

**Adopt Den 404 as follows:**

**PART Den 404 REVOCATION, SUSPENSION AND OTHER SANCTIONS, INCLUDING NON-DISCIPLINARY SUBSTANCE ABUSE RECOVERY PROGRAM**

Den 404.01 Misconduct. Misconduct shall be:

- (a) Addiction to mind-altering drugs or intoxicants;
- (b) Commission of any felony or misdemeanor involving dishonesty, untrustworthiness, or unprofessional conduct;
- (c) Any administrative or criminal conviction involving moral turpitude;
- (d) The practice of fraud or untruthfulness in obtaining educational credentials, examination scores, or professional licensure in this or any other jurisdiction;
- (e) Affliction with a physical or mental impairment or disease which is dangerous to the public health or which precludes the practice of dentistry or dental hygiene at ordinary levels of proficiency;
- (f) Ignorance, incompetence, or a pattern of behavior inconsistent with the basic knowledge and skills expected of persons licensed to practice dentistry or dental hygiene;
- (g) Gross or repeated negligence in practicing dentistry or dental hygiene;
- (h) Intentionally injuring a patient or engaging in any other unprofessional or dishonest conduct in practicing dentistry or dental hygiene;
- (i) Failure to follow the current guidelines of:
  - (1) The American Dental Association, as adopted by the board, as published in:
    - a. The “Dental Radiographic Examinations: Recommendations for Patient Selection and Limiting Radiation Exposure”, required by Den 501.01(p); or
    - b. “Recommendations in Radiographic Practices” Journal of the American Dental Association, January 1989; and
  - (2) The Centers for Disease Control and Prevention as published in Infection Control Recommendations;
- (j) Advertising the licensee's dental practice by using any newspaper, broadcast, cable transmission, telephone, sign, poster, or other advertising message which:
  - (1) Deceives or is intended to deceive the public concerning dental services, techniques, the qualifications of a licensee, or the prices to be charged;
  - (2) Claims or suggests that the licensee enjoys professional superiority or performs services in a manner superior to other persons licensed by this chapter or that the licensee performs services or any particular service in a painless manner; or

- (3) Announces the use of any drug or medicine of an unknown formula or any system or anesthetic that is unnamed, misnamed, misrepresented, or not in reality used
- (k) Employing or permitting an unlicensed person to practice in the licensee's office;
- (l) Knowingly or willfully violating any provision of the board's administrative rules, RSA 317-A, order of the dental board, any federal, state, or local controlled drug law or other federal, state, or local laws or regulations pertaining to:
- (1) The practice of dentistry, and the Principles of Ethics and Code of Professional Conduct of the American Dental Association, as required by Den 501; or
  - (2) The practice of dental hygiene, and the Code of Ethics of the American Dental Hygienists' Association, as required by Den 501.
- (m) Having more than one patient undergoing moderate sedation, deep sedation, or general anesthesia on an outpatient basis at any given time unless each patient is being continuously monitored on a one-to-one ratio while sedated by either the dentist or another licensed health professional authorized by law to administer moderate sedation, deep sedation, or general anesthesia;
- (n) Failing to have patients recovering from moderate sedation, deep sedation, or general anesthesia closely monitored by licensed health professionals experienced in the care and resuscitation of patients recovering from moderate sedation, deep sedation, or general anesthesia. If one licensed professional is responsible for the recovery care of more than one patient at a time, all of the patients shall be physically in the same room to allow continuous visual contact with all patients and the patient to recovery staff ratio should not exceed 3 to one;
- (o) Failing to have patients continuously monitored with a pulse oximeter or arterial blood gas monitoring machine while undergoing or recovering from moderate sedation, deep sedation, or general anesthesia;
- (p) Failing to perform an adequate history and physical as defined in rules under RSA 317-A:12, XII-a(i) or to obtain the written informed consent of a patient prior to the administering general anesthesia, deep sedation, or moderate sedation. In the case of a minor, the consent shall be obtained from the child's parent or guardian;
- (q) Failing to report an adverse event or implement a corrective action plan as required by RSA 317-A:20-a; or
- (r) Violation of:
- (1) Any provision of RSA 317-A;
  - (2) Any rule adopted by the board; or
  - (3) Any state or federal law reasonably related to the licensee's authority to practice or the licensee's ability to practice safely; and
- (s) In the licensee's role as a dentist or dental hygienist, unprofessional conduct shall include, but not be limited to:

- (1) Yelling, swearing, or using profanity;
- (2) Throwing items at or in the direction of any person;
- (3) Verbally threatening; and
- (4) Grabbing, pulling, or pushing any person.

Den 404.02 Sanctions.

(a) Pursuant to RSA 310:12, I(e), disciplinary measures available to the board to sanction misconduct shall be:

- (1) Revocation or suspension of a licensure;
- (2) Limitation or restriction of a license;
- (3) Requiring the licensee to submit to the care, counseling, or treatment of a physician, counseling service, health care facility, professional assistance program, or any comparable person or facility, approved by the board;
- (4) Requiring the licensee to participate in educational programs relevant to the practice of dentistry in substantive areas in which the licensee has been found professionally deficient;
- (5) Requiring the licensee to practice under the direction of a dentist in a public institution, public, or private health care program, or private practice for a period of time specified in Den rules adopted pursuant to RSA 541-A;
- (6) Assessing administrative fines in amounts established in Den 404.05 below which shall not exceed \$2,000 per offense or, in the case of continuing offenses, \$250 for each day the violation continues; or
- (7) Reprimand.

Den 404.03 Procedure for Imposition of Sanctions. Other than immediate license suspension authorized by RSA 541-A:30, III, the board shall impose disciplinary sanctions only:

- (a) After prior notice to the licensee and opportunity for the licensee to be heard; or
- (b) By agreement in a settlement between the board and the licensee.

Den 404.04 Determinations Required for Sanctions. Sanctions by the board shall be determined as follows:

(a) The board shall select appropriate sanction(s) from the list in Den 404.02, choosing the sanction or combination of sanctions most likely to:

- (1) Protect public health and safety;
- (2) Prevent future misconduct by the licensee;

- (3) Take into account any acknowledgement of fault by the licensee and any cooperation by the licensee with the board's investigation of misconduct;
  - (4) Correct any attitudinal, educational, or other deficiencies which led to the licensee's misconduct;
  - (5) Encourage the responsible practice of mental health; and
  - (6) Demonstrate to the licensee and the public the board's intention to insure that its licensees practice in accordance with applicable law and the public welfare.
- (b) In determining which sanction or combination of sanctions to impose, the board shall:
- (1) First determine the nature of the act or omission constituting the misconduct done by the licensee;
  - (2) Next determine whether the misconduct has one or more of the characteristics listed in (c) below; and
  - (3) Apply the standard's outlined in Den 404.04(a).
- (c) The characteristics shall be:
- (1) The misconduct actually caused physical or mental harm to the client or another person;
  - (2) The misconduct had the potential to cause physical or mental harm to the client or another person;
  - (3) The misconduct repeated earlier misconduct done by the licensee, as determined by:
    - a. An earlier hearing;
    - b. An earlier settlement agreement predicated on the same misconduct by the licensee;  
or
    - c. An admission by the licensee;
  - (4) The misconduct was not the first misconduct by the licensee, as determined by:
    - a. An earlier hearing;
    - b. An earlier settlement agreement predicated on the same misconduct by the licensee;  
or
    - c. An admission by the licensee; and
    - d. The misconduct was intentional rather than the result of negligence or inadvertence

Den 404.05 Imposition of Fines.

(a) Fines, penalties, and monetary sanctions shall be assessed by the board upon a finding of licensee misconduct in accordance with the considerations of RSA 310:12, Den 501, and Den 502.

(b) Fines, if imposed, shall not exceed the following amounts:

(1) When no violation of the same type has occurred within the 5 years preceding the board's notice to the respondent, the fine assessed shall not exceed \$500.00 per offense;

(2) When a single disciplinary infraction of the same type has occurred within the 5 years preceding the board's notice to the licensee, the fine assessed shall not exceed \$1000.00 per offense; and

(3) When more than one disciplinary infraction of the same type has occurred within the 5 years preceding the board's notice to the licensee, the fine assessed shall not exceed \$2000.00 per offense.

(c) Each day the violation continues, a separate fine up to \$250.00 per day shall be assessed which shall not exceed \$2000.00.

Den 404.06 Monetary Sanctions: Expenses Relating to Discipline Enforcement.

(a) Expenses incurred by the board in the conduct of a hearing and enforcement of discipline shall be assessed, in whole or in part, against a licensee who is disciplined following the hearing provided the board sets forth its reasons based upon the following criteria:

(1) The severity of the conduct resulting in the discipline imposed;

(2) The extent to which the evidence was in dispute;

(3) The nature and extent of the investigation and hearing;

(4) Whether the licensee was given the opportunity to enter into a reasonable settlement agreement before the hearing;

(5) The contribution that repayment of expenses makes toward rehabilitation;

(6) Whether the payment of all or a portion of a monetary fine was suspended; and

(7) The likelihood that assessment of expenses will deter the licensee or others from engaging in similar conduct.

(b) Following any assessment, the board shall send a written statement of the nature and amount of each such expense to the disciplined licensee, together with a formal demand for payment.

**APPENDIX I**

<b>RULE</b>	<b>STATUTE</b>
Den 404.01	RSA 317-A:17, II
Den 404.02	RSA 310:12, I(e)
Den 404.03	RSA 310:12, I(e)
Den 404.04	RSA 310:12, I(e)
Den 404.05	RSA 310:12, I(e)
Den 404.06	RSA 310:12, I(e)

**APPENDIX II**

<b>Rule</b>	<b>Title</b>	<b>Obtained at:</b>
Den 501.01(p) and Den 404.01(i)(1)a.	Dental Radiographic Examinations: Recommendations for Patient Sedation and Limiting Radiation Exposure (Revised 2016)	American Dental Association Obtain online at no cost at: <a href="http://www.ada.org/~media/ADA/Member%20Center/Files/Dental_Radiographic_Examinations_2012.ashx">http://www.ada.org/~media/ADA/Member%20Center/Files/Dental_Radiographic_Examinations_2012.ashx</a>
Den 404.01(i)(1)a.	Recommendations in Radiographic Practices: an update, 1988 (JADA, Volume 118, January 1989)	American Dental Association Council on Dental Materials, Instruments, and Equipment Obtained at no cost at: <a href="https://www.sciencedirect.com/sdfe/pdf/download/eid/1-s2.0-S0002817789810281/first-page-pdf">https://www.sciencedirect.com/sdfe/pdf/download/eid/1-s2.0-S0002817789810281/first-page-pdf</a>