



# 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 properly 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 verbal account of an alleged violation of the Alabama Dental Practice Act and/or Board rules.
- Complainant: A person(s) who has filed a complaint.
- Deferral: The designation given to a licensee who self-reports a wellness issue. This person voluntarily submits to a wellness evaluation and any subsequent contractual agreement presented to them through the Alabama Dental Professionals Wellness Program (see also self-report(er)).
- 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, General Counsel, Prosecuting Attorney, Compliance Director, Paralegal, Investigator, Board Team Leader, and Administrative Assistant.



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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 medical 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 or permit 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 or permit through the Board (see also licensee) or any other medical regulatory board (e.g., medical examiners, nursing, pharmacy, 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.
- Self-Report(er): A licensee who voluntarily reports a wellness issue (see Deferral).
- 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 dentistry questions that arise;
  - Review of completed investigative materials;
  - Presentation to the Board of facts developed during the investigation. (The team leader is recused from voting on any actions involving investigations that s/he has presented to the Board for consideration.)



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## TYPES OF COMPLAINTS

1. Board-initiated Complaint: A complaint initiated by the Board members or Executive Director. As the state licensing agency for dental professionals, the Board reserves its right, and the right of the Executive Director, to initiate an investigation of any suspected violation of the Alabama Dental Practice Act and Board rules by any licensee or non-licensee.
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 self-initiated from a Board-affiliated auxiliary committee, such as the Board's Anesthesia Committee or the Alabama Dental Professionals Wellness Committee. Such a complaint must be based on reliable and verifiable information.
  - c. The complaint is made to the chair of the Alabama Dental Professionals Wellness Committee regarding a wellness/impairment issue of a licensee. At minimum, the complainant must identify him/herself, provide contact information, and provide adequate detail before the complaint can be accepted.
3. Wellness or Impairment Complaint: A complaint alleging drug, alcohol, wellness (physical/mental), or a combination of these types of issues involving a licensee. This includes self-reporting by a licensee. All wellness/impairment issues will be reviewed by the director of the Alabama Dental Professionals Wellness Committee. Only licensees who self-report will be afforded deferral status.
4. Written Complaint: A formal written complaint filed with the Board using an established complaint form provided by the Board (Attachment 1). A written complaint can be accepted for review by the Board only if: 1) it is notarized; 2) it identifies a specific licensee; 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 communication.
  - b. Any licensee of the Board who chooses to self-report personal violation(s) may do so without using a formal written complaint form.



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- c. Any complaint received by the Board or its auxiliary committees that identifies gross immorality or harassment by a licensee against other licensees, non-licensees, patients, etc. can be accepted by the Board for investigation without a formal, notarized Board-approved complaint form, if the following minimum requirements are met:
  - i. Complainant must identify a specific licensee;
  - ii. Complainant must identify him/herself and be willing to assist in the investigation;
  - iii. The complaint must be in written form (i.e. email, letter, complaint form);
  - iv. The event must have occurred within the four (4) years preceding the filing of the complaint.

### **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, sends a letter of explanation to the complainant.
    - ii. Enters complaint into database, assigns case number.
    - iii. Identifies and assigns Board member as team leader.
    - iv. Issues initial receipt letter to the complainant confirming review of the complaint.
    - v. Forwards documents to the Board's enforcement group.
  - b. Initial Complaint with case number sent to Enforcement Group—PROCESSING:
    - i. Investigator scans and attaches all relevant documents to the Board's database.
    - ii. Investigator makes initial contact with complainant and briefly interviews him/her to identify any additional information that has potential bearing on the investigation, as needed.
    - iii. Investigator forwards complaint to the Enforcement Group for initial review.

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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 or not such complaints are concurrently investigated by the Board.



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- 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, licensee 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 will have the complainant, respondent, and geographic location of the incident redacted, unless exigent circumstances exist.
- d. Team Leader review of Complaint:
  - i. Reviews all information with a member(s) of the Enforcement Group.
  - 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. Prosecutor identifies specific violations of the DPA and/or rules contained within the complaint.
- b. Once the prosecutor has identified specific violations, s/he determines what evidence can be obtained (physical, documentary, testimonial, etc.) to validate the complaint. This includes review of PDMP or other databases by the investigator.
- c. An Enforcement Group member(s) drafts and issues a notification to respondent(s).
- 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.



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### 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 (no evidence to sustain, outside jurisdiction, etc.)
  - ii. Notice respondent for a hearing
  - iii. Other action (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 complainant and respondent.
  - ii. Any other actions will be completed by the Enforcement Group, as needed.
- c. If Board votes to notice the respondent for a hearing
  - i. Enforcement Group member(s) identifies a date for a hearing, then drafts and sends a Notice of Hearing to the licensee. 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 licensee 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 his/her defense to the allegations. All evidence being offered in the case is presented at this stage.
- b. Once the prosecutor and respondent have concluded their presentations, the Board meets with the hearing officer and makes a final determination. The Board may close the case with no further action, impose license or permit restrictions, assess administrative costs and fines, impose continuing education requirements, require monitoring through the Wellness Committee, or impose some other remedy or sanction.
- c. Regardless of the final decision of the hearing officer and Board, both the complainant and respondent are informed of the outcome of the hearing.



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- d. All disciplinary actions and findings issued by the Board are considered public records. These are reported by the executive director to any required databanks (e.g., NPDB).

### 5. Post-investigative Duties

The executive director or his/her 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 clinic inspections, consulting with the Wellness Committee chair, etc. 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-SELF-REPORT(ER) ONLY:

- a. Complaint is received by the chair of the Alabama Dental Professionals Wellness Committee (WC).
- b. The WC Chair then notifies the Enforcement Group.
- c. The WC chair advises the licensee that an evaluation by an authorized health care facility must be completed within six (6) months of the self-report to maintain a deferral status.
- d. The Enforcement Group member(s) gathers relevant information (e.g., PDMP report, police report) to document reported issues to aid in the evaluation process conducted by the health care facility.
- e. The investigator presents an initial deferral agreement to the licensee that suspends his/her license and any related permits pending the evaluation and subsequent recommended treatment (Attachments 2, 3). Should the licensee decline the initial deferral agreement, the WC chair and Enforcement Group member(s) review the case to determine whether an emergency suspension of the license is warranted. If an emergency suspension of the license is issued, it can be served on the licensee by mail, electronically, or in person.
- f. Based on the outcome of the evaluation and active participation in any recommended treatment plans identified by the health care facility, the licensee may be offered an expanded deferral contract that would allow the licensee to return to practice in a limited capacity. This contract must be approved by the WC chair and the prosecuting attorney, as well as the licensee. Any license reinstatement must be approved by the Board.



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### 2. Wellness/ Impairment complaint received-OTHER:

- a. Any wellness/impairment complaint that is not considered a self-report will follow the same General Investigative Protocols as previously listed.
- b. Because of the nature of this type of complaint, additional safeguards are authorized:
  - i. Should information involving the licensee indicate a wellness/impairment issue, an Enforcement Group member(s) will prepare a voluntary suspension of license/permit. The investigator serves this document on the licensee.
  - ii. Should information gathered through the course of the investigation indicate a possible wellness/impairment issue, the WC chair will deliver an order to the licensee to have an evaluation at an approved health care facility or submit to the taking of evidence by another method.
  - iii. Based on the outcome of the above evaluation, active participation by the licensee in any recommended treatment plans identified by the health care facility, and the status of the complaint with the Board, the WC chair, Enforcement Group, and team leader may offer the licensee a consent order that would allow the licensee to return to practice in a limited capacity.
  - iv. If the nature of the complaint or the licensee is deemed an eminent or active public safety risk, the Enforcement Group may issue an emergency suspension of license and any related permits to be served by the investigator. The emergency suspension would then proceed pursuant to Ala. Code (1975), § 41-22-19.
  - v. In the event that the team leader and WC chair disagree on the proper resolution of the complaint, a second team leader will be appointed to break the tie.