



## ARIZONA STATE BOARD OF DENTAL EXAMINERS

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### BODEX UPDATE

#### **RECORDS – 999<sup>th</sup> REMINDER:**

I have continued to write about the ongoing challenges the Board has with respect to adjudicating cases without the respondent or subsequent treating dentist's entire patient record. Most recently, the adjudication of a case was changed because a CT scan was presented after the Board's consultant report had been completed. In another case, the outside dental consultant found that the anesthesia records were not submitted. Similarly, a dentist responded to a complaint and submitted the periodontal charting that was not included when the records were submitted in response to the Board's subpoena. PLEASE ensure that all records are submitted and that x-rays are dated. It is the licensee's responsibility to comply with the subpoena and not the dental staff. Every week we are entering into consent agreements with licensees for failure to respond to a subpoena which results in a \$500 penalty. The good news is that this is non-reportable to the national practitioner databank and in the former days, an investigative interview panel would have convened to determine the non-compliance.

The other trend I have written about previously is the increase in complaints generated by subsequent treating dentists. There have been occasion when Board staff has contacted the subsequent treating dentist to clarify what they told the patient. Most recently, the patient documented that the subsequent treating dentist told her to file a complaint with the Board for their "recommendations." The Board does not make recommendations; it adjudicates cases and determines whether the standard of care is met. Licensees should exercise some caution and discretion when speaking with patients.

This might also be a good time to review frequently asked questions. Some of these were published in February, 2010 Inscriptions; however, they continue to be our most frequently asked questions.

#### **Why does the Board review malpractice cases?**

ARS 32-3203 requires that all malpractice cases be reviewed. If the patient filed a complaint prior to the Board receiving the report from the National Practitioner Databank and the case has been adjudicated, the case will not be reviewed again.

#### **What constitutes informed consent?**

There is no Board statute or rule (other than related to mobile dentistry) that dictates what constitutes appropriate informed consent. It is dictated by the applicable community standard of care in a given case which the Board determines and applies on a case-by-case basis. The Board in the past has issued letters of concern for lack of informed consent.

#### **If I have a pending complaint with the Board may I attempt to resolve it with the complainant?**

At any point in time a respondent may attempt to resolve a complaint with the complainant. Frequently, a complainant will write the Board to inform us that the complaint has been resolved and request that the process be terminated. In most cases Board staff will recommend to the Board that it terminate the complaint; however, the Board has the discretion to continue to investigate and adjudicate the complaint if it believes it is necessary for the protection of the patient's or public's health, safety, or welfare.

#### **Do I need a license for every office where I practice?**

Yes. ARS 32-1236 E. requires a licensee maintaining more than one place of practice to obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate

license. The licensee shall notify the board in writing within ten days of opening the additional place or places of practice. The board shall impose a penalty of fifty dollars for failure to notify the board.

**How does the Board establish the standard of care?**

The Board does not establish the standard of care; the Board applies the community standard of care; the Board applies the community standard of care, based on its collective expertise and experience, on an individual case basis. Prior Board decisions and minutes are public records and may be reviewed to determine how the Board decided a particular case with the caveat that each case is decided on its own particular facts.

Thanks to all of you who utilized the online renewal process. Any feedback you have is appreciated.