

**NOTICE OF INTENT TO AMEND RULE OF THE GEORGIA STATE BOARD OF
DENTISTRY
RULE 150-8-.01 UNPROFESSIONAL CONDUCT DEFINED**

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Georgia State Board of Dentistry (hereinafter "Board") proposes amendments to Georgia Board of Dentistry Rule 150-8-.01 UNPROFESSIONAL CONDUCT DEFINED (hereinafter "proposed amendments").

This notice, together with an exact copy of the rule including the proposed amendments and a synopsis of the rule including the proposed amendments, is being forwarded to all persons who have requested, in writing, that they be placed on an interested parties list. A copy of this notice, an exact copy of the rule including the proposed amendments, and a synopsis of the rule including the proposed amendments may be reviewed during normal business hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, except official State holidays, at the Department of Community Health at 2 Peachtree Street, NW, Atlanta, Georgia, 30303. These documents will also be available for review on the Georgia State Board of Dentistry's web page at <http://gbd.georgia.gov/>.

A public hearing is scheduled to begin at 10:00 AM on January 12, 2018 at the Department of Community Health at 2 Peachtree Street, NW, 5th Floor, Atlanta, Georgia, 30303 to provide the public an opportunity to comment upon and provide input into the proposed amendments. At the public hearing, anyone may present data, make a statement, comment or offer a viewpoint or argument whether orally or in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously recorded messages, must be submitted for the official record. Oral statements should be concise and will be limited to 5 minutes per person. Additional comments should be presented in writing. Written comments are welcome. To ensure their consideration, written comments must be received prior to January 5, 2018. Written comments should be addressed to Executive Director of the Georgia State Board of Dentistry at 2 Peachtree Street NW, Atlanta, Georgia 30303 FAX: 678-717-6435. You may email your comments to tbattle@dch.ga.gov.

The proposed rule amendments will be considered by the Georgia State Board of Dentistry during its meeting scheduled to begin at 1:15 PM on January 24, 2018 at the Department of Community Health at 2 Peachtree Street, NW, 6th Floor, Atlanta, Georgia, 30303. According to the Department of Law, State of Georgia, the Georgia State Board of Dentistry has the authority to adopt the proposed rule amendments pursuant to authority contained in O.C.G.A §§ 31-33-2, 43-1-19, 43-1-19.1, 43-11-7, 43-11-8, 43-11-47, and 43-11-72.

At its meeting on December 1, 2017, the Board voted that the formulation and adoption of these amendments do not impose excessive regulatory cost on any licensee and any cost to comply with the proposed amendments cannot be reduced by a less expensive alternative that fully accomplishes the objectives of O.C.G.A §§ 31-33-2, 43-1-19, 43-1-19.1, 43-11-7, 43-11-8, 43-11-47, and 43-11-72.

At its meeting on 12/1/2017, the Board also voted that it is not legal or feasible to meet the objectives of O.C.G.A §§ 31-33-2, 43-1-19, 43-1-19.1, 43-11-7, 43-11-8, 43-11-47, and 43-11-72 to adopt or implement differing actions for businesses as listed at O.C.G.A § 50-13-4(a)(3)(A), (B), (C) and (D). The formulation and adoption of these amendments will impact every licensee in the same manner, and each licensee is independently licensed, owned and operated and dominant in the field of dentistry.

For further information, contact the Board office at 404-651-8000.

This notice is given in compliance with O.C.G.A. §50-13-4.

This 22nd day of December, 2017.



Tanja D. Battle
Executive Director
Georgia Board of Dentistry

Posted: December 22, 2017

**SYNOPSIS OF PROPOSED AMENDMENTS OF THE
GEORGIA STATE BOARD OF DENTISTRY
150-8-.01 Unprofessional Conduct Defined.**

Purpose of amendment: The purpose of this amendment is to provide clarification as to what constitutes unprofessional conduct and provide additional guidelines.

Main Features: The main feature of this amendment is to provide clarification regarding health records and termination of dentist/patient relationship notification as well as include violations of the Health Insurance Portability and Accountability Act and false certification of records.

**DIFFERENCES OF PROPOSED AMENDMENTS OF THE
GEORGIA STATE BOARD OF DENTISTRY
150-8-.01 Unprofessional Conduct Defined.**

Note: Struck through text is proposed to be deleted. Underlined text is proposed to be added.

150-8-.01 Unprofessional Conduct Defined.

The Board has the authority to refuse to grant a license to an applicant, or to discipline a dentist or dental hygienist licensed in Georgia if that individual has engaged in unprofessional conduct. For the purpose of the implementation and enforcement of this rule, unprofessional conduct is defined to include, but not be limited to, the following:

(a) Failing to conform to current recommendations of the Centers for Disease Control and Prevention (C.D.C.) for preventing transmission of Human Immunodeficiency Virus, Hepatitis B Virus, and all other communicable diseases to patients. It is the responsibility of all currently licensed dentists and dental hygienists to maintain familiarity with these recommendations, which are considered by the Board to be minimum standards of acceptable and prevailing dental practice. ~~(Copies of the guidelines may be obtained from the Centers for Disease Control, the Department of Human Resources, or from the Board.)~~

(b) Violating any lawful order of the Board;

(c) Violating any Consent Agreement entered into with the Georgia Board of Dentistry or any other licensing board;

(d) Violating statutes and rules relating to or regulating the practice of dentistry, including, but not limited to, the following:

1. The Georgia Dental Practice Act (O.C.G.A. T. 43, Ch. 11);
2. The Georgia Controlled Substances Act (O.C.G.A. T. 16, Ch. 13, Art. 2);
3. The Georgia Dangerous Drug Act (O.C.G.A. T. 16, Ch. 23, Art. 3);
4. The Federal Controlled Substances Act (21 U.S.C.A., Ch. 13);
5. Rules and Regulations of the Georgia Board of Dentistry;
6. Rules of the Georgia State Board of Pharmacy, Ch. 480, Rules and Regulations of the State of Georgia, in particular those relating to the prescribing and dispensing of drugs, Ch. 480-28;
7. Code of Federal Regulations Relating to Controlled Substances (21 C.F.R. Par. 1306);
8. O.C.G.A. T. 31-33 Health Records. A dentist must send a patient a copy of his/her request records upon request where the request complies with O.C.G.A. Title 31-33, et. seq., even if the patient has an outstanding balance with the dentist, but the patient may be required to pay costs of copying and mailing records and for search, retrieval, certification, and other direct administrative costs related to compliance with the request.

9. The Health Insurance Portability and Accountability Act (Pub. L. 104-191).

(e) Failing to maintain appropriate records whenever controlled drugs are prescribed.

Appropriate records, at a minimum, shall contain the following:

1. The patient's name and address;
2. The date, drug name, drug quantity, and diagnosis for all controlled drugs;
3. Records concerning the patient's history.

(f) Prescribing controlled substances for a habitual drug user in the absence of substantial dental justification;

(g) Prescribing drugs for other than legitimate dental purposes;

(h) Any departure from, or failure to conform to, the minimum standards of acceptable and prevailing dental practice. Guidelines to be used by the Board in defining such standards may include, but are not restricted to:

1. Diagnosis. Evaluation of a dental problem using means such as history, oral examination, laboratory, and radiographic studies, when applicable.
2. Treatment. Use of medications and other modalities based on generally accepted and approved indications, with proper precautions to avoid adverse physical reactions, habituation or addiction.
3. Emergency Service. Dentists shall be obliged to make reasonable arrangements for the emergency care of their patients of record. For purposes of this rule, a "patient of record" is defined as a patient who has received dental treatment on at least one occasion within the preceding year.

4. Records. Maintenance of records to furnish documentary evidence of the course of the patient's medical/dental evaluation, treatment and response. A dentist shall be required to maintain a patient's complete dental record, which may include, but is not limited to, the following: treatment notes, evaluations, diagnoses, prognoses, x-rays, photographs, diagnostic models, laboratory reports, laboratory prescriptions (slips), drug prescriptions, insurance claim forms, billing records, and other technical information used in assessing a patient's condition. Notwithstanding any other provision of law, a dentist shall be required to maintain a patient's complete treatment record for no less than a period of ten (10) years from the date of the patient's last office visit.

(i) Practicing fraud, forgery, deception or conspiracy in connection with an examination for licensure or an application;

(j) Knowingly submitting any misleading, deceptive, untrue, or fraudulent misrepresentation on a claim form, bill or statement to a third party;

(k) Knowingly submitting a claim form, bill or statement asserting a fee for any given dental appliance, procedure or service rendered to a patient covered by a dental insurance plan, which fee is greater than the fee the dentist usually accepts as payment in full for any given dental appliance, procedure or service;

(l) Abrogating or waiving the co-payment provisions of a third party contract by accepting the payment received from a third party as payment in full, unless the abrogation or waiver of such co-payment or the intent to abrogate or waive such copayment is fully disclosed, in writing, to the third party at the time the claim is submitted for payment. For the purpose of this rule, a "third party" is any party to a dental prepayment contract that may collect premiums, assume financial risks, pay claims, and/or provide administrative services;

(m) Falsifying, altering or destroying treatment records in contemplation of an investigation by the Board or a lawsuit being filed by a patient;

- (n) Committing any act of sexual intimacy, abuse, misconduct or exploitation related to the licensee's practice of dentistry or dental hygiene;
- (o) Delegating to unlicensed or otherwise unqualified personnel duties that may only be lawfully performed by a dentist or dental hygienist;
- (p) Using improper, unfair or unethical measures to draw dental patronage from the practice of another licensee.;
- (q) ~~Termination of~~ Terminating a dentist/patient relationship by a dentist, unless notice of the termination is provided to the patient. A "dentist/patient relationship" exists where a dentist has provided dental treatment to a patient on at least one occasion within the preceding year.
- ~~(1)~~1. "Termination of a dentist/patient relationship by the dentist" means that the dentist is unavailable to provide dental treatment to a patient, under the following circumstances:
- (i) The office where the patient has received dental care has been closed permanently or for a period in excess of (30) days; ~~or~~
- (ii) The dentist discontinues treatment of a particular patient for any reason, including non-payment of fees for dental services, although the dentist continues to provide treatment to other patients at the office location.;
- ~~(2)~~2. The dentist who is the owner or custodian of the patient's dental records shall mail notice of the termination of the dentist's relationship to patient, which notice shall provide the following:
- (i) The date that the termination becomes effective, and the date on which the dentist/patient relationship may resume, if applicable;
- ~~(ii) A location at which the patient may receive emergency dental care for at least (30) days following the termination of the dentist/patient relationship;~~
- ~~(iii) A statement of further dental treatment required, if any; and~~
- ~~(iv)~~(ii) A means for the patient to obtain a copy of his ~~or~~ or her dental records. The notice shall be mailed at least fourteen (14) days prior to the date of termination of the dentist/patient relationship, unless the termination results from an unforeseen emergency (such as sudden injury or illness), in which case the notice shall be mailed as soon as practicable under the circumstances.
- (r) Knowingly certifying falsely to the accuracy or completeness of dental records provided to the Board.

Authority: O.C.G.A. §§ 31-33-2, 43-1-19, 43-1-19.1, 43-11-7, 43-11-8, 43-11-47, 43-11-72.