



Eric Milstead
Director

Legislative Services Office Idaho State Legislature

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MEMORANDUM

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

FROM: Matt Drake - Legislative Drafting Attorney

DATE: November 04, 2020

SUBJECT: Temporary Rule

IDAPA 24.31.01 - Rules of the Idaho State Board of Dentistry (Fee Rule) OMNIBUS - Amendment to Temporary Rule - Docket No. 19-0101-2000F

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Matt Drake at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

24.31.01 – RULES OF THE IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-2000F (FEE RULE)

NOTICE OF OMNIBUS RULEMAKING – AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: A temporary rule was adopted under docket number 19-0101-2000F in the April 15, 2020, Idaho Administrative Bulletin, [Vol. 20-4SE, pages 1133-1150](#). The effective date of the amendment to the temporary rule is July 24, 2020.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has amended a temporary rule. The action is authorized pursuant to Section 54-5206(1), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for amending the temporary rule and a statement of any change between the text of the temporary rule and text of the amended temporary rule with an explanation for any changes:

This rule prohibits a dentist from interfering with a patient’s ability to file a complaint with the board. Without this temporary rule, the Board may not receive complaints necessary to assess public risk related to the practice of dentistry.

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

Protection of the public health, safety, or welfare.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

This rule does include several fees; however, the amendments to this temporary rule do not impact, change, or modify the existing fees.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the amendments to the temporary rule, contact Susan Miller, (208) 334-2369.

Dated this 8th day of October, 2020.

Susan Miller
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Idaho Board of Dentistry
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**This docket has been previously published as a temporary rule,
with a temporary effective date of March 20, 2020.**

**The original text of the temporary rule was published in the Idaho Administrative Bulletin,
Volume 20-4SE, April 15, 2020, pages 1133 through 1150.**

**Only those sections that have changed from the original temporary
text are printed in this Bulletin following this notice.**

THE FOLLOWING IS THE AMENDED TEMPORARY RULE TEXT FOR DOCKET NO. 19-0101-2000F

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: (3-20-20)T

01. Fraud. Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. (3-20-20)T

02. Unlicensed Practice. Employing directly or indirectly any suspended or unlicensed individual as defined in Title 54, Chapter 9, Idaho Code. (3-20-20)T

03. Unlawful Practice. Aiding or abetting licensed persons to practice unlawfully. (3-20-20)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: (3-20-20)T

a. The patient consents to employment of the other party after a full disclosure that a division of fees will be made; (3-20-20)T

b. The division is made in proportion to the services performed and responsibility assumed by each dentist or party. (3-20-20)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. (3-20-20)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. (3-20-20)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. (3-20-20)T

08. Altering Records. Alter a patient's record with intent to deceive. (3-20-20)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 CDC guidelines as incorporated by reference in these rules. (3-20-20)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. (3-20-20)T

11. Use of Intoxicants. Practicing 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. (3-20-20)T

12. Mental or Physical Condition. 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. (3-20-20)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. (3-20-20)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. (3-20-20)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. (3-20-20)T

16. Unauthorized Treatment. Performing professional services that have not been authorized by the patient or his legal representative. (3-20-20)T

17. Supervision. Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. (3-20-20)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. (3-20-20)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. (3-20-20)T

20. Misrepresentation. Willful misrepresentation of the benefits or effectiveness of dental services. (3-20-20)T

21. Disclosure. Failure to advise patients or their representatives in understandable terms of the treatment to be rendered, alternatives, the name and professional designation of the provider rendering treatment, and disclosure of reasonably anticipated fees relative to the treatment proposed. (3-20-20)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. (3-20-20)T

23. Patient Management. Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. (3-20-20)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. (3-20-20)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. (3-20-20)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 with records within five (5) business days. 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. (3-20-20)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. (3-20-20)T

28. Advertising. Advertise in a way that is false, deceptive, misleading or not readily subject to verification. (3-20-20)T

29. Patient Complaint. Require directly, or as a member, representative, contracted agent, or employee of or in connection with any company, association, corporation, or partnership, that a patient sign an agreement limiting his right or ability to file a complaint with the board. (7-24-20)T