Regulation of the Dental Profession
Louisiana State Board of Dentistry

Performance Audit
Issued October 26, 2016

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

October 26, 2016

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Taylor F. Barras,
Speaker of the House of Representatives

Dear Senator Alario and Representative Barras:

This report provides the results of our performance audit on the Louisiana State Board of Dentistry (LSBD). The purpose of the audit was to determine whether LSBD effectively regulates the dental profession in Louisiana to ensure compliance with the Dental Practice Act (Louisiana Revised Statutes 37:751-795).

The report contains our findings, conclusions, and recommendations. Appendix A contains LSBD's response to this report. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the management and staff of LSBD for their assistance during this audit.

Sincerely,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/aa

LSBD REG 2016

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Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE

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Audit Control # 40150031

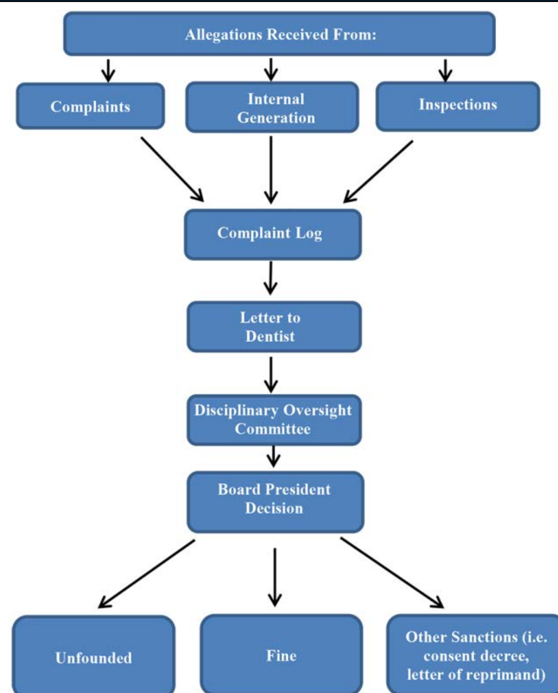
Introduction

The **mission** of LSBD is to *protect the public* by regulating the professions of dentistry and dental hygiene in Louisiana in accordance with the Dental Practice Act.

We evaluated whether the Louisiana State Board of Dentistry (LSBD) is effectively regulating the dental profession in Louisiana to ensure compliance with the Dental Practice Act.[1] During fiscal year 2016, there were 2,673 dentists practicing in Louisiana and 2,333 dental hygienists. We conducted this audit because, although LSBD is created under the authority of the Louisiana Department of Health (LDH), neither LDH nor any other entity provides oversight of LSBD's operations. While this performance audit focused on LSBD's regulatory activities during fiscal years 2011 to 2015, the Louisiana Legislative Auditor's Financial Audit Services Section issued a report dated August 25, 2016, on the board's controls over financial reporting, compliance with applicable laws and regulations, and accountability over public funds.[2]

LSBD was established in 1880 as a regulatory agency and is responsible for licensing dentists and dental hygienists, inspecting dental offices, and enforcing the Dental Practice Act by investigating allegations against dentists and issuing sanctions for violations. Exhibit 1 shows an overview of LSBD's enforcement process for allegations received through complaints from the public, identified internally, or found during inspections.

Exhibit 1
Overview of LSBD Enforcement Process



Source: Prepared by legislative auditor's staff using information from LSBD.

LSBD is comprised of 14 board members, two appointed by the Governor at-large and the remaining appointed by the Governor from a pool of three nominees elected by ballot by each district. Members represent nine districts and include 13 dentists and one hygienist currently licensed and

[1] Louisiana Revised Statutes (R.S.) 37:751-795
[2] See https://app.lla.state.la.us/PublicReports.nsf/B0E7F9E03CB246938625801A006E08F2/$FILE/00010A20.pdf

practicing in the state. In addition, LSBD has six employees to perform administrative functions and assist with licensing, monitoring, and enforcement responsibilities. LSBD is funded solely through self-generated revenues. In fiscal year 2015, LSBD's total revenue of approximately $1.3 million included fees from license applications, renewals, and permits, as well as fines assessed to dentists and hygienists. Most LSBD expenditures were for salaries and benefits and operating costs. Exhibit 2 provides a breakdown of LSBD's revenues and expenditures for fiscal years 2010 through 2015.

Exhibit 2
LSBD Revenues, Expenditures, and Net Income
Fiscal Years 2010 through 2015

Category	Sub-category	2010	2011	2012	2013	2014	2015	Total	Percentage of Total
Revenues	License Renewals	$731,550	$785,238	$811,655	$907,268	$929,478	$951,298	**$5,116,487**	**67.4%**
	Licenses and Permits	196,200	163,050	199,355	176,300	174,550	132,000	**1,041,455**	**13.7%**
	Enforcement Actions	68,750	54,157	83,984	441,911	110,619	115,251	**874,672**	**11.5%**
	Other	109,118	76,484	89,109	89,740	96,646	93,514	**554,611**	**7.3%**
	Total	**$1,105,618**	**$1,078,929**	**$1,184,103**	**$1,615,219**	**$1,311,293**	**$1,292,063**	**$7,587,225**	
Expenses	Salaries and Benefits	$589,289	$577,212	$610,077	$577,599	$591,028	$629,479	**$3,574,684**	**49.1%**
	Other	275,307	325,986	309,612	314,914	274,056	255,082	**1,754,957**	**24.1%**
	Legal	154,346	280,868	200,737	146,113	157,829	317,265	**1,257,158**	**17.3%**
	Investigative	127,952	121,891	147,625	115,391	108,588	68,809	**690,256**	**9.5%**
	Total	**$1,146,894**	**$1,305,957**	**$1,268,051**	**$1,154,017**	**$1,131,501**	**$1,270,635**	**$7,277,055**	
Net Income		**($41,276)**	**($227,028)**	**($83,948)**	**$461,202**	**$179,792**	**$21,428**	**$310,170**	

Note: LSBD's negative net income in fiscal years 2010 through 2012 was primarily caused by increased legal and investigative expenses. In 2013, net income spiked due to an increase in revenue from enforcement actions that rose 426%, from $83,984 in fiscal year 2012 to $441,911 in fiscal year 2013.
Source: Prepared by legislative auditor's staff using information from LSBD.

The objective of this performance audit was:

Does LSBD effectively regulate the dental profession to ensure compliance with the Dental Practice Act?

We found that LSBD should strengthen its monitoring and enforcement activities to better protect the public and ensure that dentists are practicing in accordance with the Dental Practice Act. The issues we identified are listed on the next page and discussed in further detail throughout the remainder of the report. Appendix A contains LSBD's response to this report, and Appendix B details our scope and methodology. Appendix C shows a map of dental offices not inspected by LSBD, by parish, during fiscal years 2012 through 2014, and Appendix D contains the number and types of allegations received by LSBD from fiscal years 2011 through 2015.

Objective: Does LSBD effectively regulate the dental profession to ensure compliance with the Dental Practice Act?

We found that LSBD should strengthen its monitoring and enforcement activities to protect the public and ensure that dentists and hygienists comply with the Dental Practice Act. We identified the following issues:

- LSBD should establish a consistent policy on how often dental offices should be inspected to provide assurance to the public that offices are monitored regularly. We found that between fiscal years 2012 and 2014 LSBD did not conduct inspections on 568 (35.5%) of 1,600 dental offices.

- LSBD should ensure all violations it identifies are corrected. We found that LSBD did not always notify dental offices of violations needing correction or require dentists to submit proof that violations were corrected.

- LSBD should track disciplinary actions and develop a disciplinary matrix in order to fairly and equitably administer sanctions to dentists who violate the Dental Practice Act. We found that cases with similar violations were not always treated consistently.

In addition, the Legislature may wish to consider amending state law to include the appointment of a public board member to LSBD. These issues are explained in more detail below.

LSBD should establish a consistent policy on how often dental offices should be inspected to provide assurance to the public that offices are monitored regularly. We found that between fiscal years 2012 and 2014, LSBD did not conduct inspections on 568 (35.5%) of 1,600 dental offices.

The Louisiana Administrative Code (LAC) requires that LSBD perform random, announced inspections to help ensure that dental offices are following proper health and safety precautions in order to prevent the transmission of disease.[3] LSBD also uses these inspections to check other LSBD requirements. According to LSBD staff, these inspections are one of the ways LSBD fulfills its mission of protecting the public. These inspections also ensure that offices comply with CDC guidelines for infection control and LSBD requirements such as displaying licenses, permits, and certifications. However, regulations do not specify how often these inspections should be conducted.

In addition, LSBD has not developed a consistent policy on how often inspections should be conducted. Because LSBD only conducted inspections in fiscal years 2012 to 2014, we were

[3] LAC Title 46, Part XXXIII, Chapter 12

unable to assess LSBD's inspection performance for our entire audit scope of fiscal years 2011 through 2015. According to LSBD staff, prior to May 2014 the board's practice was to attempt to inspect every dental office once every three years. Using this as criteria, we reviewed inspection records from fiscal years 2012 through 2014 and found that LSBD did not inspect 568 (35.5%) of the 1,600 dental offices in accordance with this practice during this three-year period.[4] According to LSBD, it stopped having the contractor conduct inspections in late October 2013 due to financial concerns related to increasing costs of investigating allegations and litigation arising from disciplinary actions.

In May 2014, the board adopted a formal policy stating that LSBD *should* inspect every dental office once every three years and hired a full-time employee in July 2015 to conduct inspections.[5] However, LSBD changed its policy in July 2016 to state that LSBD *endeavors*, but does not require, its inspector to randomly inspect each office at least once every six years. According to LSBD staff, all offices will continue to be inspected once every three years in practice; however, the board changed the policy so that it cannot be criticized if it fails to comply with inspection requirements.

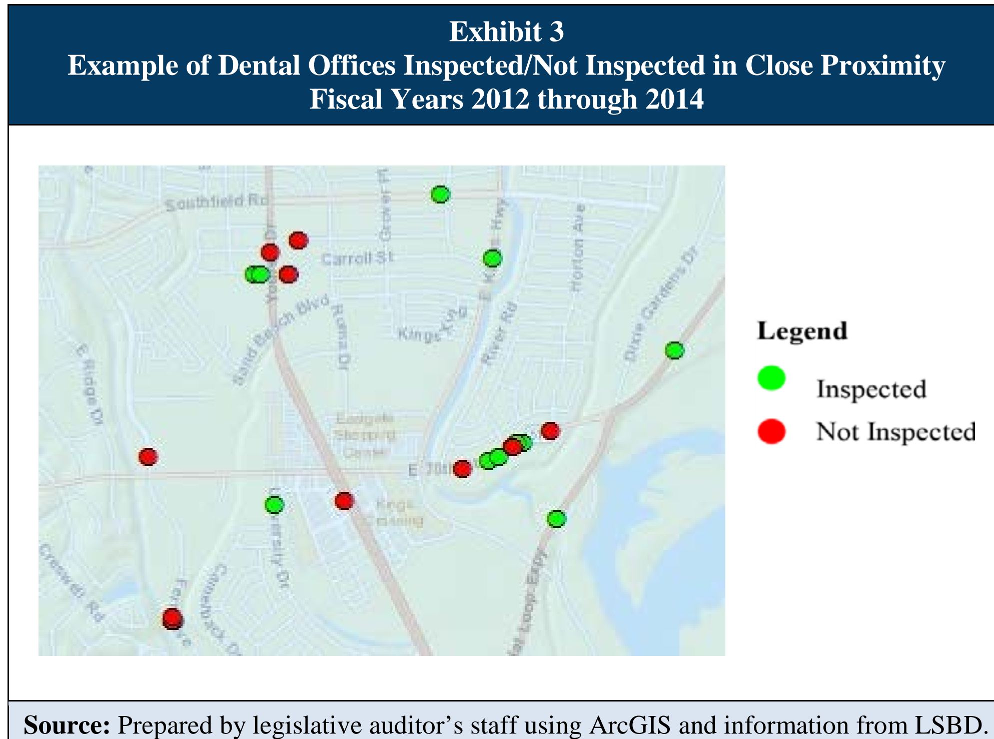
Other regulatory entities in Louisiana have specific inspection criteria. We found that 23 (85.2%) of the 27 dental boards we contacted in other states do not have an inspection requirement similar to Louisiana. However, within Louisiana, other regulatory boards and state agencies have specific inspection criteria. For example, the Louisiana Board of Pharmacy inspects all pharmacies at least once every two years and high-risk pharmacies every year, while LDH conducts inspections of nursing facilities and intermediate care facilities for the developmentally disabled at least once every 15 months. In addition, the Office of Alcohol and Tobacco Control inspects stores that sell alcohol once a year. Best practices[6] on state regulatory programs issued by the National State Auditors Association (NSAA) also recommend that regulatory agencies conduct inspections frequently enough to provide reasonable safeguards to the public. Therefore, establishing a definitive policy on how often each dental office must be inspected would help provide assurance that LSBD is sufficiently protecting the public and regulating the dental profession through regular monitoring visits. Without periodic inspections, LSBD cannot ensure all dental offices in Louisiana are in compliance with the Dental Practice Act and CDC guidelines.

To help ensure it meets its required number of inspections, LSBD should inspect dentists in close proximity at the same time. Best practices state that regulatory programs should ensure that inspectors follow the most efficient routes in traveling between inspection sites. According to LSBD staff, inspection routes are scheduled based on the office zip codes of active dentists. However, we found dental offices in close proximity within the same zip code that did not receive an inspection and entire cities where no dental offices were inspected. For example, during fiscal years 2012 through 2014, LSBD did not inspect 78 (43.6%) of 179 dental

[4] There were 1,054 inspections conducted at 1,032 dental offices during fiscal years 2012 to 2014 by a contracted private investigative firm with four employees.
[5] This inspector was a former employee of the private investigative firm that conducted inspections during fiscal years 2012 through 2014.
[6] "Carrying Out a State Regulatory Program," A National State Auditors Association Best Practices Document, NSAA, 2004.

offices in Baton Rouge or any dental offices in 54 other cities. Appendix C details the results of inspections not conducted by LSBD from fiscal years 2012 to 2014, by parish. Exhibit 3 illustrates an example of inspection results for dental offices in close proximity that were and were not inspected.

Exhibit 3
Example of Dental Offices Inspected/Not Inspected in Close Proximity
Fiscal Years 2012 through 2014



Source: Prepared by legislative auditor's staff using ArcGIS and information from LSBD.

Recommendation 1: LSBD should revise its current policy and require staff to periodically inspect all dental offices frequently enough to provide reasonable safeguards to the public by identifying dental offices that are not in compliance with the Dental Practice Act and other LSBD requirements.

Summary of Management's Response: LSBD disagrees with this recommendation and states that its current policy to endeavor, but not require, dental offices to be inspected at least once every six years does not need to be revised because it exceeds what other health care boards in Louisiana do, such as the Louisiana State Board of Medical Examiners, and what dental boards in other states currently do. LSBD also stated that random inspections provide a deterrent effect even if the office is not actually inspected.

LLA Additional Comments: LSBD serves as the main regulatory agency that inspects dental offices. These inspections help protect the public by ensuring that dental offices are in compliance with CDC guidelines and the Dental Practice Act. Although LSBD cited other medical boards that do not conduct inspections, many of these boards have another agency that does conduct inspections. For example, the Louisiana Department of Health inspects hospitals and other medical facilities to ensure they meet standards to continue to provide services. In addition, although LSBD stated that random inspections provide a deterrent to committing violations, our analysis found that 410

(39.7%) of the 1,032 dental offices inspected in fiscal years 2012 through 2014 had at least one violation identified. This indicates that the mere threat of an inspection may not be a sufficient deterrent and that regular inspections are needed.

Recommendation 2: LSBD should ensure that staff conducts inspections as required in its updated policy.

Summary of Management's Response: LSBD disagrees with this recommendation. LSBD states that it does ensure that its staff conducts inspections with its current policy.

Recommendation 3: LSBD should improve its process for scheduling inspections to ensure that it inspects all dental offices in an efficient manner, potentially by using mapping software to plan routes.

Summary of Management's Response: LSBD disagrees with this recommendation. LSBD states that the investigator does use Google Maps to plan his routes and that those offices not inspected on the first attempt will be inspected at the end of the inspection cycle.

LLA Additional Comments: In a preliminary meeting to discuss the report, the LSBD inspector agreed that this recommendation would be useful to him when scheduling his inspections and stated he would use Google Maps to better plan his routes in the future. LSBD was not using this mapping tool prior to LLA's recommendation.

LSBD should ensure all violations it identifies are corrected. We found that LSBD did not always notify dental offices of violations needing correction or require dentists to submit proof that violations were corrected.

LSBD internally identifies violations by performing inspections and through special projects it initiates. During its inspections, LSBD may cite dental offices for 16 potential violations in six violation categories. Between fiscal years 2012 and 2014, LSBD identified 715 violations at 410 dental offices.[7] Examples of these violations include undocumented or lack of spore testing,[8] insufficient immunization documentation, and failure to properly display licenses, permits, or certificates. LSBD also created a "Yellow Page Review Committee" in May 2011 to review phonebooks from across the state and identify advertising violations. State law and administrative code outline requirements for advertisements placed by dentists, such as the content, font size, and types of services offered, to protect the public from misleading or deceptive advertising.[9] Based on these reviews conducted from fiscal years 2012 through 2013,

[7] As discussed previously, LSBD did not conduct any inspections between November 2013 and September 2015.
[8] According to the CDC's *Summary of Infection Prevention Practices in Dental Settings: Basic Expectations for Safe Care,* spore testing monitors the sterilization process that is supposed to kill known highly-resistant bacteria.
[9] R.S. 37:775 and LAC Title 46, Part XXXIII, Section 301.

the committee identified 267 violations committed by 255 dentists who violated advertising guidelines. However, we found that LSBD did not properly follow up on either inspection or advertising violations to ensure dentists submitted sufficient proof of correcting the violations, as discussed below.

LSBD staff did not always notify dental offices with inspection violations. LSBD developed a policy in May 2014 that requires board staff to send a letter to every dental office with inspection violations requiring them to submit proof of correcting the violations within 30 days. Prior to that date, LSBD inspection records indicate that staff notified dentists of violations by verbally requesting proof of correction, sending a letter that required proof of correction to be submitted within 30 days, or opening a case for an internal review. However, we found no evidence that notification occurred for 107 (26.1%) of the 410 dental offices with inspection violations during fiscal years 2012 through 2014.

LSBD did not ensure that dentists submitted required proof of correcting advertising violations. We reviewed 39 cases where LSBD found that a dentist committed an advertising violation. In 16 (41.0%) of these 39 cases, there was no evidence that the advertisements were corrected prior to LSBD closing the case even though LSBD's process requires such proof. In 15 (93.8%) of the 16 cases, the dentist was fined and required to submit proof of fixing the advertisement; however, LSBD closed these 15 cases without receiving such proof once the dentist paid the fine.

According to NSAA best practices, a supervisor should review the results of inspections to ensure that they were conducted in accordance with applicable laws, regulations, and agency policy and that any conclusions and recommendations are based on clear and sufficient evidence. According to LSBD, no one currently reviews the inspector's work. Therefore, implementing a formalized review process would help LSBD ensure that it is holding dental offices accountable for addressing violations.

Another way to ensure violations have been corrected is to categorize violations based on severity and conduct re-inspections of dentists with a certain type of violation or who have multiple or repeat violations. According to NSAA best practices, state regulatory agencies should track and flag entities with violations and follow up as needed to determine whether the problem has been corrected or whether additional enforcement action is needed. Regulatory agencies should also maintain a record of the monitoring process and its results so a licensee's inspection history and past violations can be evaluated. While LSBD enters information on violations from inspections into a spreadsheet, it does not categorize violations based on severity and use this information to identify high-risk dentists or dental offices that need to be re-inspected to ensure violations are corrected. For example, LSBD could analyze inspection data to conduct a risk assessment that allows it to target re-inspection efforts on dental offices cited for the most common violations, cities with a high percentage of offices with previous violations, offices with multiple violations identified during inspections, or dentists cited for violations at multiple offices.[10]

[10] Dentists can work at or be associated with more than one dental office. As of January 4, 2016, the most dental offices that one dentist was associated with was 15.

To analyze inspection results, we manually entered violations from LSBD's 1,054 inspections conducted during fiscal years 2012 through 2014 into a spreadsheet to identify potential trends that LSBD could use to target re-inspection efforts. Exhibit 4 below shows the types and number of inspection violations cited in each category during this timeframe. As the exhibit shows, most violations were related to undocumented or lack of sterilization and disinfection techniques.

Exhibit 4
Inspection Violations Cited, by Category
Fiscal Years 2012 through 2014

Violation Category	Number of Violations	Percentage
Undocumented or lack of sterilization and disinfection techniques (i.e. heat sterilization and spore testing)	296	41.4%
Lack of proof of immunization against Hepatitis B	222	31.0%
LSBD license, permit and certificate display requirements not met	131	18.3%
Anesthesia violations* (i.e. emergency drugs not available or drug logs not properly maintained)	30	4.2%
No proof of proper sharp items or contaminated wastes disposal	28	3.9%
Disposable gloves, face masks, or protective eyewear not being worn	8	1.1%
Total	**715**	

*Anesthesia violations are only cited during inspections for dental offices that are permitted to administer anesthesia.
Source: Prepared by legislative auditor's staff using information obtained from LSBD.

We found that the most common violations cited were for dental offices conducting inadequate spore testing, maintaining insufficient evidence of Hepatitis B immunity, or failing to display current permits and licenses. As mentioned earlier, LSBD's process is to ensure that violations are corrected by requiring dentists to submit documentation as proof. However, proof of correction for some violations such as determining whether gloves, face masks, or protective eyewear are being worn as required would entail another inspection instead of simply reviewing documentation. Using this information, LSBD could also target re-inspection efforts on dentists with multiple violations. For example, we identified 170 (41.5%) of 410 dental offices that were cited for multiple violations and 65 dentists cited for violations at multiple dental offices, including one dentist who had violations at five different offices.

LSBD staff stated that the board will not need three years to complete its current cycle of inspections of all dental offices in the state. However, at this time the LSBD does not plan to use the inspector's downtime to re-inspect any offices. If LSBD categorized violations by severity and electronically analyzed inspection violations, it could identify high-risk dentists or dental offices as outlined in this section and prioritize the inspector's downtime effectively to re-inspect those offices and ensure violations were corrected.

Recommendation 4: LSBD should review inspections to ensure that staff properly notify dental offices of inspection violations and request any necessary proof of correction in accordance with policy.

Summary of Management's Response: LSBD disagrees with this recommendation. According to LSBD, policies have been established that require the inspector to obtain proof that violations were corrected. In addition, LSBD stated that it would be "wasteful" to have other staff review the inspector's work.

Recommendation 5: LSBD should categorize violations based on severity and analyze violation data to identify high-risk dentists to re-inspect to ensure violations are corrected.

Summary of Management's Response: LSBD disagrees with this recommendation. LSBD stated that the process does not need to be improved because it already conducts follow-up with offices through email or fax correspondence for certain issues and through follow-up visits for other issues such as unsanitary conditions.

LLA Additional Comments: LSBD did not address the categorization of violations, which is what we recommended. Categorizing violations based on severity and analyzing violation data would allow LSBD to identify high-risk dentists who may need to be re-inspected. For example, we found that 10 offices had four violations, two offices had five violations, and one office had six violations identified on inspections. However, none of these 13 offices were re-inspected during the scope of our audit.

Recommendation 6: LSBD should utilize any downtime that the inspector may have in each cycle of inspections to re-inspect offices that are deemed to be high-risk.

Summary of Management's Response: LSBD disagrees with this recommendation. LSBD stated that the process does not need to be improved because it conducts follow-up with offices through email or fax correspondence for certain issues and through follow-up visits for other issues such as unsanitary conditions.

LLA Additional Comments: This recommendation focuses on complete re-inspections of high-risk offices, not on follow-ups to specific inspection violations. Not re-inspecting offices or dentists identified as high-risk may allow that noncompliance to continue for many years, endangering the public's health for the years between inspections.

LSBD should track disciplinary actions and develop a disciplinary matrix in order to fairly and equitably administer sanctions to dentists who violate the Dental Practice Act. We found that cases with similar violations were not always treated consistently.

All allegations LSBD receives about dentists and hygienists for violations of the Dental Practice Act from the public, other dentists, other agencies, or internally from LSBD staff and board members are reviewed by a Disciplinary Oversight Committee ("Oversight Committee"). These committees, comprised of three board members selected by the executive director,[11] advise the board president, who determines whether the complaint is valid and should be settled,[12] needs further review,[13] or is invalid and should be dismissed. Settlements can include a letter of reprimand, a fine between $500 and $5,000, probation, reimbursement of investigative or legal costs, consent decree, and/or license suspension or revocation.

Exhibit 5
Top Five Categories of Allegations Received Fiscal Years 2011 through 2015

Alleged Violation	Number
Advertising	420
Substandard Care	361
CDC/Spore Testing	176
Fraud	137
Failure to Update Address	126

Source: Prepared by legislative auditor's staff using information obtained from LSBD.

In fiscal years 2011 through 2015, LSBD received 1,335 allegations that 926 dentists allegedly committed 1,809 violations. During the same time period, LSBD reviewed 860 allegations and determined that the licensee violated the Dental Practice Act in 116 (13.5%) cases. However, LSBD does not track case outcomes in a comprehensive manner to use as a reference for similar cases in the future, leading to disparities in how similar cases are treated. Exhibit 5 above shows the top five categories of allegations, and Appendix D summarizes all categories of allegations by fiscal year.

LSBD disciplined dentists inconsistently for similar violations. According to LSBD, every disciplinary case is different, and Oversight Committee members must take multiple factors into account when administering disciplinary actions to a licensee, such as length of time in practice, the number of violations committed during that time, severity of the violation, etc. Also, experience in the dental field is necessary to understand the nuances of each case. Taking these factors into account, we analyzed similar advertising violations and found instances of inconsistent discipline. For example, LSBD fined one dentist $1,000 and issued a letter of reprimand for not including "General" or "Family" dentistry on a print media advertisement. Another dentist who also failed to include "General" or "Family" dentistry on a print media advertisement was not fined. In addition, this dentist was a board member at the time of the Oversight Committee review, and his website contained the same violation.

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[11] The board members on this committee cannot be from the same district as the dentist being investigated.
[12] If the board president determines that a complaint is valid, then he may offer to settle the case with a fine or other discipline in lieu of further proceedings. If the dentist agrees to the discipline, then the case is closed.
[13] An informal hearing, disciplinary committee, and formal hearing are all potential steps that LSBD can use to further review a complaint.

We also found that disciplinary files contained evidence that spore testing violations cited during CDC inspections were treated inconsistently. For example, dentists missing comparable spore testing proof were inconsistently fined between $0 and $750. In addition, LSBD fined one longtime practicing dentist $2,500 for failing to conduct spore testing during the previous year, while another dentist with similar experience and the same violation was only fined $1,000.

According to the LSBD executive director, he notifies the three Oversight Committee members of how each other voted and the board president's decision on how to proceed with each case. However, since the three Oversight Committee members are different on each case, the remaining 10 board members cannot be sure they are recommending consistent levels of discipline for similar violations. In addition, the board president is responsible for reviewing the recommendations of the Oversight Committee and deciding how to proceed. Although he is involved in every case during his one-year term as board president, it may be difficult to remember the results and nuances of every case necessary to effectively administer consistent and appropriate discipline. If LSBD electronically tracked disciplinary case outcomes, this data could be used as a reference by Oversight Committee members to search similar cases and ensure that they fairly and equitably discipline dentists with similar violations.

Use of a disciplinary matrix would also help ensure violations are treated consistently. State law authorizes LSBD to levy fines ranging between $500 and $5,000 for any violation, no matter the severity or prior violations.[14] NSAA best practices recommend that regulatory agencies establish a graduated and equitable system of sanctions and specify the number or severity of violations that should trigger each level of sanction. The board president requested that we review whether other states' dental boards or other Louisiana boards use a graduated system for classifying fines for violations because a new member inquired about more defined guidelines on how cases should be treated. We found:

- The Texas State Board of Dental Examiners uses a disciplinary matrix that classifies violations into different tiers based on severity, such as administrative versus substandard care violations.
- The Mississippi State Board of Dental Examiners imposes increasing possible fine amounts for repeat violations instead of having one range for all types of violations.
- The Louisiana State Board of Nursing assesses penalties according to recommended but non-binding tiers that are based on the number and severity of offenses per licensee.

While LSBD's board president stated that the board does not want to be required to assess specific fines, if LSBD used a tiered or graduated system it could recommend more fair and equitable discipline for licensees with similar cases. This system would also provide assurances to the public and the dental profession that the board disciplines licensees in a fair and equitable manner.

[14] R.S. 37:780

Recommendation 7: LSBD should electronically track disciplinary action data so that Disciplinary Oversight Committee members can reference similar cases and sanction dentists fairly and equitably.

Summary of Management's Response: LSBD disagrees with this recommendation. LSBD stated that board members are informed of other members' votes and the board president's decision allows them to see the trends in settlement offers over time, thus giving them adequate information to make informed recommendations. In addition, LSBD stated that LLA misunderstood certain cases, referring to cases where LLA stated a violation was identified when there actually was not one.

LLA Additional Comments: We did not misunderstand the cases we cited in the report. These two cases were similar in terms of severity but were given different penalties. LSBD's response described a completely different case than the one we used in the report.

Recommendation 8: LSBD should develop a graduated and equitable system of sanctions that specifies the number and severity of violations that trigger each level of sanction.

Summary of Management's Response: LSBD disagrees with this recommendation. LSBD stated it believes that board members being informed of other members' votes and the board president's decision allows it to see the trends in settlement offers over time, thus giving it adequate information to make informed recommendations.

The Legislature may wish to consider amending state law to include the appointment of a public board member to LSBD.

According to R.S. 37:753, LSBD is comprised of 13 dentists and one hygienist, each serving a term of five years but no more than a total of 10 years. Prior to 2014, board members were not subject to term limits.[15] However, while LSBD's mission is to protect the public, it does not have any board members from the general public. According to the Citizen Advocacy Center, public members can make distinctive contributions that add to the overall effectiveness of boards because they bring something different to boards that were once composed entirely of members of the profession.[16] In addition, public members can help licensee members appreciate the issues, concerns, and sensitivities of the broader public and help keep the board's focus on its statutory mission, which in Louisiana is to the protect the public by regulating the dental profession.

[15] Act 866 of the 2014 Legislative Session
[16] *Strengthening the Community's Voice on California's Health Care Licensing Boards*, July 2009

While state law does not require the Governor to appoint a member of the public (non-dentist or hygienist) to the board in Louisiana, other states' dental boards have at least one public member. For example, members of the public comprise two of Arkansas's dental board's nine members, two of Oklahoma's 11 members, and five of Texas's 15 members. In addition, other Louisiana regulating boards include at least one member of the public. One of the Louisiana Board of Pharmacy's 11 members is a non-pharmacist, one of the Louisiana State Board of Social Work Examiners' seven members is a non-social worker, and four of the Louisiana Attorney Disciplinary Board's 14 members are from the general public with diverse backgrounds.

The National Commission for Certifying Agencies (NCCA) Standards require accredited certification programs to a have a public member to represent the consumers of services provided by a defined certificant population and serve as a voting member on the governing body. While LSBD does not certify the dentists and hygienists, they do license and permit them. According to NCCA, public members offer unique value including:

- enhancing their boards' credibility with the public and with employers;
- making their boards more accountable to the public; and
- bringing a different perspective and new ideas to the board's deliberations and its priorities.

Matter for Legislative Consideration: The Legislature may wish to consider amending R.S. 37:753 to include the appointment of a public board member to LSBD.

APPENDIX A: MANAGEMENT'S RESPONSE

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October 10, 2016

Transmitted via email
dpurpera@lla.state.la.us

Mr. Daryl G. Purpera, CPE, CFE
Louisiana Legislative Auditor
1600 North Third Street
P.O. Box 94397
Baton Rouge, LA 70804-9397

Re: Legislative Auditors' Performance Audit

Dear Mr. Purpera:

Please accept this response by the Louisiana State Board of Dentistry to the performance audit report produced by your office.

RESPONSE BY THE LOUISIANA STATE BOARD OF DENTISTRY TO THE LEGISLATIVE AUDITOR PERFORMANCE AUDIT REPORT

After spending months auditing the board, scanning thousands of pages of board documents, meeting with and questioning board employees, and looking into just about every aspect of the board, the Legislative Auditors produced a report which addresses three main subjects: 1) the random inspections that the board conducts of dental offices; 2) the supposed inequitable application of sanctions; and 3) adding someone from outside the field of dentistry to the board. Each of these subjects will be addressed in order.

RANDOM INSPECTIONS

The board has been conducting random inspection of private dental offices for many years. Such inspections have never been mandated by the legislature. The board itself is the impetus behind the decision to do these inspections. As the auditors indicate on page 3 of their report, the Louisiana Administrative Code requires random inspections. These rules are rules passed by the board. The board itself promulgated the rule referenced by the auditors. The referenced rule is Rule 46:XXXIII.1204 of the Louisiana Administrative Code. A copy of the rule is attached. This rule that was passed by the board does not require that every dental office in the state be inspected. The mere threat of a potential inspection is sufficient in most cases to ensure compliance with the rules governing dentistry.

As the auditors' report noted, only a small minority of dental boards around the country perform **any** random inspections. By conducting random inspections, the Louisiana State Board of Dentistry is going above and beyond the efforts of typical dental boards. The auditors cherry pick examples of boards in this state such as the pharmacy board, which inspects pharmacies, and the ATC, which inspects stores which sell alcohol, to suggest that even though most dental boards do not conduct random inspections, it is imperative that the Louisiana Dental Board inspect every dental office in the state. The auditors conspicuously fail to mention the boards in this state with the most commonality with the dental board, The Louisiana State Board of Medical Examiners and the Optometry Board, which do not conduct **any** random inspections. Thus, physicians, podiatrists (podiatrists are licensed by the medical board) and optometrists in this state have no random inspections. Despite the lack of random inspections by the majority of dental boards nationwide and by the medical and optometry boards of this state, the auditors incredulously suggest that the dental board cannot do it job without inspecting every dental office in the state on a regular basis: "[w]ithout periodic inspections, the LSBD cannot ensure all dental offices in Louisiana are in compliance with the Dental Practice Act and CDC guidelines." Furthermore, although by having random inspections the dental board is going above and beyond the norm, the auditors criticize the dental board for failing to inspect **every** office in the state during its three year cycle of inspections. In reality, the board should be held out as being exemplary for doing more than any other health care board that licenses individuals in this state and more than 85% of the dental board in other states.

It should initially be noted that the auditors looked at inspections that took place from 2011 through 2013 (fiscal year 2014), prior to the current administration. The inspections run on a three year cycle. The auditors did not address the current round of inspections, which are being performed very differently from the prior round of inspections. **The procedures and outcomes examined by the auditors are not the procedures in place since the latest round of inspections began in 2015, making any analysis of the procedures done by the auditors useless**. This review of outdated procedures is the sort of wasteful government spending that should be targeted by the legislative auditor.

The board currently has a full time employee who performs inspections. At the time of the inspections referenced in the report, the board was using independent contractors to conduct

inspections. The cost savings from using a full time employee will allow the board to inspect every private dental office in the state during the latest three year round of inspections, which began in September 2015. Every dental office will be inspected during this latest three year round of inspections, despite the current board policy which does not require that every office be inspected. At the time of the round of inspections that were examined by the auditors, there was no specific policy in place as to how often each dental office should be inspected. The current board policy provides:

> "Random inspections described by rule 1204 are designed to serve as a deterrent for dentists who would fail to follow the board rules. There is a deterrent effect even if the office is not actually inspected. Nevertheless, the board will endeavor, but is not required, to inspect each office at least once every 6 years."

Furthermore, by having a full time employee perform the inspections, the board administration has greater control over how the inspections are done and in making sure that follow up on violations is accomplished. During the current round of inspections every violation that was noted during an inspection generated a follow up letter and follow through to confirm that the violation was corrected. Where follow up inspections are necessary, they are done. The inspections are conducted efficiently, with the board inspector scheduling several office inspections in the same area on the same day. If helping to improve procedures at the board were truly the intent of the Legislative Auditors, one would have thought that they would look at the current inspection procedures, rather than the procedures from a prior administration.

DISCIPLINARY ACTIONS

In their Performance Audit Report, the Legislative Auditors labor under a misunderstanding of the disciplinary process of the dental board. Despite having the process explained to them on several occasions, and despite the clear description of the process in the Louisiana Administrative Code, this misunderstanding persists. The misunderstanding is exhibited in several places in the report, starting with Exhibit 1 on page 1. The exhibit shows that once a complaint is made, it is reviewed by a Disciplinary Oversight Committee ("DOC") and then it is either determined to be unfounded or some sanction is meted out. That is not correct.

The DOC is merely a screening mechanism to advise the board president, who acts on the board's behalf between board meetings, whether the complaint should go any further. Neither the DOC nor the board president can sanction a licensee. If it is determined by the board president, with the advice of the DOC, that the complaint potentially has merit and should be looked at more closely, the matter is referred to a Disciplinary Committee ("DC"). The DC consists of three board members who were not on the DOC. The DC then holds a formal hearing on the matter. The DC, not the DOC or the board president, is the only body that can impose a sanction

upon a licensee. The procedures are clearly set forth in La. R.S. 37:779 and 780, and in LAC 46:XXXIII.801-805. Copies of these statutes and rules are attached.

This misunderstanding is crucial to the analysis of the auditors, who state that the board disciplined dentists inconsistently for similar advertising violations. The auditors support their position with examples which purport to show inconsistent sanctions for the same violations. **None of the fines/sanctions that were reviewed by the auditors were imposed by a disciplinary committee.** Those sanctions were negotiated settlements between the board and the dentist**; they were not imposed by the board**. The variations associated with negotiated settlements are well known, given differing personalities, agendas, positions, etc. of the licensee involved in the negotiations.

More importantly, the auditors have failed to understand that even when the same rule is violated, there can be differences in the severity of the violation. The auditors' report references two dentists who were both accused of failing to indicate in ads that they were "general" or "family" dentists. One was not fined, while the other settled with the board for a $1,000 fine. The rule that was allegedly violated was advertising rule 301(G)(3), which requires general dentists to list themselves as general dentists or family dentists in print larger and or bolder and/or noticeably more prominent than any other area of dentistry listed in their ad. This rule is to avoid the public from being misled into believing, for example, that a dentist is a specialist in cosmetic dentistry, when no such specialty exists. A copy of Rule 301 is attached. Just because the same rule was alleged to have been violated does not mean that it was violated to the same degree.

Take for instance the dentists referenced by the auditors.   The dentist with no fine in the example, who had no history of advertising violations, had an ad that stated, "Comprehensive Adolescent and Adult Dental Care." There was no intent to mislead and the ad was not misleading. It simply used the word "comprehensive" instead of "general" or "family' dentistry. The DOC was divided in its recommendations on how to handle the matter, with one member emphatically stating that there was no violation, another member advising to take no action on the matter, and a third suggesting a fine. The board president sided with the DOC member whose opinion was that there was no violation. Thus, it was determined that the matter would go no further and there was no fine. The suggestion by the auditors that there was a violation but no punishment is incorrect. There was simply no violation.

The dentist who received the fine, on the other hand, had a prior advertising violation. His ad had multiple issues, and was described by one long term board member on the DOC as follows: "This is absolutely the worst advertising violation in one spot that I have seen in 23 years on the board." The ad listed sedation dentistry in print larger than family dentistry. It listed cosmetic dentistry in print lager than family dentistry. There were two dentists working in the office, one of whom was a specialist and one of whom was a general dentist. Neither was identified as to their specialty or lack thereof, in violation of a separate rule, Rule 301(G)(4). The ad listed $200 off for braces without stating the true fee from which the discount was taken, in contravention of

yet another board rule, Rule 301(I)(1). To suggest that both dentists are similarly situated is so misleading that it is hard to believe that any thought at all went into the making of the comparison.

The use of a disciplinary matrix as suggested by the auditors would handcuff the board and would prevent the board from taking into account subtleties and nuances of each violation. If there were such a matrix, any time the matter went to a formal hearing a dentist who had a mere technical violation of a rule, such as using the incorrect font size, would be subject to the same fine as a dentist who was willfully misleading the public. That would be a grave injustice.

ADDING A PUBLIC MEMBER TO THE BOARD

The auditors suggest that the legislature may consider adding a public member to the board. It has become a trend among boards in other states to add public members. Very few board in this state have public members. Seeking to jump on this trend, the legislative auditors suggest that the legislature may wish to consider amending state law to appoint someone outside of the dental field to the board. The auditors list no objective findings to suggest it would be a good idea, but merely cite the Citizen Advocacy Center ("CAC") for the proposition that having public member is a good idea. The CAC was created to support and advocate for public members of health professional boards. One of their main missions is described as, "Advocating for a significant number of public members" on healthcare boards. See the attached screen shot of a page from the CAC website entitled, "About CAC," http://www.cacenter.org/cac/about_cac_2. Thus, it is not surprising that the CAC suggests that public board members are a good idea; the CAC was created for the purpose of advocating for that idea. The CAC advocates for a number of controversial issues, including allowing hygienists to practice independently from the supervision of a dentist, an issue rejected by the overwhelming majority of the states. The mere fact that the CAC advocates for an issue does not necessarily make that issue a desirable one. The CAC opinion cannot be considered a studied, unbiased opinion upon which to base a conclusion.

The auditors go on to say, without support, that public members can help licensee members appreciate the issues, concerns, and sensitivities of the broader public and help keep the board's focus on its statutory mission. How auditors could reach such a conclusion is unknown. There is no evidence that a non-dentist can be better at keeping the board focused on its mission better than a dentist. If there were some objective study, perhaps the auditors' conclusion would have credibility. Without any evidence it is just empty words uttered by auditors seeking to follow a trend from other states.

The board does not take a position on whether public members would be a good thing or a bad thing in general. It is simply a fact that the auditors' conclusions are without any basis in fact. It should also be noted that the board has a system where, in order to ensure due process, many board members have vetted a complaint before it ever comes to a formal hearing. There have

been times that the board has run thin on board members to sit on a formal panel, because members who have been involved in the vetting process are excluded from serving on the formal panel. Having a dentist board member replaced with a non-dentist board member, who could not sit on a formal panel involving standard of care issues, might exacerbate this problem. The auditors do not cite any analysis of how adding a public member would affect the board's disciplinary process. They put no thought into that issue, instead simply throwing out the suggestion with no supporting documentation or facts.

RECOMMENDATIONS BY THE LEGISLATIVE AUDITORS

Recommendation 1: LSBD should revise its current policy and require staff to periodically inspect all dental offices frequently enough to provide reasonable safeguards to the public by identifying dental offices that are not in compliance with the Dental Practice Act and other LSBD requirements.

LSBD response: The LSBD disagrees that its current policy needs to be revised. The policy currently provides:

> "Random inspections described by rule 1204 are designed to serve as a deterrent for dentists who would fail to follow the board rules. There is a deterrent effect even if the office is not actually inspected. Nevertheless, the board will endeavor, but is not required, to inspect each office at least once every 6 years."

As discussed above, this policy far exceeds what other health care boards in this state do and what the overwhelming majority of dental boards in other states do and does not need to be revised.

Recommendation 2: LSBD should ensure that staff conducts inspections as required in its updated policy.

LSBD response: This recommendation suggests that the board has not been ensuring that inspections are conducted as required under the policy. That is not correct. The LSBD disagrees that this should be a recommendation because the LSBD **does** ensure that its staff conducts inspections as required in its updated policy. There has been no showing that this has not been done by the LSBD.

Recommendation 3: LSBD should improve its process for scheduling inspections to ensure that it inspects all dental offices in an efficient manner, potentially by using mapping software to plan routes.

LSBD response: The LSBD disagrees that this process needs to be improved. Rule 1204 requires that the dentist receive at least 48 hours' notice. The week prior to visiting any given zip code, the board investigator sends out letters to the dental offices in the area. He then attempts to visit the offices in that area. Sometimes the offices are closed when he arrives, so they do not get

inspected with the rest of the offices in the area. In the past, those offices that were closed might go uninspected. Since the most recent round of inspections started in 2015, those offices that were missed are kept track of and will be visited at the end of the inspection cycle. Mapping software would not improve the process. The investigator does use google maps to plan his routes.

Recommendation 4: LSBD should review inspections to ensure that staff properly notify dental offices of inspection violations and request any necessary proof of correction with policy.

LSBD response: LSBD disagrees that its process needs to be improved. The auditors looked at inspections that took place from 2011-213, before the current administration. The procedures that they reviewed are not the ones that have been in place since the 2015 round of inspections began. All dentists who have violations are currently notified and proof of correction is always obtained. There is no need for a review of each inspection to ensure that this is being done; the procedures are in place to assure it is being done and it would be wasteful to have other staff members review each inspection to make sure that it is being done.

Recommendation 5: LSBD should categorize violations based on severity and analyze violation data to identify high-risk dentist to re-inspect to ensure violations are corrected.

LSBD response: LSBD disagrees that its process needs to be improved. As discussed above, there is follow up on all violations. Typical violations involve a failure of the dentist to monitor the effectiveness of his or her sterilizer or failure to have proper emergency drugs on hand. These are followed up on by having the dentist fax or email proof of sterilizer monitoring (typically from a third party company) or receipts to show that he or she has purchased the required emergency drugs. A follow up visit is not typically necessary or warranted, but when it is necessary for something like unsanitary conditions, a follow up visit it done.

Recommendation 6: LSBD should utilize any downtime that the inspector may have in each cycle of inspections to re-inspect offices that are deemed to be high-risk.

LSBD response: LSBD disagrees that its process needs to be improved. As discussed above, there is follow up on all violations. Typical violations involve a failure of the dentist to monitor the effectiveness of his or her sterilizer or failure to have proper emergency drugs on hand. These are followed up on by having the dentist fax or email proof of sterilizer monitoring (typically from a third party company) or receipts to show that he or she has purchased the required emergency drugs. A follow up visit is not typically necessary or warranted, but when it is necessary for something like unsanitary conditions, a follow up visit it done.

Recommendation 7: LSBD should electronically track disciplinary action data so that Disciplinary Oversight Committee members can reference similar cases and sanction dentist fairly and equitably.

LSBD response: LSBD disagrees that its process needs to be changed. The Disciplinary Oversight Committee does not have the power to enforce a sanction, although it does sometimes recommend settlement terms for the board president to consider. The board members who sit on the Disciplinary Oversight Committee are informed of the other members' votes and the board president's decision on whether to dismiss the matter, to try to settle the matter or to go to a formal hearing. Over time the see the trends in settlement offers. Thus, they have adequate information to make informed recommendations. In any case, there has been no showing of disparity in treatment of dentists. The auditors recommend a flawed solution to a problem that does not exist.

Recommendation 8: LSBD should develop a graduated and equitable system of sanctions that specifies the number and severity of violations that trigger each level of sanction.

LSBD response: LSBD disagrees that its process needs to be changed. The Disciplinary Oversight Committee does not have the power to enforce a sanction, although it does sometimes recommend settlement terms for the board president to consider. The board members who sit on the Disciplinary Oversight Committee are informed of the other members' votes and the board president's decision on whether to dismiss the matter, to try to settle the matter or to go to a formal hearing. Over time they see the trends in settlement offers. Thus, they have adequate information to make informed recommendations. In any case, there has been no showing of disparity in treatment of dentists. The auditors recommend a flawed solution to a problem that does not exist.

Yours truly,

Arthur F. Hickham, Jr.
Executive Director

Enclosure
Cc via email with enclosure: Emily Wilson, EWilson@lla.la.gov
Christopher Magee, CMagee@LLA.La.gov

RULE 1204

HBV Seropositive—a condition where one has developed antigens sufficient to diagnosis seropositivity to HBV evidencing infectability under the criteria of the Federal Centers for Disease Control or the Association of State and Territorial Public Health Laboratory Directors.

HCV—the Hepatitis C virus.

HCV Seronegative—a condition where one has been HCV seropositive but is no longer infectious under the criteria of the Federal Centers for Disease Control or the Association of State and Territorial Public Health Laboratory Directors, or where one has never been infected with HCV.

HCV Seropositive—a condition where one has developed antigens sufficient to diagnose seropositivity to HCV evidencing infectability under the criteria of the Federal Centers for Disease Control or the Association of State Territorial Public Health Laboratory Directors.

HIV—any strain of the human immunodeficiency virus.

HIV Seropositive—a condition where one has developed antibodies sufficient to diagnose seropositivity to HIV under the criteria of the Federal Centers for Disease Control or of the Association of State and Territorial Public Health Laboratory Directors.

Invasive Procedure—any surgical or other diagnostic or therapeutic procedure involving manual or instrumental contact with or entry into any blood, body fluids, cavity, internal organ, subcutaneous tissue, mucous membrane, or percutaneous wound of the human body.

Standard Precautions—those generally accepted infection control practices defined by the Federal Centers for Disease Control as *standard precautions* in addition to proper hygiene by the dental health care provider; the use of personal protective equipment including, but not limited to, gloves, masks, eye protection, and gowns; proper cleaning and decontamination of patient care equipment; cleaning and disinfection of environmental surfaces and injury prevention through engineering controls or safer work practices.

Sterilization—the process by which all forms of microorganisms within an environment are totally destroyed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:741 (July 1992), amended LR 21:572 (June 1995), LR 40:1006 (May 2014).

§1203. Standard Precautions

A. All dental health care providers shall strictly observe recognized standard precautions as currently recommended by the Federal Centers for Disease Control to minimize the risk of transmission of HBV, HCV or HIV or other blood borne pathogens during any patient encounter with a patient's bodily fluids.

B. In the event that the Federal Centers for Disease Control issue a new version of their recommendations for standard precautions, the board will take into consideration the nature of the changes to those recommendations and establish a reasonable period of time in which dental health care providers must comply with any new or altered recommendations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:742 (July 1992), amended LR 21:572 (June 1995), LR 40:1006 (May 2014).

§1204. Investigations

A. In order to ensure compliance with this Chapter, the board shall conduct random announced inspections upon providing 48-hour notice. Notice may be provided by verbal, written, telephone or with other telecommunication means. Refusal by any licensee of access to licensee's premises for the purpose of conducting said inspection shall constitute a violation of R.S. 37:776(A)(24) and R.S. 37:775(6).

B. Unannounced inspections of dental offices may be conducted when bona fide complaints have been received regarding non-adherence to Federal Centers for Disease Control guidelines or other issues involving sanitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1746-1747 and R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:742 (July 1992), amended LR 30:2306 (October 2004).

§1205. Prohibitions and Restrictions

A. Except as may be permitted pursuant to §1207.G and §1210 of this Chapter, a dental health care provider who is seropositive for HBV, HCV, or HIV, or who otherwise knows or should know that he or she carries and is capable of transmitting HBV, HCV, and HIV, shall not thereafter perform or participate directly in an exposure-prone procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:1747.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:742 (July 1992), amended LR 21:572 (June 1995).

§1206. Sterilizer Monitoring Log and Record Retention

A. Each and every sterilizer utilized in a dental practice shall be monitored in accordance with the recommendations of the Federal Centers for Disease Control including those recommendations designated as strongly recommended and required. A written log of the monitoring shall be produced and maintained by the dentist. The log should include the date of the test, the method of the monitoring, the manufacturer and type of the monitoring system as well as the name of the individual performing the monitoring.

B. The written log and all records of sterilizer monitoring shall be maintained for a period of two years from the date of the last test. The records of sterilizer monitoring shall include any and all documentation for the purchase of testing materials or kits and reports of each test conducted. The records shall be subject to inspection and review during an inspection conducted in accordance with LAC 46:XXXIII.1204. The board may request such documentation from licensees selected at random.

RULES 801-805

g. methods of administering local anesthetic agents with emphasis on:

i. technique;

(a). aspiration;

(b). slow injection; and

ii. minimum effective dosage;

6. medical emergency, prevention, diagnosis, and management.

D. The applicant must pass the board approved written examination in the administration of local anesthesia, depending upon the circumstances, if deemed necessary by the board.

E. A dental hygienist who has been licensed and trained in a course equivalent to §710.B and C to administer local anesthesia in another state may qualify, at the discretion of the board, to be permitted to administer local anesthesia in Louisiana by presenting written documentation of such licensure and training to the board and documentation of experience in the previous two years and by gaining approval of the board through the interview process. Factors to be considered are whether the dental hygienist had satisfactorily completed a course at a dental hygiene school approved by the Commission on Dental Accreditation or by having successfully completed a continuing education course in local anesthesia comparable to the requirements set forth in §710.B and C.

F. The permit to administer local anesthesia shall expire with the expiration of the dental hygienist's license to practice dental hygiene.

G. A licensed dental hygienist who has demonstrated competence to the satisfaction of the board may qualify for a special endorsement and may undertake the administration of local anesthesia by:

1. providing satisfactory documentation via affidavit provided by the board evidencing the administration of local anesthesia for a period of not less than six months upon a minimum of fifty patients with no adverse complications;

2. substantiating the adequacy of training via affidavit provided by the board in the administration of local anesthesia; and

3. agreeing in writing via affidavit provided by the board to administer local anesthesia as provided by these rules.

H. Any hygienist who is not certified by the state of Louisiana in local anesthesia and who performs such a procedure is subject to severe sanctions up to and including revocation of his/her license. The dentist under whose instructions he/she performed the procedure will be subject to severe sanctions up to and including revocation of the dentist's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1292 (July 1998), amended LR 25:1476 (August 1999), LR 26:1613 (August 2000), repromulgated LR 27:1894 (November 2001), amended LR 27:1892 (November 2001), LR 28:1779 (August 2002), LR 30:2306 (October 2004), LR 33:847 (May 2007), LR 42:58 (January 2016).

§712. Nitrous Oxide Inhalation Analgesia

A. After satisfying the board of his or her competence to administer nitrous oxide inhalation analgesia, a licensed dental hygienist may qualify for a special endorsement to administer nitrous oxide inhalation analgesia for dental procedures under the direct on-premises supervision of a licensed dentist who currently holds a personal permit for the administration of nitrous oxide or higher level of anesthesia in an office location at which there currently exists an office permit for the administration of nitrous oxide or higher level of anesthesia.

B. No dental hygienist shall use nitrous oxide inhalation analgesia unless said dental hygienist has received authorization by the board evidenced by receipt of a permit from the board.

C. In order to receive authorization the dental hygienist must show and produce evidence that he/she complies with the following provisions:

1. completion of a board-approved course which conforms to American Dental Association guidelines as described in §1503 of these rules; and

2. provide proof of current certification in cardiopulmonary resuscitation, Course "C," Basic Life Support for the Healthcare Provider as defined by the American Heart Association, or its equivalent.

D. The permit to administer nitrous oxide inhalation analgesia shall expire with the expiration of the dental hygienist’s license to practice dental hygiene.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 37:1407 (May 2011), amended LR 42:58 (January 2016).

Chapter 8. Complaints, Investigation, and Informal Resolution

§801. Complaints and Investigation

A. Complaints to the board about licensees or about individuals practicing without a license must be in writing to be considered by the board, although the board president has discretion to accept an oral complaint. Complaints can come from any source, including but not limited to the general public, board members and governmental agencies or their contractors.

B. When a complaint is received by the board, the complaint is sent for investigation to a committee of one or more board members. This committee is called the Disciplinary Oversight Committee (hereinafter referred to as

the "DOC"). The DOC generally consists of three board members chosen by the executive director of the board, but may consist of as few as one member. The board member from the same district as the licensee being investigated is not eligible to serve on the DOC. The board president is also not eligible to serve on the DOC during his term.

C. If for any reason, through recusal or otherwise, there are not enough board members to form a three-person DOC, the board president may appoint any Louisiana-licensed dentists and/or hygienists to serve on the DOC. The only restriction on the licensees to be appointed is that their home address in the board records not be within the same board electoral district as the home address of the licensee being investigated, if the subject of the investigation is a licensee.

D. The board president has discretion regarding whether to request a response from the subject of the complaint prior to sending the complaint to the DOC. If a response is requested, the subject of the complaint shall be given a reasonable amount of time under the circumstances to respond, and if the subject of the complaint responds, the response, along with the complaint and/or a summary of the allegations, shall be sent to the DOC.

E. The subject of the complaint will be provided with a copy of the complaint if a response is requested of the subject of the complaint except in circumstances where the board president in his discretion feels that the complaint should not be provided or that the identity of the person or entity making the complaint should remain confidential.

F. The board president may choose to have some preliminary investigation done prior to sending the matter to the DOC. Generally, this would include, but is not limited to, obtaining patient records for the DOC to review.

G. The complaint, a response from the licensee if one is requested and received, and any investigative materials gathered by the board, are sent to each member of the DOC. Each member then reviews the materials and conducts any research that he feels is appropriate, then makes a recommendation on how he believes the board should proceed in the matter. The recommendation is provided by the DOC member to the executive director of the board. Once all of the recommendations from the DOC member(s) are received by the executive director, the executive director informs the board president of the recommendations. Taking the recommendations into consideration, the board president chooses a course of action for the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:56 (January 2016).

§803. Recommendations by the Disciplinary Oversight Committee (DOC)

A. If the subject of the complaint is a licensee or a former licensee, the recommendations of the Disciplinary Oversight Committee ("DOC") can include, but are not limited to, any of the following:

1. send the licensee a letter of concern. This letter of concern is not considered a sanction; it is sent when there is concern that there may have been a violation, but it is not clear that there has been a violation. The letter of concern is not made public, but is kept in the board records for future reference;

2. additional investigation by the board. If additional investigation is determined by the board president to be appropriate, then the board conducts additional investigation, after which the matter, along with the additional investigation materials, is sent back to the DOC for a second recommendation, which is again provided for determination to the board president;

3. informal resolution via correspondence. The licensee may, via correspondence, be offered an informal settlement of the matter;

4. informal dentist-to-dentist conference. The licensee may be offered the opportunity to meet with members of the DOC on an informal basis to discuss the allegations in the complaint;

5. formal adjudication. If formal adjudication is chosen, a new committee is formed to hear the charges against the licensee and formal charges are filed;

6. take no action against the licensee;

7. refer the complainant to the Louisiana Dental Association's voluntary peer review program and take no action against the licensee;

8. ask a court for injunctive relief. If a former licensee is practicing without a license, this option to ask a court to enjoin the licensee from practicing, along with all of the above options, is available;

9. refer to the authorities for criminal charges.

B. If the complaint is against a non-licensee who has never held a Louisiana license, the recommendations of the DOC can include, but are not limited to any of the following:

1. take no action against the subject of the complaint;

2. asking a court for injunctive relief;

3. refer to the authorities for criminal charges.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:56 (January 2016).

§805. Informal Dentist-to-Dentist Meeting

A. If during the investigative phase of matter the option of an informal dentist-to-dentist meeting is chosen by the board, the licensee shall be invited via a correspondence to the informal meeting to meet on an informal basis with the members of the DOC to discuss issues raised by the complaint.

B. The licensee has the option to make an electronic recording of the informal meeting. If the licensee chooses

this option, the board is allowed to make its own recording. If the licensee does not choose this option, no recording is to be made. Only electronic recordings are allowed. Due to the informal nature of the meeting, a court reporter or transcriptionist is not allowed in the meeting.

C. The discussions that take place during the informal meeting shall not be used against the licensee if the matter later goes to a formal hearing, unless the licensee chooses the option of electronically recording the meeting, in which case the board will make its own copy of the meeting and will use anything said during the meeting at any subsequent formal proceeding.

D. The meeting is voluntary. The licensee is not required to attend.

E. The meeting is strictly dentist-to-dentist; only the licensee and the DOC members are eligible to be present in the room during the informal meeting.

F. Although only dentists are allowed in the room during the meeting, if the licensee wishes, at any time during the meeting, he may pause the meeting so he can consult his attorney, who is allowed to be present at the board during the meeting, or to call an attorney.

G. The DOC does not have the power to sanction the licensee. It only makes recommendations to the board about how to proceed. If the matter goes to a formal hearing, a second committee will be appointed. Only the second committee has the power to sanction. However, the DOC may attempt to negotiate a settlement with the licensee, which, if agreed to, becomes final and valid only after ratification by the full board. If the full board declines to ratify the settlement, the matter goes back to the DOC for further recommendations.

H. If the licensee and the DOC members negotiate a settlement, the licensee may, but will not be required to, sign the settlement on the same day as the informal meeting. The licensee will be allowed, if he chooses, to take a draft of the settlement home to think about it or to consult an attorney rather than to sign on the day of the informal meeting. If the licensee chooses the option of taking the draft home, he shall be granted at least three business days to consider the settlement offer.

I. If a negotiated settlement occurs during the informal meeting and the licensee is offered a consent decree to settle the matter, prior to the licensee signing the consent decree, the board shall turn over whatever evidence in its possession at the time that it would intend to put into evidence at a formal hearing, if there were to be a formal hearing.

J. If the matter is resolved, subject to board approval, through a consent decree negotiated at the informal meeting or as the result of the informal meeting, the consent decree is treated as a final action by the board, as set forth in R.S. 37:780(B), if ratified by the entire board.

K. If the matter is not resolved to the satisfaction of all parties at the informal meeting, or in the time period after the informal meeting that the licensee has been given to consider a proposed settlement, then, after the board member(s) assigned to conduct the informal meeting have reported to the president of the board, the latter may then determine whatever further action, if any, he deems necessary, including but not limited to formal adjudication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:57 (January 2016).

Chapter 9. Formal Adjudication

§901. Scope of Chapter

A. The rules of Chapter 9 govern the board's initiation and adjudication of administrative complaints providing cause under law for the suspension or revocation, of a license issued by the board, imposition of probation on or other disciplinary action against persons holding licenses, permits, certifications, or registrations issued by the board, applicants therefor, or any non-licensed person illegally practicing dentistry or dental hygiene. The rules of Chapter 9 are promulgated in order to supplement the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Dental Practice Act, R.S. 37:751 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (4), (5), and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Dentistry, LR 13:178 (March 1987), amended by the Department of Health and Hospitals, Board of Dentistry, LR 19:1317 (October 1993), amended LR 25:511 (March 1999).

§903. Initiation of Proceedings

A. When determined by the president that a formal adjudication is warranted, proceedings to adjudicate an administrative enforcement action shall be initiated by serving the complaint filed in accordance with §905 of this Chapter. Service of the complaint on the licensee may be accomplished by personal delivery to the licensee by an agent of the board, or delivery by certified U.S. Mail return receipt requested or courier at the most current mailing address of the licensee as indicated in the official records of the board. This complaint may be signed by either the president or a board member or employee designated by the president. Said notice shall name the accused licensee as respondent.

B. If the public health, safety, and/or welfare imperatively requires emergency action, the board, through its president, may order an interim suspension of a dental or dental hygiene license pending formal disciplinary proceedings, as provided in R.S. 49:961(C). The president shall appoint one or more board members to hear the evidence in support of an immediate interim suspension and to make recommendations to the board president, who shall thereafter issue whatever order of interim suspension pending formal adjudication as is warranted by the circumstances.

C. When determined by the president that a formal adjudication is warranted, the board president shall appoint a

<u>LA. R.S. 779-780</u>

(13) Assisting or authorizing unlicensed persons to perform work which under this Chapter can only be done by persons licensed to practice dental hygiene.

(14) Conduct which being contrary to the provisions of this Chapter disqualifies the licensee to practice dental hygiene with safety to the public, including inability to practice dental hygiene with reasonable skill or safety to patients because of mental illness or deficiency, physical illness, including but not limited to deterioration through the aging process or loss of motor skills.

(15) Employing solicitors or subsidizing anyone, or paying or presenting any person money or anything of value for the purpose of securing patients, other than advertising permitted by law.

(16) Interdiction or commitment by due process of law.

(17) The use of advertising without disclosing the name and address of the licensed dentist under whom the dental hygienist operates as defined in R.S. 37:766.

(18) Violation of any rule or regulation of the board, or any provision of this Chapter.

(19) Refusing to submit to the examinations and inquiry of medical physicians appointed or designated by the board to inquire into the dental hygienist's physical and mental fitness and ability to practice dental hygiene with reasonable skill and safety to patients, or following submission to evaluation, failing to comply with the orders or recommendations of said examining physicians.

(20) The failure to pay timely a dental hygiene license renewal fee as required by law.

(21) Failing to cooperate with the board in investigating any matter before the board except for an openly expressed claim of a constitutional privilege; or knowingly failing to respond to a lawful demand from the board for information from any professional licensing or disciplinary authority.

(22) Failing to maintain certification in an approved course of cardiopulmonary resuscitation for the renewal of a dental hygienist license.

(23) When license suspension or revocation is otherwise required by law.

(24) Conduct which disqualifies the licensee to practice dental hygiene with safety to the public, including inability to practice dental hygiene with reasonable skill or safety to patients because of mental illness or deficiency or physical illness, including but not limited to deterioration through the aging process or loss of motor skills.

(25) Violation of any rule, regulation, order of the board, consent decree agreed upon between the board and the licensee, or any provision of this Chapter.

B. The board shall establish regulations and procedures to enforce the provisions of this Section.

C. Any license or permit suspended, revoked, or otherwise restricted by the board may be reinstated by the board.

§778. Board to hear charges against dentists, dental hygienists, and any person practicing dentistry

The board shall hear and determine all charges against any licensed dentist, licensed dental hygienist, or any person practicing dentistry as defined in R.S. 37:751 for violation of any of the provisions of this Chapter. It may in all cases suspend or revoke the license and reinstate any license if suspended or revoked.

§779. Filing of administrative complaint or charge; appointment of committee to hear charge; quorum

A. Any administrative complaint or charge for a violation of this Chapter shall be made under oath either by the secretary-treasurer or any member of the board, noticed and docketed for hearing, and submitted to the president of the board, who shall appoint a committee of three or more members of the board to hear the administrative complaint or charge. The president and the member of the board making the charge or

residing in the same board electoral district as the individual charged shall be ineligible to sit as a member of the committee. The president shall designate the time and place of the hearing.

B. Where the charge is made by a citizen, he should state to the secretary-treasurer or any member of the board, the sources of his information and the grounds of his belief, and the secretary-treasurer, a member, an inspector, or any agent of the board shall substantiate the charge by determining that the citizen is informed and has reasonable cause to believe that the charge is true, after which an administrative complaint or charge may be issued, and noticed and docketed for hearing by the board, as set forth in Subsection A.

C. At any hearing held pursuant thereto, a majority of the committee shall constitute a quorum and an affirmative vote by a majority of the committee members present shall be required for any disposition, action, or decision at the conclusion of the hearing.

D. For purposes of this Chapter and Section, a hearing shall be the same as an adjudication defined under the Administrative Procedure Act.

§780. Hearing; notice; penalty; interest

A. (1) In all cases where a charge is made against any unlicensed person, licensed dentist, or licensed dental hygienist practicing in this state, the president of the board, before any hearing of the charge, shall furnish the accused with a copy of such charges and a notice of the time and place of the hearing. The president shall also notify the accused to attend the hearing and inform him that he may appear with counsel, that he may produce witnesses and give competent evidence under oath, and that he has the right to cross-examine witnesses appearing against him and giving testimony under oath. Service of this notice shall be personal or by delivery to the place of business or residence of the accused, at least twenty days before the time fixed for the hearing or before the time and place to which adjourned.

(2) When required by law to afford a licensee an opportunity to demonstrate his compliance with the provisions of this Chapter, the president, or any employee of the board designated by the president, shall provide notice to the licensee that the board intends to institute formal proceedings against the licensee, and to afford the licensee an opportunity to demonstrate his compliance with the Chapter. Said notice shall contain sufficient information to advise the licensee of the nature of the allegations against him. The notice will advise the licensee that he may appear with counsel. The notice shall inform the licensee of the time and place of the meeting, and may be served on the licensee in the same manner as in Paragraph (1) of this Subsection or by certified mail. Upon receipt of said notice, the licensee shall have ten calendar days in which to request an opportunity to demonstrate his compliance with the provisions of this Chapter.

B. (1) The committee hearing the charge may cause the testimony adduced to be reduced to writing or stenographic record. Should the committee after due hearing find that the charges filed against the licensee or the unlicensed person are sustained by clear and convincing evidence, it may revoke, suspend, restrict, fine, place on probation, reprimand, or admonish, or any or all of the above, the licensed dentist or licensed dental hygienist. The committee may levy an administrative fine, but it shall assess all of the board's costs, from the start of the investigation through an administrative hearing, judicial review, and any appeals, as set forth in this Section, against the licensee or the unlicensed person. Any costs assessed by the committee shall not include costs related solely to a charge in a formal complaint in a disciplinary proceeding instituted by the board which is later dismissed or not proven at an administrative adjudication. Nothing in this Paragraph shall prohibit the board from assessing eligible costs related to additional violations when the investigation of a complaint leads to the discovery of such additional violations proven at an administrative adjudication. Should the person contend that some costs assessed by the committee are attributable solely to allegations dismissed or not proven, he may file within thirty days of his receipt of the costs claimed a motion to traverse assessment of those costs in accordance with applicable board rules.

(2) Any fine imposed pursuant to this Section shall not be less than five hundred dollars nor more than five thousand dollars for each offense.

(3) After a hearing wherein a charge, or a number of charges, is proven by clear and convincing evidence, and even if there is no fine imposed, the unlicensed person, the licensed dentist, or licensed dental hygienist shall pay, not later than the thirtieth day after the decision is made by the committee, all costs, from the start of the investigation through an administrative hearing, judicial review, and any appeals, including but not limited to stenographer fees, attorney fees, investigative fees and expenses, witness fees and expenses, and the per diem and expenses of the committee members, as detailed in a recapitulation of said costs provided by the board to the licensee or unlicensed person. If, for any reason, the money portion of the committee's decision is not paid by the unlicensed person, licensed dentist, or licensed dental hygienist for fines and costs imposed pursuant to this Section, the board may recover any and all reasonable attorney fees in association with the collection of them.

(4) The committee shall release to the public the result of any decision rendered by it after it has become final.

(5) Regardless of medium, each advertisement found by the committee to be in violation of the provisions of this Chapter shall be considered a single violation, regardless of the actual number of violations occurring in the advertisement or the number of dentists included in the advertisement. Notwithstanding any other provision of this Section, any fine imposed pursuant to this Section for an advertising violation shall be not less than five hundred dollars nor more than five thousand dollars for the first offense, and the maximum allowable amount of such fine shall increase incrementally by five thousand dollars for each subsequent offense.

C. Any suspension or revocation ordered by the committee or board shall take from the licensed dentist or licensed dental hygienist all rights and privileges acquired under the license issued to him.

§781. Issuance of subpoenas; production of patient records; maintenance of confidentiality

A. The president or any member of the board may issue investigative subpoenas, subpoenas or subpoenas duces tecum requiring the attendance and testimony under oath of witnesses and the production of any evidence or documentation that relates to any matter properly under investigation or in question before the board or committee or attorney acting on behalf of the board conducting the hearing or investigation. Any subpoena authorized in this Subsection may be served in any manner authorized by the Administrative Procedure Act, the Code of Civil Procedure, including, but not limited to, by certified mail or by private process server. The board may obtain sworn testimony taken before a certified court reporter from any individual, licensed or not licensed by the board, who may possess any information concerning the matter under investigation.

B. In case of refusal to obey a subpoena or subpoena duces tecum issued to any person or entity, the board, or the respondent named in a formal disciplinary proceeding who has requested the issuance of the subpoena as set forth in Chapter 9 of the board rules, may apply to any district court within the jurisdiction where the inquiry is carried on or within the jurisdiction where such person or entity is found, resides, or transacts business, to issue to such person or entity an order requiring him to appear before the board, its member, agent, or agency, to produce evidence if ordered or to give testimony concerning the matter under investigation or in question, and to pay the reasonable attorney fees caused by the filing and prosecution of such application should the board prevail on it. Any failure to obey this order of the court may be punished by the court as a contempt.

C. The board may require the attendance of witnesses who are summoned or to whomever a subpoena duces tecum is issued in all matters arising in the course of its duties, and at an investigation, the board shall take any oral or written proof, for or against any unlicensed person, or the person whose license is sought to be suspended or revoked, that will best present the facts.

D. Notwithstanding any privilege or confidentiality recognized by law, no dentist or entity providing dental services with which such dentist is affiliated shall, acting under any such privilege, fail or refuse to respond to a lawfully issued subpoena of the board for any dental/medical information, testimony, records, data, reports or other documents, tangible items, or information relative to any patient treated by any such dentist under investigation. However, the identity of any patient identified in or by such records or information shall be maintained in confidence by the board and shall be deemed a privilege of confidentiality existing in favor of any such patient. For the purpose of maintaining such confidentiality

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rising utilization of these materials by dentists, the board sets forth the following requirements.

B. Before administering Botox or dermal fillers, a dentist must have either received satisfactory training in a dental institution accredited by the Commission on Dental Accreditation of the American Dental Association or successfully completed a continuing education course of instruction that includes at a minimum the following:

1. patient assessment and consultation for Botox and dermal fillers;

2. indications and contraindications for these techniques;

3. safety and risk issues for botulinum neurotoxin/dermal fillers injectable therapy;

4. proper preparation and delivery techniques for desired outcomes;

5. enhancing and finishing esthetic dentistry cases with dermal fillers;

6. botulinum neurotoxin treatment of temporomandibular joint syndrome and bruxism;

7. knowledge of adverse reactions and management and treatment of possible complications;

8. patient evaluation for best esthetic and therapeutic outcomes;

9. integrating botulinum neurotoxin and dermal filler therapy into dental therapeutic and esthetic treatment plans;

10. live patient hands-on training including diagnosis, treatment planning, and proper dosing and delivery of Botox and dermal fillers.

C. Botox and dermal fillers shall only be administered in dental offices using universal precautions as required by the Federal Centers for Disease Control.

D. All dental auxiliaries are prohibited from administering either Botox or dermal fillers.

E. Continuing education courses shall be approved or sponsored by one or more of the entities set forth in LAC 46:XXXIII.1615.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760 (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 37:3513 (December 2011).

Chapter 3. Dentists

§301. Advertising and Soliciting by Dentists

A. Scope. This Section provides for advertising requirements in addition to those set forth in R.S. 37:774 and R.S. 37:775 for dentists licensed and practicing in this state. The provisions in this Section shall govern any and all forms of advertisements including but not limited to all forms of printed and electronic media and direct or telephone solicitations.

B. Identification of Licensee. All advertising in any medium must identify the Louisiana licensed dentist who sponsors or benefits from, and assumes total responsibility for, the advertisement. The term *identify* shall mean the use of the licensee's commonly used name or the name appearing on his dental license or renewal certificate, together with the current address and telephone number the licensee has on file with the board.

C. Approved Specialties. The board has reviewed and approved the "Standards for Advanced Specialty Education Programs" set forth by the Commission on Dental Accreditation of the American Dental Association and approves only the following specialties:

1. dental public health;

2. endodontics;

3. oral and maxillofacial surgery;

4. oral pathology;

5. orthodontics and dentofacial orthopedics;

6. pediatric dentistry;

7. periodontics;

8. prosthodontics; and

9. oral and maxillofacial radiology.

D. Definitions

Advertisement and *Advertising*—any statement, oral or written, disseminated to or displayed before the public or any portion thereof with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services. The provisions of this Section shall apply to *advertising* of any nature regardless of whether it is in the form of paid advertising.

Dental Public Health—the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice which serves the community as a patient rather than the individual. It is concerned with the dental health education of the public, with applied dental research, and with the administration of group dental care programs, as well as the prevention and control of dental diseases on a community basis. Implicit in this definition is the requirement that the specialist have broad knowledge and skills in public health administration, research methodology, the prevention and control of oral diseases, the delivery and financing of oral health care, and the identification and development of resources to accomplish health goals.

Endodontics—the branch of dentistry that is concerned with the morphology, physiology, and pathology of the human dental pulp and periradicular tissues. Its study and practice encompass the basic clinical sciences including biology of the normal pulp, the etiology, diagnosis, prevention, and treatment of diseases and injuries of the pulp; and associated periradicular condition.

Oral and Maxillofacial Radiology—the specialty of dentistry and the discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy, in a manner that minimizes risk to the patient, operator and the public, that are used for the diagnosis and management of diseases, disorders and conditions of the oral and maxillofacial region.

Oral and Maxillofacial Surgery—the specialty of dentistry which includes the diagnosis, surgical, and adjunctive treatment of diseases, injuries and defects involving both the functional and aesthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

Oral Pathology—the specialty of dentistry and discipline of pathology which deals with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes and effect of these diseases. The practice of oral pathology includes research, diagnosis of diseases using clinical, radiographic, microscopic, biochemical, or other examinations, and management of patients.

Orthodontics and *Dentofacial Orthopedics*—the area of dentistry concerned with the supervision, guidance, and correction of the growing or mature dentofacial structures, including those conditions that require movement of teeth or correction of malrelationships and malformations of their related structures and the adjustment of relationships between and among teeth and facial bones by the application of forces and/or the stimulation and redirection of functional forces within the craniofacial complex. Major responsibilities of orthodontic practice include the diagnosis, prevention, interception, and treatment of all forms of malocclusion of the teeth and associated alterations of their surrounding structures; the design, application and control of functional and corrective appliances; and the guidance of the dentition and its supporting structures to attain and maintain optimum occlusal relations in physiological and aesthetic harmony among facial and cranial structures.

Pediatric Dentistry—an age-defined specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, including those with special health care needs.

Periodontics—that specialty of dentistry which encompasses the prevention, diagnosis, and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes; the maintenance of the health, function and esthetics of these structures and tissues; and the replacement of lost teeth and supporting structures by grafting or implantation of natural and synthetic devices and materials.

Prosthodontics—the dental specialty pertaining to the diagnosis, treatment planning, rehabilitation and maintenance of the oral function, comfort, appearance and health of patients with clinical conditions associated with missing or deficient teeth and/or maxillofacial tissues using biocompatible substitutes.

E. Prohibition on Misrepresentative or Fraudulent Advertising. No dentist shall disseminate or cause the dissemination of any advertisement or advertising which is in any way fraudulent, false, deceptive, or misleading in form or content. Additionally, no dentist shall disseminate or cause the dissemination of any advertisement or advertising which:

1. contains misrepresentations of fact;

2. is likely to mislead or deceive because in its context or in the context in which it is presented it makes only a partial disclosure of relevant facts;

3. contains laudatory statements about the dentist or group of dentists;

4. is intended or likely to create false, unjustified expectations of favorable results;

5. relates to the quality of dental services provided as compared to other available dental services;

6. advertises any procedure mandated or prohibited by law;

7. contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or to be deceived. For example, it is fraudulent, false, deceptive, and misleading for a dentist who utilizes a laser in his dental practice to advertise that the use of lasers is painless, heals faster, or provides better results than other dental procedures. However, a dentist may advertise that he treats patients with a laser in certain circumstances.

F. Advertising through or with Referral Services. Any dentist who advertises by, through or with a referral service shall be held responsible for the contents of such advertising, and all advertisements shall comply with this rule.

G. Disclosure of Area of Practice

1. Specialists must disclose their specialties in print larger than and/or bolder and noticeably more prominent than any service offered in their specialty or related area of dentistry.

2. Those dentists who have not completed a post-doctoral training program in an approved specialty of dentistry listed in §301.C must advertise their areas of practice in such a way that the public is not misled into believing that the dentist has met the educational requirements for the specialties listed.

3. Anyone not qualified for the specialties listed in §301.C must disclose "General Dentistry" or "Family Dentistry" in print larger and/or bolder and noticeably more prominent than any area of practice or service advertised.

4. Those group practices which include general dentists and specialists must list the phrase "General Dentistry and Specialty Practice" or "Family Dentistry and Specialty Practice" larger and/or bolder and noticeably more prominent than any service offered. All dentists associated with the group and their area of practice shall be listed.

H. Prohibition on Advertising Names of Persons Not Involved in Practice. Advertising which includes the name of a person who is neither actually involved in the practice of dentistry at the advertised location nor an owner of the practice being advertised is not permitted. However, to facilitate the smooth transition of a practice after its sale from one licensee to another, it is permissible to identify the previous owner in advertising by the new owner for a reasonable period of time not to exceed a period of 24 months. If a practice is being managed in transition following the death or disablement of a dentist, it is permissible to identify the deceased or disabled dentist in advertising for a period not to exceed 24 months following the death or disability of said dentist. This rule does not provide authority to use a previous owner's name in any advertising without first obtaining that licensee's or his legal representative's written permission to do so.

I. Advertisement of Fees and Discounted Services

1. An appropriate disclosure regarding advertised fees is necessary to protect the public so all procedures or devices which are advertised with fees must adequately describe the procedure or device in such a way that a layperson is not mislead. Proof of customary fee must be available if discounted fees are advertised, and the true fee from which the discount is taken must be in the advertisement also.

2. Any advertisement containing fee information shall contain a disclaimer statement that the fee is a minimum fee, and that the charges may increase depending on the treatment required, if any.

3. Any advertised fee for a dental service shall state a specified period during which the fee is in effect or that service shall remain available at or below the advertised fee for at least 90 days following the final advertisement for that service.

J. Appendages. In addition to those appendages required by law pertaining to one's business entity such as Professional Dental Corporation (P.C.) or Dental Limited Liability Company (L.L.C.), dentists may only use those abbreviations or appendages as specified under R.S. 37:771 or other degrees earned from accredited colleges or universities after their names. Fellowships, awards, membership in academies, or non-degreed boards may be spelled out in their entirety under one's name, but not appended to the name so as to avoid confusion to the consumer. However, fellowships, awards, memberships in academies and non-degreed boards may be appended to names in newsletters which are not intended for publication or dissemination to the public but which remain peculiar to dentists or dental hygienists. An example is the "Pelican Pouch" which is a newsletter which goes out to members of the Academy of General Dentistry. It is permissible for persons to append "F.A.G.D." after their names in newsletters such as this.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Dentistry, December 1970, amended 1971, amended and promulgated LR 13:179 (March 1987), amended by Department of Health and Hospitals, Board of Dentistry, LR 15:966 (November 1989), LR 18:739 (July 1992), LR 20:657 (June 1994), LR 21:567 (June 1995), LR 22:23 (January 1996), LR 22:1215 (December 1996), repromulgated LR 23:199 (February 1997), amended LR 23:1524 (November 1997), LR 25:509 (March 1999), LR 25:1476 (August 1999), LR 26:690 (April 2000), LR 27:1890 (November 2001), LR 28:1776 (August 2002), LR 28:2512 (December 2002), LR 30:2305 (October 2004), LR 32:243 (February 2006), LR 37:2150 (July 2011).

§304. Address of Dental Practice and Mailing Address

A. Each dentist shall inform the Louisiana State Board of Dentistry of his official mailing address and all office addresses at which the dentist practices dentistry within 30 days of changing his official mailing address or commencing practice at each location if the dentist practices for more than 30 days in a 1-year period at the new location.

B. Failure of a dentist to notify the board within 30 days of any change of official mailing address or office move or relocation will result in the imposition of any one or more of the penalties set forth in R.S. 37:780(B).

C. Within 30 days following the abandonment of any office located within Louisiana, all signs or references to the practice of dentistry at said former office by the dentist shall be removed. This pertains to all references whether attached or not attached to the abandoned premises. A licensee's failure to remove said signs in accordance with this Section will result in the imposition of any one or more of the penalties set forth in R.S. 37:780(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 15:965 (November 1989), amended LR 18:739 (July 1992), LR 23:1525 (November 1997), LR 31:927 (April 2005), LR 42:59 (January 2016).

§306. Requirements of Applicants for Dental Licensure by Credentials

A. The board may issue a license by credentials in lieu of an examination administered by a board approved clinical licensing examination agency provided that the applicant provides to the board satisfactory documentation evidencing that the applicant:

1. meets all requirements set forth in R.S. 37:761 and 37:768, and LAC 46:XXXIII.103 and 1805;

2. has satisfactorily passed an examination administered by the Louisiana State Board of Dentistry testing the applicant's knowledge of the Louisiana Dental Practice Act and the jurisprudence affecting same;

3. currently possesses a nonrestricted license in another state as defined in R.S. 37:751(A)(1);

4. has been in active practice, while possessing a nonrestricted license in another state, by:

a. working full-time as a dentist at a minimum of 1,000 hours per year for the preceding three years before applying for licensure in Louisiana; or

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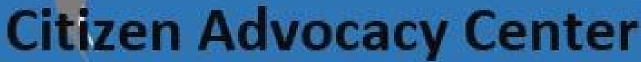

Providing Training and Support for Public Members and for the Health Oversight Boards on Which They Serve

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Since 1987, the Citizen Advocacy Center has been serving the public interest by enhancing the effectiveness and accountability of health professional oversight bodies. We offer training, research and networking opportunities for public members and for the health care *regulatory, credentialing,* and *governing* boards on which they serve.

Created as a support program for the thousands of public members serving on health professional boards as representatives of the consumer interest, we soon became a resource for the health professional boards themselves.

Our products and services include:

- A quarterly publication entitled CAC News & Views;
- Research reports on public policy issues and topics of current and practical concern to board members;
- An annual meeting and periodic conferences on public policy matters;
- Consultant services;
- Website design assistance; and
- Tailored training seminars on current health issues.

OUR MISSION

To increase the accountability and effectiveness of health care regulatory, credentialing, oversight and governing boards by:

- Advocating for a significant number of public members;
- Improving the training and effectiveness of public and other board members;
- Developing and advancing positions on relevant administrative and policy issues;
- Providing training and discussion forums; and,
- Performing needed clearinghouse functions for public members and other interested parties.

OUR CORE VALUES

- *Transparency* - Maximum possible openness of the policy-making process and its results;
- *Oversight and Accountability* - As a necessary component of patient protection and the regulatory process;
- *Collaboration* - Between consumers, health care providers, payers, regulators, and oversight organizations to support the delivery of ethical, safe, accessible quality health care;
- *Meaningful consumer representation and participation* - As essential to a system that serves the public interest.

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APPENDIX B: SCOPE AND METHODOLOGY

This report provides the results of our performance audit of the Louisiana State Board of Dentistry (LSBD). We conducted this performance audit under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. This audit covered the period of July 1, 2011, through June 30, 2015, although some analyses included data from fiscal years 2010 and 2016. Our audit objective was:

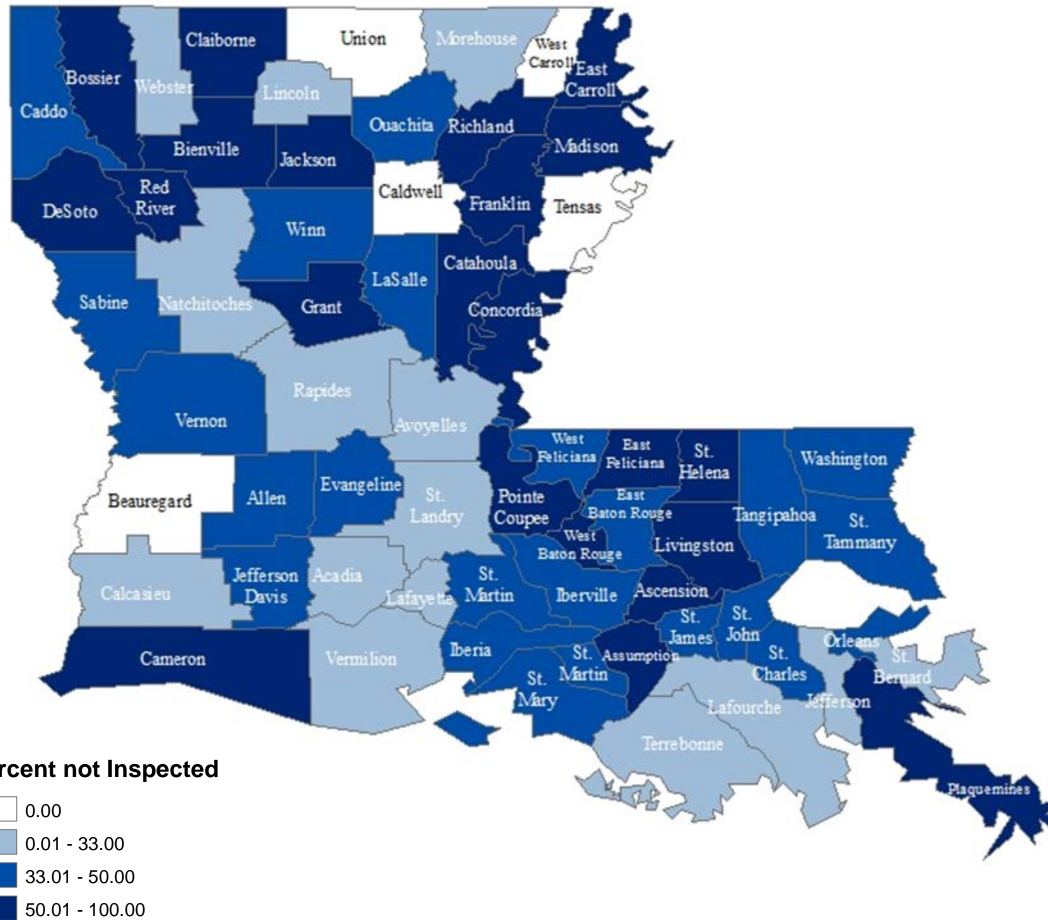
Does LSBD effectively regulate the dental profession to ensure compliance with the Dental Practice Act?

We conducted this performance audit in accordance with generally-accepted *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. To answer our objective, we reviewed internal controls relevant to the audit objective and performed the following audit steps:

- Researched and reviewed relevant state statutes and regulations relating to LSBD.
- Researched dental board audits, program models, and practices in other states. Contacted select states to obtain additional information.
- Interviewed relevant LSBD staff and dental profession stakeholders, such as the Louisiana Dental Association and licensed Louisiana dentists.
- Obtained and analyzed a log of all allegations received by LSBD against licensees from January 2011 through January 2016 to determine the number and types of allegations.
- Obtained and analyzed all inspection data from fiscal years 2012 through 2014, which were the only years in which LSBD conducted inspections during our scope.
- Used Audit Command Language software to determine if all dental offices were inspected during fiscal years 2012 through 2014.
- Conducted a file review of all disciplinary files closed between July 2010 and April 2016 to determine if similar cases were handled in a consistent manner.
- Discussed the results of our analysis with LSBD management and provided LSBD with the results of our data analysis.

APPENDIX C: DENTAL OFFICES NOT INSPECTED BY LSBD, BY PARISH FISCAL YEARS 2012 THROUGH 2014

The exhibit below summarizes the number and percentage of dental offices not inspected by parish. It should be noted that dental offices that were not inspected by LSBD may still be in compliance with Dental Practice Act requirements.



Source: Prepared by legislative auditor's staff using ArcGIS and information from LSBD.

Parish	Total Uninspected	Total	Percentage
Acadia	1	11	9.1%
Allen	1	3	33.3%
Ascension	17	33	51.5%
Assumption	2	2	100.0%
Avoyelles	1	5	20.0%
Beauregard	0	6	0.0%
Bienville	2	2	100.0%
Bossier	31	39	79.5%
Caddo	42	99	42.4%
Calcasieu	15	73	20.5%
Caldwell	0	2	0.0%
Cameron	1	1	100.0%
Catahoula	3	3	100.0%
Claiborne	4	6	66.7%
Concordia	6	6	100.0%
DeSoto	3	4	75.0%
East Baton Rouge	90	200	45.0%
East Carroll	1	1	100.0%
East Feliciana	4	6	66.7%
Evangeline	6	12	50.0%
Franklin	3	3	100.0%
Grant	2	2	100.0%
Iberia	8	25	32.0%
Iberville	4	9	44.4%
Jackson	2	2	100.0%
Jefferson	54	225	24.0%
Jefferson Davis	3	9	33.3%
Lafayette	22	114	19.3%
Lafourche	8	32	25.0%
Lasalle	1	2	50.0%
Lincoln	4	16	25.0%
Livingston	20	37	54.1%
Madison	1	1	100.0%
Morehouse	1	7	14.3%
Natchitoches	2	11	18.2%
Orleans	38	117	32.5%
Ouachita	29	68	42.6%
Plaquemines	6	6	100.0%
Point Coupee	3	5	60.0%
Rapides	9	38	23.7%
Red River	2	2	100.0%
Richland	4	7	57.1%
Sabine	1	3	33.3%
St. Bernard	1	8	12.5%
St. Charles	9	19	47.4%
St. Helena	1	1	100.0%
St. James	3	6	50.0%
St. John	3	9	33.3%
St. Landry	5	23	21.7%
St. Martin	2	6	33.3%
St. Mary	6	16	37.5%
St. Tammany	38	123	30.9%
Tangipahoa	17	41	41.5%
Tensas	0	0	0.0%
Terrebonne	10	42	23.8%
Union	0	2	0.0%
Vermilion	2	12	16.7%
Vernon	1	3	33.3%
Washington	4	12	33.3%
Webster	2	9	22.2%
West Baton Rouge	4	5	80.0%
West Carroll	0	1	0.0%
West Feliciana	2	4	50.0%
Winn	1	3	33.3%
Total	**568**	**1600**	**35.5%**

APPENDIX D: ALLEGATIONS RECEIVED BY LSBD, BY TYPE FISCAL YEARS 2011 THROUGH 2015

Type of Violation Alleged	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Total
Advertising	14	284	24	74	24	420
Substandard Care	52	64	86	99	60	361
CDC/Spore Testing	1	6	20	149	0	176
Medicaid/Billing Fraud	15	26	42	43	11	137
Failure to Update Address	0	5	36	85	0	126
Fee Dispute	41	26	5	25	16	113
Unnecessary Work	8	5	20	13	7	53
Abandonment	5	11	10	11	5	42
Professional Incompetency	0	11	28	3	0	42
Continuing Education Requirements Violation	1	11	7	20	0	39
Rude Treatment	18	9	1	3	7	38
Illegal Prescription of Controlled Substances	7	7	10	4	4	32
Drug Logs Not Maintained	0	3	10	17	0	30
Lack of Informed Consent	8	5	2	6	5	26
Patient Records	8	13	2	3	0	26
Unprofessional or Immoral Conduct	6	4	2	6	6	24
Sedation Permits or Equipment	1	2	8	10	1	22
Habitual Indulgence in Drugs or Alcohol	3	1	5	8	5	22
Allowing Unlicensed Person to Practice	2	3	5	9	1	20
Anesthesia Incident	0	2	5	5	6	18
Reconsideration of Revoked License	1	0	0	5	4	10
Soliciting Patients	0	2	7	1	0	10
Unsanitary Office	1	2	2	1	4	10
National Practitioner Data Bank Report/Malpractice Claim	1	2	0	2	3	8
Practice without License	3	1	0	0	0	4
Total Allegations	**196**	**505**	**337**	**602**	**169**	**1,809**

Source: Prepared by legislative auditor's staff using information obtained from LSBD.