

Dear Senators MARTIN, Souza, Jordan, and  
Representatives WOOD, Wagoner, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of  
the Board of Dentistry:

IDAPA 19.01.01 - Rules of the Idaho State Board of Dentistry (Fee Rule) - Temporary and Proposed  
Rule (Docket No. 19-0101-1901).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 10/04/2019. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/04/2019.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

**FROM:** Legislative Drafting Attorney - Matt Drake

**DATE:** September 17, 2019

**SUBJECT:** Board of Dentistry

IDAPA 19.01.01 - Rules of the Idaho State Board of Dentistry (Fee Rule) - Temporary and Proposed Rule  
(Docket No. 19-0101-1901)

#### Summary and Stated Reasons for the Rule

The Idaho State Board of Dentistry submits notice of a temporary and proposed fee rule at IDAPA 19.01.01 - Rules of the Idaho State Board of Dentistry. During the 2019 legislative session, the Idaho Legislature passed Senate Bill 1129 to authorize the practice of dental therapy under Title 54, Chapter 9, Idaho Code. Under that law, the board was required to develop rules pertaining to the practice of dental therapy. Accordingly, the board promulgated the rules at issue. The board states that the fee rule is necessary to protect the public health, safety, and welfare of Idaho's citizens.

The proposed fee rule requires dental therapists to pass a board-approved written exam and a clinical local anesthesia exam. Applicants must also furnish proof of graduation from a dental therapy program accredited by the Commission on Dental Accreditation as well as current basic life support certification. The proposed fee rule also imposes continuing education requirements, requiring thirty (30) credits prior to renewal of an active license.

New sections 035 and 036 define the scope of practice for a dental therapist. Section 035 states that a dental therapist is authorized under Chapter 9, Title 54, Idaho Code, to perform activities "specified by the supervising dentist in conformity with a written collaborative practice agreement at the supervision levels set forth in the agreement. The supervising dentist must practice in the same practice setting as the dental therapist." Section 036 sets forth prohibited practice activities, including sedation, cutting procedures, periodontal therapy, and most extractions unless specifically exempted.

#### Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted. The board states that there is no fiscal impact. An application fee and a biennial license fee is imposed for dental therapy licensees.

#### Statutory Authority

The rulemaking appears to be authorized by 54-912, Idaho Code.

Kristin Ford, Manager  
Research & Legislation

Paul Headlee, Manager  
Budget & Policy Analysis

April Renfro, Manager  
Legislative Audits

Glenn Harris, Manager  
Information Technology

cc: Board of Dentistry  
Susan Miller

**\*\*\* PLEASE NOTE \*\*\***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

**IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY**  
**19.01.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY**  
**DOCKET NO. 19-0101-1901 (FEE RULE)**  
**NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 27, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 54-912(2)(3)(4)(10), Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**PUBLIC HEARING**

**Friday September 20, 2019 – 1:00 p.m. (MDT)**

**Idaho State Capitol  
Room W433  
700 W. Jefferson Street  
Boise, ID 83702**

Contact the undersigned by September 18, 2019 to make arrangements for telephone participation.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Legislation enacted on July 1, 2019 authorized the practice of dental therapy under Title 54, Chapter 9, Idaho Code. The Board of Dentistry is mandated to promulgate rules for the licensure and regulation of dental therapists. The Board of Dentistry conducted two negotiated rulemaking meetings and considered broad comments/materials from affected parties prior to the adoption of this temporary rule.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rule implements amendments to Title 54, Chapter 9, Idaho Code as it relates to licensure of dental therapists. This rule is necessary to protect the public health, safety and welfare of Idaho's citizens.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

Sections 54-916, 54-916B, and 54-920, Idaho Code, impose fees for application and licensure of dental therapists. This rule sets the one-time application fee at \$200, and the biennial license fee at \$250.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

This rulemaking has no fiscal impact on the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 3, 2019, Idaho Administrative Bulletin, [Vol. 19-7, page 241](#).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Susan Miller (208) 334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2019.

Dated this 2nd day of August, 2019.

Susan Miller, Executive Director  
Idaho State Board of Dentistry  
350 N. 9th Street, Suite M100  
P.O. Box 83720  
Boise, ID 83720-0021  
Phone: (208) 334-2369  
Fax: (208) 334-3247  
[susan.miller@isbd.idaho.gov](mailto:susan.miller@isbd.idaho.gov)  
[www.isbd.idaho.gov](http://www.isbd.idaho.gov)

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT  
OF DOCKET NO. 05-0102-1401  
(Only Those Sections With Amendments Are Shown.)**

**001. TITLE AND SCOPE.**

These rules are titled IDAPA 19.01.01, "Rules of the Idaho State Board of Dentistry." These rules constitute the minimum requirements for licensure and regulation of dentists, ~~and~~ dental hygienists, and dental therapists.  
~~(6-30-19)T~~(7-27-19)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**011. APPLICATION AND LICENSE FEES.**

Application fees are not refunded. A license shall not be issued or renewed unless fees have been paid. License fees ~~shall be~~ are prorated from date of initial licensure to the next successive license renewal date. The application fees and license fees ~~shall be~~ are as follows:

License/Permit Type	Application Fee	License/Permit Fee
Dentist/Dental Specialist	\$300	Active Status: \$375 Inactive Status: \$160
Dental Hygienist	\$150	Active Status: \$175 Inactive Status: \$85
<u>Dental Therapist</u>	<u>\$200</u>	<u>Active Status: \$250</u> <u>Inactive Status: \$125</u>
Sedation Permit	\$300	\$300

~~(6-30-19)F~~(7-27-19)T

012. EXAMINATIONS FOR LICENSURE.

01. ~~Dentist and Dental Specialist~~ **Written Examination.** ~~Evidence of passing~~ Successful completion of the NBDE may be required of all applicants for a license to practice dentistry or a dental specialty. Successful completion of the NBDHE may be required of all applicants for a license to practice dental hygiene. Dental therapists must successfully complete a board-approved written examination. Any other written examination will be specified by the Board. ~~(6-30-19)F~~(7-27-19)T

02. ~~Dentist~~ **Clinical Examination.** All applicants for a license to practice general dentistry ~~shall be,~~ dental hygiene or dental therapy are required to pass a Board-approved clinical examination upon such subjects as specified by the Board. Applicants for dental hygiene and dental therapy licensure must pass a clinical local anesthesia examination Clinical examination results will be valid for licensure by examination for a period of (5) five years from the date of successful completion of the examination. ~~(6-30-19)F~~(7-27-19)T

~~03. **Dental Hygienist Written Examination.** Evidence of passing the NBDHE may be required of all applicants applying for a license to practice dental hygiene. Any other written examination will be specified by the Board.~~ ~~(6-30-19)F~~

~~04. **Dental Hygienist Clinical Examination.** All applicants for a license to practice dental hygiene shall be required to pass a Board-approved clinical dental hygiene examination upon such subjects as specified by the Board. In addition, all applicants must pass a clinical local anesthesia examination. Clinical examination results will be valid for licensure by examination for a period of (5) five years from the date of successful completion of the examination.~~ ~~(6-30-19)F~~

013. REQUIREMENTS FOR LICENSURE.

Applicants for licensure to practice dentistry must furnish proof of graduation from a school of dentistry accredited by CODA at the time of applicant's graduation. Applicants for licensure to practice dental hygiene must furnish proof of graduation from a dental hygiene program accredited by CODA at the time of applicant's graduation. Applicants for licensure to practice dental therapy must furnish proof of graduation from a dental therapy program accredited by CODA at the time of applicant's graduation. ~~(6-30-19)F~~(7-27-19)T

014. REQUIREMENT FOR BLS.

Applicants for initial licensure ~~as a dentist, dental specialist, or dental hygienist shall~~ will provide proof of current BLS certification. ~~All practicing dentists, dental specialists, and dental hygienists~~ licensees must maintain current BLS certification. ~~(6-30-19)F~~(7-27-19)T

015. CONTINUING EDUCATION REQUIREMENTS.

A licensee renewing an active status license shall report to the Board completion of ~~continuing education~~ verifiable CE or volunteer practice which meets the following requirements: ~~(6-30-19)F~~(7-27-19)T

01. Number of Credits.

<u>License/Endorsement Type</u>	<u>Requirements</u>
<u>Dentist/Dental Specialist</u>	<u>30 credits, one of the credits must be related to opioid prescribing</u>
<u>Dental Hygienist</u>	<u>24 credits</u>
<u>Dental Hygienist with Extended Access License Endorsement</u>	<u>28 credits, four of the credits must be in the specific practice areas of medical emergencies, local anesthesia, oral pathology, care and treatment of geriatric, medically compromised or disabled patients and treatment of children.</u>
<u>Dental Therapist</u>	<u>30 credits</u>

~~(6-30-19)F~~(7-27-19)T

~~a. Dentists and dental specialists must complete thirty (30) credits of verifiable CE in each biennial~~

~~renewal period. One (1) of the credits must be related to using the PMP. (6-30-19)T~~

~~**b.** Dental hygienists must complete twenty-four (24) credits of verifiable continuing education in each biennial renewal period. (6-30-19)T~~

~~**c.** A dental hygienist holding an extended access dental hygiene license endorsement must complete an additional four (4) credits of verifiable continuing education in each biennial renewal period in the specific practice areas of medical emergencies, local anesthesia, oral pathology, care and treatment of geriatric, medically compromised or disabled patients and treatment of children. (6-30-19)T~~

**02. Nature of Education.** Continuing education must be oral health/health-related for the licensee's professional development. (6-30-19)T

**03. Volunteer Practice.** Licensees are allowed one (1) credit of continuing education for every two (2) hours of verified volunteer practice performed during the biennial renewal period up to a maximum of ten (10) credits. (6-30-19)T

**04. Prorated Credits.** Any person who is granted a license with active during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. (6-30-19)T

**05. Documentation.** In conjunction with license renewal, the licensee shall provide a list of continuing education credits obtained and verification of hours of volunteer practice performed and certify that the minimum requirements were completed in the biennial renewal period. (6-30-19)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**031. INFECTION CONTROL.**

In determining what constitutes unacceptable patient care with respect to infection control, the Board may consider current infection control guidelines such as those of the Centers for Disease Control and Prevention. Additionally, ~~dentists, dental hygienists~~ **licensees** and dental assistants must comply with the following requirements:

~~(6-30-19)T~~ **(7-27-19)T**

**01. Gloves.** Disposable gloves shall be worn whenever placing fingers into the mouth of a patient or when handling blood or saliva contaminated instruments or equipment. Appropriate hand hygiene shall be performed prior to gloving. (6-30-19)T

**02. Masks and Eyewear.** Masks and protective eyewear or chin-length shields shall be worn when spattering of blood or other body fluids is likely. (6-30-19)T

**03. Instrument Sterilization.** Between each patient use, instruments and other equipment that come in contact with body fluids shall be sterilized. (6-30-19)T

**04. Sterilizing Devices Testing.** Heat sterilizing devices shall be tested for proper function by means of a biological monitoring system that indicates micro-organisms kill. Devices shall be tested each calendar week in which scheduled patients are treated. Testing results shall be retained by the licensee for the current calendar year and the two (2) preceding calendar years. (6-30-19)T

**05. Non-Critical Surfaces.** Environmental surfaces that are contaminated by blood or saliva shall be disinfected with an EPA registered hospital disinfectant. (6-30-19)T

**06. Clinical Contact Surfaces.** Impervious backed paper, aluminum foil, or plastic wrap should be used to cover surfaces that may be contaminated by blood or saliva. The cover shall be replaced between patients. If barriers are not used, surfaces shall be cleaned and disinfected between patients by using an EPA registered hospital disinfectant. (6-30-19)T

**07. Disposal.** All contaminated wastes and sharps shall be disposed of according to any governmental requirements. (6-30-19)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**035. DENTAL THERAPISTS – PRACTICE.**

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, dental therapists are hereby authorized to perform activities specified by the supervising dentist in conformity with a written collaborative practice agreement at the supervision levels set forth in the agreement. The supervising dentist must practice in the same practice setting as the dental therapist. (7-27-19)T

**036. DENTAL THERAPISTS – PROHIBITED PRACTICE.**

**01. Sedation.** Administration of minimal, moderate or deep sedation or general anesthesia except as otherwise allowed by these rules; (7-27-19)T

**02. Cutting Procedures.** Cutting procedures involving the supportive structures of the tooth including both the soft and hard tissues. (7-27-19)T

**03. Periodontal Therapy.** Periodontal scaling and root planing, including the removal of subgingival calculus. (7-27-19)T

**04. All Extractions with Exception.** All extractions except: (7-27-19)T

**a. Under direct supervision.** (7-27-19)T

**i. Non-surgical extractions.** (7-27-19)T

**b. Under general supervision or as specified in IDAPA 19.01.01.035.** (7-27-19)T

**i. Removal of periodontally diseased teeth with class III mobility.** (7-27-19)T

**ii. Removal of coronal remnants of deciduous teeth.** (7-27-19)T

**0357. DENTAL ASSISTANTS – PRACTICE.**

**01. Direct Supervision.** A dental assistant may perform specified duties under direct supervision as follows: (6-30-19)T

**a.** Recording the oral cavity (existing restorations, missing and decayed teeth); (6-30-19)T

**b.** Placement of topical anesthetic agents (prior to administration of a local anesthetic by a dentist or dental hygienist); (6-30-19)T

**c.** Removal of excess bonding material from temporary and permanent restorations and orthodontic appliances (using hand instruments or contra-angle handpieces with disks or polishing wheels only); (6-30-19)T

**d.** Expose and process radiographs; (6-30-19)T

**e.** Make impressions for preparation of diagnostic models, bleach trays, fabrication of night guards, temporary appliances, temporary crowns or bridges; (6-30-19)T

**f.** Record diagnostic bite registration; (6-30-19)T

**g.** Record bite registration for fabrication of restorations; (6-30-19)T



- h.** Provide patient education and instruction in oral hygiene and preventive services; (6-30-19)T
- i.** Placement of cotton pellets and temporary restorative materials into endodontic access openings; (6-30-19)T
- j.** Placement and removal of arch wire; (6-30-19)T
- k.** Placement and removal of orthodontic separators; (6-30-19)T
- l.** Placement and removal of ligature ties; (6-30-19)T
- m.** Cutting arch wires; (6-30-19)T
- n.** Removal of loose orthodontic brackets and bands to provide palliative treatment; (6-30-19)T
- o.** Adjust arch wires; (6-30-19)T
- p.** Etching of teeth prior to placement of restorative materials; (6-30-19)T
- q.** Etching of enamel prior to placement of orthodontic brackets or appliances by a Dentist; (6-30-19)T
- r.** Placement and removal of dental dam; (6-30-19)T
- s.** Placement and removal of matrices; (6-30-19)T
- t.** Placement and removal of periodontal pack; (6-30-19)T
- u.** Removal of sutures; (6-30-19)T
- v.** Application of cavity liners and bases; (6-30-19)T
- w.** Placement and removal of gingival retraction cord; and (6-30-19)T
- x.** Application of topical fluoride agents. (6-30-19)T
- 02. Prohibited Duties.** A dental assistant is prohibited from performing the following duties: (6-30-19)T
  - a.** Definitive diagnosis and treatment planning. (6-30-19)T
  - b.** The intraoral placement or carving of permanent restorative materials. (6-30-19)T
  - c.** Any irreversible procedure using lasers. (6-30-19)T
  - d.** The administration of any sedation or local injectable anesthetic. (6-30-19)T
  - e.** Any oral prophylaxis (removal of stains and plaque biofilm and if present, supragingival and/or subgingival calculus). (6-30-19)T
  - f.** Use of an air polisher. (6-30-19)T
  - g.** Any intra-oral procedure using a high-speed handpiece, except to the extent authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity. (6-30-19)T
  - h.** Any dental hygiene prohibited duty. (6-30-19)T

i. The following expanded functions, unless authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity and performed under direct supervision:

(6-30-19)T

- i. Fabrication and placement of temporary crowns; (6-30-19)T
- ii. Perform the mechanical polishing of restorations; (6-30-19)T
- iii. Initiating, regulating and monitoring the administration of nitrous oxide/oxygen to a patient; (6-30-19)T
- iv. Application of pit and fissure sealants; (6-30-19)T
- v. Coronal polishing (removal of plaque biofilm and stains from the teeth using an abrasive agent with a rubber cup or brush). (6-30-19)T
- vi. Use of a high-speed handpiece only for the removal of orthodontic cement or resin. (6-30-19)T

**03. Expanded Functions Qualifications.** A dental assistant may be considered Board qualified in expanded functions, authorizing the assistant to perform any or all of the expanded functions described in Subsection 035.02.h. upon satisfactory completion of the following requirements: (6-30-19)T

**a.** Completion of Board-approved training in each of the expanded functions with verification of completion of the training to be provided to the Board upon request by means of a Certificate of Registration or other certificate evidencing completion of approved training. The required training shall include adequate training in the fundamentals of dental assisting, which may be evidenced by: (6-30-19)T

- i. Current certification by the Dental Assisting National Board; or (6-30-19)T
- ii. Successful completion of Board-approved curriculum in the fundamentals of dental assisting; or (6-30-19)T
- iii. Successfully challenging the fundamentals course. (6-30-19)T

**b.** Successful completion of a Board-approved competency examination in each of the expanded functions. There are no challenges for expanded functions. (6-30-19)T

**04. Curriculum Approval.** Any school, college, institution, university or other teaching entity may apply to the Board to obtain approval of its course curriculum. Before approving such curriculum, the Board may require satisfactory evidence of the content of the instruction, hours of instruction, content of examinations or faculty credentials. (6-30-19)T

**05. Other Credentials.** Assistants, who have completed courses or study programs in expanded functions that have not been previously approved by the Board, may submit evidence of the extent and nature of the training completed, and, if in the opinion of the Board the same is at least equivalent to other Board-approved curriculum, and demonstrates the applicant's fitness and ability to perform the expanded functions, the Board may consider the assistant qualified to perform any expanded function(s). (6-30-19)T

**0368. – 040. (RESERVED)**

**041. LOCAL ANESTHESIA.**

~~Persons licensed to practice dentistry and dental hygiene in accordance with the Idaho Dental Practice Act and these rules are not required to obtain a permit to administer local anesthesia to patients.~~ Dental offices in which local anesthesia is administered to patients shall, at a minimum, have and maintain suction equipment capable of aspirating gastric contents from the mouth and pharynx, a portable oxygen delivery system including full face masks and a bag-valve mask combination capable of delivering positive pressure, oxygen-enriched ventilation to the patient, a blood pressure cuff of appropriate size and a stethoscope. (6-30-19)T (7-27-19)T

**042. NITROUS OXIDE/OXYGEN.**

Persons licensed to practice ~~dentistry and dental hygiene~~ and dental assistants certified in accordance with these rules ~~are not required to obtain a permit to~~ **may** administer nitrous oxide/oxygen to patients. Nitrous oxide/oxygen when used in combination with other sedative agents may produce an alteration of the state of consciousness in a patient to the level of moderate sedation, general anesthesia, or deep sedation. A dentist must first qualify for and obtain the appropriate permit from the Board of Dentistry to be authorized to sedate patients to the level of moderate sedation, general anesthesia, or deep sedation. ~~(6-30-19)T~~**(7-27-19)T**

**01. Patient Safety.** In connection with the administration of nitrous oxide/oxygen, a dentist shall: (6-30-19)T

**a.** Evaluate the patient to insure that the patient is an appropriate candidate for nitrous/oxygen; and (6-30-19)T

**b.** Insure that any patient under nitrous/oxygen ~~shall~~ be continually monitored; and ~~(6-30-19)T~~**(7-27-19)T**

**c.** Insure that a second person ~~shall~~ be ~~on in~~ the ~~office premises~~ **practice setting** who can immediately respond to any request from the person administering the nitrous/oxygen. ~~(6-30-19)T~~**(7-27-19)T**

**02. Required Facilities and Equipment.** Dental offices in which nitrous oxide/oxygen is administered to patients shall, at a minimum and in addition to emergency medications, maintain appropriate facilities and have equipment on site for immediate use as follows: (6-30-19)T

**a.** A nitrous oxide delivery system with a fail-safe system that is maintained in working order: (6-30-19)T

**i.** A functioning device that prohibits the delivery of less than thirty percent (30%) oxygen; or (6-30-19)T

**ii.** An appropriately calibrated and functioning in-line oxygen analyzer with audible alarm; and (6-30-19)T

**b.** An appropriate scavenging system must be available; and (6-30-19)T

**c.** A positive-pressure oxygen delivery system suitable for the patient being treated. (6-30-19)T

**03. Personnel.** For nitrous oxide/oxygen administration, personnel shall include: (6-30-19)T

**a.** An operator; and (6-30-19)T

**b.** An assistant currently certified in BLS. (6-30-19)T

**c.** Auxiliary personnel must have documented training in BLS, ~~shall~~ have specific assignments, and ~~shall~~ have current knowledge of the emergency cart inventory. The dentist and all office personnel must participate in periodic reviews of office emergency protocol. ~~(6-30-19)T~~**(7-27-19)T**

**(BREAK IN CONTINUITY OF SECTIONS)**

**056. UNPROFESSIONAL CONDUCT.**

A licensee shall not engage in unprofessional conduct in the course of his practice. Unprofessional conduct by a person licensed under the provisions of Title 54, Chapter 9, Idaho Code, is defined as, but not limited to, one (1) of the following: (6-30-19)T

- 01. Fraud.** Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. (6-30-19)T
- 02. Unlicensed Practice.** Employing directly or indirectly any suspended or unlicensed ~~dentist or dental hygienist to practice dentistry or dental hygiene~~ **individual** as defined in Title 54, Chapter 9, Idaho Code. ~~(6-30-19)T~~(7-27-19)T
- 03. Unlawful Practice.** Aiding or abetting licensed persons to practice ~~dental hygiene or dentistry~~ unlawfully. ~~(6-30-19)T~~(7-27-19)T
- 04. Dividing Fees.** A dentist shall not divide a fee for dental services with another party, who is not a partner or associate with him in the practice of dentistry, unless: (6-30-19)T
- a.** The patient consents to employment of the other party after a full disclosure that a division of fees will be made; (6-30-19)T
- b.** The division is made in proportion to the services performed and responsibility assumed by each dentist or party. (6-30-19)T
- 05. Prescription Drugs.** Prescribing or administering prescription drugs not reasonably necessary for, or within the scope of, providing dental services for a patient. A dentist may not prescribe or administer prescription drugs to himself. A dentist shall not use controlled substances as an inducement to secure or maintain dental patronage or aid in the maintenance of any person's drug addiction by selling, giving or prescribing prescription drugs. (6-30-19)T
- 06. Harassment.** The use of threats or harassment to delay or obstruct any person in providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of Title 54, Chapter 9, Idaho Code, or the Board's Rules, or to aid in such compliance. (6-30-19)T
- 07. Discipline in Other States.** Conduct himself in such manner as results in a suspension, revocation or other disciplinary proceedings with respect to his license in another state. (6-30-19)T
- 08. Altering Records.** Alter a patient's record with intent to deceive. (6-30-19)T
- 09. Office Conditions.** Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession in the state of Idaho and current recommendations of the American Dental Association and the Centers for Disease Control as referred to in Section 004. (6-30-19)T
- 10. Abandonment of Patients.** Abandonment of patients by licensees before the completion of a phase of treatment, as such phase of treatment is contemplated by the customary practice and standards of the dental profession in the state of Idaho, without first advising the patient of such abandonment and of further treatment that is necessary. (6-30-19)T
- 11. Use of Intoxicants.** Practicing ~~dentistry or dental hygiene~~ while under the influence of an intoxicant or controlled substance where the same impairs the licensee's ability to practice with reasonable and ordinary care. ~~(6-30-19)T~~(7-27-19)T
- 12. Mental or Physical ~~Illness~~ Condition.** ~~Continued practice of dentistry or dental hygiene in the case of inability of the licensee to practice with reasonable and ordinary care by reason of one (1) or more of the following: The inability to practice with reasonable skill and safety to patients by reason of age, illness, or as a result of any mental or physical condition.~~ ~~(6-30-19)T~~(7-27-19)T
- a.** ~~Mental illness;~~ (6-30-19)T
- b.** ~~Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill.~~ (6-30-19)T

13. **Consent.** Revealing personally identifiable facts, data or information obtained in a professional capacity without prior consent of the patient, except as authorized or required by law. (6-30-19)T
14. **Scope of Practice.** Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities that the licensee knows or has reason to know that he or she is not competent to perform. (6-30-19)T
15. **Delegating Duties.** Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or with the exercise of reasonable care and control should know, that such a person is not qualified by training or by licensure to perform them. (6-30-19)T
16. **Unauthorized Treatment.** Performing professional services that have not been authorized by the patient or his legal representative. (6-30-19)T
17. **Supervision.** Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. (6-30-19)T
18. **Legal Compliance.** Failure to comply with any provisions of federal, state or local laws, statutes, rules, and regulations governing or affecting the practice of dentistry or dental hygiene. (6-30-19)T
19. **Exploiting Patients.** Exercising undue influence on a patient in such manner as to exploit a patient for the financial or personal gain of a practitioner or of a third party. (6-30-19)T
20. **Misrepresentation.** Willful misrepresentation of the benefits or effectiveness of dental services. (6-30-19)T
21. **Disclosure.** Failure to advise patients or their representatives in understandable terms of the treatment to be rendered, alternatives, the provider rendering treatment, and disclosure of reasonably anticipated fees relative to the treatment proposed. ~~(6-30-19)T~~(7-27-19)T
22. **Sexual Misconduct.** Making suggestive, sexual or improper advances toward a patient or committing any lewd or lascivious act upon or with a patient. (6-30-19)T
23. **Patient Management.** Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. (6-30-19)T
24. **Compliance with Dentist Professional Standards.** Failure by a dentist to comply with professional standards applicable to the practice of dentistry, as incorporated by reference in this chapter. (6-30-19)T
25. **Compliance with Dental Hygienist Professional Standards.** Failure by a dental hygienist to comply with professional standards applicable to the practice of dental hygiene, as incorporated by reference in this chapter. (6-30-19)T
26. **Failure to Provide Records to a Patient or Patient's Legal Guardian.** Refusal or failure to provide a patient or patient's legal guardian legible copies of dental records. Failure to provide a patient or patient's legal guardian with records under Subsection 040.26 within five (5) business days shall be considered unprofessional conduct. A patient or patient's legal guardian may not be denied a copy of his records for any reason, regardless of whether the person has paid for the dental services rendered. A person may be charged for the actual cost of providing the records but in no circumstances may a person be charged an additional processing or handling fee or any charge in addition to the actual cost. (6-30-19)T
27. **Failure to Cooperate with Authorities.** Failure to cooperate with authorities in the investigation of any alleged misconduct or interfering with a Board investigation by willful misrepresentation of facts, willful failure to provide information upon request of the Board, or the use of threats or harassment against any patient or witness to prevent them from providing evidence. (6-30-19)T

**28. Advertising.** Advertise in a way that is false, deceptive, misleading or not readily subject to verification. (6-30-19)T

## PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

**Department or Agency:** Idaho State Board of Dentistry

**Agency Contact:** Susan Miller **Phone:** (208) 334-2369

**Date:** \_\_\_\_\_

**IDAPA, Chapter and Title Number and Chapter Name:**

IDAPA 19.01.01 Rules of the Idaho State Board of Dentistry

**Fee Rule Status:** X **Proposed** X **Temporary**

**Rulemaking Docket Number:** 19-0101-1901

### **STATEMENT OF ECONOMIC IMPACT:**

Negative fiscal impact to the Board of Dentistry's dedicated fund is estimated at \$4,000 for costs associated with rulemaking, legal fees, and changes to the Board's licensing database. There is no immediate expectation of revenue from dental therapist license and application fees.