



# Board of Dental Examiners of Alabama

## Complaint and Investigation Policy



### **POLICY**

It is the policy of the Board of Dental Examiners of Alabama (“Board”) to investigate all complaints filed with this agency efficiently, effectively, consistently, and thoroughly, regardless of the nature of a complaint or the licensee against whom the complaint is lodged.

These investigative protocols have been established to screen, categorize, and investigate complaints that are received by the Board. Additionally, the protocols describe the flow and direction of board investigations, to include post-investigative duties, which include, but are not limited to: confirming a licensee’s adherence to consent or final orders; confirming a licensee’s completion of any required continuing education; confirming a licensee’s completion of any required treatment or monitoring programs; reviewing a licensee’s prescribing history through the Alabama Prescription Drug Monitoring Program (PDMP), as required; and following up on any cases brought against non-licensees by the Board.

### **ABBREVIATIONS/ DEFINITIONS**

- **Common Abbreviations:**

- DEA: Drug Enforcement Agency
- DPA: Alabama Dental Practice Act
- ED: Executive Director
- NPDB: National Practitioners Data Bank
- PDMP: Alabama Prescription Drug Monitoring Program
- WC: Alabama Dental Professionals Wellness Program/Committee

- **Definitions**

- Complaint: A written or oral account of an alleged violation of the Alabama Dental Practice Act and/or Board rules.
- Complainant: A person(s) who has filed a complaint.
- Deferred Prosecution (Deferral): Applicable to a licensee who is the subject of a wellness-report. Disciplinary action is stayed pending the adherence to recommendations by/through an approved treatment center. Also referred to as a “Deferral” (see “Wellness-Report”).
- Enforcement Group: The group responsible for all Board investigations, hearings, post-hearing reviews and all compliance matters. This group may include, but is not limited to, the following members of the Board and staff: Executive Director, Prosecuting Attorney, Compliance Director, Paralegal, Investigator, and Board Team Leader.



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- Governmental Agencies: Agencies that have enforcement responsibilities, including but not limited to local, state, and federal law enforcement agencies, and state regulatory boards.
- Health Care Provider: Agencies, organizations and/or individuals with responsibilities of providing health care, including but not limited to hospitals, nursing homes, hospice facilities, pharmacists, chiropractors, physicians, nurses, psychologists, substance abuse treatment facilities, etc. This definition does not apply to dentists or dental hygienists for purposes of this policy.
- Licensee: Any individual who receives any form of license through the Board (see also Practitioner).
- Non-licensee: Any individual who does not possess a license or permit issued by the Board.
- Practitioner: Any individual who possesses any form of license, special teaching permit, or teaching permit through the Board (see also Licensee). May also refer to individual holding a professional license with another health services-related board (e.g., physician, nurse, pharmacist, etc.).
- Reporting Agency: Any organization responsible for reporting adverse occurrences, insurance settlements, and/or disciplinary actions (e.g., NPDB, insurance agencies, etc.).
- Respondent: An individual(s) against whom a complaint has been filed.
- Wellness-Report: This designation may be afforded to a dental/dental hygiene practitioner who is the subject of a matter involving alcohol/substance abuse or an impairing medical condition and is reported to the Chair of the Alabama Dental Professionals Wellness Committee or one of its members. This designation may also occur as a result of reporting by staff, friends, family members, peers, or through other medically related modalities such as physicians, hospitals, or treatment centers. In order for this designation to be given, the licensee must attest/avow that a problem does exist. In no case will information involving actual or imminently probable harm to a patient or any minor be eligible for treatment as a Wellness Report.
- Team Leader: The designation given to a Board member to whom an investigation is assigned. The team leader is responsible for:
  - Authorizing the issuance of any necessary legal documents and/or correspondence (e.g., subpoenas, letters of explanation, etc.).
  - Authorizing investigative inquiries into restricted databases.
  - Guidance on any dental/dental hygiene related questions that arise.
  - Decisions/approvals for issues involving wellness/impairment complaints or matters.



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- Review of completed investigative materials.
- Presentation to the Board of facts developed during the investigation, together with the Team Leader's recommendation for the disposition of the complaint (e.g., notice of hearing or no evidence to sustain). (The team leader is recused from voting on any actions involving investigations that they have presented to the Board for consideration.)

### **TYPES OF COMPLAINTS**

1. Board-initiated Complaint: A complaint initiated by the Board. As the state licensing agency for dental professionals, the Board reserves its right to initiate an investigation of any suspected violation of the Alabama Dental Practice Act and associated administrative code (Board rules).
2. Oral Complaint: A complaint submitted by telephone or personal visit, without a writing. An oral complaint can be accepted for review by the Board only under very limited circumstances. Those circumstances include, but are not limited to:
  - a. The complaint is from a governmental agency, healthcare provider, regulatory board, educational institution responsible for teaching dentists/dental hygienists, or a reporting agency.
  - b. The complaint is made to the chair of the Alabama Dental Professionals Wellness Committee regarding a wellness/impairment issue of a practitioner. The Wellness Committee will accept information provided anonymously.
3. Written Complaint: A formal written complaint filed with the Board using an established complaint form provided by the Board. A written complaint can be accepted for review by the Board only if: 1) it is notarized; 2) it identifies a specific dental/dental hygiene practitioner; and 3) the issue being reported happened within the four (4) years preceding the filing of the complaint.
  - a. Any governmental agency, healthcare provider, regulatory board, educational institution responsible for teaching dentistry/dental hygiene, or reporting agency is exempt from the requirement of using a formal, notarized Board-approved complaint form. Written complaints by these exempt groups may be in email, memorandum, official report, or other style of written or oral communication.



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- b. Any dental/dental hygiene practitioner of the Board who chooses to submit a wellness report may do so without using a formal written complaint form.
- 4. Wellness or Impairment Complaint (Non-Wellness Report): A written complaint, as above, alleging drug, alcohol, wellness (physical/mental), or a combination of these types of issues involving a dental/dental hygiene practitioner. All wellness/impairment complaints may include the chair of the Alabama Dental Professionals Wellness Committee as part of the investigation. All investigative decisions involving this type(s) of case will be approved by the assigned Team Leader or his or her designated proxy in consultation with the board's prosecutor.

### **GENERAL INVESTIGATIVE PROTOCOL<sup>1</sup>**

- 1. Initial complaint is received by the Board
  - a. Executive Director/Designee reviews complaint:
    - i. Confirms complaint meets minimum requirements, including Board jurisdiction. If complaint does not qualify, a letter of explanation will be sent to the complainant explaining that an investigation cannot be initiated.
    - ii. Enters complaint into database, assigns case number.
    - iii. Identifies and assigns a board member as Team Leader.
      - 1. As it relates to the reporting of Adverse Occurrences only: If an active or former board member reports an adverse occurrence, the Team Leader shall assign the case to an outside expert to review. If the outside expert identifies a potential standard of care violation, the case will be forwarded to the Alabama Attorney General's Office for investigation. If no standard of care issue is identified, the case will be disposed of by the Board.
      - 2. As it relates to standard of care-type cases involving the administration of sedation and/or anesthesia, the Team Leader will coordinate with the Prosecutor and the chair of the Anesthesia Committee regarding assigning a member of the anesthesia committee to assist in reviewing the case. The Team Leader shall make all final decisions regarding the recommendation presented to the Board.
    - iv. Issues initial receipt letter to the complainant confirming review of the complaint.
    - v. Scans complaint/documents and forwards them to the Board's enforcement group.
  - b. Initial Complaint with case number sent to Enforcement Group—PROCESSING:



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- i. Investigator scans and attaches all relevant documents to the Board's database, as needed.

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<sup>1</sup> In addition to the protocols outlined in this document, the Board might refer certain complaints to other agencies, whether such complaints are concurrently investigated by the Board.



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- ii. Investigator makes initial contact with and briefly interviews complainant to identify any additional information that has potential bearing on the investigation.
- c. Initial Complaint with case number sent to Enforcement Group—REVIEW:
  - i. The Enforcement Group determines whether any immediate action is required based on the nature of the complaint (e.g., wellness/impairment, public safety threat, dental/dental hygiene practitioner incarcerated, violation of existing consent or final order, etc.).
  - ii. All information relevant to the complaint is prepared by an Enforcement Group member(s) and presented to the Team Leader for review. Any documents that may be reviewed by the Team Leader, generally, will have the complainant, respondent, and geographic location of the incident redacted.
- d. Team Leader review of Complaint:
  - i. Reviews all information with a member(s) of the Enforcement Group.
    - 1. If necessary, determines whether a wellness/impairment complaint requires an evaluation at a Board-approved facility for the respondent. If so, the respondent must report for the evaluation within 60 days of notification. This would also apply if, during an investigation, a respondent's controlled substance inventory cannot be reconciled with the inventory and dispensing logs.
  - ii. Authorizes prosecutor/investigator to continue with investigation.
  - iii. Authorizes issuance of any needed subpoena(s) or other documents.
  - iv. Authorizes investigative access to relevant databases (e.g., PDMP, NCIC).
  - v. Maintains an oversight role in the investigation.
  - vi. Provides guidance on any questions regarding dentistry that arise.

## 2. Investigative Process

- a. The prosecutor identifies specific violations of the DPA and/or rules contained within the complaint.
- b. Once the prosecutor has identified specific violations, prosecutor determines what evidence can be obtained (physical, documentary, testimonial, etc.) to validate the complaint. This includes review of PDMP or other databases.
- c. An Enforcement Group member(s) drafts and issues a notification to respondent(s).



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- d. An Enforcement Group member(s) drafts and issues subpoenas, as needed. Subpoenas and relevant court-issued documents are generally served and executed by the investigator.
- e. An Enforcement Group member(s) will compile all investigative materials and review with the Team Leader to determine further actions to be undertaken with/by the Board or outside agencies.

### 3. Full Board Review

- a. Team Leader presents investigative findings to full Board\* with a recommendation:

\*Team leader is recused from voting.

- i. Close the case (e.g., no evidence to sustain, outside jurisdiction, etc.)
  - ii. Issue a Notice of Hearing on the respondent
  - iii. Other actions (e.g., non-disciplinary administrative fine, cease and desist letter, referral of the case to another agency, etc.)
- b. If Board votes to close case or other action
  - i. If the case is closed, a letter of the Board's decision is sent to both the complainant and respondent.
  - ii. Any other actions will be completed by the Enforcement Group, as needed.
- c. If Board votes to issue a Notice of Hearing
  - i. Enforcement Group member(s) identify a date for a hearing, then draft and send a Notice of Hearing to the respondent. Additionally, the complainant is contacted to confirm availability to appear for the hearing.
  - ii. Enforcement Group member(s) arrange for a hearing officer and court reporter to be present for the hearing.
  - iii. The Team Leader may authorize the prosecutor to draft a consent order within certain established guidelines to present to the respondent for consideration in lieu of a formal hearing.

### 4. Hearings

- a. The prosecutor presents the case to the hearing officer and the Board. The respondent is allowed to present their defense of the allegations. All evidence being offered in the case is presented at this stage.



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- b. The Team Leader for the case should not ask any questions during the hearing. Additionally, the Team Leader shall not attend the Board's deliberations after the hearing has concluded. The Team Leader's attendance counts towards a quorum.
- c. Once the prosecutor and respondent have concluded their presentations, the Board meets with the executive director, and/or general counsel, enters executive session for deliberations, and makes a final determination. The hearing officer has the discretion to attend deliberations. The Board may close the case with no further action, impose license or permit restrictions, suspend, or revoke a license and/or permit(s), assess administrative costs and fines, order monitoring by the Wellness Committee, or impose some other remedy or sanction. The Board may impose any of the actions as provided in Ala. Code § 34-9-18(b).
  - i. The executive director will prepare an "Administrative Costs Worksheet" to document/itemize related costs associated with the investigation and subsequent hearing. Those costs may include but are not limited to retaining an administrative law judge; retaining a court reporter; mandatory purchase of full transcript of the disciplinary hearing; executive director staff time; prosecutor staff time; general counsel staff time; compliance director staff time; investigator staff time/travel; assigned team leader case review time; and document/evidence copies for hearing/exhibits.
  - ii. Upon the conclusion of the disciplinary hearing and prior to the Board's deliberation, the executive director will meet with the general counsel and present the "Administrative Costs Worksheet" for review. This will provide a full accounting of the time and funds already spent on the investigation and presentation of the case. The costs for the administrative law judge, court reporter, and hearing transcript will be approximated based on an average of previous hearings.
  - iii. Once reviewed, the general counsel will retain a copy for the Board's deliberation. If the Board determines fault and begins to determine appropriate disciplinary actions, the general counsel will provide the board president with a copy of the "Administrative Costs Worksheet". The board president will share the document with the remaining board members. The Board will be advised not to exceed the costs as documented; however, the Board may reduce the costs, at their discretion.
- d. Regardless of the final decision of the Board, both the complainant and respondent are informed of the outcome of the hearing in writing.
- e. All Notices of Hearing, disciplinary actions, and findings issued by the Board are considered public records. Adverse licensing actions are reported by the executive director to any required databanks (e.g., NPDB).

### 5. Post-investigative Duties





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The executive director or their designee is authorized to confirm a respondent's adherence to all consent or final orders of the Board by, among other things: making PDMP inquiries, conducting follow-up clinic inspections, consulting with the Wellness Committee chair, etc., as needed. Any violation is reported to the Board and could result in a board-initiated complaint and further disciplinary action.

### **WELLNESS/IMPAIRMENT INVESTIGATIVE PROTOCOL**

#### 1. Wellness/Impairment complaint received-WELLNESS-REPORT ONLY:

- i. Wellness-Report/deferrals are handled exclusively by the Alabama Dental Health Professionals Wellness Committee.
- ii. The Wellness Committee shall have an affirmative obligation to report immediately to the Board the following:
  1. Any licensee who has failed or refused to voluntarily cease such professional practice pursuant to an agreement with the Committee, or, having entered into such an agreement with the Committee, has violated that agreement;
  2. Any licensee who has failed or refused to participate in programs of treatment or rehabilitation recommended by the Committee.

#### 2. Wellness/ Impairment complaint received- Written Complaints:

- a. In situations not expressly covered by the foregoing provisions, the Enforcement Team and Chairman will proceed and exercise good faith judgment with the dual objectives of protecting public safety and promoting rehabilitation of impaired licensees, to the maximum degree attainable.