

OCCUPATIONS CODE
TITLE 3. HEALTH PROFESSIONS
SUBTITLE D. DENTISTRY
CHAPTER 258. PRACTICE BY DENTIST

SUBCHAPTER A. DELEGATION BY DENTIST

Sec. 258.001. IMPERMISSIBLE DELEGATIONS. A dentist may not delegate:

(1) an act to an individual who, by board order, is prohibited from performing the act;

(2) any of the following acts to a person not licensed as a dentist or dental hygienist:

(A) the removal of calculus, deposits, or accretions from the natural and restored surfaces of exposed human teeth and restorations in the human mouth;

(B) root planing or the smoothing and polishing of roughened root surfaces or exposed human teeth; or

(C) any other act the delegation of which is prohibited by board rule;

(3) any of the following acts to a person not licensed as a dentist:

(A) comprehensive examination or diagnosis and treatment planning;

(B) a surgical or cutting procedure on hard or soft tissue;

(C) the prescription of a drug, medication, or work authorization;

(D) the taking of an impression for a final restoration, appliance, or prosthesis;

(E) the making of an intraoral occlusal adjustment;

(F) direct pulp capping, pulpotomy, or any other endodontic procedure;

(G) the final placement and intraoral adjustment of a fixed or removable appliance; or

(H) the placement of any final restoration; or

(4) the authority to an individual to administer a local anesthetic agent, inhalation sedative agent, parenteral sedative agent, or general anesthetic agent if the individual is not licensed as:

(A) a dentist with a permit issued by the board for the procedure being performed, if a permit is required;

(B) a certified registered nurse anesthetist licensed by the Texas Board of Nursing, only if the delegating dentist holds a permit issued by the board for the procedure being performed, if a permit is required; or

(C) a physician anesthesiologist licensed by the Texas Medical Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. [2426](#)), Sec. 37, eff. September 1, 2007.

Sec. 258.002. DELEGATION TO DENTAL ASSISTANT. (a) A licensed dentist may delegate to a qualified and trained dental assistant acting under the dentist's general or direct supervision any dental act that a reasonable and prudent dentist would find is within the scope of sound dental judgment to delegate if:

(1) in the opinion of the delegating dentist, the act:

(A) can be properly and safely performed by the person to whom the dental act is delegated; and

(B) is performed in a customary manner and is not in violation of this subtitle or any other statute;

(2) the person to whom the dental act is delegated does not represent to the public that the person is authorized to practice dentistry; and

(3) the person to whom the dental act is delegated holds the appropriate certificate, if a certificate is required to perform the act.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 476, Sec. 8(1), eff. September 1, 2009.

(c) The board by rule shall establish guidelines regarding the types of dental acts that may be properly or safely delegated by

a dentist, including a determination of which delegated dental acts, if any, require competency testing before a person may perform the act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1470, Sec. 4.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1144, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 8(1), eff. September 1, 2009.

Sec. 258.003. RESPONSIBILITY OF DELEGATING DENTIST. A delegating dentist is responsible for a dental act performed by the person to whom the dentist delegates the act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. GENERAL PRACTICE PROVISIONS

Sec. 258.051. DENTIST RECORDS. (a) The records of a diagnosis made and treatment performed for and on a dental patient are the property of the dentist performing the dental service.

(b) A dentist's records may not be sold, pledged as collateral, or transferred to any person other than the patient unless the transfer is made in compliance with Subchapter C and board rules.

(c) This section does not prevent the voluntary submission of records to an insurance company to determine benefits when consent for the disclosure has been granted under Section 258.104.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(a), eff. Sept. 1, 2001.

Sec. 258.0511. ACCESS TO DENTAL RECORDS. (a) An owner, shareholder, partner, or executive officer of a clinic or other entity that provides dental services for the public shall designate a license holder as the dental custodian of records to provide

records to the board or a dentist who has provided dental treatment and to comply with other law regulating dental patient records.

(b) On demand, the dental custodian of records shall give access to the board and produce for the board all records or other evidence related to the investigation or prosecution of an alleged violation of this subtitle or another law regulating the practice of dentistry in this state.

(c) The board shall adopt rules regarding the designation and duties of a dental custodian of records.

(d) Section 264.101 applies to a violation of this section. Added by Acts 2007, 80th Leg., R.S., Ch. 1119 (H.B. 3876), Sec. 1, eff. September 1, 2007.

Sec. 258.052. CASE HISTORIES AND PHYSICAL EVALUATIONS. (a) A dentist may take a complete case history and perform a complete physical evaluation that may be used to admit a patient to a hospital for the practice of dentistry if the activity is necessary in the exercise of due care in the practice of dentistry.

(b) A dentist is not automatically entitled to membership on a hospital's medical staff or to exercise clinical privileges at a hospital solely because the dentist is licensed in this state or because the dentist is authorized to take a case history and perform a physical evaluation.

(c) A dentist may not be denied membership on a hospital's medical staff or the right to the exercise of clinical privileges at a hospital solely because the person is a dentist rather than a physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 258.053. USE OF CERTAIN DRUGS. (a) In this section, "narcotic drugs," "dangerous drugs," and "controlled substances" have the meanings defined or recognized by federal law or the law of this state.

(b) A dentist may not:

(1) prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver to or for any person a narcotic drug, dangerous drug, or controlled substance:

- (A) that is not necessary or required; or
 - (B) the use or possession of which would promote addiction to the drug or substance; or
- (2) aid, abet, or cause another person to engage in an action described by Subdivision (1).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 258.054. USE OF X-RAY EQUIPMENT. (a) A dentist may authorize a qualified person to perform beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, or protection analysis on radiation-emitting equipment or radiopharmaceuticals for a procedure that involves the diagnosis or treatment of disease or another dental condition in humans.

(b) A dentist's authorization and the performance of authorized activities by a qualified person does not constitute the practice of medical physics under Chapter 602.

(c) A dentist may not authorize a dental assistant to make a dental x-ray unless the dental assistant holds an x-ray certificate issued under Section 265.005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 5, eff. September 1, 2005.

Sec. 258.055. PRACTICE OF DENTISTRY ON CERTAIN CHILDREN.

(a) The parent or guardian of a child younger than 18 years of age may be present in the treatment room during the child's dental treatment or procedure, unless the dentist determines in the dentist's professional judgment that the presence of the parent or guardian in the treatment room is likely to have an adverse effect on the treatment or the child.

(b) In this section, "parent or guardian" includes a person authorized by law to consent for the medical or dental treatment of a child younger than 18 years of age.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 8, eff. January 1, 2014.

SUBCHAPTER C. DENTAL PRIVILEGE

Sec. 258.101. DEFINITIONS. In this subchapter:

(1) "Dental record" means dental information about a patient:

(A) created or maintained by a dentist; and

(B) relating to the history or treatment of the patient.

(2) "Dentist" means a person licensed to practice dentistry.

(3) "Patient" means a person who consults with a dentist to receive dental care.

(4) "Privilege" means the confidentiality privilege created by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.102. SCOPE OF PRIVILEGE. (a) The following information is privileged and may not be disclosed except as provided by this subchapter:

(1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and

(2) a dental record.

(b) The privilege described by this section applies regardless of when the patient received the professional service from the dentist.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.103. HOLDER OF PRIVILEGE. (a) The patient is the holder of the privilege.

(b) The following persons may claim the privilege on the patient's behalf:

(1) a person authorized to act on the patient's behalf;

(2) a dentist acting on the patient's behalf; and

(3) an agent or employee of a person listed in

Subdivision (1) or (2).

(c) A person's authority to claim the privilege is presumed in the absence of evidence to the contrary.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.104. CONSENT TO DISCLOSURE OF PRIVILEGED INFORMATION. (a) A person may disclose privileged information if the patient consents to the disclosure as provided in this section.

(b) Consent for the release of privileged information must be in writing and be signed by:

(1) the patient;

(2) a parent or legal guardian of the patient, if the patient is a minor;

(3) a legal guardian of the patient, if the patient has been adjudicated incompetent to manage the patient's personal affairs;

(4) an attorney ad litem appointed for the patient, as authorized by:

(A) Chapter 107, Family Code;

(B) Subtitle B, Title 6, Health and Safety Code;

(C) Subtitle C, Title 7, Health and Safety Code;

(D) Subtitle D, Title 7, Health and Safety Code;

(E) Subtitle E, Title 7, Health and Safety Code;

(F) Chapter V, Texas Probate Code; or

(G) any other law; or

(5) a personal representative of the patient, if the patient is deceased.

(c) The consent required under this section must specify:

(1) the information covered by the release;

(2) the person to whom the information is to be released; and

(3) the purpose for the release.

(d) A person may withdraw consent granted under this section by notifying in writing the person who maintains the information. Withdrawal of consent does not affect information disclosed before the written notice of the withdrawal is delivered.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.105. EXCEPTION TO PRIVILEGE FOR CERTAIN PROCEEDINGS. (a) The privilege does not apply in a court or administrative proceeding if the proceeding is:

(1) brought by the patient against a dentist, including a malpractice, criminal, or license revocation proceeding, and the disclosure is relevant to a claim or defense of the dentist; or

(2) to collect on a claim for dental services rendered to the patient.

(b) The privilege does not apply to the disclosure of a dental record:

(1) to the board in a disciplinary investigation or proceeding against a dentist conducted under this subtitle; or

(2) in a criminal investigation or proceeding against a dentist in which the board is participating or assisting by providing a record obtained from the dentist.

(c) The board may not reveal the identity of a patient whose dental record is disclosed under Subsection (b).

(d) Privileged information is discoverable in a criminal prosecution if:

(1) the patient is a victim, witness, or defendant; and

(2) the court in which the prosecution is pending rules, after an in camera review, that the information is relevant for discovery purposes.

(e) Privileged information is admissible in a criminal prosecution if:

(1) the patient is a victim, witness, or defendant; and

(2) the court in which the prosecution is pending rules, after an in camera review, that the information is relevant.

(f) The privilege does not apply to a grand jury subpoena.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.106. EXCEPTION TO PRIVILEGE FOR CERTAIN DISCLOSURES BY DENTIST. (a) The privilege does not apply to the disclosure of information by a dentist to:

(1) a governmental agency, if:

(A) the disclosure is required by another law;
and

(B) the agency agrees to keep confidential the identity of a patient whose dental record is disclosed;

(2) medical or law enforcement personnel, if the dentist determines that it is more likely than not that the following will occur:

(A) imminent physical injury to the patient, the dentist, or others; or

(B) immediate mental or emotional injury to the patient;

(3) a person in relation to a management or financial audit, program evaluation, or research, if the person agrees to keep confidential the identity of a patient whose dental record is disclosed;

(4) a person involved in the payment or collection of fees for services rendered by a dentist, if necessary; or

(5) another dentist, or a person under the direction of the dentist, who participates in the diagnosis, evaluation, or treatment of the patient.

(b) A person who receives information under Subsection (a)(3) may not disclose a patient's identity in writing.

(c) A record reflecting a charge or specific service provided may be disclosed only when necessary in the collection of fees for a service provided by a dentist, professional association, or other entity qualified to provide or arrange for a service.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.107. EXCEPTION TO PRIVILEGE FOR CERTAIN LEGISLATIVE INQUIRIES. A state hospital or state school may disclose a dental record if:

(1) the state hospital or state school created the record;

(2) an inquiry authorized by the legislature requests the information; and

(3) the entity receiving the record agrees not to disclose a patient's identity.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.108. LIMIT ON DISCLOSURE. A person who receives privileged information may disclose the information to another person only to the extent consistent with the purpose for which the information was obtained.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.109. REQUEST FOR DENTAL RECORD: TIMING; EXCEPTION. (a) If disclosure of a dental record is authorized under this subchapter, a dentist shall disclose the dental record within a reasonable period after it is requested but not later than:

(1) the 30th day after the date on which it is requested from the dentist; or

(2) a date ordered by a court.

(b) A dentist may refuse to disclose the requested record if the dentist determines that providing the information would be harmful to the physical, mental, or emotional health of the patient, except that requests from the board may not be refused. If the dentist determines that disclosing the record would be harmful, the dentist shall notify the person requesting the record and explain why the information would be harmful. The person requesting the record may challenge in court the dentist's refusal to disclose the record. If the court finds that the dentist made the refusal in bad faith, the court may order the disclosure of the record and award costs and attorney's fees incurred by the person to obtain the information.

(c) In disclosing a dental record under this section, a dentist shall redact privileged information about another person.

(d) A dentist may charge a reasonable fee for providing a dental record under this section. For purposes of this subsection, a fee established under Section [241.154](#), Health and Safety Code, is a reasonable fee.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

SUBCHAPTER D. ENTERAL ADMINISTRATION OF ANESTHESIA

Sec. 258.151. DEFINITION. In this subchapter, "enteral" means any technique of administering anesthesia in which the anesthetic is absorbed through the gastrointestinal tract or oral mucosa. Examples of enterally administering anesthesia include administering an anesthetic orally, rectally, sublingually, or intranasally.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

Sec. 258.152. APPLICABILITY. Rules adopted by the board under this subchapter do not apply to:

(1) the regional injection of an anesthetic to reduce or eliminate sensation, especially pain, in one part of the body; or

(2) the administration of anxiolytics and analgesics that are not being used in conjunction with the administration of nitrous oxide and that are administered in doses that do not have the probability of placing the dental patient at risk for loss of the dental patient's life-preserving protective reflexes.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

Sec. 258.153. RULES. (a) The board shall establish by rule the minimum standards for the enteral administration of anesthesia by a dentist.

(b) The rules must be designed to protect the health, safety, and welfare of the public and must include requirements relating to:

(1) the methods used to enterally administer an anesthetic and the anesthetic agents that may be used;

(2) dental patient evaluation, diagnosis, counseling, and preparation;

(3) dental patient monitoring to be performed and equipment to be used during a procedure and during postprocedure monitoring;

(4) emergency procedures, drugs, and equipment, including education, training, and certification of personnel, as appropriate, and including protocols for transfers to a hospital;

(5) the documentation necessary to demonstrate compliance with this subchapter; and

(6) the period in which protocols or procedures covered by rules of the board shall be reviewed, updated, or amended.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

Sec. 258.154. COMPLIANCE WITH ANESTHESIA RULES. (a) On and after August 31, 2002, a dentist who practices dentistry in this state and who enterally administers anesthesia or performs a procedure for which anesthesia is enterally administered shall comply with the rules adopted under this subchapter.

(b) The board may require a dentist to submit and comply with a corrective action plan to remedy or address any current or potential deficiencies with the dentist's enteral administration of anesthesia in accordance with this subtitle or rules of the board.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

Sec. 258.155. ANNUAL PERMIT. (a) Not later than September 1, 2002, the board shall require each dentist who enterally administers anesthesia or performs a procedure for which anesthesia is enterally administered to annually obtain a permit from the board by completing a form prescribed by the board. The board shall set and impose a fee for the permit in an amount designed to recover the costs of regulating a permit holder under this subchapter.

(b) The board shall coordinate the times at which a permit must be renewed with the times at which a dentist's license must be renewed under Chapter 257 so that the times of registration,

payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to dentists.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

Sec. 258.156. INSPECTIONS. (a) The board may conduct inspections to enforce this subchapter, including inspections of an office site and of documents of a dentist's practice that relate to the enteral administration of anesthesia. The board may contract with another state agency or qualified person to conduct these inspections.

(b) Unless it would jeopardize an ongoing investigation, the board shall provide at least five business days' notice before conducting an on-site inspection under this section.

(c) This section does not require the board to make an on-site inspection of a dentist's office.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

Sec. 258.157. REQUESTS FOR INSPECTION AND ADVISORY OPINION.

(a) The board may consider a request by a dentist for an on-site inspection. The board may, in its discretion and on payment of a fee in an amount established by the board, conduct the inspection and issue an advisory opinion.

(b) An advisory opinion issued by the board under this section is not binding on the board, and the board, except as provided by Subsection (c), may take any action under this subtitle in relation to the situation addressed by the advisory opinion that the board considers appropriate.

(c) A dentist who requests and relies on an advisory opinion of the board may use the opinion as mitigating evidence in an action or proceeding to impose an administrative or civil penalty under this subtitle. The board or court, as appropriate, shall take proof of reliance on an advisory opinion into consideration and mitigate the imposition of administrative or civil penalties accordingly.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.