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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOAH CASE NO: 07-0974PL
DOH CASE NO: 2005-67102

JENNY DAVENPORT, D.D.S.

Respondent

MOTION TO TAKE OFFICIAL RECOGNITION

COMES NOW, the Petitioner, Department of Health, by and through the undersigned counsel in pursuant to Rule 28-106.204, Florida Administrative Code and moves the Administrative Law Judge for an order taking official recognition of the Florida Statutes applicable to dentists practicing in the State of Florida as set forth herein, as grounds therefore states;

1. This case involves an allegation that Respondent, Jenny Davenport, D.D.S., failed to meet the minimum standards of performance in her diagnosis and treatment of Patient L.E. when measured against generally prevailing peer performance.

Florida Statutes

2. The Florida Legislature now, and at the time of these events had enacted statutes concerning the duties, responsibilities and definitions related to the practice of dentistry in the State of Florida.

3. At the time of the allegations in this complaint, April 2004 to December 2004, Florida Statute § 466.028(1)(x) was in effect. A copy of F.S. § 466.028(1)(x) is attached hereto as Exhibit "A".

4. Florida Statutes § 466.028(1)(x), Florida Statutes, constitutes a public statutory law as contemplated by § 90.201 of the Florida Evidence Code, and therefore must be judicially noticed by courts in the State of Florida.

5. The content of said statute is relevant to the issues in this proceeding in that Respondent is a licensed dentist in Florida and by virtue of accepting the privilege of licensure by the Board of Dentistry, has consented to the Department's authority to regulate dentistry, including areas specifically regulated and monitored under the statutory section presented for judicial notice and recognition.

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Florida Administrative Code

6. At the time of the allegations in this complaint, April 2004 to December 2004, Rule 64B5-17.004, Florida Administrative Code was in effect. A copy of Rule 64B5-17.004, Florida Administrative Code is attached hereto as Exhibit "B".

7. Rule 64B5-17.004, Florida Administrative Code, constitutes a rule promulgated by a governmental agency as contemplated by § 90.202 of the Florida Evidence Code, and therefore may be judicially noticed by courts in the State of Florida.

8. The content of said rule is relevant to the issues in this proceeding

9. At the time of the allegations in this complaint, April 2004 to December 2004, Rule 64B5-13.005, Florida Administrative Code was in effect. A copy of Rule 64B5-13.005, Florida Administrative Code is attached hereto as Exhibit "C".

10. Rule 64B5-13.005, Florida Administrative Code, constitutes a rule promulgated by a governmental agency as contemplated by § 90.202 of the Florida Evidence Code, and therefore may be judicially noticed by courts in the State of Florida.

11. The content of said rule is relevant to the issues in this proceeding.

12. The undersigned has conferred with counsel for Respondent who has not stated their position with regard to this Motion.

THEREFORE, Petitioner respectfully requests that the Administrative Law Judge enter an order taking official recognition of Florida Statute § 466.028(1)(x); Rule 64B5-17.004, F.A.C.; and Rule 64B5-13.005, F.A.C. for DOAH Case No. 07-0974PL and DOH case number 2005-67102.

Respectfully submitted,

/S/
Jamie Ito
Assistant General Counsel
Florida Bar No.: #13553
Department of Health/ PSU
4052 Bald Cypress Way, C-65
Tallahassee, Florida 32399-3265
Phone: (850) 245.4640 X 8188
Fax: (850) 245.4683

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via: ☒ DHL Delivery, ☐ Hand-Delivery, ☐ E-mail and/or ☐ Facsimile Transmission to Catherine Chapman, Esq., Huey, Guilday, Tucker, Schwartz, & Williams, P.A., 1983 Centre Pointe Boulevard, Suite 200, Tallahassee, Florida 33308 this 5th day of April, 2007.

Respectfully submitted,

_____/S/_____
Jamie Ito
Assistant General Counsel

466.028 Grounds for disciplinary action; action by the board.--

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(a) Attempting to obtain, obtaining, or renewing a license under this chapter by bribery, fraudulent misrepresentations, or through an error of the department or the board.

(b) Having a license to practice dentistry or dental hygiene revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country.

(c) Being convicted or found guilty of or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of dentistry or dental hygiene. A plea of nolo contendere shall create a rebuttable presumption of guilt to the underlying criminal charges.

(d) Advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content contrary to s. 466.019 or rules of the board adopted pursuant thereto.

(e) Advertising, practicing, or attempting to practice under a name other than one's own.

(f) Failing to report to the department any person who the licensee knows, or has reason to believe, is clearly in violation of this chapter or of the rules of the department or the board.

(g) Aiding, assisting, procuring, or advising any unlicensed person to practice dentistry or dental hygiene contrary to this chapter or to a rule of the department or the board.

(h) Being employed by any corporation, organization, group, or person other than a dentist or a professional corporation or limited liability company composed of dentists to practice dentistry.

(i) Failing to perform any statutory or legal obligation placed upon a licensee.

(j) Making or filing a report which the licensee knows to be false, failing to file a report or record required by state or federal law, knowingly impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a licensee.

(k) Committing any act which would constitute sexual battery, as defined in chapter 794, upon a patient or intentionally touching the sexual organ of a patient.

(l) Making deceptive, untrue, or fraudulent representations in or related to the practice of

dentistry.

(m) Failing to keep written dental records and medical history records justifying the course of treatment of the patient including, but not limited to, patient histories, examination results, test results, and X rays, if taken.

(n) Failing to make available to a patient or client, or to her or his legal representative or to the department if authorized in writing by the patient, copies of documents in the possession or under control of the licensee which relate to the patient or client.

(o) Performing professional services which have not been duly authorized by the patient or client, or her or his legal representative, except as provided in ss. 766.103 and 768.13.

(p) Prescribing, procuring, dispensing, administering, mixing, or otherwise preparing a legend drug, including any controlled substance, other than in the course of the professional practice of the dentist. For the purposes of this paragraph, it shall be legally presumed that prescribing, procuring, dispensing, administering, mixing, or otherwise preparing legend drugs, including all controlled substances, in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the professional practice of the dentist, without regard to her or his intent.

(q) Prescribing, procuring, dispensing, or administering any medicinal drug appearing on any schedule set forth in chapter 893, by a dentist to herself or himself, except those prescribed, dispensed, or administered to the dentist by another practitioner authorized to prescribe them.

(r) Prescribing, procuring, ordering, dispensing, administering, supplying, selling, or giving any drug which is a Schedule II amphetamine or a Schedule II sympathomimetic amine drug or a compound thereof, pursuant to chapter 893, to or for any person except for the clinical investigation of the effects of such drugs or compounds when an investigative protocol therefor is submitted to, and reviewed and approved by, the board before such investigation is begun.

(s) Being unable to practice her or his profession with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon a finding of the secretary or her or his designee that probable cause exists to believe that the licensee is unable to practice dentistry or dental hygiene because of the reasons stated in this paragraph, the authority to issue an order to compel a licensee to submit to a mental or physical examination by physicians designated by the department. If the licensee refuses to comply with such order, the department's order directing such examination may be enforced by filing a petition for enforcement in the circuit court where the licensee resides or does business. The licensee against whom the petition is filed shall not be named or identified by initials in any public court records or documents, and the proceedings shall be closed to the public. The department shall be entitled to the summary procedure provided in s. 51.011. A licensee affected under this paragraph shall at

reasonable intervals be afforded an opportunity to demonstrate that she or he can resume the competent practice of her or his profession with reasonable skill and safety to patients.

(t) Fraud, deceit, or misconduct in the practice of dentistry or dental hygiene.

(u) Failure to provide and maintain reasonable sanitary facilities and conditions.

(v) Failure to provide adequate radiation safeguards.

(w) Performing any procedure or prescribing any therapy which, by the prevailing standards of dental practice in the community, would constitute experimentation on human subjects, without first obtaining full, informed, and written consent.

(x) Being guilty of incompetence or negligence by failing to meet the minimum standards of performance in diagnosis and treatment when measured against generally prevailing peer performance, including, but not limited to, the undertaking of diagnosis and treatment for which the dentist is not qualified by training or experience or being guilty of dental malpractice. For purposes of this paragraph, it shall be legally presumed that a dentist is not guilty of incompetence or negligence by declining to treat an individual if, in the dentist's professional judgment, the dentist or a member of her or his clinical staff is not qualified by training and experience, or the dentist's treatment facility is not clinically satisfactory or properly equipped to treat the unique characteristics and health status of the dental patient, provided the dentist refers the patient to a qualified dentist or facility for appropriate treatment. As used in this paragraph, "dental malpractice" includes, but is not limited to, three or more claims within the previous 5-year period which resulted in indemnity being paid, or any single indemnity paid in excess of \$25,000 in a judgment or settlement, as a result of negligent conduct on the part of the dentist.

(y) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that she or he is not competent to perform.

(z) Delegating professional responsibilities to a person who is not qualified by training, experience, or licensure to perform them.

(aa) The violation of a lawful order of the board or department previously entered in a disciplinary hearing; or failure to comply with a lawfully issued subpoena of the board or department.

(bb) Conspiring with another licensee or with any person to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude another licensee from lawfully advertising her or his services.

(cc) Being adjudged mentally incompetent in this or any other state, the discipline for which

shall last only so long as the adjudication.

(dd) Presigning blank prescription or laboratory work order forms.

(ee) Prescribing, ordering, dispensing, administering, supplying, selling, or giving growth hormones, testosterone or its analogs, human chorionic gonadotropin (HCG), or other hormones for the purpose of muscle building or to enhance athletic performance. For the purposes of this subsection, the term "muscle building" does not include the treatment of injured muscle. A prescription written for the drug products listed above may be dispensed by the pharmacist with the presumption that the prescription is for legitimate medical use.

(ff) Operating or causing to be operated a dental office in such a manner as to result in dental treatment that is below minimum acceptable standards of performance for the community. This includes, but is not limited to, the use of substandard materials or equipment, the imposition of time limitations within which dental procedures are to be performed, or the failure to maintain patient records as required by this chapter.

(gg) Administering anesthesia in a manner which violates rules of the board adopted pursuant to s. 466.017.

(hh) Failing to report to the department any licensee under chapter 458 or chapter 459 who the dentist knows has violated the grounds for disciplinary action set out in the law under which that person is licensed and who provides health care services in a facility licensed under chapter 395, or a health maintenance organization certificated under part I of chapter 641, in which the dentist also provides services.

(ii) Failing to report to the board, in writing, within 30 days if action has been taken against one's license to practice dentistry in another state, territory, or country.

(jj) Advertising specialty services in violation of this chapter.

(kk) Allowing any person other than another dentist or a professional corporation or limited liability company composed of dentists to direct, control, or interfere with a dentist's clinical judgment; however, this paragraph may not be construed to limit a patient's right of informed consent. To direct, control, or interfere with a dentist's clinical judgment may not be interpreted to mean dental services contractually excluded, the application of alternative benefits that may be appropriate given the dentist's prescribed course of treatment, or the application of contractual provisions and scope of coverage determinations in comparison with a dentist's prescribed treatment on behalf of a covered person by an insurer, health maintenance organization, or a prepaid limited health service organization.

(ll) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

History.--ss. 1, 3, ch. 79-330; s. 5, ch. 80-354; s. 330, ch. 81-259; ss. 2, 3, ch. 81-318; s. 2, ch. 83-172; s. 5, ch. 85-6; ss. 18, 23, 24, ch. 86-291; s. 42, ch. 88-1; s. 21, ch. 88-277; s. 21,

ch. 88-392; s. 11, ch. 89-66; ss. 29, 49, ch. 90-228; s. 3, ch. 90-341; s. 60, ch. 91-137; s. 7, ch. 91-156; s. 66, ch. 91-220; s. 4, ch. 91-429; s. 46, ch. 92-149; s. 6, ch. 92-178; s. 2, ch. 94-105; s. 61, ch. 95-144; s. 3, ch. 97-67; s. 262, ch. 97-103; s. 110, ch. 97-264; s. 73, ch. 98-166; s. 132, ch. 2000-160; s. 34, ch. 2001-277; s. 31, ch. 2003-416.

EXHIBIT A

(4) Fee arrangements between dentists in the same health care practice which are based upon productivity or shared net profits are not split-fee arrangements.

(5) Referral of a patient to another health care practice in which the referring dentist or any owner, employee or agent of the referring practice or immediate family member thereof has a financial interest, whether direct, indirect, active or passive in nature, is permitted only if the referral is in the best interest of the patient and the patient first consents to the arrangement by signing a written notification form from the referral dentist which informs the patient of (a) the existence of a financial interest and (b) the patient's right to request another referral or to independently seek the services recommended. Under no circumstances shall the dentist's financial interest be contingent upon or otherwise related to any referral quota or similar requirement. However, in emergency circumstances where it is in the patient's best interest that such a referral be made without first seeing the patient, the referring dentist shall orally provide the notification required herein. In such emergency situations, the referring dentist shall also make a notation in the patient's record at the time of referral that disclosure was made orally due to emergency circumstances. Written disclosure as required in paragraph 5 of this rule shall be supplied to the patient at the office to which the emergency patient was referred.

(6) Notification forms signed by patients in accordance with subsection (5) above shall be maintained in the patient's record.

(7) The written notification required by this rule shall be made on the appropriate form set forth in Rule 64B5-1.021, F.A.C.

Specific Authority 466.004(4) FS. Law Implemented 466.052, 466.028(1)(n) FS. History—New 8-30-90, Formerly 21G-17.003, 61F5-17.003, 59Q-17.003, Amended 8-19-97.

64B5-17.004 Emergency Care.

It is the responsibility of every dentist practicing in this State to provide, either personally, through another licensed dentist, or through a reciprocal agreement with another agency, reasonable twenty-four (24) hour emergency services for all patients under his continuing care.

Specific Authority 466.004(4) FS. Law Implemented 466.028(1)(u), (y) FS. History—New 4-26-87, Formerly 21G-17.004, 61F5-17.004, 59Q-17.004.

64B5-17.0045 Standards for the Use of Controlled Substances for Treatment of Pain.

(1) The Board of Dentistry recognizes that principles of quality medical practice dictate that the people of the State of Florida have access to appropriate and effective pain relief. All dentists should become knowledgeable about effective methods of pain treatment as well as statutory requirements for prescribing controlled substances.

(2) The Board recognizes that controlled substances, including opioid analgesics, may be essential in the treatment of acute pain due to a dental procedure.

(3) The Board of Dentistry is obligated under the laws of the State of Florida to protect the public health and safety. The Board recognizes that inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use.

(4) Dentists should be diligent in preventing the diversion of drugs for illegitimate purposes. This includes keeping prescription blanks in a safe place; not signing prescription blanks in advance; writing out the actual amount prescribed in addition to using a number to discourage alterations; and assisting pharmacists who may telephone to verify information about a prescription order.

(5) The Board will consider prescribing, ordering, administering, or dispensing controlled substances for pain to be for a legitimate medical purpose if based on sound clinical grounds. The dental procedure or justification for such prescribing must be clearly documented in the patient's record. All such prescribing must be in compliance with applicable state and federal law.

Specific Authority 466.004 FS. Law Implemented 466.017, 466.028(1)(p) FS. History—New 8-12-02.

64B5-17.005 Identification of Removable Prosthetic Devices.

(1) The Board takes official notice of the large number of elderly dental patients residing in Florida and that many of them are confined to hospitals, nursing homes, and other health care institutions. The Board also recognizes the continuing difficulty in providing ongoing dental care to these individuals which is created as a result of the inadvertent misplacing or switching of their removable dental prosthetic devices, which can enhance the transmission of communicable diseases. Accordingly, in an effort to enhance the likelihood that these individuals will receive minimally competent dental treatment consistent with the requirements of Section 466.028(1)(m) and (y), F.S., the Board establishes an identification standard for removable prosthetic devices.

(2) Every licensed dentist in this State making or directing to be made a removable prosthetic device, bridge, appliance or other structure to be used and worn as a substitute for natural teeth and/or supporting structure shall offer to the patient for whom the prosthesis is intended the opportunity to have such prosthesis marked at the time of fabrication. The location and method used for marking the prosthesis shall be determined by the dentist and this marking shall be permanent, legible, and cosmetically acceptable and shall include the patient's name.

(3) If the dentist determines that identification is not practicable or clinically safe, the offer to mark the prosthesis need not be made.

(4) Any removable dental prosthesis fabricated prior to the effective date of this rule, shall be subject to the provisions of subsection (2) during a laboratory relining or rebasing of the prosthesis.



(d) Violation of subsection 64B5-4.003(5), F.A.C., by providing an advertisement for free or discounted services which does not comply with the requirements of Section 455.664, F.S., and/or clearly identify the dates that free, discounted or reduced fee services will be available.

(6) Violation of Rule 64B5-4.004, F.A.C., as follows:

(a) Violation of subsection 64B5-4.004(2), F.A.C., by providing an advertisement of speciality services which does not state whether the service will be performed by a general dentist or a specialist.

(b) Violation of subsection 64B5-4.004(4), F.A.C., by providing an advertisement that states that a dentist is a specialist when the dentist does not meet the applicable criteria.

(c) Violation of subsection 64B5-4.004(5), F.A.C., by advertising a service in a manner which in its form or content would lead a reasonable person to believe that the service is a speciality unless that service is a speciality recognized by the Board.

(7) The penalty for a violation of Rule Chapter 64B5-4, F.A.C., as enumerated above are as follows: first offense will result in \$250.00 fine and reprimand; second offense, will result in a \$1,000.00 fine, reprimand and four (4) hour continuing education in ethics. Violations occurring subsequent to the second offense of the same rule or statute shall require the procedures of Section 456.073, F.S., to be followed.

(8) Violation of subsection 466.028(1)(n), F.S., failure to make available to a patient or client, or to his legal representative or to the Agency, if authorized in writing by the patient, copies of documents in the possession or under control of the licensee, which relate to the patient or client. Failure to comply will result in a \$1000.00 fine.

(9) Violation of subsection 466.028(1)(aa), F.S., which requires licensees to notify the Board of change of address. Failure to comply will result in a \$250.00 fine.

(10) Violation of subsection 466.028(1)(dd), F.S., by presigning laboratory work order forms. Failure to comply will result in a \$500.00 fine.

(11) Citations shall be issued to licensees by the Bureau of Investigative Services only after review by the legal staff of the Agency for Health Care Administration. Such review may be by telephone, in writing or facsimile machine.

(12) The procedures described herein apply only for an initial offense of the alleged violation. Subsequent violation(s) of the same rule or statute shall require the procedures of Section 456.073, F.S., to be followed. In addition, should an initial offense for which a citation could be issued occur in conjunction with violations not described herein, then the procedures of Section 456.073, F.S., shall apply.

(13) Citations are to be served upon the subject either by personal service or by certified mail, return receipt, to the last known business or residence address of the subject.

(14) The subject has 30 days from the date the citation becomes a final order to pay the fine and costs. All fines and costs are to be made payable to the "Board of Dentistry - Citations" and sent to the Agency for Health Care Administration in Tallahassee. A copy of the citation shall accompany the payment of the fine.

(15) If the licensee rejects the Agency for Health Care Administration's offer of the citation or if the licensee fails to comply with the penalty then the procedures of Section 456.073, F.S., shall apply to the original charge. In cases where the licensee fails to comply with the penalty, both the original charge and a charge of violating Section 466.028(1)(i), F.S., shall be brought before the probable cause panel pursuant to Section 456.073, F.S.

(16) The Agency for Health Care Administration shall, at the end of each calendar quarter, submit a report to the Board of the citations issued which report shall contain the name of the subject, the violation, fine imposed, whether the subject complied with the citation upon it becoming a final order, and the number of subjects who chose to follow the procedures of Section 456.073, F.S.

Specific Authority 456.077, 466.004(4) FS. Law Implemented 456.072(3)(a), 456.077 FS. History-New 12-24-91, Formerly 21G-13.0046, Amended 11-22-93, Formerly 61F5-13.0046, 59Q-13.0046, Amended 7-19-01.

64B5-13.005 Disciplinary Guidelines.

(1) Unless relevant mitigating factors are demonstrated the Board shall always impose a reprimand and an administrative fine of \$10,000.00 per count or offense when disciplining a licensee for any of the disciplinary grounds listed in subsection (2) or (3) of this rule. The reprimand and administrative fine is in addition to the penalties specified in subsections (2) and (3) for each disciplinary ground.

(2) When the Board finds an applicant or licensee whom it regulates under Chapter 466, F.S., has committed any of the acts set forth in Section 466.026, F.S., it shall issue a final order imposing appropriate penalties within the ranges recommended in the following disciplinary guidelines:

(a) Practicing dentistry or dental hygiene without an appropriate active license issued by the Agency pursuant to Chapter 466, F.S. The usual action of the Board in the case of a licensee practicing with an inactive license shall be to impose a period of probation. In the case of unlicensed practice prior to licensure, the usual action of the Board shall be to impose a penalty of probation, restriction of practice, and/or revocation. When an applicant is found to have practiced prior to licensure the Board shall deny the application.

(b) Using or attempting to use a license to practice dentistry or dental hygiene which has been suspended or revoked. The usual action of the Board shall be to impose a period of probation, restriction of practice, and/or suspension. When an applicant is found to have practiced on a previously suspended or revoked license, the Board shall deny the application for licensure.

EXHIBIT

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(c) Knowingly employing any person to perform duties outside the scope allowed such person under Chapter 466, F.S., or the rules of the Board. The usual action of the Board shall be to impose a period of probation, restriction of practice, and/or suspension. In the case of an applicant for licensure, the Board shall deny the application.

(d) Giving false or forged evidence to the Agency or the Board for the purpose of obtaining a license. The usual action of the Board shall be to impose a period of probation, restriction of practice, and/or suspension. In the case of an applicant for licensure, the Board shall deny the application.

(e) Selling or offering to sell a diploma conferring a degree from a dental college or dental hygiene school or college, or a license issued pursuant to Chapter 466, F.S., or procuring such diploma or license with intent that it be used as evidence of that which the document stands for, by a person other than the one upon whom it was conferred or to whom it was granted. The usual action of the Board shall be to impose a suspension or revocation. In the case of an applicant for licensure, the Board shall deny the application.

(f) Using the name or title "dentist," the letters "D.D.S." or "D.M.D.," or any other words, letters, title, or descriptive matter which in any way represents a person as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the teeth or jaws or oral-maxillofacial region, unless the person has an active dentist's license pursuant to Chapter 466, F.S. The usual action of the Board shall be to impose a period of probation. In the case of an applicant, the Board shall deny the application.

(g) Using the name "dental hygienist" or the initials "R.D.H.," or otherwise holding himself out as an actively licensed dental hygienist or implying to any patient or consumer that he is an actively licensed dental hygienist unless that person has an active dental hygienist's license pursuant to Chapter 466, F.S. The usual action of the Board shall be to impose a period of probation. In the case of an applicant, the Board shall deny the application.

(h) Presenting as his own the license of another. The usual action of the Board shall be to impose a suspension or a revocation. In the case of an applicant, the Board shall deny the application.

(i) Knowingly concealing information relative to violations of Chapter 466, F.S. The usual action of the board shall be to impose a period of probation, restriction of practice, and/or suspension. In the case of an applicant, the Board shall deny the application.

(j) Performing any services as a dental assistant, except in the office of a licensed dentist, unless authorized by Chapter 466, F.S., or by rule of the Board. The usual action of the Board shall be to deny the application.

(3) When the Board finds an applicant or licensee whom it regulates under Chapter 466, F.S., has committed any of the acts set forth in Section 466.028, F.S., it shall issue a Final Order imposing appropriate penalties within the ranges recommended in the following disciplinary guidelines:

(a) Attempting to obtain, obtaining a license under Chapter 466, F.S., by bribery, fraudulent misrepresentation, or through an error of the Agency or the Board. The usual action of the Board shall be revocation. In the case of an applicant, the Board shall deny the application.

(b) Renewing a license under Chapter 466, F.S., by bribery, fraudulent misrepresentation, or through an error of the Agency or the Board. The usual action of the Board shall be to impose a suspension or revocation.

(c) Having a license to practice dentistry or dental hygiene revoked, suspended, or otherwise acted against, including the denial of licensure by the licensing authority of another state, territory, or country. The usual action of the Board shall be to impose a period of probation, restriction of practice, suspension and/or revocation depending upon the conduct involved and penalties imposed by the other jurisdiction. In the case of an applicant, the Board shall deny the application.

(d) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of dentistry or dental hygiene. The usual action of the Board shall be to impose any of the penalties specified in subsection 466.028(2), F.S., dependent upon the gravity of the underlying conduct. However, in the case of criminal conduct involving insurance fraud, sexual misconduct, or drug violations, the Board shall impose a suspension or revocation. In the case of an applicant, the Board shall deny the application.

(e) Advertising goods or services in a manner which is false, deceptive or misleading in form or content or which is contrary to Section 466.019, F.S., or the rules of the Board adopted pursuant thereto. In the case of a technical error or omission, the usual action of the Board shall be to impose no penalty other than that prescribed in subsection (1) of this rule for all violations. In the case of a non-technical error or omission, the usual action of the Board shall be to impose a period of probation.

(f) Advertising, practicing or attempting to practice under a name other than one's own. In the case of the use of a pseudonym, the usual action of the Board shall be to impose a period of probation. In the case of the intentional use of the name of a deceased or retired licensee, the usual action of the Board shall be to impose a suspension or revocation.

(g) Failing to report to the Agency any person the licensee knows or has reason to believe, is clearly in violation of Chapter 466, F.S., or the rules of the Board or Agency. The usual action of the Board shall be to impose a period of probation.

(h) Aiding, assisting, procuring, or advising any unlicensed person to practice dentistry or dental hygiene contrary to Chapter 466, F.S., or the rules of the Board or Agency. The usual action of the Board shall be to impose a period of probation, restriction of practice, and/or suspension. In the case of an applicant, the Board shall deny the application.

(i) Being employed by any corporation, organization, group, or person other than a dentist or professional association composed of dentists. The usual action of the Board shall be to impose a period of probation, restriction of practice, and/or suspension. In the case of an applicant, the Board shall deny the application.

(j) Failing to perform any statutory or legal obligation placed upon a licensee. In the case of a technical error or omission, the usual action of the Board shall be to impose no penalty other than that prescribed in subsection (1) of this rule. Failure to maintain adequate patient records or records of controlled substances as required by Chapter 893, F.S., shall result in the Board imposing a period of probation, restriction of practice, and/or suspension. Failure to provide requisite supervision of a dental hygienist or dental assistant shall result in the Board imposing a period of probation, restriction of practice, and/or suspension. Failure to obtain necessary continuing education shall result in the Board imposing a period of probation. Failure to timely complete a Board-approved educational course on Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome as required in Rule 64B5-12.019, F.A.C., shall result in the Board requiring completion of the course and imposition of a fine, probation and/or suspension or revocation.

(k) Negligent or unintentional failure to file a report or record required by state or federal law. The usual action of the Board shall be to impose a period of probation.

(l) Knowingly impeding or obstructing the filing of a report or record required by state or federal law or inducing another person to do so. The usual action of the Board shall be to impose a period of probation, restriction of practice, and/or suspension. In the case of an applicant, the Board shall deny the application.

(m) Making or filing a report required by state or Federal law which the licensee knows to be false. The usual action of the Board shall be probation, restriction of practice, suspension and/or revocation.

(n) Committing any act which would constitute sexual battery as defined in Chapter 794, F.S., upon a patient or intentionally touching the sexual organ of a patient. The usual action of the Board shall be to impose a period of probation, restriction of practice, suspension, and/or revocation. In the case of an applicant, the Board shall deny the application.

(o) Making deceptive, untrue, or fraudulent representations in the practice of dentistry. The usual action of the Board shall be to impose a period of probation.

(p) Failure to keep written dental records and medical history records justifying the course of treatment of the patient including, but not limited to, patient histories, examination results, test results, and x-rays if taken. The usual action of the Board shall be to impose a period of probation.

(q) Exercising influence on the patient or client in such a manner as to exploit the patient or client for the financial gain of the licensee or of a third party or paying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever. The usual action of the Board shall be to impose a period of probation and/or suspension.

(r) Failing to make available to a patient or client, or to his legal representative or the department if authorized in writing by the patient, copies of documents in the possession or under the control of the licensee which relate to the patient or client. The usual action of the Board shall be to impose a period of probation.

(s) Performing professional services which have not been duly authorized by the patient or client or his legal representative, except as provided in Sections 768.13 and 768.46, F.S. In the case of remediable services, the usual action of the Board shall be to impose a period of probation. In the case of irremediable services, the Board shall impose a period of probation, restriction of practice, and/or suspension.

(t) Prescribing, procuring, dispensing, administering, mixing or otherwise preparing a legend drug, including any controlled substances, other than in the course of the professional practice of the dentist. The usual action of the Board shall be to impose a period of probation, restriction of practice, suspension and/or revocation. In the case of an applicant, the Board shall deny the application.

(u) Prescribing, procuring, dispensing, or administering any medicinal drug appearing on any schedule set forth in Chapter 893, F.S., by the dentist to himself except those prescribed, dispensed or administered to the dentist by another practitioner authorized to prescribe, dispense or administer them. The usual action of the Board shall be to impose a period of probation, restriction of practice, suspension and/or revocation. In the case of an applicant, the Board shall deny the application.

(v) Prescribing, procuring, ordering, dispensing, administering, supplying, selling, or giving any drug which is an amphetamine or sympathomimetic amine drug or a compound designated as a Schedule II controlled substance, pursuant to Chapter 893, F.S., to or for any person except for the clinical investigation of the effects of such drugs or compounds when an investigative protocol therefor is submitted to, and reviewed and approved by, the Board before such investigation is begun. The usual action of the Board is to impose a period of probation, restriction of practice, suspension and/or revocation. In the case of an applicant, the Board shall deny the application.

(w) Being unable to practice his profession with reasonable skill and safety to patients by reason of illness, or use of alcohol, drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition. The usual action of the Board shall be to impose a penalty of suspension until such time as the licensee demonstrates rehabilitation followed by a period of probation under such terms and conditions as set by the Board and/or restriction of practice. If the individual is an applicant, the Board shall deny the application.

(x) Fraud, deceit, or misconduct in the practice of dentistry or dental hygiene. The usual action of the Board shall be to impose a period of probation, restriction of practice, suspension and/or revocation. In the case of an applicant, the Board shall deny the application.

(y) Failure to provide and maintain reasonable sanitary facilities and conditions. The usual action of the Board is to impose a period of probation and/or suspension.

(z) Failure to provide adequate radiation safeguards. The usual action of the Board is to impose a period of probation.

(aa) Performing any procedure of prescribing any therapy which, by the prevailing standards of dental practice in the community would constitute experimentation on human subjects, without first obtaining full, informed, and written consent. The usual action of the Board shall be to impose a period of probation and/or suspension.

(bb) Being guilty of incompetence. The usual action of the Board shall be to impose a period of probation, restriction of practice, suspension, and/or revocation. In the case of an applicant, the Board shall deny the application.

(cc) Being guilty of negligence or dental malpractice. The usual action of the Board shall be to impose a period of probation, restriction of practice, and/or suspension. In the case of an applicant, the Board shall deny the application.

(dd) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform. The usual action of the Board is to impose a period of probation, restriction of practice, and/or suspension. In the case of an applicant, the Board shall deny the application.

(ee) Delegating professional responsibilities to a person who is not qualified by training, experience or licensure to perform them. The Board shall impose a 6-month period of suspension and may impose an additional period of probation or restriction of practice. In the case of an applicant, the Board shall deny the application.

(ff) Violations or repeated violations of Chapter 466 or 456, F.S., or the rules promulgated thereunder. The usual action of the Board shall be to impose a period of probation, restriction of practice, suspension and/or revocation. In the case of an applicant, the Board shall deny the application.

(gg) Violation of a lawful order of the Board or the Agency previously entered in a disciplinary hearing. The usual action of the Board shall be to impose a period of probation, suspension and/or revocation. In the case of an applicant, the Board shall deny the application.

(hh) Failure to comply with a lawfully issued subpoena of the Board and the Agency. The usual action of the Board shall be to impose a period of probation and/or suspension. In the case of an applicant, the Board shall deny the application.

(ii) Conspiring with another licensee or with any other person to commit an act, or committing an act, which would tend to coerce, intimidate or preclude another licensee from lawfully advertising his services. The usual action of the Board is to impose a period of probation.

(jj) Being adjudged mentally incompetent in this or any other state. The usual action of the Board is to impose a suspension which shall last so long as the adjudication. The mandatory penalties contained in subsection (1) of this rule will not be applied to this violation. In the case of an applicant, the Board shall deny the application.

(kk) Presigning blank prescription or laboratory work order forms. The usual action of the Board shall be to impose a period of probation. In the case of an applicant, the Board shall deny the application.

(ll) Prescribing, ordering, dispensing, administering, supplying, selling or giving growth hormones, testosterone or its analogs, human chorionic gonadotropin (HCG), or other hormones for the purpose of muscle building or to enhance athletic performance. The usual action of the Board shall be to impose a period of probation. In the case of an applicant, the Board shall deny the application.

(mm) Operating or causing to be operated a dental office in such a manner as to result in dental treatment that is below minimum acceptable standards of performance for the community. This includes, but is not limited to, the use of substandard materials or equipment, the imposition of time limitations within which dental procedures are to be performed, or the failure to maintain patient records. The usual action of the Board shall be to impose a period of probation and/or suspension. In the case of an application, the Board shall deny the application.

(nn) Administering anesthesia in a manner which violates rules of the Board. The usual action of the Board shall be to impose a period of probation and/or suspension. In the case of an applicant, the Board shall deny the application.

(oo) Failure of a licensed dentist who provides health care services in a facility licensed under Chapter 395, F.S., or a health maintenance organization certificated under Part II of Chapter 641, F.S., to report a physician or osteopathic physician so employed who the dentist knows has violated the provisions of Chapter 458 or 459, F.S., respectively. The usual action of the Board shall be the penalty described in subsection (1) of this rule.

(pp) Failure to comply with the sterilization standards and/or barrier techniques set forth in Board of Dentistry Rule Chapter 64B5-25, F.A.C. The Board shall, depending upon the severity of the infraction as it relates to the endangerment of the public, consider imposition of restriction of practice, a period of suspension or revocation.

(qq) In any case in which the violation is for fraud or making a false or fraudulent representation, the Board shall impose an administrative fine of \$10,000.00 per count in addition to any other discipline.

(4) Based upon consideration of aggravating or mitigating factors, present in an individual case, the Board may deviate from the penalties recommended in subsections (2) and (3) above. The Board shall consider as aggravating or mitigating factors the following:

- (a) The danger to the public;
- (b) The length of time since the violation;
- (c) The number of times the licensee has been previously disciplined by the Board;
- (d) The length of time the licensee has practiced;
- (e) The actual damage, physical or otherwise, caused by the violation and the reversibility of the damage;
- (f) The deterrent effect of the penalty imposed;

- (g) The effect of the penalty upon the licensee's livelihood;
 - (h) Any efforts of rehabilitation by the licensee;
 - (i) The actual knowledge of the licensee pertaining to the violation;
 - (j) Attempts by the licensee to correct or stop the violation or refusal by the licensee to correct or stop violation;
 - (k) Related violations against the licensee in another state including findings of guilt or innocence, penalties imposed and penalties served;
 - (l) Penalties imposed for related offenses under subsections (2) and (3) above;
 - (m) Any other relevant mitigating or aggravating factor under the circumstances.
- (5) Penalties imposed by the Board pursuant to subsections (2) and (3) above may be imposed in combination or individually, and are as follows:
- (a) Issuance of a reprimand;
 - (b) Imposition of an administrative fine not to exceed \$10,000.00 for each count or separate offense;
 - (c) Restriction of the authorized scope of practice;
 - (d) Placement of the licensee on probation for a period of time and subject to such conditions as the Board may specify, including requiring the licensee to attend continuing education courses, to submit to reexamination, or to work under the supervision of another licensee;
 - (e) Suspension of a license;
 - (f) Revocation of a license; however, no license revoked by the Board after December 31, 1987, shall be subject to reinstatement; and
 - (g) Denial of an application for licensure.
- (6) The provisions of subsection (1) through (4) above are not intended and shall not be construed to limit the ability of the Board to informally dispose of disciplinary actions by stipulation, agreed settlement or consent order pursuant to Section 120.57(3), F.S.
- (7) The provisions of subsections (1) through (4) above are not intended and shall not be construed to limit the ability of the Board to pursue or recommend the Agency pursue collateral civil or criminal actions when appropriate.

Specific Authority 456.079(1) FS. Law Implemented 456.072(2)(d), 456.079(1), 466.028 FS. History—New 12-31-86, Amended 2-21-88, 1-18-89, 12-24-91, Formerly 21G-13.005, 61F5-13.005, 59Q-13.005, Amended 4-2-02, 8-25-03.

64B5-13.006 Post Board Order Activity.

- (1) Any licensee whose license to practice dentistry or dental hygiene has been revoked or suspended by the Board shall:
 - (a) Immediately surrender the revoked or suspended license to the Agency for Health Care Administration or its authorized representatives. When a suspension is ordered, the license shall be held by the Agency for the duration of the suspension period;
 - (b) Refrain from misrepresenting the status of his license to practice dentistry or dental hygiene to any patient or to the general public;
 - (c) Be prohibited from receiving any compensation from any person, group practice, partnership, or corporate practice for dental or dental hygiene services provided to any person subsequent to revocation or during the period of suspension. This subsection is not intended to preclude a revoked or suspended licensee from receiving fees to which he is entitled as a result of services performed prior to the effective date of his suspension or revocation but which are received subsequent to revocation or during the period of suspension;
 - (d) During a period of suspension, a licensee shall not accept fees from any capitation or third party payment program to which he might otherwise be entitled. This subsection is not intended to preclude a suspended licensee from receiving such fees for services performed during a period of time prior to the effective date of his suspension.
- (2) Any licensee whose license to practice dentistry or dental hygiene in Florida has been revoked or suspended for a period of one (1) year or more in length shall:
 - (a) Notify his patients of record of the suspension or revocation by mail no later than one (1) month after the effective date of the suspension or revocation;
 - (b) Remove any telephone listings identifying him as licensed to practice dentistry or dental hygiene in the State of Florida;
 - (c) Remove his name from any sign, door or advertising material identifying him as one licensed to practice dentistry or dental hygiene in the State of Florida;
 - (d) Refrain from addressing the public in any manner which may suggest that he is licensed to practice dentistry or dental hygiene in the State of Florida.

Specific Authority 466.004(4) FS. Law Implemented 466.028(2) FS. History—New 9-1-87, Formerly 21G-13.006, 61F5-13.006, 59Q-13.006.

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