article 1 of chapter 42, C.R.S. 1963. This article was repealed in 2003 and was subsequently recreated and reenacted in 2004, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 2003, consult the Colorado statutory research explanatory note and the table itemizing the replacement volumes and supplements to the original volume of C.R.S. 1973 beginning on page vii in the front of this volume. Former C.R.S. section numbers prior to 2003 are shown in editor's notes following those sections that were relocated.

PART 1

GENERAL PROVISIONS

**12-35-101. Short title.** This article shall be known and may be cited as the "Dental Practice Act".

**Source: L. 2004:** Entire article RC&RE, p. 822, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1724, § 18, effective July 1.

**12-35-102. Legislative declaration.** 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 article 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.

**Source: L. 2004:** Entire article RC&RE, p. 822, § 1, effective July 1.

**12-35-103. Definitions.** As used in this article 35, unless the context otherwise requires:

- (1) "Accredited" means a program that is nationally recognized for specialized accrediting for dental, dental hygiene, and dental auxiliary programs by the United States department of education.
- (2) "Board" means the Colorado dental board created in section 12-35-104.
- (3) "Dental assistant" 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 of the board.

(4) "Dental hygiene" means the delivery of preventive, educational, and clinical services supporting total health for the control of oral disease and the promotion of oral health provided by a dental hygienist within the scope of his or her education, training, and experience and in accordance with applicable law.

(4.5) "Dental hygiene diagnosis" means the identification of an existing oral health problem that a dental hygienist is qualified and licensed to treat within the scope of dental hygiene practice. The dental hygiene diagnosis focuses on behavioral risks and physical conditions that are related to oral health. A dentist shall confirm any dental hygiene diagnosis that requires treatment that is outside the scope of dental hygiene practice pursuant to sections 12-35-124, 12-35-125, and 12-35-128.

(5) "Dentistry" means the evaluation, diagnosis, prevention, or treatment, including nonsurgical, surgical, or related procedures, of diseases, disorders, or conditions of the oral cavity, maxillofacial area, or the adjacent and associated structures and the impact of the disease, disorder, or condition on the human body so long as a dentist is practicing within the scope of his or her education, training, and experience and in accordance with applicable law.

(6) (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 the dentist's presence on the premises and availability for prompt consultation and treatment.

(b) For purposes of this subsection (6) only, "premises" means within the same building, dental office, or treatment facility and within close enough proximity to respond in a timely manner to an emergency or the need for assistance.

(7) and (8) Repealed.

(9) "Independent advertising or marketing agent" means a person, firm, association, or corporation that 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.

(10) (a) "Indirect 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 do require that the tasks be performed with the prior knowledge and consent of the dentist.

(b) For purposes of this subsection (10) only, "premises" means within the same building, dental office, or treatment facility and within close enough proximity to respond in a timely manner to an emergency or the need for assistance.

(10.5) (a) "Interim therapeutic restoration" or "ITR" means a direct provisional restoration placed to stabilize a tooth until a licensed dentist can assess the need for further definitive treatment.

(b) (I) "Interim therapeutic restoration" involves the removal of soft material using hand instrumentation, without the use of rotary instrumentation, and the subsequent placement of a glass ionomer restoration.

(II) The board may promulgate rules regarding the use of new restorative materials in addition to the materials described in subparagraph (I) of this paragraph (b) that are appropriate to the interim therapeutic restoration procedure as they become available.

(c) "Interim therapeutic restoration" includes protective restoration for adults delivered in accordance with section 12-35-128.5.

(11) "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 function in the oral cavity, maxillofacial area, or adjacent and associated regions.

(12) "License" means the grant of authority by the board to any person to engage in the practice of dentistry or dental hygiene. "License" includes an academic license to practice dentistry pursuant to section 12-35-117.5. A license is a privilege personal to the licensee, and the board may revoke, suspend, or impose disciplinary conditions on the license for a violation of this article.

(13) Repealed.

(14) "Proprietor" includes any person who:

(a) Employs dentists, dental hygienists, or dental assistants in the operation of a dental office, except as provided in sections 12-35-113 and 12-35-128;

(b) Places in possession of a dentist, dental hygienist, dental assistant, 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 a dental office and makes the same available in any manner for use by dentists, dental hygienists, dental assistants, 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.

(15) Repealed.

(16) "Telehealth by store-and-forward transfer" means an asynchronous transmission of medical or dental information to be reviewed by a dentist at a later time at a distant site without the patient present in real time.

(17) "Telehealth supervision" means indirect supervision by a dentist of a dental hygienist performing a statutorily authorized procedure using telecommunications systems.

**Source: L. 2004:** Entire article RC&RE, p. 823, § 1, effective July 1. **L. 2009:** (4.5) added, (SB 09-129), ch. 181, p. 797, § 1, effective April 22; (12) amended, (HB 09-1128), ch. 21, p. 104, § 1, effective August 5. **L. 2014:** (2) and (12) amended and (7), (8), (13), and (15) repealed, (HB 14-1227), ch. 363, p. 1705, § 2, effective July 1. **L. 2015:** (10.5), (16), and (17) added, (HB 15-1309), ch. 326, p. 1330, § 1, effective August 5. **L. 2018:** IP and (17) amended, (HB 18-1045), ch. 67, p. 622, § 1, effective March 22.

**12-35-104. Colorado dental board - subject to termination - immunity - repeal of article.** (1) (a) (I) The Colorado dental board is hereby created 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 is subject to the supervision and control of the division of professions and occupations as provided by section 24-34-102, C.R.S.

(II) The board consists of seven dentist members, three dental hygienist members, and three members from the public at large. The governor shall appoint each member for a term of four years, and each member shall have the qualifications provided in this article. No member shall serve more than two consecutive terms of four years. Each board member shall hold office until his or her term expires or until the governor appoints a successor.

(III) In making appointments to the board, the governor shall attempt to create geographical, political, urban, and rural balance among the board members. If a vacancy occurs

in any board membership before the expiration of the member's term, the governor shall fill the vacancy by appointment for the remainder of the term in the same manner as in the case of original appointments.

(IV) The governor may remove any member of the board for misconduct, incompetence, or neglect of duty.

(b) (Deleted by amendment, L. 2014.)

(2) The board shall organize annually by electing one of its members as chairperson and one as vice-chairperson. It may adopt such rules for its government as it may deem proper. The board shall meet at least quarterly, and more often if necessary, at such times and places as it may from time to time designate.

(3) Repealed.

(4) (a) Section 24-34-104, C.R.S., concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, applies to the board. Prior to the repeal of this article, the department of regulatory agencies shall review all functions of the board as provided in section 24-34-104, C.R.S.

(b) This article is repealed, effective September 1, 2025.

**Source: L. 2004:** Entire article RC&RE, p. 825, § 1, effective July 1. **L. 2014:** (1) and (4) amended and (3) repealed, (HB 14-1227), ch. 363, p. 1706, § 3, effective July 1.

**12-35-105. Qualifications of board members.** (1) A person shall be qualified to be appointed to the board if such person:

(a) Is a legal resident of Colorado;

(b) Is currently licensed as a dentist or dental hygienist, if fulfilling that position on the board; and

(c) Has been actively engaged in a clinical practice in this state for at least five years immediately preceding the appointment, if fulfilling the position of dentist or dental hygienist on the board.

(2) Repealed.

**Source: L. 2004:** Entire article RC&RE, p. 826, § 1, effective July 1. **L. 2014:** (2) repealed, (HB 14-1227), ch. 363, p. 1724, § 17, effective July 1.

**12-35-106. Quorum of board - panel.** 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. Any action taken by a quorum of the assigned panel shall constitute action by the board; except that, for disciplinary matters concerning a dentist, a majority of dentist members is required for a quorum.

**Source: L. 2004:** Entire article RC&RE, p. 826, § 1, effective July 1.

**12-35-107. Powers and duties of board.** (1) The board shall exercise, in accordance with this article 35, the following powers and duties:

(a) Repealed.

(b) Make, publish, declare, and periodically review reasonable rules as necessary to carry out and make effective the powers and duties of the board as vested in it by this article 35,

including rules regarding:

(I) The use of lasers for dental and dental hygiene purposes within defined scopes of practice, subject to appropriate education and training, and with appropriate supervision, as applicable;

(II) Minimum training, experience, and equipment requirements to obtain an anesthesia or sedation permit under section 12-35-140;

(III) Criteria and procedures consistent with section 12-35-140 for an office inspection program to be completed upon application and renewal of sedation and anesthesia permits pursuant to section 12-35-140;

(IV) A uniform system and schedule of fines pursuant to section 12-35-129.1 (6)(b).

(c) Conduct hearings to revoke, suspend, or deny the issuance of a license or renewal of a license granted under the authority of this article or of previous laws; issue a confidential letter of concern; issue a letter of admonition; impose an administrative fine; or 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. The board may elect to hear the matter itself pursuant to the provisions of section 12-35-129.1 (1), 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. The board may also grant and issue temporary licenses. The board shall promulgate rules concerning the granting of temporary licenses, which rules shall include, but not be limited to, restrictions with respect to effective dates, areas of practice that may be performed, and licensing fees that may be charged to the applicant.

(f) Repealed.

(g) Through the department of regulatory agencies and subject to appropriations made to the department of regulatory agencies, employ hearing officers or administrative law judges on a full-time or part-time basis to conduct any hearings required by this article. The hearing officers and administrative law judges shall be appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(h) (I) In accordance with section 12-35-140, issue anesthesia and sedation permits to licensed dentists and dental hygienists and set and collect fees for permit issuance; except that the board shall only collect fees for local anesthesia permits issued to dental hygienists on or after July 1, 2014.

(II) (Deleted by amendment, L. 2014.)

(i) Repealed.

(2) The board may recognize those dental specialties defined by the American dental association.

(3) To facilitate the licensure of qualified applicants, the board may, in its discretion, establish a subcommittee of at least six board members to perform licensing functions in accordance with this article. Four subcommittee members shall constitute a quorum of the subcommittee. The chairperson of the board may serve on a subcommittee as deemed necessary by the chairperson. Any action taken by a quorum of the subcommittee shall constitute action by the board.

**Source: L. 2004:** Entire article RC&RE, p. 826, § 1, effective July 1. **L. 2014:** IP(1), (1)(b), (1)(c), and (1)(h) amended and (1)(a), (1)(f), and (1)(i) repealed, (HB 14-1227), ch. 363, p. 1724, § 19, effective July 1. **L. 2017:** IP(1), IP(1)(b), and (1)(b)(I) amended, (HB 17-1010), ch. 13, p. 38, § 1, effective August 9.

**12-35-108. 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.

**Source: L. 2004:** Entire article RC&RE, p. 828, § 1, effective July 1.

**Editor's note:** This section is similar to former § 12-35-107.5 as it existed prior to 2003, and the former § 12-35-108 was relocated to § 12-35-109.

**12-35-109. Power of board to administer oaths - issue subpoenas - service - penalty for refusing to obey subpoena.** (1) The board 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 relevant 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.

(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.

(3) Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this part 1, and any person who lodges a complaint pursuant to this part 1 shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this part 1 shall be immune from any civil or criminal liability that may result from such participation.

**Source: L. 2004:** Entire article RC&RE, p. 828, § 1, effective July 1.

**Editor's note:** This section is similar to former § 12-35-108 as it existed prior to 2003, and the former § 12-35-109 was relocated to § 12-35-112.

**12-35-110. Disposition of fees.** (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 may be applied only to the payment of:

(a) The necessary traveling, hotel, and clerical expenses of the members of the board in the performance of their duties;

(b) Dues for membership in the American association of dental boards, or its successor association, and the expense of sending delegates to the association's convention; and

(c) Other expenditures necessary or proper to carry out and execute the powers and duties of the board and implement this article.

(3) 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.

**Source: L. 2004:** Entire article RC&RE, p. 829, § 1, effective July 1. **L. 2014:** (2) amended, (HB 14-1227), ch. 363, p. 1726, § 20, effective July 1.

**Editor's note:** This section is similar to former § 12-35-121 as it existed prior to 2003, and the former § 12-35-110 was relocated to § 12-35-113.

**12-35-111. Change of address - duplicate licenses and certificates.** (1) Every person licensed under this article, upon changing the licensee's place of business, shall furnish to the board the licensee's new mailing address within thirty days.

(2) The board may issue a duplicate of any license upon attestation by the licensee of loss or destruction and shall charge a fee established pursuant to section 24-34-105, C.R.S., for a duplicate.

**Source: L. 2004:** Entire article RC&RE, p. 829, § 1, effective July 1.

**Editor's note:** This section is similar to former § 12-35-119 as it existed prior to 2003, and the former § 12-35-111 was relocated to § 12-35-115.

**12-35-112. Persons entitled to practice dentistry or dental hygiene.** (1) It is unlawful for any person to practice dentistry or dental hygiene in this state except those:

(a) Who are duly licensed as dentists or dental hygienists pursuant to this article;

(b) Who are designated by this article as dental assistants, but only to the extent of the procedures authorized by this article and the rules adopted by the board.

**Source: L. 2004:** Entire article RC&RE, p. 829, § 1, effective July 1.

**Editor's note:** This section is similar to former § 12-35-109 as it existed prior to 2003, and the former § 12-35-112 was relocated to § 12-35-116.

**12-35-113. What constitutes practicing dentistry - authority to electronically prescribe.** (1) A person is practicing dentistry if the person:

(a) Performs, or attempts or professes to perform, any dental operation, oral surgery, or

dental diagnostic or therapeutic services of any kind; except that nothing in this paragraph (a) shall be construed to prohibit a dental hygienist or dental assistant 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 paragraph (b) shall be construed to prohibit a dental hygienist or dental assistant from performing those tasks and procedures consistent with section 12-35-128;

(c) Directly or indirectly, by any means or method, takes impression of the human tooth, teeth, jaws, maxillofacial area, or adjacent and associated structures, performs any phase of any operation incident to the replacement of a part of a tooth, or supplies artificial substitutes for the natural teeth, jaws, or adjacent and associated structures; except that nothing in this paragraph (c) prohibits a dental hygienist or dental assistant from performing tasks and procedures consistent with sections 12-35-124 (1)(d) and 12-35-128 (3)(b)(III);

(d) Furnishes, supplies, constructs, reproduces, or repairs any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth or upon the jaws, maxillofacial area, or adjacent and associated structures other than on the written laboratory work order of a duly licensed and practicing dentist;

(e) Places an appliance or structure described in paragraph (d) of this subsection (1) in the human mouth;

(f) Adjusts or attempts or professes to adjust an appliance or structure described in paragraph (d) of this subsection (1);

(g) Delivers an appliance or structure described in paragraph (d) of this subsection (1) to any person other than the dentist upon whose laboratory work order the work was performed;

(h) 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 or upon the jaws, maxillofacial area, or adjacent and associated structures;

(i) Examines, diagnoses, plans treatment of, or treats natural or artificial structures or conditions associated with, adjacent to, or functionally related to the oral cavity, jaws, maxillofacial area, or adjacent and associated structures and their impact on the human body;

(j) Extracts, or attempts to extract, human teeth or corrects, or attempts to correct, malformations of human teeth or jaws;

(k) Repairs or fills cavities in human teeth;

(l) Prescribes ionizing radiation or the use of an X ray for the purpose of taking dental X rays or roentgenograms; except that nothing in this paragraph (l) shall be construed to prohibit these procedures from being delegated to appropriately trained personnel in accordance with this article and rules of the board;

(m) Gives, or professes to give, interpretations or readings of dental X rays or roentgenograms, CT scans, or other diagnostic methodologies; except that nothing in this paragraph (m) shall be construed to prohibit a dental hygienist from performing tasks and procedures consistent with sections 12-35-124 and 12-35-125;

(n) Represents himself or herself to an individual or the general public as practicing dentistry, by using the words "dentist" or "dental surgeon", or by using the letters "D.D.S.", "D.M.D.", "D.D.S./M.D.", or "D.M.D./M.D.". Nothing in this paragraph (n) prohibits a dental hygienist or dental assistant from performing tasks and procedures consistent with section 12-35-128 (2) or (3)(b).

(o) States, permits to be stated, or professes by any means or method whatsoever that he

or she can perform or will attempt to perform dental operations or render a diagnosis connected therewith;

(p) Prescribes drugs or medications and administers local anesthesia, analgesia including nitrous oxide/oxygen inhalation, medication prescribed or administered for the relief of anxiety or apprehension, minimal sedation, moderate sedation, deep sedation, or general anesthesia as necessary for the proper practice of dentistry; except that nothing in this paragraph (p) shall be construed to prohibit a dental hygienist from performing those tasks and procedures consistent with sections 12-35-124 (1)(e) and (1)(g), 12-35-125 (1)(f), and 12-35-128, and in accordance with rules promulgated by the board;

(q) Prescribes, induces, and sets dosage levels for inhalation anesthesia; except that nothing in this paragraph (q) shall be construed to prohibit the delegation of monitoring and administration to appropriately trained personnel in accordance with this article and rules of the board;

(r) Gives or professes to give interpretations or readings of dental charts or records or gives treatment plans or interpretations of treatment plans derived from examinations, patient records, dental X rays, or roentgenograms; except that nothing in this paragraph (r) shall be construed to prohibit a dental hygienist or dental assistant from performing tasks and procedures consistent with sections 12-35-124, 12-35-125, and 12-35-128 (2) and (3).

(2) A licensed dentist may prescribe orders electronically.

**Source:** **L. 2004:** Entire article RC&RE, p. 830, § 1, effective July 1. **L. 2014:** IP(1), (1)(c), (1)(n), (1)(p), and (1)(q) amended and (2) added, (HB 14-1227), ch. 363, p. 1726, § 21, effective July 1.

**Editor's note:** This section is similar to former § 12-35-110 as it existed prior to 2003, and the former § 12-35-113 was relocated to § 12-35-117.

**12-35-114. Dentists may prescribe drugs - surgical operations - anesthesia - limits on opioid prescriptions - repeal.** (1) A licensed dentist is authorized to prescribe drugs or medicine; perform surgical operations; administer, pursuant to board rules, local anesthesia, analgesia including nitrous oxide/oxygen inhalation, medication prescribed or administered for the relief of anxiety or apprehension, minimal sedation, moderate sedation, deep sedation, or general anesthesia; and use appliances as necessary to the proper practice of dentistry. A dentist shall not prescribe, distribute, or give to any person, including himself or herself, any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5) or as contained in schedule II of 21 U.S.C. sec. 812, other than in the course of legitimate dental practice and pursuant to the rules promulgated by the board regarding controlled substance record keeping.

(2) (a) A dentist shall not prescribe more than a seven-day supply of an opioid to a patient who has not had an opioid prescription in the last twelve months by that dentist, and may exercise discretion to include a second fill for a seven-day supply. The limits on initial prescribing do not apply if, in the judgment of the dentist, the patient:

(I) Has chronic pain that typically lasts longer than ninety days or past the time of normal healing, as determined by the dentist, or following transfer of care from another dentist who prescribed an opioid to the patient;

(II) Has been diagnosed with cancer and is experiencing cancer-related pain; or

(III) Is experiencing post-surgical pain that, because of the nature of the procedure, is expected to last more than fourteen days.

(b) Prior to prescribing the second fill of any opioid prescription pursuant to this section, a dentist must comply with the requirements of section 12-42.5-404 (3.6). Failure to comply with section 12-42.5-404 (3.6) constitutes grounds for discipline under section 12-35-129 only if the dentist repeatedly fails to comply.

(c) A dentist licensed pursuant to this article 35 may prescribe opioids electronically.

(d) A violation of this subsection (2) does not create a private right of action or serve as the basis of a cause of action. A violation of this section does not constitute negligence per se or contributory negligence per se and does not alone establish a standard of care. Compliance with this section does not alone establish an absolute defense to any alleged breach of the standard of care.

(e) This subsection (2) is repealed, effective September 1, 2021.

**Source: L. 2004:** Entire article RC&RE, p. 832, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1727, § 22, effective July 1. **L. 2018:** Entire section amended, (SB 18-022), ch. 221, p. 1402, § 2, effective May 21.

**Editor's note:** This section is similar to former § 12-35-122 as it existed prior to 2003, and the former § 12-35-114 was relocated to § 12-35-119.

**12-35-115. Persons exempt from operation of this article.** (1) This article does not apply to the following practices, acts, and operations:

(a) Practice of his or her profession by a physician or surgeon licensed as such under the laws of this state unless the physician or surgeon practices dentistry as a specialty;

(b) The administration of an anesthetic by a qualified anesthetist or registered nurse for a dental operation;

(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) Students or residents regularly employed by a private hospital or by a city, county, city and county, or state hospital under an advanced dental education program accredited by the commission on dental accreditation or its successor commission and approved and registered by the board;

(e) The practice of dental hygiene by instructors and students or the practice of dentistry by students or residents in schools or colleges of dentistry, schools of dental hygiene, or schools of dental assistant education while such instructors, students, or residents are participating in accredited programs of such schools or colleges;

(f) The practice of dentistry or dental hygiene by dentists or dental hygienists licensed in good standing by 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, so long as such practice is limited to five consecutive days in a twelve-month period and the name of each person engaging in such practice is submitted to the board, in writing and on a form approved by the board, at least ten days before the person performs such practice;

(g) The filling of laboratory work orders of a licensed dentist, as provided by section 12-35-133, 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 restoration of natural teeth, or replacement of structures relating to the jaws, maxillofacial area, or adjacent and associated structures;

(h) The performance of acts by a person under the direct or indirect supervision of a dentist licensed in Colorado when authorized pursuant to the rules of the board or when authorized under other provisions of this article;

(i) The practicing of dentistry or dental hygiene by an examiner representing a testing agency approved by the board, during the administration of an examination; or

(j) (Deleted by amendment, L. 2010, (HB 10-1128), ch. 172, p. 611, § 5, effective April 29, 2010.)

(k) The practice of dentistry or dental hygiene by dentists or dental hygienists licensed in good standing by other states while providing care as a volunteer, at the invitation of any group of licensed dentists or dental hygienists in this state who are in good standing, so long as such practice is limited to five consecutive days in a twelve-month period and the name of each person engaging in such practice is submitted to the board, in writing and on a form approved by the board, at least ten days before the person performs such practice.

**Source:** L. 2004: Entire article RC&RE, p. 832, § 1, effective July 1. L. 2007: (1)(k) added, p. 691, § 1, effective August 3. L. 2009: (1)(e) amended, (HB 09-1128), ch. 21, p. 104, § 2, effective August 5. L. 2010: (1)(e), (1)(i), and (1)(j) amended, (HB 10-1128), ch. 172, p. 611, § 5, effective April 29. L. 2014: IP(1), (1)(b), and (1)(d) amended, (HB 14-1227), ch. 363, p. 1727, § 23, effective July 1.

**Editor's note:** This section is similar to former § 12-35-111 as it existed prior to 2003, and the former § 12-35-115 was relocated to § 12-35-130.

**12-35-116. Names and status under which dental practice may be conducted.** (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 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) The group practice of dentistry or dental hygiene is permitted.

(3) The practice of dentistry or dental hygiene by a limited liability company of licensees or by a limited liability partnership of licensees is permitted subject to the limitations and requirements, insofar as are applicable, set forth in section 12-36-134, relating to a limited liability company or limited liability partnership for the practice of medicine.

**Source:** L. 2004: Entire article RC&RE, p. 833, § 1, effective July 1.

**Editor's note:** This section is similar to former § 12-35-112 as it existed prior to 2003, and the former § 12-35-116 was relocated to § 12-35-121.

**12-35-116.5. Ownership of dental or dental hygiene practice - information to be posted - heir to serve as temporary proprietor - limitations.** (1) (a) Only a dentist licensed to practice dentistry in this state pursuant to this article may be the proprietor of a dental practice in this state.

(b) Only a dentist licensed to practice dentistry in this state pursuant to this article or a dental hygienist licensed to practice dental hygiene in this state pursuant to this article may be the proprietor of a dental hygiene practice in this state.

(c) (I) Notwithstanding paragraphs (a) and (b) of this subsection (1), a nonprofit organization may be the proprietor of a dental or dental hygiene practice if:

(A) The organization is a community health center, as defined in the federal "Public Health Service Act", 42 U.S.C. sec. 254b; or

(B) At least fifty percent of the patients served by the organization are low income. As used in this sub-subparagraph (B), "low income" means the patient's income does not exceed the income level specified for determining eligibility for the children's basic health plan established in article 8 of title 25.5, C.R.S.

(II) Notwithstanding paragraphs (a) and (b) of this subsection (1), a political subdivision of the state may be the proprietor of a dental or dental hygiene practice. As used in this subparagraph (II), "political subdivision of the state" means a county, city and county, city, town, service authority, special district, or any other kind of municipal, quasi-municipal, or public corporation, as defined in section 7-49.5-103, C.R.S.

(III) The proprietorship of a dental or dental hygiene practice by a nonprofit organization that meets the criteria in subparagraph (I) of this paragraph (c) or by a political subdivision of the state shall not affect the exercise of the independent professional judgment of the licensed dentist or dental hygienist providing care to patients on behalf of the organization or political subdivision.

(d) (I) A dentist may conduct a dental or dental hygiene business collaboratively as a provider network in accordance with part 3 of article 18 of title 6, C.R.S.

(II) A dental hygienist may conduct a dental hygiene business collaboratively as a provider network in accordance with part 3 of article 18 of title 6, C.R.S.

(2) (a) The name, license number, ownership percentage, and other information, as required by the board, of each proprietor of a dental or dental hygiene practice, including an unlicensed heir who is the temporary proprietor of the practice, as specified in subsection (3) of this section, shall be available at the reception desk of the dental or dental hygiene practice during the practice's hours of operation. The information required by this paragraph (a) shall be available in a format approved by the board.

(b) Upon request, the dental or dental hygiene practice shall promptly make available to the requesting person a copy of the information required by paragraph (a) of this subsection (2).

(c) The dental or dental hygiene practice shall ensure that the information required by paragraph (a) of this subsection (2) is accurate and current. Any change in the information shall be updated within thirty days after the change.

(3) (a) Notwithstanding sections 12-35-129 (1)(h) and 12-35-129.4 (1) and (2), if a dentist or dental hygienist who was the proprietor of a dental or dental hygiene practice and was engaged in the active practice of dentistry or dental hygiene dies:

(I) An heir to the dentist may serve as a proprietor of the deceased dentist's dental or dental hygiene practice for up to one year after the date of the dentist's death, regardless of whether the heir is licensed to practice dentistry or dental hygiene; or

(II) An heir to the dental hygienist may serve as a proprietor of the deceased dental hygienist's dental hygiene practice for up to one year after the date of the dental hygienist's death, regardless of whether the heir is licensed to practice dentistry or dental hygiene.

(b) Upon good cause shown by the heir or the heir's representative, the board may extend the period described in paragraph (a) of this subsection (3) by up to an additional twelve months, if necessary, to allow the heir sufficient time to sell or otherwise dispose of the practice.

(c) If an heir to a deceased dentist or dental hygienist serves as a proprietor of the deceased dentist's or dental hygienist's practice as specified in paragraph (a) of this subsection (3), all patient care provided during the time the heir is a proprietor of the practice shall be provided by an appropriately licensed dentist or dental hygienist.

(d) The temporary proprietorship of a dental or dental hygiene practice by an unlicensed heir shall not affect the exercise of the independent professional judgment of the licensed dentist or dental hygienist providing care to patients on behalf of the practice.

**Source: L. 2008:** Entire section added, p. 147, § 1, effective August 5. **L. 2014:** (1)(d) added and IP(3)(a) amended, (HB 14-1227), ch. 363, p. 1722, § 13, effective July 1.

**12-35-117. 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 board an application for a license on a form provided by the board, verified by the oath of the applicant, and accompanied by a fee required by section 12-35-138 (1)(a) or established pursuant to section 24-34-105, C.R.S., indicating that the applicant:

(a) Has attained the age of twenty-one years;

(b) Is a graduate of a dental school or college that, at the time of the applicant's graduation, was accredited. An official transcript prepared by the dental college or school attended shall be submitted to the board.

(c) Has listed any act the commission of which would be grounds for disciplinary action under section 12-35-129 against a licensed dentist, along with an explanation of the circumstances of such act;

(d) Repealed.

(e) Has proof that he or she has not been subject to final or pending disciplinary action by any state in which the applicant is or has been previously licensed; except that, if the applicant has been subject to disciplinary action, the board may review such disciplinary action to determine whether it warrants grounds for refusal to issue a license; and

(f) Has proof that he or she has met any more stringent criteria established by the board.

(2) An applicant for licensure shall demonstrate to the board that he or she has maintained the professional ability and knowledge required by this article when such applicant has not graduated from an accredited dental school or college within the twelve months immediately preceding the application and has not, for at least one year of the five years immediately preceding the application, engaged in:

(a) The active clinical practice of dentistry;

(b) Teaching dentistry in an accredited program; or

(c) Service as a dentist in the military.

(3) The board may require other pertinent information on the application that the board deems necessary to process the application, including demonstration of compliance with the financial responsibility requirements set forth in section 13-64-301 (1)(a), C.R.S.

**Source: L. 2004:** Entire article RC&RE, p. 833, § 1, effective July 1. **L. 2014:** IP(1) and (3) amended and (1)(d) repealed, (HB 14-1227), ch. 363, p. 1722, § 14, effective July 1.

**Editor's note:** This section is similar to former § 12-35-113 as it existed prior to 2003, and the former § 12-35-117 was relocated to § 12-35-121.

**12-35-117.5. Academic license.** (1) (a) A dentist who is employed at an accredited school or college of dentistry in this state and who practices dentistry in the course of his or her employment responsibilities shall either make written application to the board for an academic license in accordance with this section or shall otherwise become licensed pursuant to sections 12-35-117 and 12-35-119, as applicable.

(b) Nothing in this section shall require a dentist who appears in a program of dental education or research, as described in section 12-35-115 (1)(f), to obtain an academic license pursuant to this section.

(2) A person who applies for an academic license shall submit proof to the board that he or she:

(a) Graduated from a school of dentistry located in the United States or another country; and

(b) Is employed by an accredited school or college of dentistry in this state.

(c) (Deleted by amendment, L. 2014.)

(3) An applicant for an academic license shall satisfy the credentialing standards of the accredited school or college of dentistry that employs the applicant.

(4) An academic license shall authorize the licensee to practice dentistry only while engaged in the performance of his or her official duties as an employee of the accredited school or college of dentistry and only in connection with programs affiliated or endorsed by the school or college. An academic licensee may not use an academic license to practice dentistry outside of his or her academic responsibilities.

(5) In addition to the requirements of this section, an applicant for an academic license shall complete all procedures for academic licensing established by the board to become licensed, including payment of any fee imposed pursuant to section 12-35-117 (1).

**Source: L. 2009:** Entire section added, (HB 09-1128), ch. 21, p. 105, § 3, effective August 5. **L. 2014:** (1)(a) and (2) amended, (HB 14-1227), ch. 363, p. 1727, § 24, effective July 1.

#### **12-35-118. Graduates of foreign dental schools. (Repealed)**

**Source: L. 2004:** Entire article RC&RE, p. 834, § 1, effective July 1. **L. 2014:** Entire section repealed, (HB 14-1227), ch. 363, p. 1728, § 25, effective July 1.

#### **12-35-119. Examination - how conducted - license issued to successful applicants.**

(1) Applicants for dental licensure shall submit to the board proof of having successfully passed the following:

(a) The examination administered by the joint commission on national dental examinations; and

(b) (Deleted by amendment, L. 2014.)

(c) An examination or other methodology, as determined by the board, designed to test the applicant's clinical skills and knowledge, which may include residency and portfolio models.

(2) All examination results required by the board must be filed with the board and kept for reference for a period of not less than one year. If the applicant successfully completes the examinations and is otherwise qualified, the board shall grant a license to the applicant and shall issue a license certificate to the applicant.

(3) (Deleted by amendment, L. 2014.)

**Source: L. 2004:** Entire article RC&RE, p. 835, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1707, § 4, effective July 1.

**Editor's note:** This section is similar to former § 12-35-114 as it existed prior to 2003, and the former § 12-35-119 was relocated to § 12-35-111.

**12-35-120. Licensure by endorsement.** (1) The board shall provide for licensure upon application of any person licensed in good standing to practice dentistry in another state or territory of the United States who provides the credentials and meets the qualifications set forth in this section in the manner prescribed by the board.

(2) The board shall issue a license to an applicant licensed as a dentist in another state or territory of the United States if the applicant has submitted credentials and qualifications for licensure that include:

- (a) Proof of graduation from an accredited dental school;
- (b) Proof the applicant is currently licensed in another state or United States territory;
- (c) Proof the applicant has been in practice or teaching dentistry, which involves personally providing care to patients for not less than three hundred hours annually in an accredited dental school for a minimum of five years out of the seven years immediately preceding the date of the receipt of the application, or evidence that the applicant has demonstrated competency as a dentist as determined by the board;
- (d) Proof the applicant has not been subject to final or pending disciplinary action by any state in which the applicant is or has been previously licensed; except that, if the applicant has been subject to disciplinary action, the board may review such disciplinary action to determine whether the underlying conduct warrants refusal to issue a license;
- (e) Repealed.
- (f) Proof the applicant has passed an entry level examination acceptable to the board; and
- (g) Proof the applicant has met any more stringent criteria established by the board.

**Source: L. 2004:** Entire article RC&RE, p. 835, § 1, effective July 1. **L. 2010:** (2)(c) amended, (HB 10-1175), ch. 46, p. 174, § 2, effective July 1, 2011. **L. 2014:** IP(2) amended and (2)(e) repealed, (HB 14-1227), ch. 363, p. 1728, § 26, effective July 1.

**Editor's note:** This section is similar to former § 12-35-114.5 as it existed prior to 2003.

**12-35-121. Renewal of dental and dental hygienist licenses - fees.** Licenses must be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies, referred to in this section as the director, and pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees, delinquency fees for late renewal, and fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her license pursuant to the schedule

established by the director, the license expires. Any person whose license expires is subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

**Source: L. 2004:** Entire article RC&RE, p. 836, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1728, § 27, effective July 1.

**Editor's note:** This section is similar to former §§ 12-35-116, 12-35-117, and 12-35-127 as they existed prior to 2003, and the former § 12-35-121 was relocated to § 12-35-110.

**12-35-122. Inactive dental or dental hygienist license.** (1) Any person licensed to practice dentistry or dental hygiene pursuant to this article may apply to the board to be transferred to an inactive status. The licensee shall submit an application in the form and manner designated by the board. The board may grant inactive status by issuing an inactive license or deny the application for any of the causes set forth in section 12-35-129.

(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, will not practice dentistry or dental hygiene in this state unless he or she 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 24-34-105, C.R.S.; and

(c) Comply with any financial responsibility or professional liability insurance requirements established by the board under section 12-35-141, as applicable.

(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 12-35-129 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 or dental hygiene shall file an application in the form and manner the board designates, pay the license fee promulgated by the board pursuant to section 24-34-105, C.R.S., and meet the financial responsibility requirements or the professional liability insurance requirements in section 12-35-141, as applicable. The board may approve the 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 12-35-129.

**Source: L. 2004:** Entire article RC&RE, p. 836, § 1, effective July 1. **L. 2014:** (1), (2)(a), (2)(c), and (5) amended, (HB 14-1227), ch. 363, p. 1723, § 15, effective July 1. **L. 2016:** (2)(c) amended, (HB 16-1327), ch. 124, p. 352, § 1, effective August 10.

**Editor's note:** This section is similar to former § 12-35-135 as it existed prior to 2003, and the former § 12-35-122 was relocated to § 12-35-114.

**12-35-123. Retired dental and dental hygienist licenses.** (1) Any person licensed to practice dentistry or dental hygiene pursuant to this article may apply to the board for retired licensure status. Any 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 if the licensee has been disciplined for any of the causes set forth in section 12-35-129.

(2) Any person applying for a license under this section shall:

(a) Provide an affidavit to the board stating that, after a date certain, the applicant shall not practice dentistry or dental hygiene, shall no longer earn income as a dentist or dental hygiene administrator or consultant, and shall not perform any activity that constitutes practicing dentistry or dental hygiene pursuant to sections 12-35-113, 12-35-124, and 12-35-125 unless said applicant is issued a license to practice dentistry or dental hygiene pursuant to subsection (5) of this section; and

(b) Pay the license fee authorized by section 24-34-105, C.R.S., which fee shall not exceed fifty dollars.

(3) The retired status of a licensee shall be plainly indicated on the face of any retired license certificate issued under this section.

(4) The board may take disciplinary action pursuant to sections 12-35-129.1 to 12-35-129.5 against any person licensed under this section for an act committed while such person was licensed pursuant to this article.

(5) Any person licensed under this section may apply to the board for a return to active licensure status by filing an application in the form and manner the board designates, paying the appropriate license fee established pursuant to section 24-34-105, C.R.S., and meeting the financial responsibility requirements or the professional liability insurance requirements in section 12-35-141, as applicable. The board may approve the application and issue a license to practice dentistry or dental hygiene or may deny the application if the licensee has been disciplined for any of the causes set forth in section 12-35-129.

(6) A dentist or dental hygienist on retired status may provide dental or dental hygiene services on a voluntary basis to the indigent if the retired dentist or dental hygienist provides the services on a limited basis and does not charge a fee for the services. A retired dentist or dental hygienist providing voluntary care pursuant to this subsection (6) is immune from any liability resulting from the voluntary care he or she provided.

**Source: L. 2004:** Entire article RC&RE, p. 837, § 1, effective July 1. **L. 2014:** (4), (5), and (6) amended, (HB 14-1227), ch. 363, p. 1723, § 16, effective July 1.

**Editor's note:** This section is similar to former § 12-35-136 as it existed prior to 2003, and the former § 12-35-123 was relocated to § 12-35-126.

**12-35-124. What constitutes practicing unsupervised dental hygiene.** (1) Unless licensed to practice dentistry, a person shall be deemed to be practicing unsupervised dental hygiene who, within the scope of the person's education, training, and experience:

(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 a periodontal pocket;

(c) Provides preventive measures including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(d) Gathers and assembles information including, but not limited to:

(I) Fact-finding and patient history;

(II) Preparation of study casts for the purpose of fabricating a permanent record of the

patient's present condition; as a visual aid for patient education, dental hygiene diagnosis, and dental hygiene treatment planning; and to provide assistance during forensic examination;

(III) Extra- and intra-oral inspection;

(IV) Dental and periodontal charting; and

(V) Radiographic and X-ray survey for the purpose of assessing and diagnosing dental hygiene-related conditions for treatment planning for dental hygiene services as described in this section and identifying dental abnormalities for immediate referral to a dentist;

(e) Administers a topical anesthetic to a patient in the course of providing dental care;

(f) Performs dental hygiene assessment, dental hygiene diagnosis, and dental hygiene treatment planning for dental hygiene services as described in this section and identifies dental abnormalities for immediate referral to a dentist; or

(g) (I) Prescribes, administers, and dispenses fluoride, fluoride varnish, antimicrobial solutions for mouth rinsing, other nonsystemic antimicrobial agents, and related emergency drugs and reversal agents in collaboration with a licensed dentist. The board may, by rule, further define the permissible and appropriate emergency drugs and reversal agents. Dental hygienists shall maintain clear documentation in the patient record of the drug or agent prescribed, administered, or dispensed; the date of the action; and the rationale for prescribing, administering, or dispensing the drug or agent.

(II) A dental hygienist shall not prescribe, administer, or dispense the following:

(A) Drugs whose primary effect is systemic, with the exception of fluoride supplements permitted under sub-subparagraph (A) of subparagraph (III) of this paragraph (g); and

(B) Dangerous drugs or controlled substances, as defined in section 18-18-102 (5),

C.R.S.

(III) A dental hygienist may prescribe the following:

(A) Fluoride supplements as follows, all using sodium fluoride: Tablets: 0.5 mg, 1.1 mg, or 2.2 mg; lozenges: 2.21 mg; and drops: 1.1 mL;

(B) Topical anti-caries treatments as follows, all using sodium fluoride unless otherwise indicated: Toothpastes: 1.1 % or less (or stannous fluoride 0.4%); topical gels: 1.1% or less (or stannous fluoride 0.4%); oral rinses: 0.05%, 0.2%, 0.44%, or 0.5%; oral rinse concentrate used in periodontal disease: 0.63% stannous fluoride; fluoride varnish: 5%; and prophylaxis pastes containing approximately 1.23% sodium fluoride and used for polishing procedures as part of professional dental prophylaxis treatment;

(C) Topical anti-infectives as follows: Chlorhexidine gluconate rinses: 0.12%; chlorhexidine gluconate periodontal chips for subgingival insertion into a periodontal pocket/sulcus; tetracycline impregnated fibers, inserted subgingivally into a periodontal pocket/sulcus; doxycycline hyclate periodontal gel, inserted subgingivally into a periodontal pocket/sulcus; and minocycline hydrochloride periodontal powder, inserted subgingivally into a periodontal pocket/sulcus; and

(D) Related emergency drugs and reversal agents as authorized by the collaborating dentist.

(1.5) A dental hygienist shall state in writing and require a patient to acknowledge by signature that any diagnosis or assessment is for the purpose of determining necessary dental hygiene services only and that it is recommended by the American dental association, or any successor organizations, that a thorough dental examination be performed by a dentist twice each year.

(2) Unsupervised dental hygiene may be performed by licensed dental hygienists without

the supervision of a licensed dentist.

(3) (a) Notwithstanding section 12-35-103 (14) or 12-35-113 (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.

(b) A dental hygienist proprietor, or a professional corporation or professional limited liability corporation of dental hygienists, in addition to providing dental hygiene services, may enter into an agreement with one or more dentists for the lease or rental of equipment or office space in the same physical location as the dental hygiene practice, but only if the determination of necessary dental services provided by the dentist and professional responsibility for those services, including but not limited to dental records, appropriate medication, and patient payment, remain with the treating dentist. It shall be the responsibility of the dental hygienist to inform the patient as to whether there is a supervisory relationship between the dentist and the dental hygienist. Such an agreement shall not constitute employment and shall not constitute cause for discipline pursuant to section 12-35-129 (1)(h).

**Source:** **L. 2004:** Entire article RC&RE, p. 838, § 1, effective July 1. **L. 2006:** (3) amended, p. 1165, § 1, effective May 25. **L. 2009:** IP(1), (1)(a), and (1)(d) amended and (1)(f), (1)(g), and (1.5) added, (SB 09-129), ch. 181, pp. 797, 798, §§ 2, 3, effective April 22. **L. 2014:** (1)(b), (1)(f), (1)(g), and (2) amended, (HB 14-1227), ch. 363, p. 1729, § 28, effective July 1. **L. 2017:** (1)(b), (1)(g)(I), (1)(g)(III)(B), and (1)(g)(III)(C) amended and (1)(g)(III)(D) added, (HB 17-1010), ch. 13, p. 38, § 2, effective August 9.

**Editor's note:** This section is similar to former § 12-35-122.5 as it existed prior to 2003, and the former § 12-35-124 was relocated to § 12-35-127.

**12-35-125. What constitutes practicing supervised dental hygiene.** (1) Unless licensed to practice dentistry, a person who performs any of the following tasks under the supervision of a licensed dentist is deemed to be practicing supervised dental hygiene:

- (a) Any task described in section 12-35-124 (1);
  - (b) Prepares study casts;
  - (c) to (e) (Deleted by amendment, L. 2014.)
  - (f) Administers local anesthesia under the indirect supervision of a licensed dentist pursuant to rules of the board, including minimum education requirements and procedures for local anesthesia administration;
  - (g) and (h) (Deleted by amendment, L. 2014.)
  - (i) Places interim therapeutic restorations pursuant to section 12-35-128.5; or
  - (j) Applies silver diamine fluoride pursuant to section 12-35-128.8.
- (2) (Deleted by amendment, L. 2014.)

**Source:** **L. 2004:** Entire article RC&RE, p. 838, § 1, effective July 1. **L. 2009:** (1)(d) and (1)(f) amended and (1)(g) and (1)(h) added, (SB 09-129), ch. 181, p. 798, § 4, effective April 22. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1730, § 29, effective July 1. **L. 2015:** (1)(i) added, (HB 15-1309), ch. 326, p. 1331, § 2, effective August 5. **L. 2018:** (1)(j) added, (HB 18-1045), ch. 67, p. 622, § 2, effective March 22.

**Editor's note:** This section is similar to former § 12-35-122.6 as it existed prior to 2003, and the former § 12-35-125 was relocated to § 12-35-128.

- 12-35-126. Application for dental hygienist license - fee.** (1) Every person who desires to qualify for practice as a dental hygienist within this state shall file with the board:
- (a) A written application for a license, on which application such applicant shall list:
    - (I) Any act the commission of which would be grounds for disciplinary action under section 12-35-129 against a licensed dental hygienist; and
    - (II) An explanation of the circumstances of such act; and
  - (b) Satisfactory proof of graduation from a school of dental hygiene that, at the time of the applicant's graduation, was accredited, and proof that the program offered by the accredited school of dental hygiene was at least two academic years or the equivalent of two academic years.
- (2) 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.
- (3) 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.
- (4) Repealed.

**Source: L. 2004:** Entire article RC&RE, p. 839, § 1, effective July 1. **L. 2014:** (1)(b) amended and (4) repealed, (HB 14-1227), ch. 363, p. 1709, § 8, effective July 1.

**Editor's note:** This section is similar to former § 12-35-123 as it existed prior to 2003.

- 12-35-127. Dental hygienist examinations - license.** (1) Every applicant for dental hygiene licensure shall submit to the board proof of having successfully completed the following:
- (a) An examination administered by the joint commission on national dental examinations; and
  - (b) An examination designed to test the applicant's clinical skills and knowledge, which must be administered by a regional testing agency composed of at least four states or an examination of another state, or a methodology adopted by the board by rule that is designed to test the applicant's clinical skills and knowledge.
  - (c) (Deleted by amendment, L. 2014.)
- (2) All examination results required by the board must be filed with the board and kept for reference for a period of not less than one year. If an applicant successfully completes the examinations and is otherwise qualified, the board shall grant a license to the applicant and shall issue a license certificate signed by the officers of the board.
- (3) and (4) Repealed.

**Source: L. 2004:** Entire article RC&RE, p. 840, § 1, effective July 1. **L. 2009:** (4) added,

(SB 09-129), ch. 181, p. 799, § 5, effective April 22. **L. 2010:** (3)(b)(III) amended, (HB 10-1175), ch. 46, p. 174, § 3, effective July 1, 2011. **L. 2014:** (1) and (2) amended and (3) and (4) repealed, (HB 14-1227), ch. 363, pp. 1708, 1709, §§ 5, 7, effective July 1.

**Editor's note:** This section is similar to former § 12-35-124 as it existed prior to 2003, and the former § 12-35-127 was relocated to § 12-35-121.

**12-35-127.5. Dental hygienist - licensure by endorsement.** (1) 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 12-35-126, and provides the credentials and meets the qualifications set forth in this section in the manner prescribed by the board.

(2) 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 that include:

(a) Verification of licensure from any other jurisdiction where the applicant has held a dental hygiene or other health care license;

(b) Evidence of the applicant's successful completion of the national board dental examination administered by the joint commission on national dental examinations;

(c) (I) 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 date of the receipt of the application; or

(II) Evidence that the applicant has demonstrated competency as a dental hygienist as determined by the board;

(d) A report of any pending or final disciplinary actions against any health care license held by the applicant at any time; and

(e) A report of any pending or final malpractice actions against the applicant.

**Source: L. 2014:** Entire section added with relocations, (HB 14-1227), ch. 363, p. 1708, § 6, effective July 1.

**Editor's note:** This section is similar to former § 12-35-127 (3) as it existed prior to 2014.

**12-35-128. Tasks authorized to be performed by dental assistants or dental hygienists.** (1) (a) (I) Except as provided in subparagraph (II) of this paragraph (a), the responsibility for dental diagnosis, dental treatment planning, or the prescription of therapeutic measures in the practice of dentistry remains with a licensed dentist and may not be assigned to any dental hygienist.

(II) A dental hygienist may:

(A) Perform dental hygiene assessment, dental hygiene diagnosis, and dental hygiene treatment planning for dental hygiene services pursuant to section 12-35-124 (1)(f);

(B) Identify dental abnormalities for immediate referral to a dentist as described in section 12-35-124 (1)(f);

(C) In collaboration with a licensed dentist, prescribe, administer, and dispense, as described in section 12-35-124 (1)(g): Fluoride; fluoride varnish; antimicrobial solutions for mouth rinsing; other nonsystemic antimicrobial agents; and resorbable antimicrobial agents pursuant to rules of the board; and

(D) In collaboration with a licensed dentist, apply silver diamine fluoride pursuant to section 12-35-128.8.

(b) A dental procedure that involves surgery or that will contribute to or result in an irreparable alteration of the oral anatomy shall not be assigned to anyone other than a licensed dentist.

(2) Except as provided in subsection (1) of this section, a dental hygienist may perform any dental task or procedure assigned to the hygienist by a licensed dentist that does not require the professional skill of a licensed dentist; except that the dental hygienist may perform the task or procedure only under the indirect supervision of a licensed dentist or as authorized in sections 12-35-124 and 12-35-125.

(3) (a) A dental assistant shall not perform the following tasks:

- (I) Diagnosis;
- (II) Treatment planning;
- (III) Prescription of therapeutic measures;
- (IV) Any procedure that contributes to or results in an irreparable alteration of the oral anatomy;
- (V) Administration of local anesthesia;
- (VI) Scaling (supra and sub-gingival), as it pertains to the practice of dental hygiene;
- (VII) Root planing;
- (VIII) Soft tissue curettage;
- (IX) Periodontal probing.

(b) A dental assistant may perform the following tasks under the indirect supervision of a licensed dentist:

- (I) Smoothing and polishing natural and restored tooth surfaces;
- (II) Provision of preventive measures, including the application of fluorides and other recognized topical agents for the prevention of oral disease;
- (III) Gathering and assembling information including, but not limited to, fact-finding and patient history, oral inspection, and dental and periodontal charting;
- (IV) Administering topical anesthetic to a patient in the course of providing dental care;
- (V) Any other task or procedure that does not require the professional skill of a licensed dentist;
- (VI) Repairing and relining dentures pursuant to a dental laboratory work order signed by a licensed dentist.

(c) A dental assistant may, under the direct supervision of a licensed dentist in accordance with rules promulgated by the board, administer and monitor the use of nitrous oxide on a patient.

(d) (I) A dental assistant may perform intraoral and extraoral tasks and procedures necessary for the fabrication of a complete or partial denture under the direct supervision of a licensed dentist. These tasks and procedures shall include:

- (A) Making of preliminary and final impressions;
- (B) Jaw relation records and determination of vertical dimensions;
- (C) Tooth selection;
- (D) 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;

(E) Denture adjustments that involve the periphery, occlusal, or tissue-bearing surfaces of the denture prior to the final examination of the denture.

(II) The tasks and procedures in subparagraph (I) of this paragraph (d) shall be performed in the regularly announced office location of a licensed practicing dentist, and the dentist shall be personally liable for all treatment rendered to the patient. A dental assistant performing these tasks and procedures shall be properly identified as a dental assistant. No dentist shall utilize more than the number of dental assistants the dentist can reasonably supervise.

(III) Prior to any work being performed pursuant to subparagraph (I) of this paragraph (d), 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.

(4) Repealed.

(5) The board may make such reasonable rules as may be necessary to implement and enforce the provisions of this section.

**Source: L. 2004:** Entire article RC&RE, p. 841, § 1, effective July 1. **L. 2009:** (1) and (2) amended, (SB 09-129), ch. 181, p. 799, § 6, effective April 22. **L. 2014:** (1), (2), and IP(3)(b) amended, (3)(b)(VI) added with relocations, and (4) repealed, (HB 14-1227), ch. 363, p. 1731, § 30, effective July 1. **L. 2018:** (1)(a)(II)(B) and (1)(a)(II)(C) amended and (1)(a)(II)(D) added, (HB 18-1045), ch. 67, p. 624, § 4, effective March 22.

**Editor's note:** (1) This section is similar to former § 12-35-125 as it existed prior to 2003, and the former § 12-35-128 was relocated to § 12-35-131.

(2) Subsection (3)(b)(VI) is similar to former § 12-35-128 (4) as it existed prior to 2014.

### **12-35-128.3. Interim therapeutic restorations advisory committee - rules - repeal. (Repealed)**

**Source: L. 2015:** Entire section added, (HB 15-1309), ch. 326, p. 1331, § 3, effective August 5.

**Editor's note:** Subsection (8) provided for the repeal of this section, effective December 31, 2016. (See L. 2015, p. 1331.)

**12-35-128.5. Interim therapeutic restorations by dental hygienists - permitting process - repeal.** (1) Upon application, accompanied by a fee in an amount determined by the director of the division of professions and occupations, the board shall grant a permit to place interim therapeutic restorations to any dental hygienist applicant who:

(a) Holds a license in good standing to practice dental hygiene in Colorado;

(b) Has completed a course developed at the postsecondary educational level that complies with the rules adopted by the board. The course must be offered under the direct supervision of a member of the faculty of a Colorado dental or dental hygiene school accredited by the commission on dental accreditation or its successor agency. All faculty responsible for clinical evaluation of students must be dentists with a faculty appointment at an accredited Colorado dental or dental hygiene school.

(c) Carries current professional liability insurance in the amount specified in section 12-35-141; and

(d) Has completed the following hours of dental hygiene practice as evidenced in documentation required by the board:

(I) Two thousand hours of supervised dental hygiene practice after initial dental hygiene licensure;

(II) Four thousand hours of unsupervised dental hygiene practice after initial dental hygiene licensure; or

(III) A combination of the hours specified in subparagraphs (I) and (II) of this paragraph (d) as determined by the board by rule.

(2) The board may waive the requirement in paragraph (d) of subsection (1) of this section for a dental hygienist who performs interim therapeutic restorations exclusively under the direct supervision of a dentist.

(3) A dental hygienist shall not use local anesthesia for the purpose of placing interim therapeutic restorations.

(4) (a) A dental hygienist may place an interim therapeutic restoration only after a dentist provides a diagnosis, treatment plan, and instruction to perform the procedure.

(b) If an interim therapeutic restoration is authorized by a supervising dentist at a location other than the dentist's practice location, the dental hygienist shall provide the patient or the patient's representative with written notification that the care was provided at the direction of the supervising dentist. The dental hygienist shall include in the written notification the dentist's name, practice location address, and telephone number.

(c) A dental hygienist who obtains a dentist's diagnosis, treatment plan, and instruction to perform an ITR utilizing telehealth by store-and-forward transfer shall notify the patient of the patient's right to receive interactive communication with the distant dentist upon request. Communication with the distant dentist may occur either at the time of the consultation or within thirty days after the dental hygienist notifies the patient of the results of the consultation.

(5) A dental hygienist who obtains a permit pursuant to this section may place interim therapeutic restorations in a dental office setting under the direct or indirect supervision of a dentist or through telehealth supervision for purposes of communication with the dentist.

(6) A dentist shall not supervise more than five dental hygienists who place interim therapeutic restorations under telehealth supervision. A dentist who supervises a dental hygienist who provides interim therapeutic restorations under telehealth supervision must have a physical practice location in Colorado for purposes of patient referral for follow-up care.

(7) A dental hygienist shall inform the patient or the patient's legal guardian, in writing, and require the patient or the patient's legal guardian to acknowledge by signature, that the interim therapeutic restoration is a temporary repair to the tooth and that appropriate follow-up care with a dentist is necessary.

(8) This section is repealed, effective September 1, 2021. Prior to the repeal, the department of regulatory agencies shall review the permitting of dental hygienists to place interim therapeutic restorations as provided in section 24-34-104, C.R.S.

**Source: L. 2015:** Entire section added, (HB 15-1309), ch. 326, p. 1332, § 4, effective August 5. **L. 2017:** (1)(b) amended, (SB 17-294), ch. 264, p. 1386, § 12, effective May 25; IP(1) and (1)(c) amended, (HB 17-1010), ch. 13, p. 39, § 3, effective August 9.

**12-35-128.7. Interim therapeutic restorations - gifts, grants, and donations - repeal. (Repealed)**

**Source: L. 2015:** Entire section added, (HB 15-1309), ch. 326, p. 1334, § 5, effective August 5.

**Editor's note:** Subsection (2) provided for the repeal of this section, effective December 31, 2016. (See L. 2015, p. 1334.)

**12-35-128.8. Application of silver diamine fluoride by dental hygienists - authorization - limitations - rules - repeal.** (1) A dental hygienist may apply silver diamine fluoride if the dental hygienist:

- (a) Holds a license in good standing to practice dental hygiene in Colorado;
- (b) Has completed a postsecondary course or continuing education course developed at the postsecondary level that satisfies the requirements established by the board by rule and that provides instruction on the use and limitations of applying silver diamine fluoride;
- (c) Is covered by professional liability insurance in the amount established by the board pursuant to section 12-35-141; and
- (d) Has a collaborative agreement with a dentist that describes the silver diamine fluoride protocols, any restrictions or limitations, follow-up and referral mechanisms, and any other requirements established by the board by rule.

(2) (a) If the application of silver diamine fluoride is authorized by a supervising dentist at a location other than the dentist's practice location, the dental hygienist shall provide the patient or the patient's representative with written notification that the application of silver diamine fluoride is being provided in collaboration with the supervising dentist. The dental hygienist shall include in the written notification the dentist's name, practice location address, and telephone number.

(b) A dental hygienist who applies silver diamine fluoride in collaboration with a supervising dentist utilizing telehealth by store-and-forward transfer shall notify the patient or the patient's representative of the patient's right to receive interactive communication with the distant dentist upon request. Communication with the distant dentist may occur either at the time of the consultation or within thirty days after the dental hygienist notifies the patient of the results of the consultation.

(3) A dental hygienist who meets the requirements of subsections (1) and (2) of this section may apply silver diamine fluoride under the direct or indirect supervision of a dentist or through telehealth supervision for purposes of communication with the dentist.

(4) (a) Not later than ninety days after March 22, 2018, the board shall promulgate rules to:

(I) Define requirements for the education course required in subsection (1)(b) of this section, including qualifications for entities offering the course and faculty oversight requirements; and

(II) Address appropriate indications and limitations for the application of silver diamine fluoride by a dental hygienist.

(b) The board may establish additional requirements for the collaborative agreement required by subsection (1)(d) of this section.

(5) This section is repealed, effective September 1, 2021. Prior to the repeal, the department of regulatory agencies shall review the application of silver diamine fluoride by dental hygienists as provided in section 24-34-104.

**Source: L. 2018:** Entire section added, (HB 18-1045), ch. 67, p. 622, § 3, effective March 22.

**12-35-129. Grounds for disciplinary action.** (1) The board may take disciplinary action against an applicant or licensee in accordance with section 12-35-129.1 for any of the following causes:

(a) Engaging in 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 12-35-141, or in taking the examinations provided for in this article;

(b) Conviction of a felony or any crime that constitutes a violation of this article. For purposes of this paragraph (b), conviction includes the entry of a plea of guilty or nolo contendere or a deferred sentence.

(c) Administering, dispensing, or prescribing a habit-forming drug or controlled substance, as defined in section 18-18-102 (5), C.R.S., to a person, including the applicant or licensee, other than in the course of legitimate professional practice;

(d) Conviction of a violation of a federal or state law regulating the possession, distribution, or use of a controlled substance, as defined in section 18-18-102 (5), C.R.S., 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 section 24-5-101, C.R.S.;

(e) Habitually abusing or excessively using alcohol, a habit-forming drug, or a controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(f) Misusing a drug or controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(g) Aiding or abetting, in the practice of dentistry or dental hygiene, a person who is not licensed to practice dentistry or dental hygiene under this article or whose license to practice dentistry or dental hygiene is suspended;

(h) Except as otherwise provided in sections 25-3-103.7, C.R.S., 12-35-116, and 12-35-124 (3), practicing dentistry or dental hygiene as a partner, agent, or employee of or in joint venture with any person who does not hold a license to practice dentistry or dental hygiene within this state or practicing dentistry or dental hygiene as an employee of or in joint venture with any partnership, association, or corporation. A licensee holding a license to practice dentistry or dental hygiene in this state may accept employment from any person, partnership, association, or corporation to examine, prescribe, and treat the employees of the person, partnership, association, or corporation.

(i) Violating or attempting to violate, directly or indirectly, 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;

(j) (I) Failing to notify the board of a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the licensee unable, or limits the licensee's ability, to perform dental or dental hygiene services with reasonable skill and with safety to the patient;

(II) Failing to act within the limitations created by a physical illness; a physical condition; or a behavioral, mental health, or substance use disorder that renders the licensee unable to practice dental or dental hygiene services with reasonable skill and safety or that may endanger the health or safety of persons under his or her care; or

(III) Failing to comply with the limitations agreed to under a confidential agreement

entered pursuant to section 12-35-129.6;

(k) Committing an act or omission that constitutes grossly negligent dental or dental hygiene practice or that fails to meet generally accepted standards of dental or dental hygiene practice;

(l) Advertising in a manner that is misleading, deceptive, or false;

(m) Engaging in a sexual act with a patient during the course of patient care or within six months immediately following the termination of the licensee's professional relationship with the patient. "Sexual act", as used in this paragraph (m), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(n) Refusing to make patient records available to a patient pursuant to a written authorization-request under section 25-1-802, C.R.S.;

(o) False billing in the delivery of dental or dental hygiene services, including, but not limited to, performing one service and billing for another, billing for any service not rendered, or committing a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(p) Committing abuse of health insurance in violation of section 18-13-119, C.R.S.;

(q) Failing to notify the board, in writing and within ninety days after a judgment is entered, 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, which notice must contain the name of the court, the case number, and the names of all parties to the action;

(r) Failing to report a dental or dental hygiene malpractice judgment or malpractice settlement to the board by the licensee within ninety days;

(s) Failing to furnish unlicensed persons with laboratory work orders pursuant to section 12-35-133;

(t) Employing a solicitor or other agent to obtain patronage, except as provided in section 12-35-137;

(u) Willfully deceiving or attempting to deceive the board or its agents with reference to any matter relating to this article;

(v) Sharing any professional fees with anyone except those with whom the dentist or dental hygienist is lawfully associated in the practice of dentistry or dental hygiene; except that:

(I) A licensed dentist or dental hygienist may pay an independent advertising or marketing agent compensation for advertising or marketing services rendered by the agent for the benefit of the licensed dentist or dental hygienist, including compensation that is based on the results or performance of the services on a per-patient basis; and

(II) Nothing in this section prohibits a dentist or dental hygienist practice owned or operated by a proprietor authorized under section 12-35-116.5 from contracting with any person or entity for business management services or paying a royalty in accordance with a franchise agreement if the terms of the contract or franchise agreement do not affect the exercise of the independent professional judgment of the dentist or dental hygienist.

(w) Failing to provide reasonably necessary referral of a patient to other licensed dentists or licensed health care professionals for consultation or treatment when the failure to provide referral does not meet generally accepted standards of dental care;

(x) Failure of a dental hygienist to recommend that a patient be examined by a dentist, or to refer a patient to a dentist, when the dental hygienist detects a condition that requires care beyond the scope of practicing supervised or unsupervised dental hygiene;

(y) Engaging in any of the following activities and practices:

(I) Willful and repeated ordering or performance, without clinical justification, of

demonstrably unnecessary laboratory tests or studies;

(II) The administration, without clinical justification, of treatment that is demonstrably unnecessary;

(III) In addition to the provisions of paragraph (x) 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;

(IV) Ordering or performing, without clinical justification, any service, X ray, or treatment that is contrary to recognized standards of the practice of dentistry or dental hygiene as interpreted by the board;

(z) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;

(aa) Violating section 8-42-101 (3.6), C.R.S.;

(bb) Violating section 12-35-202 or any rule of the board adopted pursuant to that section;

(cc) Administering local anesthesia, minimal sedation, moderate sedation, or deep sedation/general anesthesia without obtaining a permit from the board in accordance with section 12-35-140;

(dd) Failing to report to the board, within ninety days after final disposition, 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 an act or conduct that would constitute grounds for discipline pursuant to this article;

(ee) Failing to provide adequate or proper supervision when employing unlicensed persons in a dental or dental hygiene practice;

(ff) Engaging in any conduct that constitutes a crime as defined in title 18, C.R.S., which conduct relates to the licensee's practice as a dentist or dental hygienist;

(gg) Practicing outside the scope of dental or dental hygiene practice;

(hh) Failing to establish and continuously maintain financial responsibility or professional liability insurance as required by section 12-35-141;

(ii) Advertising or otherwise holding oneself out to the public as practicing a dental specialty in which the dentist has not successfully completed the education specified for the dental specialty as defined by the American dental association;

(jj) Failing to respond in an honest, materially responsive, and timely manner to a complaint filed against the licensee pursuant to this article;

(kk) Committing an act or omission that fails to meet generally accepted standards for infection control;

(ll) Administering moderate sedation or deep sedation/general anesthesia without a licensed dentist or other licensed health care professional qualified to administer the relevant level of sedation or anesthesia present in the operatory;

(mm) Failing to complete and maintain records of completing continuing education as required by section 12-35-139;

(nn) Failing to comply with section 12-35-128.5 regarding the placement of interim therapeutic restorations; or

(oo) Failing to comply with section 12-35-128.8 regarding the application of silver diamine fluoride.

(2) to (18) Repealed.

**Source: L. 2004:** Entire article RC&RE, p. 843, § 1, effective July 1; IP(1) amended and (13) added, p. 1864, § 124, effective August 4. **L. 2006:** (1)(h) amended, p. 1166, § 2, effective

May 25; (14) to (18) added, p. 793, § 24, effective July 1. **L. 2014:** (1) amended and (2) to (18) repealed, (HB 14-1227), ch. 363, pp. 1709, 1721, § § 9, 11, effective July 1. **L. 2015:** (1)(ll) and (1)(mm) amended and (1)(nn) added, (HB 15-1309), ch. 326, p. 1334, § 6, effective August 5. **L. 2016:** (1)(v) amended, (SB 16-009), ch. 7, p. 13, § 1, effective August 10. **L. 2017:** (1)(j)(I) and (1)(j)(II) amended, (SB 17-242), ch. 263, p. 1270, § 50, effective May 25. **L. 2018:** (1)(mm) and (1)(nn) amended and (1)(oo) added, (HB 18-1045), ch. 67, p. 624, § 5, effective March 22.

**Editor's note:** (1) This section is similar to former § 12-35-118 as it existed prior to 2003, and the former § 12-35-129 was relocated to § 12-35-132.

(2) Subsections (2) to (18) were relocated to sections 12-35-129.1 through 12-35-129.5 in 2014.

**Cross references:** For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

**12-35-129.1. Disciplinary actions.** (1) (a) If, after notice and hearing conducted in accordance with article 4 of title 24, C.R.S., the board determines that an applicant or licensee has engaged in an act specified in section 12-35-129, the board may:

(I) Deny the issuance of, refuse to renew, suspend, or revoke any license provided for in this article;

(II) Reprimand, censure, or place on probation any licensed dentist or dental hygienist;

(III) Issue a letter of admonition; or

(IV) Impose an administrative fine.

(b) Hearings under this section must be conducted by the board or by an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S.

(2) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the board, does not warrant formal action by the board but should not be dismissed as being without merit, the board may issue and send to the licensee a letter of admonition.

(b) When the board sends a letter of admonition to a licensee pursuant to paragraph (a) of this subsection (2), the board shall also advise the licensee that he or she has the right to request in writing, within twenty days after receipt of the letter, that the board initiate formal disciplinary proceedings to adjudicate the propriety of the conduct upon which the letter of admonition is based. If the licensee makes the request for adjudication in a timely manner, the board shall vacate the letter of admonition and shall process the matter by means of formal disciplinary proceedings.

(3) If an investigation discloses an instance of conduct that, in the opinion of the board, does not warrant formal board action and should be dismissed, but in which the board has noticed indications of possible errant conduct that could lead to serious consequences if not corrected, the board shall send a confidential letter of concern to the licensee against whom the complaint was made. The board shall send the person making the complaint a notice that the board has issued a letter of concern to the licensee.

(4) The board may include, in any disciplinary order that allows a dentist or dental hygienist to continue to practice, conditions the board deems appropriate to assure that the dentist or dental hygienist is physically, mentally, and otherwise qualified to practice dentistry or dental hygiene in accordance with generally accepted professional standards of practice. The order may include any or all of the following:

- (a) A condition that the licensee submit to examinations to determine the licensee's physical or mental condition or professional qualifications;
  - (b) A condition that the licensee take therapy, courses of training, or education as needed to correct deficiencies found by the board or by examinations required pursuant to paragraph (a) of this subsection (4);
  - (c) Review or supervision of the licensee's practice as necessary to determine the quality of the practice and to correct any deficiencies;
  - (d) The imposition of restrictions on the licensee's practice to assure that the practice does not exceed the limits of the licensee's capabilities.
- (5) The board may suspend the license of a dentist or dental hygienist who fails to comply with an order of the board issued in accordance with this section. The board may impose the license suspension until the licensee complies with the board's order.
- (6) (a) In addition to any other penalty permitted under this article, when a licensed dentist or dental hygienist violates a provision of this article or of any rule promulgated pursuant to this article, the board may impose a fine on the licensee. If the licensee is a dentist, the fine must not exceed five thousand dollars. If the licensee is a dental hygienist, the fine must not exceed three thousand dollars.
- (b) The board shall adopt rules establishing a uniform system and schedule of fines that set forth fine tiers based on the severity of the violation, the type of violation, and whether the licensee repeatedly violates this article, board rules, or board orders.
- (7) If the board finds the charges proven and orders that discipline be imposed, the board may also order the licensee to take courses of training or education the board deems necessary to correct deficiencies found as a result of the hearing.
- (8) Any person whose license to practice is revoked is ineligible to apply for any license under this article for at least two years after the date of revocation or surrender of the license. Any subsequent application for licensure is an application for a new license.

**Source: L. 2014:** Entire section added with relocations, (HB 14-1227), ch. 363, p. 1713, § 10, effective July 1.

**Editor's note:** This section is similar to several provisions of former § 12-35-129, as it existed prior to 2014.

**12-35-129.2. Disciplinary proceedings.** (1) (a) Any person may submit a complaint relating to the conduct of a dentist or dental hygienist, which complaint must be in writing and signed by the person. The board, on its own motion, may initiate a complaint. The board shall notify the dentist or dental hygienist of the complaint against him or her.

(b) (I) For complaints related to the standard of care delivered to a patient that are submitted by a person other than the patient, the person submitting the complaint shall notify the patient of the complaint before filing the complaint with the board.

(II) The requirements of this paragraph (b) do not apply when a complaint is submitted to the board by a state department or agency.

(2) (a) Except as provided in paragraph (b) of this subsection (2), investigations, examinations, hearings, meetings, and other proceedings of the board conducted pursuant to this section or section 12-35-129.1, 12-35-129.3, 12-35-129.4, or 12-35-129.5 are 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 this section are open to public inspection.

(b) The final action of the board taken pursuant to this section is open to the public.

(3) When a complaint or an investigation discloses an instance of misconduct that, in the opinion of the board, warrants formal action, the board shall not resolve the complaint by a deferred settlement, action, judgment, or prosecution.

(4) Any member of the board or professional review committee authorized by the board, any member of the board's or professional review committee's staff, any person acting as a witness or consultant to the board or committee, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article is immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board or committee member, staff, consultant, or witness, respectively, if the individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that his or her action was warranted by the facts. Any person participating in good faith in lodging a complaint or participating in any investigative or administrative proceeding pursuant to this article is immune from any civil or criminal liability that may result from the participation.

(5) The discipline of a licensee by another state, territory, or country is deemed the equivalent of unprofessional conduct under this article; except that this subsection (5) applies only to discipline that is based upon an act or omission in the other state, territory, or country that is defined substantially the same as unprofessional conduct pursuant to this article.

(6) (a) Nothing in this section:

(I) Deprives a dental patient of the right to choose or replace any professionally recognized restorative material;

(II) Permits disciplinary action against a dentist solely for removing or placing any professionally recognized restorative material.

(b) Nothing in paragraph (a) of this subsection (6) prevents disciplinary action against a dentist for practicing dentistry in violation of this article.

(7) (a) If a professional review committee is established pursuant to this section to investigate complaints against a person licensed to practice dentistry under this article, the committee must include in its membership at least three persons licensed to practice dentistry under this article. The committee may be authorized to act only by:

(I) The board; or

(II) A society or an association of persons licensed to practice dentistry under this article whose membership includes not less than one-third of the persons licensed to practice dentistry under this article residing in this state, if the licensee whose services are the subject of review is a member of the 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 professional review committee is immune from suit in any civil action brought by a licensee who is the subject of a professional review proceeding if the member, witness, or consultant acts in good faith within the scope of the function of the board or committee, has made a reasonable effort to obtain the facts of the matter as to which the member, witness, or consultant acts, and acts in the reasonable belief that his or her action is warranted by the facts. The immunity provided by this paragraph (b) extends 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 the committee if the committee is authorized to act as provided in subparagraph (II) of paragraph (a) of this subsection (7).

(c) A professional review committee of a society or an association of persons licensed pursuant to this article shall:

(I) Notify the board within sixty days after the review committee analyzes care provided by a licensee and determines that the care may not meet generally accepted standards or that the licensee has otherwise violated any provision of this article. The licensee may be subject to disciplinary action by the board.

(II) Allow the board or its designee to conduct a periodic audit of records of the review committee. A person designated by the board to conduct the audit must be a licensed or retired dentist from any state. The board or its designee shall conduct the audit no more than twice annually. If any pattern of behavior of a licensee is identified that may constitute reasonable grounds to believe there has been a violation of this article, all relevant records of the review committee are subject to a subpoena issued by the board.

(d) (I) The proceedings and records of a review committee must be held in confidence and are not subject to discovery or introduction into evidence in any civil action against a dentist arising out of the matters that are the subject of evaluation and review by the committee. However, records of closed proceedings and investigations are available to the particular licensee under review and the complainant involved in the proceedings.

(II) A person who was in attendance at a meeting of the committee shall not be permitted or required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or any members of the committee. However, information, documents, or records otherwise available from original sources are not protected from discovery or use in a civil action merely because they were presented during proceedings of the committee, and any documents or records that have been presented to the review committee by any witness must be returned to the witness, if requested by the witness or if ordered to be produced by a court in any action, with copies to be retained by the committee at its discretion.

(III) Any person who testifies before the committee or who is a member of the committee is not prevented from testifying as to matters within the person's knowledge, but the person may not be asked about his or her testimony before the committee or opinions he or she formed as a result of the committee hearings.

**Source: L. 2014:** Entire section added with relocations, (HB 14-1227), ch. 363, p. 1715, § 10, effective July 1.

**Editor's note:** This section is similar to several provisions of former § 12-35-129, as it existed prior to 2014.

**12-35-129.3. Board panels.** (1) The chairperson of the board shall divide the members of the board, other than the chairperson, into two panels of six members each.

(2) Each panel shall act as both an inquiry panel and a hearing panel. The chairperson may reassign members of the board from one panel to the other. The chairperson may be a member of both panels, but neither the chairperson nor any other member who has considered a complaint as a member of a panel acting as an inquiry panel shall take any part in the

consideration of a formal complaint involving the same matter.

(3) If the inquiry panel refers a matter for formal hearing, the hearing panel or a committee of the hearing panel shall hear the matter. However, in its discretion, either inquiry panel may elect to refer a case for formal hearing to a qualified administrative law judge in lieu of a hearing panel of the board for an initial decision pursuant to section 24-4-105, C.R.S.

(4) A licensee who is the subject of an initial decision by an administrative law judge, or by the hearing panel that would have heard the case upon its own motion, may seek review of the initial decision pursuant to section 24-4-105 (14) and (15), C.R.S., by filing an exception to the initial decision with the hearing panel that would have heard the case if it had not been referred to an administrative law judge. The respondent or the board's counsel may file the exception.

(5) The inquiry panel to whom an investigation is assigned shall supervise the investigation, and the person conducting the investigation shall report the results of the investigation to the panel for appropriate action.

**Source: L. 2014:** Entire section added with relocations, (HB 14-1227), ch. 363, p. 1718, § 10, effective July 1.

**Editor's note:** This section is similar to several provisions of former § 12-35-129, as it existed prior to 2014.

**12-35-129.4. Cease-and-desist orders.** (1) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a licensee is acting in a manner that is an imminent threat to the health and safety of the public or a person is acting or has acted without the required license, the board may issue an order to cease and desist the activity. The board shall set forth in the order the statutes and rules the person is alleged to have violated, the facts alleged to constitute the violation, and the requirement that all unlawful acts or unlicensed practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (1), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. The board or an administrative law judge, as applicable, shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S.

(2) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to the person an order to show cause as to why the board should not issue a final order directing the person to cease and desist from the unlawful act or unlicensed practice.

(b) The board shall promptly notify the person against whom it issues an order to show cause pursuant to paragraph (a) of this subsection (2) of the issuance of the order and shall include in the notice a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. The board may serve the notice by personal service, by first-class United States mail, postage prepaid, or by other means as may be practicable. Personal service or mailing of an order or document pursuant to this subsection (2) constitutes notice to the person.

(c) (I) The board shall commence the hearing on an order to show cause no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification as provided in paragraph (b) of this subsection (2). The board may continue the

hearing by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the board commence the hearing later than sixty calendar days after the date of transmission or service of the notification.

(II) If the person against whom the board has issued the order to show cause pursuant to paragraph (a) of this subsection (2) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon the person pursuant to paragraph (b) of this subsection (2) and other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order becomes final as to that person by operation of law. The board or an administrative law judge, as applicable, shall conduct the hearing in accordance with sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required license or has or is about to engage in acts or practices constituting violations of this part 1, the board may issue a final cease-and-desist order directing the person to cease and desist from further unlawful acts or unlicensed practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (2), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order is issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) is effective when issued and is a final order for purposes of judicial review.

(3) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in an unlicensed act or practice; an act or practice constituting a violation of this part 1, a rule promulgated pursuant to this part 1, or an order issued pursuant to this part 1; or an act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with the person.

(4) If a person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested the attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(5) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-35-130.

**Source: L. 2014:** Entire section added with relocations, (HB 14-1227), ch. 363, p. 1719, § 10, effective July 1.

**Editor's note:** This section is similar to several provisions of former § 12-35-129, as it existed prior to 2014.

**12-35-129.5. Mental and physical examinations.** (1) (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 physical or mental disability or because of excessive use of alcohol, a habit-forming drug or substance, or a controlled substance, as defined in section 18-18-102 (5), C.R.S., the board may require the licensed dentist or dental hygienist to submit to a mental or physical examination by a qualified professional designated by the board.

(b) Upon the failure of the licensed dentist or dental hygienist to submit to a mental or physical examination required by the board, unless the failure is due to circumstances beyond the dentist's or dental hygienist's control, the board may suspend the dentist's or dental hygienist's license to practice dentistry or dental hygiene in this state until the dentist or dental hygienist submits to the examination.

(2) Every person licensed to practice dentistry or dental hygiene in this state is deemed, by so practicing or by applying for a renewal of the person's license to practice dentistry or dental hygiene in this state, to have:

(a) Given consent to submit to a mental or physical examination when directed in writing by the board; and

(b) Waived all objections to the admissibility of the examining qualified professional's testimony or examination reports on the ground of privileged communication.

(3) The results of any mental or physical examination ordered by the board cannot be used as evidence in any proceeding other than before the board.

**Source: L. 2014:** Entire section added with relocations, (HB 14-1227), ch. 363, p. 1720, § 10, effective July 1.

**Editor's note:** (1) Subsections IP(1)(c), (1)(c)(I), (1)(c)(II), and (1)(d) were renumbered on revision as subsections IP(2), (2)(a), (2)(b), and (3) respectively for ease of location.

(2) This section is similar to several provisions of former § 12-35-129, as it existed prior to 2014.

**12-35-129.6. Confidential agreement to limit practice - violation - grounds for discipline.** (1) If a licensed dentist or dental hygienist has a physical illness; a physical condition; or a behavioral or mental health disorder that renders him or her unable to practice dentistry or dental hygiene with reasonable skill and safety to clients, the dentist or dental hygienist shall notify the board of the physical illness; the physical condition; or the behavioral or mental health disorder in a manner and within a period determined by the board. The board may require the dentist or dental hygienist to submit to an examination to evaluate the extent of the physical illness; the physical condition; or the behavioral or mental health disorder and its impact on the dentist's or dental hygienist's ability to practice dentistry or dental hygiene with reasonable skill and safety to patients.

(2) (a) Upon determining that a dentist or dental hygienist with a physical illness; a physical condition; or a behavioral or mental health disorder is able to render limited services with reasonable skill and safety to patients, the board may enter into a confidential agreement with the dentist or dental hygienist in which the dentist or dental hygienist agrees to limit his or her practice based on the restrictions imposed by the physical illness; the physical condition; or the behavioral or mental health disorder, as determined by the board.

(b) As part of the agreement, the dentist or dental hygienist is subject to periodic reevaluations or monitoring as determined appropriate by the board.

(c) The parties may modify or dissolve the agreement as necessary based on the results of a reevaluation or of monitoring.

(3) By entering into an agreement with the board pursuant to this section to limit his or her practice, a dentist or dental hygienist is not engaging in activities prohibited pursuant to section 12-35-129 (1). The agreement does not constitute a restriction or discipline by the board.

However, if the dentist or dental hygienist fails to comply with the terms of an agreement entered into pursuant to this section, the failure constitutes a prohibited activity pursuant to section 12-35-129 (1)(j), and the dentist or dental hygienist is subject to discipline in accordance with section 12-35-129.

(4) This section does not apply to a dentist or dental hygienist subject to discipline for prohibited activities as described in section 12-35-129 (1)(e).

**Source: L. 2014:** Entire section added, (HB 14-1227), ch. 363, p. 1721, § 12, effective July 1. **L. 2017:** (1) and (2)(a) amended, (SB 17-242), ch. 263, p. 1271, § 51, effective May 25.

**Cross references:** For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

**12-35-130. Review of board action.** (1) The court of appeals, by appropriate proceedings under section 24-4-106 (11), C.R.S., may review any final action of the board to:

- (a) Deny or refuse to issue or renew a license;
  - (b) Suspend a license;
  - (c) Revoke a license;
  - (d) Censure a licensee;
  - (e) Issue a letter of admonition to a licensee;
  - (f) Place a licensee on probation;
  - (g) Issue a reprimand to a licensee; or
  - (h) Issue an order to cease and desist.
- (2) The provisions of this section apply to a license issued to a dentist or dental hygienist.

**Source: L. 2004:** Entire article RC&RE, p. 851, § 1, effective July 1. **L. 2006:** (1)(h) added, p. 795, § 25, effective July 1.

**Editor's note:** This section is similar to former § 12-35-115 as it existed prior to 2003, and the former § 12-35-130 was relocated to § 12-35-133.

**12-35-131. Use of forged or invalid diploma or certificate.** It is unlawful for any person to use or attempt to use as his or her own a diploma of a dental college or school or school of dental hygiene, 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. It is also unlawful for any person to file with the board a forged document in response to a request by the board for documentation of an applicant's qualifications for licensure.

**Source: L. 2004:** Entire article RC&RE, p. 851, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1732, § 31, effective July 1.

**Editor's note:** This section is similar to former § 12-35-128 as it existed prior to 2003, and the former § 12-35-131 was relocated to § 12-35-134.

**12-35-132. Sale of forged or invalid diploma or license certificate.** (1) 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:

(a) With the intent that it 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

(b) With fraudulent intent to alter the document and use or attempt to use it when it is so altered.

**Source: L. 2004:** Entire article RC&RE, p. 851, § 1, effective July 1.

**Editor's note:** This section is similar to former § 12-35-129 as it existed prior to 2003, and the former § 12-35-132 was relocated to § 12-35-135.

**12-35-133. Construction of dental devices by unlicensed technician.** (1) (a) A licensed dentist who uses the services of an unlicensed technician for the purpose of constructing, altering, repairing, or duplicating any denture, bridge, splint, or orthodontic or prosthetic appliance shall furnish the unlicensed technician with a written or electronic laboratory work order in a form approved by the board, which form must be dated and signed by the dentist for each separate and individual piece of work. The dentist shall make the laboratory work order in a reproducible form, and the dentist and the unlicensed technician shall each retain a copy in a permanent file for two years. The permanent files of the licensed dentist and the unlicensed technician shall be open to inspection at any reasonable time by the board or its duly constituted agent. The licensed dentist that furnishes the laboratory work order shall have appropriate training, education, and experience related to the prescribed treatment and is responsible for directly supervising all intraoral treatment rendered to the patient.

(b) An unlicensed technician that possesses a valid laboratory work order may provide extraoral construction, manufacture, fabrication, supply, or repair of identified dental and orthodontic devices but shall not provide intraoral service in a human mouth except under the direct supervision of a licensed dentist in accordance with section 12-35-128 (3)(d).

(2) If the dentist fails to keep permanent records of laboratory work orders as required in paragraph (a) of subsection (1) of this section, the dentist is subject to disciplinary action as deemed appropriate by the board.

(3) If an unlicensed technician fails to have in his or her possession a laboratory work order signed by a licensed dentist with each denture, bridge, splint, or orthodontic or prosthetic appliance in his or her possession, the absence of the laboratory work order is prima facie evidence of a violation of this section and constitutes the practice of dentistry without an active license in violation of, and subject to the penalties specified in, section 12-35-135.

**Source: L. 2004:** Entire article RC&RE, p. 852, § 1, effective July 1. **L. 2014:** Entire section amended, (HB 14-1227), ch. 363, p. 1732, § 32, effective July 1.

**Editor's note:** This section is similar to former § 12-35-130 as it existed prior to 2003, and the former § 12-35-133 was relocated to § 12-35-136.

**12-35-134. Soliciting or advertisements by unlicensed persons.** It is unlawful for any unlicensed person, corporation, entity, partnership, or group of persons to solicit or advertise 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.

**Source: L. 2004:** Entire article RC&RE, p. 852, § 1, effective July 1.

**Editor's note:** This section is similar to former § 12-35-131 as it existed prior to 2003, and the former § 12-35-134 was relocated to § 12-35-137.

**12-35-135. Unauthorized practice - penalties.** (1) Any person who practices or offers or attempts to practice dentistry or dental hygiene without an active license issued under this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and, for the second or any subsequent offense, the person commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) Repealed.

**Source: L. 2004:** Entire article RC&RE, p. 852, § 1, effective July 1. **L. 2006:** (2) repealed, p. 795, § 26, effective July 1; (1) amended, p. 87, § 25, effective August 7.

**Editor's note:** This section is similar to former § 12-35-132 as it existed prior to 2003, and the former § 12-35-135 was relocated to § 12-35-122.

**12-35-136. 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. If 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 such litigation without cost to the board or to any individual member thereof.

**Source: L. 2004:** Entire article RC&RE, p. 853, § 1, effective July 1.

**Editor's note:** This section is similar to former § 12-35-133 as it existed prior to 2003, and the former § 12-35-136 was relocated to § 12-35-123.

**12-35-137. Independent advertising or marketing agent - injunctive proceedings.** (1) Notwithstanding section 12-35-129 (1)(t), a licensed dentist or dental hygienist may employ an independent advertising or marketing agent to provide advertising or marketing services on the dentist's or dental hygienist's 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 district court to enjoin any independent advertising or marketing agent from the use of advertising or marketing that 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 that the licensed dentist or dental hygienist provides to the independent advertising or marketing agent is accurate and not misleading, deceptive, or false.

**Source: L. 2004:** Entire article RC&RE, p. 853, § 1, effective July 1.

**Editor's note:** This section is similar to former § 12-35-134 as it existed prior to 2003.

**12-35-138. Dentist peer health assistance fund.** (1) (a) Effective July 1, 2004, as a condition of renewal in this state, every renewal applicant shall pay to the administering entity that has been selected by the board pursuant to the provisions of paragraph (b) of this subsection (1) an amount not to exceed fifty-nine dollars per year, which maximum amount may be adjusted on January 1, 2005, and annually thereafter by the board to reflect changes in the United States bureau of statistics consumer price index for the Denver-Boulder consolidated metropolitan statistical area for all urban consumers or goods, or its successor index. Such fee 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 that may be detrimental to their ability to practice dentistry. Such fee shall not exceed one hundred dollars per year per licensee.

(b) 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 that 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 its services available to all licensed Colorado dentists.

(c) 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.

(d) The responsibilities of the administering entity shall be to:

(I) Collect the required annual payments, directly or through the board;

(II) 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) Distribute the moneys collected, less expenses, to the designated provider, as directed by the board;

(IV) Provide an annual accounting to the board of all amounts collected, expenses incurred, and amounts disbursed; and

(V) 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.

(e) The board, at its discretion, may collect the required annual payments payable to the administering entity for the benefit of the administering entity and shall transfer all such

payments to the administering entity. All required annual payments collected or due to the board for each fiscal year shall be deemed custodial funds that are not subject to appropriation by the general assembly, and such funds shall not constitute state fiscal year spending for purposes of section 20 of article X of the state constitution.

(2) (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 that such failure shall result in disciplinary action by the board.

(b) Notwithstanding section 12-35-129 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 or she may submit a written request to the board for a formal hearing on such suspension within ten days after 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 or her 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 or her knowledge, information, and belief, he or she knows of no instance in which he or she has violated this article or the rules of the board, except in those instances affected by the dentist's physical, emotional, or psychological problems.

(2.5) If a dentist is arrested for a drug- or alcohol-related offense, the dentist shall refer himself or herself to the peer health assistance program within thirty days after the arrest for an evaluation and referral for treatment as necessary. If the dentist self-refers, the evaluation by the program is confidential and cannot be used as evidence in any proceeding other than before the board. If a dentist fails to comply with this subsection (2.5), the failure, alone, is not grounds for discipline under sections 12-35-129 and 12-35-129.1 unless the dentist has also committed an act or omission specified in section 12-35-129, other than an act or omission specified in section 12-35-129 (1)(e) or (1)(f).

(3) 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 members in making grants to peer assistance programs, and no civil action may be brought or maintained against the board 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.

(4) The board is authorized to promulgate rules necessary to implement the provisions of this section.

**Source: L. 2004:** Entire article RC&RE, p. 853, § 1, effective July 1. **L. 2010:** (1)(d)(I) amended and (1)(e) added, (HB 10-1128), ch. 172, p. 611, § 6, effective April 29. **L. 2014:** (2.5) added, (HB 14-1227), ch. 363, p. 1733, § 33, effective July 1.

**Editor's note:** This section is similar to former § 12-35-123.5 as it existed prior to 2003.

**12-35-139. Continuing education requirements - rules.** (1) As a condition of renewing, reactivating, or reinstating a license issued under this article, every dentist and dental hygienist shall obtain at least thirty hours of continuing education every two years to ensure patient safety and professional competency.

(2) The board may adopt rules establishing the basic requirements for continuing education, including the types of programs that qualify, exemptions for persons holding an inactive or retired license, requirements for courses designed to enhance clinical skills for certain licenses, and the manner by which dentists and dental hygienists are to report compliance with the continuing education requirements.

**Source: L. 2014:** Entire section added, (HB 14-1227), ch. 363, p. 1733, § 34, effective July 1.

**12-35-140. Anesthesia and sedation permits - dentists and dental hygienists - training and experience requirements - office inspections - rules.** (1) Upon application in a form and manner determined by the board and payment of the applicable fees established by the board, the board may issue an anesthesia or sedation permit to a licensed dentist or a local anesthesia permit to a dental hygienist in accordance with this section.

(2) (a) A licensed dentist who obtains an anesthesia or sedation permit pursuant to this section may administer minimal sedation, moderate sedation, or deep sedation/general anesthesia.

(b) A licensed dentist who administers minimal sedation, moderate sedation, or deep sedation/general anesthesia to pediatric dental patients shall obtain a permit designated by the board to allow for administration to pediatric dental patients.

(c) An anesthesia or sedation permit issued to a licensed dentist is valid for five years, unless the dentist's license expires. As a condition of renewing an anesthesia or sedation permit, a licensed dentist shall attest, when applying to renew the permit, that he or she completed seventeen continuing education credits specific to anesthesia or sedation administration during the five-year permit period. Continuing education credits obtained as required by this section may be used to satisfy the continuing education requirements in section 12-35-139.

(3) (a) A licensed dental hygienist who obtains a local anesthesia permit pursuant to this section may administer local anesthesia.

(b) A local anesthesia permit issued to a dental hygienist is valid as long as the dental hygienist's license is active.

(4) (a) The board shall establish, by rule, minimum training, experience, and equipment requirements for the administration of local anesthesia, analgesia including nitrous oxide/oxygen inhalation, and medication prescribed or administered for the relief of anxiety or apprehension, minimal sedation, moderate sedation, deep sedation, or general anesthesia, including procedures that may be used by and minimum training requirements for dentists, dental hygienists, and dental assistants.

(b) In order to fulfill the training and experience requirements for an anesthesia or sedation permit, an applicant must be the primary provider and directly provide care for all required case work.

(c) The rules relating to anesthesia and sedation are not intended to:

(I) Permit administration of local anesthesia, analgesia, medication prescribed or administered for the relief of anxiety or apprehension, minimal sedation, moderate sedation, deep sedation, or general anesthesia by dental assistants; except that this section does not prohibit a dental assistant from monitoring and administering nitrous oxide/oxygen inhalation performed under the supervision of a licensed dentist pursuant to section 12-35-113 (1)(q) and board rules; or

(II) Reduce competition or restrain trade with respect to the dentistry needs of the public.

(5) The board shall establish, by rule, criteria and procedures for an office inspection program to be completed upon application and renewal of anesthesia or sedation permits, which must include:

(a) Designation of qualified inspectors who are experts in dental outpatient deep sedation/general anesthesia and moderate sedation;

(b) A requirement for each licensee that is inspected to bear the cost of inspection by allowing designated inspectors to charge a reasonable fee as established by the board;

(c) A requirement that an inspector notify the board in writing of the results of an inspection; and

(d) A requirement for reinspection of an office prior to the renewal of a moderate sedation or deep sedation/general anesthesia permit.

**Source: L. 2014:** Entire section added, (HB 14-1227), ch. 363, p. 1733, § 34, effective July 1.

**12-35-141. Professional liability insurance required - rules.** (1) A licensed dentist and a licensed dental hygienist must meet the financial responsibility requirements established by the board pursuant to section 13-64-301 (1)(a), C.R.S.

(2) Upon request of the board, a licensed dentist or licensed dental hygienist shall provide proof of professional liability insurance to the board.

(3) The board may, by rule, exempt from or establish lesser financial responsibility standards for licensed dentists and licensed dental hygienists who meet the criteria in section 13-64-301 (1)(a)(II), C.R.S.

**Source: L. 2014:** Entire section added with relocations, (HB 14-1227), ch. 363, p. 1735, § 35, effective July 1. **L. 2016:** Entire section amended, (HB 16-1327), ch. 124, p. 352, § 2, effective August 10.

**Editor's note:** Subsection (2) is similar to former § 12-35-127 (4) as it existed prior to 2014.

## PART 2

### SAFETY TRAINING FOR UNLICENSED X-RAY TECHNICIANS

**Cross references:** For similar provisions in article 32 of this title regulating podiatrists, see part 2 of said article; for similar provisions in article 33 of this title regulating chiropractors, see part 2 of said article.

**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 Colorado dental board pursuant to this part 2.

(3) The general assembly seeks to ensure, and accordingly declares its intent, that in promulgating the rules 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.

**Source: L. 2004:** Entire article RC&RE, p. 856, § 1, effective July 1. **L. 2014:** (2) amended, (HB 14-1227), ch. 363, p. 1736, § 39, effective July 1.

**12-35-202. Board authorized to issue rules.** (1) (a) The Colorado dental board shall adopt rules prescribing minimum standards for the qualifications, education, and training of unlicensed persons operating machine sources of ionizing radiation and administering radiation to patients for diagnostic medical use. A licensed dentist or dental hygienist shall not allow an unlicensed person to operate a machine source of ionizing radiation or to administer radiation to any patient unless the person meets standards then in effect under rules adopted pursuant to this section. The board may adopt rules allowing a grace period in which newly hired operators of machine sources of ionizing radiation are to receive the training required by this section.

(b) For purposes of this part 2, "unlicensed person" means a 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 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. 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 25-1.5-103, 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.

**Source: L. 2004:** Entire article RC&RE, p. 856, § 1, effective July 1. **L. 2014:** (1)(a) amended, (HB 14-1227), ch. 363, p. 1736, § 40, effective July 1.