



STATE OF IOWA

CHESTER J. CULVER
GOVERNOR

PATTY JUDGE
LT. GOVERNOR

IOWA DENTAL BOARD
CONSTANCE L. PRICE, EXECUTIVE DIRECTOR

TO: Iowa Dental Board
FROM: Constance Price
DATE: November 20, 2009

RE: House File 686
Legislative Intent

At its October 27, 2009, meeting the Board reviewed a letter from the Iowa Dental Association requesting that the Board provide guidance concerning the Session Laws associated with the 2000 Legislative Session, House File 686.

The Board discussed the matter and asked that the Assistant Attorney General review the matter and advise the Board accordingly.

Theresa O'Connell Weeg, Assistant Attorney General, has provided the attached information pertaining to this issue. Please find enclosed a copy of AG Opinion 97-7-1 (L) and AG Opinion 82-11-11 (L). Both Opinions address the issue of Session laws.

To summarize these Opinions: Session laws are valid laws, whether or not placed in the Iowa Code and thus are part of Iowa law. Laws enacted by the legislature but printed only in the session laws and omitted from the permanent edition of the Code of Iowa because they are not of "a general and permanent nature" have full force and effect.

This information is for discussion at the January, 2010 meeting of the Board.

1997 WL 988715 (Iowa A.G.)

Office of the Attorney General
State of Iowa

Opinion No. 97-7-1(L)

July 8, 1997

STATE OFFICERS AND DEPARTMENTS: Iowa Department of Transportation's development of "access Iowa highways." Iowa Code §§ 307A.2(12), 313.2A (1997); 1997 Iowa Acts, 77th G.A., ch. __, § 12 (S.F. 391); 1996 Iowa Acts, 76th G.A., ch. 1218, § 51 (H.F. 2421). Session laws are valid laws, whether or not placed in the Iowa Code; the law of the State of Iowa therefore includes 1996 Iowa Acts, 76th G.A., chapter 1218, section 51(2), a session law that involves the development of "access Iowa highways." Pursuant to that law, the Iowa Department of Transportation should act with reasonable dispatch in developing access Iowa highways. (Kempkes to Halvorson, State Senator, 7-8-97)

The Honorable Rod Halvorson
State Senator

Dear Senator Halvorson:

You have requested an opinion on two legislative acts as they relate to the Iowa Department of Transportation and the Iowa State Transportation Commission. First, the General Assembly in 1996 passed a "session law," House File 2421. See 1996 Iowa Acts, 76th G.A., ch. 1218. Part of House File 2421, section 51(2), created the "access Iowa plan" for developing "access Iowa highways." Second, the General Assembly in 1997 passed Senate File 391. Senate File 391 struck one part of House File 2421 that involved the access Iowa plan; however, it did not strike section 51(2).

You ask whether section 51(2) of House File 2421 "is Iowa law" and, if so, what duty is imposed by this law upon the Department. We conclude that session laws are valid laws, whether or not placed in the Iowa Code, and that House File 2421 is thus part of Iowa law. We also conclude the Department, pursuant to that law, should act with reasonable dispatch in developing access Iowa highways.

I.

(A).

Iowa Code chapter 306 (1997) governs the establishment of state highways. Section 306.4(1) generally vests the Department with jurisdiction over them. See generally Iowa Code § 306.3(8). Chapter 307 generally governs the Department. Section 307.2 places responsibility with the Department for planning, developing, regulating, and improving transportation within the state as provided by law. See generally Iowa Code §§ 307.10, 307.22, 307.24, 307.2(12).

Chapter 307A generally governs the Commission. Section 307A.2(12) requires the Commission to prepare a long-range program for the primary road system that shall cover a period of at least five years, undergo yearly revision and republication, and list definite projects in order of urgency. Under section 307A.2(15), the Commission must identify a network of "commercial and industrial highways" and include proposed improvements to this network in its long-range program.

Chapter 313 governs the primary road system. Section 313.2A, like section 307A.2(15), directs the Commission to identify a network of commercial and industrial highways to enhance opportunities for the development and diversification of the state's economy and sets forth criteria for the Department in establishing priorities for improving those highways. Section 313.8 provides that the Department shall proceed to improving the primary road system "as rapidly as funds become available therefor" and that improvements "shall be made and carried out in such a manner as to equalize the condition of the primary roads and accessibility for commercial and industrial economic development purposes, as nearly as possible, in all sections of the state."

(B).

*2 House File 2421 dates from 1996. Among other things, the title to House File 2421 revealed that it appropriated money to the Department out of the General Fund, the Road Use Tax Fund, and the Primary Road Fund for various projects. See 1996 Iowa Acts, 76th G.A., ch. 1218. In section 51, House File 2421 addressed the access Iowa plan:

(1). It is the intent of the general assembly to formulate an access Iowa plan which shall designate portions of the commercial and industrial network of highways as access Iowa highways. The goal of the access Iowa plan shall be to enhance the existing Iowa economy and ensure its continuing development and growth in the national and global competitive marketplace by providing for early completion of the construction of the most important portions of the Iowa highway system. These portions of the system shall be those that are essential for ensuring Iowans direct access to the nation's system of interstate highways and transportation services.

The general assembly's past actions are consistent with the access Iowa plan. The general assembly has set general policy guidelines for the [Commission's] planning and programming development . . .

(2). The [Department] shall designate portions of the commercial and industrial network of highways as access Iowa highways and shall expedite and accelerate development of access Iowa highways. . . .

(3). The [Department] shall provide a report to the general assembly by January 15, 1997, designating which portions of the commercial and industrial network of highways the department determines to be access Iowa highways. . . .

(emphasis added).

The Governor signed House File 2421 on May 30, 1996; his item vetoes did not affect section 51. See Governor's Veto Message following 1996 Iowa Acts, 76th G.A., ch. 1218. No effective date being specified for section 51, see 1996 Iowa Acts, 76th G.A., ch. 1218, § 71, it took effect on July 1, 1996. See generally Iowa Const. art. III, § 26 (1857); Iowa Code § 3.7.

In the interim between the 1996 and 1997 legislative sessions, the Department filed its "Report to the General Assembly, Chapter 1218, Section 51(3), of the 1996 Session Laws (January, 1997)." As indicated by the report's title, the Department filed this report pursuant to section 51(3) of House File 2421. After acknowledging that "[t]he legislative directive was 'to enable the early, rapid, expedited, and accelerated completion of the development of access Iowa highways,'" the Department stated in the report that "[t]he time frame considered for the

purposes of this report is ten years, the minimum amount of time required to place projects on a 'fast-track' from concept development to complete paving."

According to the Department report, "[t]he costs of four-laning all the [1,313] miles identified as potential access Iowa routes are about \$ 1.66 billion." The Department addressed three options it faced in implementing the access Iowa plan in conjunction with its other projects. One option placed access Iowa improvements on the same priority schedule as other primary road improvements, which would, however, prevent completion within ten years of some access Iowa highways. A second option involved obtaining revenues, in the amount of \$ 455 million, specifically for developing access Iowa highways. A third option "would delay other non-access Iowa projects beyond the ten-year period in order to fund access Iowa." The Department expressly rejected the third option on the ground it would adversely affect other projects involving the primary road system; it did not expressly approve or reject the first and second options.

*3 Senate File 391 dates from 1997. Among other things, the title to Senate File 391 revealed that it, too, appropriated money to the Department out of the General Fund, the Road Use Tax Fund, and the Primary Road Fund for various projects. See S.F. 391 (p. 1, 11. 3-13). In section 12 of Senate File 391, the General Assembly amended House File 2421 by striking section 51(3), which required the Department to report on the designation of commercial and industrial highways by January 15, 1997. In lieu of section 51(3), the General Assembly provided:

The [Commission] shall make a presentation to the joint appropriations subcommittee on transportation, infrastructure, and capitals not later than February 1, 1998, regarding the effect that complying with subsection 2 will have on the [Commission's compliance with section 313.2A, which relates to identification and improvement of commercial and industrial highways] . . .

This section is repealed effective July 1, 2000.

S.F. 391, § 12. The Governor signed Senate File 391 on May 19, 1997; his item vetoes did not affect section 12. Senate File 391 became effective on July 1, 1997. See Iowa Code § 3.7(1). See generally S.F. 391 (p. 8, 11. 32-35; p. 9, 11. 1-2).

II.

(A).

You have asked whether section 51(2) of House File 2421 "is Iowa law." Section 51(2) provides that the Department "shall designate portions of the commercial and industrial network of highways as access Iowa highways and shall expedite and accelerate development of access Iowa highways. . . ."

House File 2421 is a "session law" and is not published in the Iowa Code. Compare Iowa Code § 2B.10 with Iowa Code § 2B.12. Enacted by a state legislature at one of its annual or biennial sessions, session laws stand in contrast with "compiled laws" or "revised statutes" of the state. Black's Law Dictionary 1230 (1979). Session laws are "[p]ublished laws of a state enacted by each assembly and separately bound for the session and extra sessions. The session laws are normally published on a periodic basis, in a pamphlet, throughout the legislative session and then at the end of the session are bound into a more permanent form." Id.

Iowa Code chapter 2B, entitled "Legal Publications," governs the publication of session laws as well as the publication of the Iowa Code and Iowa Code Supplement. See Iowa Code §§ 2B.10, 2B.12; see also Iowa Code §§ 2.42(11), 2B.6(2), 3.3. Section 2B.17 provides for the proper citation to "official statutes," which expressly include session laws. Section 2B.17(3) provides in part that the official printed versions "of the Iowa Code, Code

Supplement, and session laws published under authority of the state are the only authoritative publications of the statutes of this state."

In view of the foregoing, we conclude that session laws are valid laws, whether or not placed in the Iowa Code, and that section 51(2) of House File 2421 is thus part of Iowa law. Our conclusion effectively reaffirms this office's statement in 1937 that "[t]he laws enacted by the legislature and carried only in the session laws and not in the Code have just as much validity and effect as those carried in the Code." 1938 Op. Att'y Gen. 360, 361.

(B).

*4 You have also asked about the impact of section 51(2) upon the Department. You point to the statutory requirement that the Department expedite and accelerate development of access Iowa highways. You specifically ask what practical steps the Department must take in order to comply with this requirement as the Department formulates its plan known as "Iowa in Motion." This plan, which predates the legislation on access Iowa highways, identifies the Department's goals up to the year 2020; it has not yet reached the stage of assigning priorities to projects. You believe that "Iowa in Motion" must encompass the development of access Iowa highways in order for the Department to comply with section 51(2).

Section 51 does not set forth a specific deadline or timetable for developing access Iowa highways. Section 51(1) does, however, provide that "[t]he goal of the access Iowa plan shall be to enhance the existing Iowa economy and ensure its continuing development and growth . . . by providing for early completion of the construction of the most important portions of the Iowa highway system." See generally Iowa Code § 4.6(1) (statutory construction may involve consideration of legislative object), § 4.6(7) (statutory construction may involve consideration of legislative preamble or statement of policy). Section 51(2) also provides that the Department "shall expedite and accelerate" the development of access Iowa highways. See generally Iowa Code § 4.1(30)(a) (if not otherwise specifically provided, word "shall" in statutes imposes a duty).

We note that the General Assembly has used "expedite" (or "expeditiously") and "accelerate" in other statutes calling for the taking of particular actions. See, e.g., Iowa Code §§ 6B.54(1), 16.15(1), 28A.23, 42.3, 42.6(4)(a), 266.36, 314.22(1)(g). Some of these statutes do not necessarily negate the possibility of some delay. See, e.g., Iowa Code § 28A.23 (to act "as expeditiously as possible"), § 42.6(4)(a) (to act "as expeditiously as reasonably possible"). In contrast, one law specifically provides that persons "expedite without delay" in taking action. See Iowa Probate R. 4.1(a)(3).

To "expedite" commonly means to hasten, to make haste, or to speed, Black's Law Dictionary 518 (1979), and to "accelerate" similarly means to bring about at an earlier time, to cause to move faster, or to hasten the progress or development of, Webster's Ninth New Collegiate Dictionary 6 (1979). See Crabb's English Synonyms 403-04 (1917) ("accelerate" signifies literally to quicken for a specific purpose, while "expedite" expresses a process, a bringing forward to an end).

When the General Assembly imposes a duty upon administrative agencies similar to section 51(2), it intends for them to act reasonably in compliance with that duty. See 1996 Op. Att'y Gen. ___ (#96-10-8); 1988 Op. Att'y Gen. 116 (#88-12-1(L)); see also 1994 Op. Att'y Gen. 136 (#94-8-6(L)). Under section 51(2), then, the Department should act with reasonable dispatch in developing access Iowa highways. Although we do not view section 51 as requiring assignment of the highest priority to developing access Iowa highways in any particular plan, we believe that such assignment would certainly comport with section 51(2). See generally 1996 Op. Att'y Gen. ___ (#96-10-8). In any event, the Department -- pursuant to the letter and spirit of section 51 -- should make a good-

faith effort to achieve substantial compliance with section 51(2) by proceeding with reasonable dispatch to develop access Iowa highways. See 1988 Op. Att'y Gen. 37 (#87-4-4(L)); 1984 Op. Att'y Gen. 138, 138-39; 1980 Op. Att'y Gen. 435 (#79-10-2(L)); see also 13 E. McQuillin, The Law of Municipal Corporations § 37.16, at 65, § 37.99, at 280-81 (1997). See generally Iowa Code § 4.2 ("provisions [of Iowa Code] and all its proceedings under it shall be liberally construed with a view to promote its objects").

*5 What length of time signifies reasonable dispatch and substantial compliance, however, amounts to a question of fact. See 1980 Op. Att'y Gen. 323, 327-28. We do not decide issues of fact in an opinion. 1992 Op. Att'y Gen. 55, 59-60. Accordingly, we cannot provide a definite answer to your question about the practical steps the Department must take in order to comply with section 51(2). We can only say that determining the Department's compliance with the duty imposed by section 51(2) would, at any one point in time, necessitate a consideration of all the Department's statutory duties, its budget and projected budgets, and its projects and proposed projects competing for priority with the access Iowa plan.

In assessing its duty under section 51(2) to expedite and accelerate such development, the Department has stated that "ten years [is] the minimum amount of time required to place [access Iowa] projects on a 'fast-track' from concept development to complete paving." See Iowa Dep't of Transp., "Report to the General Assembly, Chapter 1218, Section 51(3), of the 1996 Session Laws (January, 1997)." See generally Iowa Code § 4.6(6) (statutory construction may involve consideration of administrative construction of statutory language). We cannot opine as a matter of law, however, exactly how the Department must treat access Iowa highways within the "Iowa in Motion" plan. That task would require consideration of all relevant factors -- including balancing of the Department's other statutory duties, as well as factual information about "Iowa in Motion" and the Department's other plans -- to determine priorities for planning and constructing various highway projects. The responsibility to exercise that judgment lies with the Commission and the Department. Nevertheless, treatment of access Iowa highways within the Department's plans clearly amounts to a significant factor in determining whether the Department has met its duty under section 51(2). See generally Iowa Code § 4.2 (statutes shall be liberally construed with a view to promote their objects), § 4.4(3) (statutory construction presumes that legislature intended just and reasonable result), § 4.4(4) (statutory construction presumes that legislature intended a result feasible of execution).

III.

To summarize: Session laws are valid laws, whether or not placed in the Iowa Code, and 1996 Iowa Acts, 76th G.A., chapter 1218, section 51(2), is thus part of Iowa law. Pursuant to that law, the Iowa Department of Transportation must act with reasonable dispatch in developing "access Iowa highways."

Sincerely,
Bruce Kempkes
Assistant Attorney General

1997 WL 988715 (Iowa A.G.)
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1982 Iowa Op. Atty. Gen. 559, 1982 WL 524901 (Iowa A.G.)

Office of the Attorney General
State of Iowa

Opinion No. 82-11-11(L)

November 30, 1982

STATE OFFICES AND DEPARTMENTS; Professional licensing boards; Dispensing of prescription drugs. 1980 Session Laws, 68th G.A., chp. 1036 § 33. Laws enacted by the legislature but printed only in the session laws and omitted from the permanent edition of the Code of Iowa because they are not of "a general and permanent nature" have full force and effect. The law enacted in section 33 of chapter 1036 of the 1980 Session Laws is effective "until legislation has been enacted to affirm or modify the attorney general's opinion" issued on July 5, 1979. The law enacted in section 33 of chapter 1036 of the 1980 Session Laws entitles any individual practitioner "to continue the practices" which all practitioners of the respective profession had generally followed under the laws of this state prior to issuance of the attorney general's opinion on July 5, 1979. The law enacted in section 33 of chapter 1036 of the 1980 Session Laws does not prohibit any licensing board from issuing a declaratory ruling on the subject of the standard of practice with respect to dispensing which was in effect prior to issuance of the attorney general's opinion on July 5, 1979. (Pottorff to Schwengels, State Senator, 11/30/82)

Honorable Forrest Schwengels
State Senator

Dear Senator Schwengels:

You have requested an opinion of the Attorney General concerning legislation affecting practices with respect to dispensing of prescription drugs which was enacted by the legislature in 1980. Specifically, you pose the following questions:

1. Since the legislation enacted was made a part of the session laws only, and is not a part of the permanent Code, is the moratorium still in effect today? If you answer that in the affirmative, please then state how long, without modification by the General Assembly, will it remain in effect.
2. Does the moratorium allow any practitioner to delegate dispensing functions in violation of the law as interpreted by the Attorney General on June 5, 1979, or does the moratorium only allow those practitioners who were practicing in violation of the law prior to the effective date of the moratorium to continue practicing in that fashion until the law is changed or modified?
3. Attached to this letter you will find a Declaratory Ruling rendered by the Board of Medical Examiners dealing with physician delegation of dispensing functions. Would you determine the legal effect and status of Declaratory Ruling specifically with regard to the authority of the Board of Medical Examiners to render such a ruling?

The legislation about which you inquire was enacted by the General Assembly in the 1980 Session Laws. See

1980 Session, 68th G.A., chp. 1036 § 33. This language provides:

Practitioners licensed under chapters one hundred forty-eight (148), one hundred forty-nine (149), one hundred fifty (150), one hundred fifty A (150A), one hundred fifty-two (152), one hundred fifty-three (153), one hundred fifty-five (155) and one hundred sixty-nine (169) of the Code shall be entitled to continue the practices with respect to dispensing of prescription drugs, including controlled substances, which those practitioners had followed under the laws of this state as amended to July 1, 1979, and as generally interpreted prior to July 5, 1979, notwithstanding the opinion of the attorney general to the secretary of the board of pharmacy examiners rendered on that date, until legislation has been enacted to affirm or modify the attorney general's opinion.

*2 This language is not included in the 1981 Code of Iowa but reference to the 1980 Session Laws is included under the title of each relevant chapter. See Iowa Code chps. 148, 149, 150, 150A, 152, 153, 155 and 169 (1981).

The omission of this language from the permanent edition of the 1981 Code of Iowa is expressly directed by statute. We point out that the items to be included in a permanent edition of the Code of Iowa are specifically delineated by statute. Chapter 14 provides, in part, that the Code "shall include" statutes "of a general and permanent nature." Iowa Code § 14.6(i) (1981). The language in issue, however, expressly provides that its terms are effective only "until legislation has been enacted to affirm or modify an attorney general's opinion" on dispensing issued on July 5, 1979. See 1980 Session Laws, 68th G.A., chp. 1036 § 33. Since the language is effective only until the legislature acts, the language is not a statute of "permanent nature" designated for inclusion in the permanent Code of Iowa under chapter 14.

In a previous opinion this office concluded that laws enacted by the legislature but printed only in the session laws and not printed in the permanent edition of the Code of Iowa are as valid and effective as those laws enacted by the legislature and printed in both the session laws and the permanent edition of the Code of Iowa. 1938 Op. Atty. Gen. 360, 360-61. This opinion was based on the reasoning that statutes omitted from the Code of Iowa because they were not of "a general and permanent nature" were omitted for reasons of style in the composition of the Code of Iowa. *Id.* at 361. We continue to adhere to the view expressed in this opinion.

We find no basis for distinguishing between practitioners who did not practice until after the effective date of the legislation and practitioners who were practicing before the effective date of the legislation in applying the language of this statute. The language specifically provides that practitioners licensed under one of several enumerated chapters "shall be entitled to continue the practices with respect to dispensing of prescription drugs, including controlled substances, which those practitioners had followed under the laws of this state" prior to the issuance of the attorney general's opinion on July 5, 1979. Interpreting this language, we follow principles of statutory construction. The goal of all principles of statutory construction is to ascertain and give effect to the intent of the enacting legislature. *American Home Products Corp. v. Iowa State Board of Tax Review*, 302 N.W.2d 140, 142 (Iowa 1981). Statutes, moreover, should be given a construction which is sensible, practical, workable, and logical. *Hansen v. State*, 298 N.W.2d 263, 265-66 (Iowa 1980). Utilizing these principles we believe the intent of the legislature was to maintain the *status quo* with respect to dispensing practices until legislation could be enacted. This intent is evidenced by specific reference to and neutralization of the attorney general's opinion issued on July 5, 1979.

*3 In light of this intent, it would not be sensible, practical, workable or logical to differentiate between practitioners practicing before and practitioners practicing after the effective date of the legislation. This construction would maintain the *status quo* with respect to some but not all of each class of practitioners enumerated in the

statute. For this reason, we believe the language must be construed to entitle any individual practitioner "to continue the practices" which all practitioners of the respective profession had generally followed under laws of this state prior to issuance of the opinion on July 5, 1979.

We find nothing in the statutory language which would prohibit any licensing board from issuing a declaratory ruling, upon request, on the subject of the standard of practice with respect to dispensing which was in effect prior to issuance of the opinion on July 5, 1979. All state agencies are empowered to issue declaratory rulings. See Iowa Code § 17A.9 (1981). The Board of Medical Examiners has promulgated rules governing the filing and disposition of declaratory rulings. See 135 I.A.C. §§ 10(1)-10(10). The declaratory ruling mechanism may be properly utilized in this and other circumstances to resolve ambiguities in agency enforced law. See Bonfield, The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, the Rulemaking Process, 60 Iowa L.Rev. 731, 805-806 (1975).

In summary, in response to your specific inquiries, it is our opinion that:

1. Laws enacted by the legislature but printed only in the session laws and omitted from the permanent edition of the Code of Iowa because they are not of "a general and permanent nature" have full force and effect. The law enacted in section 33 of chapter 1036 of the 1980 Session Laws is effective "until legislation has been enacted to affirm or modify the attorney general's opinion" issued on July 5, 1979.
2. The law enacted in section 33 of chapter 1036 of the 1980 Session Laws entitles any individual practitioner "to continue the practices" which all practitioners of the respective profession had generally followed under the laws of this state prior to issuance of the attorney general's opinion on July 5, 1979.
3. The law enacted in section 33 of chapter 1036 of the 1980 Session Laws does not prohibit any licensing board from issuing a declaratory ruling on the subject of the standard of practice with respect to dispensing which was in effect prior to issuance of the attorney general's opinion on July 5, 1979.

Sincerely,
Julie F. Pottorff
Assistant Attorney General

1982 Iowa Op. Atty. Gen. 559, 1982 WL 524901 (Iowa A.G.)
END OF DOCUMENT

CHAPTER 27
STANDARDS OF PRACTICE AND
PRINCIPLES OF PROFESSIONAL ETHICS

650—27.1(153) General.

27.1(1) *Dental ethics.* The following principles relating to dental ethics are compatible with the Code of Professional Ethics and advisory opinions published in August 1998 by the American Dental Association. These principles are not intended to provide a limitation on the ability of the board to address problems in the area of ethics but rather to provide a basis for board review of questions concerning professional ethics. The dentist's primary professional obligation shall be service to the public with the most important aspect of that obligation being the competent delivery of appropriate care within the bounds of the clinical circumstances presented by the patient, with due consideration being given to the needs and desires of the patient. Unprofessional conduct includes, but is not limited, to any violation of these rules.

27.1(2) *Dental hygiene ethics.* The following principles relating to dental hygiene ethics are compatible with the Code of Ethics of the American Dental Hygienists' Association published in 1995. Standards of practice for dental hygienists are compatible with the Iowa dental hygienists' association dental hygiene standards of practice adopted in May 1993. These principles and standards are not intended to provide a limitation on the ability of the dental hygiene committee to address problems in the area of ethics and professional standards for dental hygienists but rather to provide a basis for committee review of questions regarding the same. The dental hygienist's primary responsibility is to provide quality care and service to the public according to the clinical circumstances presented by the patient, with due consideration of responsibilities to the patient and the supervising dentist according to the laws and rules governing the practice of dental hygiene.

27.1(3) *Dental assistant ethics.* Dental assistants shall utilize the principles of professional dental and dental hygiene ethics for guidance, and the laws and rules governing the practice of dental assisting.

650—27.2(153,272C) Patient acceptance. Dentists, in serving the public, may exercise reasonable discretion in accepting patients in their practices; however, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, sex or national origin.

650—27.3(153) Emergency service. Emergency services in dentistry are deemed to be those services necessary for the relief of pain or to thwart infection and prevent its spread.

27.3(1) Dentists shall make reasonable arrangements for the emergency care of their patients of record.

27.3(2) Dentists shall, when consulted in an emergency by patients not of record, make reasonable arrangements for emergency care.

650—27.4(153) Consultation and referral.

27.4(1) Dentists shall seek consultation, if possible, whenever the welfare of patients will be safeguarded or advanced by utilizing those practitioners who have special skills, knowledge and experience.

27.4(2) The specialist or consulting dentist upon completion of their care shall return the patient, unless the patient expressly states a different preference, to the referring dentist or, if none, to the dentist of record for future care.

27.4(3) The specialist shall be obliged, when there is no referring dentist and upon completion of the treatment, to inform the patient when there is a need for further dental care.

27.4(4) A dentist who has a patient referred for a second opinion regarding a diagnosis or treatment plan recommended by the patient's treating dentist, should render the requested second opinion in accordance with these rules. In the interest of the patient being afforded quality care, the dentist rendering the second opinion should not have a vested interest in the ensuing recommendation.

650—27.5(153) Use of personnel. Dentists shall protect the health of their patients by assigning to qualified personnel only those duties that can be legally delegated. Dentists shall supervise the work of all personnel working under their direction and control.

650—27.6(153) Evidence of incompetent treatment.

27.6(1) Licensees or registrants shall report to the board instances of gross or continually faulty treatment by other licensees or registrants.

27.6(2) Licensees or registrants may provide expert testimony when that testimony is essential to a just and fair disposition of a judicial or administrative action.

650—27.7(153) Representation of care and fees.

27.7(1) Dentists shall not represent the care being rendered to their patients or the fees being charged for providing the care in a false or misleading manner.

27.7(2) A dentist who accepts a third-party payment under a copayment plan as payment in full without disclosing to the third-party payer that the patient's payment portion will not be collected is engaging in deception and misrepresentation by this overbilling practice.

27.7(3) A dentist shall not increase a fee to a patient solely because the patient has insurance.

27.7(4) Payments accepted by a dentist under a governmentally funded program, a component or constituent dental society sponsored access program, or a participating agreement entered into under a program of a third party shall not be considered as evidence of overbilling in determining whether a charge to a patient or to another third party on behalf of a patient not covered under any of these programs, constitutes overbilling under this rule.

27.7(5) A dentist who submits a claim form to a third party reporting incorrect treatment dates is engaged in making unethical, false or misleading representations.

27.7(6) A dentist who incorrectly describes a dental procedure on a third party claim form in order to receive a greater payment or incorrectly makes a noncovered procedure appear to be a covered procedure is engaged in making an unethical, false or misleading representation to the third party.

27.7(7) A dentist who recommends or performs unnecessary dental services or procedures is engaged in unprofessional conduct.

27.7(8) Rescinded IAB 5/14/03, effective 6/18/03.

650—27.8(153) General practitioner announcement of services. General dentists who wish to announce the services available in their practices are permitted to announce the availability of those services so long as they avoid any communications that express or imply specialization. General dentists shall also state that the services are being provided by a general dentist.

650—27.9(153) Unethical and unprofessional conduct.

27.9(1) Licensee or registrant actions determined by the board to be abusive, coercive, intimidating, harassing, untruthful or threatening in connection with the practice of dentistry shall constitute unethical or unprofessional conduct.

27.9(2) A treatment regimen shall be fully explained and patient authorization obtained before treatment is begun.

27.9(3) A licensee or registrant determined to be infected with HIV or HBV shall not perform an exposure-prone procedure except as approved by the expert review panel as specified in Iowa Code section 139A.22, established by the Iowa department of public health, or if the licensee or registrant works in a hospital setting, the licensee or registrant may elect either the expert review panel established by the hospital or the expert review panel established by the Iowa department of public health for the purpose of making a determination of the circumstances under which the licensee or registrant may perform exposure-prone procedures. The licensee or registrant shall comply with the recommendations of the expert review panel. Failure to do so shall constitute unethical and unprofessional conduct and is grounds for disciplinary action by the board.

27.9(4) Knowingly providing false or misleading information to the board or an agent of the board is considered unethical and unprofessional conduct.

650—27.10(153) Retirement or discontinuance of practice.

27.10(1) A licensee, upon retirement, or upon discontinuation of the practice of dentistry, or upon leaving or moving from a community, shall notify all active patients in writing, or by publication once a week for three consecutive weeks in a newspaper of general circulation in the community, that the licensee intends to discontinue the practice of dentistry in the community, and shall encourage patients to seek the services of another licensee. The licensee shall make reasonable arrangements with active patients for the transfer of patient records, or copies thereof, to the succeeding licensee. "Active patient" means a person whom the licensee has examined, treated, cared for, or otherwise consulted with during the two-year period prior to retirement, discontinuation of the practice of dentistry, or leaving or moving from a community.

27.10(2) Nothing herein provided shall prohibit a licensee from conveying or transferring the licensee's patient records to another licensed dentist who is assuming a practice, provided that written notice is furnished to all patients as hereinbefore specified.

650—27.11(153,272C) Record keeping. Dentists shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Records shall be permanent, timely, accurate, legible, and easily understandable.

27.11(1) Dental records. Dentists shall maintain dental records for each patient. The records shall contain all of the following:

a. Personal data.

- (1) Name, date of birth, address and, if a minor, name of parent or guardian.
- (2) Name and telephone number of person to contact in case of emergency.

b. Dental and medical history. Dental records shall include information from the patient or the patient's parent or guardian regarding the patient's dental and medical history. The information shall include sufficient data to support the recommended treatment plan.

c. Patient's reason for visit. When a patient presents with a chief complaint, dental records shall include the patient's stated oral health care reasons for visiting the dentist.

d. Clinical examination progress notes. Dental records shall include chronological dates and descriptions of the following:

- (1) Clinical examination findings, tests conducted, and a summary of all pertinent diagnoses;
- (2) Plan of intended treatment and treatment sequence;
- (3) Services rendered and any treatment complications;
- (4) All radiographs, study models, and periodontal charting, if applicable;
- (5) Name, quantity, and strength of all drugs dispensed, administered, or prescribed; and
- (6) Name of dentist, dental hygienist, or any other auxiliary, who performs any treatment or service or who may have contact with a patient regarding the patient's dental health.

e. Informed consent. Dental records shall include, at a minimum, documentation of informed consent that includes discussion of procedure(s), treatment options, potential complications and known risks, and patient's consent to proceed with treatment.

27.11(2) Retention of records. A dentist shall maintain a patient's dental record for a minimum of six years after the date of last examination, prescription, or treatment. Records for minors shall be maintained for a minimum of either (a) one year after the patient reaches the age of majority (18), or (b) six years, whichever is longer. Proper safeguards shall be maintained to ensure safety of records from destructive elements.

27.11(3) Electronic record keeping. The requirements of this rule apply to electronic records as well as to records kept by any other means. When electronic records are kept, a dentist shall keep either a duplicate hard copy record or use an unalterable electronic record.

27.11(4) Correction of records. Notations shall be legible, written in ink, and contain no erasures or white-outs. If incorrect information is placed in the record, it must be crossed out with a single nondeleting line and be initialed by a dental health care worker.

27.11(5) Confidentiality and transfer of records. Dentists shall preserve the confidentiality of patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or patient's legal guardian, the dentist shall furnish the dental records or copies or summaries of the records, including dental radiographs or copies of the radiographs, as will be beneficial for the future treatment of that patient. The dentist may charge a nominal fee for duplication of records, but may not refuse to transfer records for nonpayment of any fees.

650—27.12(17A,147,153,272C) Waiver prohibited. Rules in this chapter are not subject to waiver pursuant to 650—Chapter 7 or any other provision of law.

These rules are intended to implement Iowa Code sections 153.34(7), 153.34(9), 272C.3, 272C.4(1f) and 272C.4(6).

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[Filed 2/5/07, Notice 11/22/06—published 2/28/07, effective 4/4/07]

Representation of care and fees:

Consider the following:

A dentist shall not bill or collect monies for services not rendered

A dentist shall not bill or draw on a patient's line of credit prior to services being performed.

IOWA DENTAL BOARD HIGHLIGHTS

RECORD KEEPING UPDATE

The Iowa Dental Board was recently asked for clarification on the Board's rule regarding the signing of patient records. Board rule 650—27.11(1)(d)(6) requires that the "Clinical examination progress notes" shall include the: Name of dentist, dental hygienist, or any other auxiliary, who performs any treatment or service or who may have contact with a patient regarding the patient's dental health. This requirement does not require that the actual person performing the treatment sign the record, only that the record contain the name of the person(s) who provided services. This rule pertains to all providers, general practitioners, and specialists whether in a group practice or individual proprietors.

ARCHITECTURAL EXAMINING BOARD[193B](cont'd)

Examining Board, 1920 S.E. Hulsizer Road, Ankeny, Iowa 50021; or faxed to (515)281-7411. E-mail may be sent to glenda.lovings@iowa.gov.

This amendment is intended to implement Iowa Code chapter 544A.

The following amendment is proposed.

Amend subrule 2.3(4) as follows:

~~2.3(4) Applicants who have previously passed any portion of formerly required NCARB examinations will be granted credit for those portions passed in accordance with procedures established by NCARB.~~ Applicants who have passed one or more but not all divisions of the ARE by January 1, 2006, shall have a rolling five years-year period to pass all each of the remaining divisions. A passing grade for any remaining division shall be valid for five years, after which time the division must be retaken if all remaining divisions have not been passed. The rolling five-year period shall commence after January 1, 2006, on the date when the first division that has been passed is administered. Applicants who have passed no divisions of the ARE by January 1, 2006, shall be governed by the above rolling five-year requirement. The rolling five-year period shall commence on the date when the first division that has been passed is administered. Any division passed prior to January 1, 2006, shall no longer remain valid if all remaining divisions have not been passed by July 1, 2014.

Effective January 1, 2011, and thereafter, the Authorization to Test of any applicant shall terminate unless the applicant has passed or failed a division of the ARE within a period of five years, which includes the five-year period prior to January 1, 2011. Any applicant whose authorization is so terminated must establish a new eligibility under the then-current procedures of the board.

ARC 8370B

DENTAL BOARD[650]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Dental Board hereby gives Notice of Intended Action to amend Chapter 29, “Deep Sedation/General Anesthesia, Conscious Sedation and Nitrous Oxide Inhalation Analgesia,” Iowa Administrative Code.

The amendments make various changes to the rules on the use of sedation and antianxiety premedication. The intent of these changes is to clarify the different levels of sedation and to clarify when a dentist must hold a sedation permit. Last year, the American Dental Association (ADA) revised its guidelines for the use of sedation and adopted new definitions concerning sedation. The ADA adopted new definitions for “minimal sedation” and “moderate sedation,” which was previously referred to as “conscious sedation.” The Board is proposing to adopt these new definitions, along with additional guidance for dentists on what constitutes minimal sedation or antianxiety premedication.

The training requirements for obtaining a moderate sedation or deep sedation permit in Iowa have not changed; however, the Board is incorporating the specific requirements in its rules. To qualify for a moderate sedation permit, a dentist must complete a Board-approved course in moderate (conscious) sedation that consists of a minimum of 60 hours of instruction and management of at least 20 patients. The Board does not differentiate between an enteral sedation permit or a parenteral sedation permit. All dentists who administer moderate sedation, regardless of the route of administration, must meet the same training requirements.

The proposed amendments also require that a dentist utilizing moderate sedation on pediatric (patients aged 12 and under) or American Society of Anesthesiologists (ASA) category 3 or 4 patients must have completed additional postgraduate training approved by the Board. This requirement is consistent with

DENTAL BOARD[650](cont'd)

the ADA guidelines that require dentists to have completed additional training in pediatric and medically compromised patients in order to provide sedation to these patients.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendments on or before January 5, 2010. Such written comments should be directed to Jennifer Hart, Executive Officer, Iowa Dental Board, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to Jennifer.Hart@iowa.gov.

Also, there will be a public hearing on January 5, 2010, beginning at 10 a.m. in the Board Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the October 27, 2009, regular meeting of the Iowa Dental Board.

These amendments are intended to implement Iowa Code sections 153.33 and 153.34.

The following amendments are proposed.

ITEM 1. Amend 650—Chapter 29, title, as follows:

~~DEEP SEDATION/GENERAL ANESTHESIA, CONSCIOUS SEDATION
AND NITROUS OXIDE INHALATION ANALGESIA~~

ITEM 2. Amend rule 650—29.1(153), introductory paragraph, as follows:

650—29.1(153) Definitions. For the purpose of these rules relative to the administration of deep sedation/general anesthesia, ~~conscious~~ moderate sedation, minimal sedation, and nitrous oxide inhalation analgesia by licensed dentists the following definitions shall apply:

ITEM 3. Amend rule 650—29.1(153), definitions of “Antianxiety premedication” and “Conscious sedation,” as follows:

~~“Antianxiety premedication” is the prescription/administration of pharmacologic substances for the relief of anxiety and apprehension which does not result in a depressed level of consciousness~~ means minimal sedation. A dentist providing minimal sedation must meet the requirements of rule 650—29.7(153).

~~“Conscious sedation” is a depressed level of consciousness produced by the administration of pharmacologic substances, that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command~~ means moderate sedation.

ITEM 4. Adopt the following new definitions of “ASA,” “Minimal sedation,” “Moderate sedation” and “Pediatric” in rule 650—29.1(153):

“ASA” refers to the American Society of Anesthesiologists Patient Physical Status Classification System. Category 1 means normal healthy patients, and category 2 means patients with mild systemic disease with no functional limitations. Category 3 means patients with moderate systemic disease with functional limitations, and category 4 means patients with severe systemic disease that is a constant threat to life.

“Minimal sedation” means a minimally depressed level of consciousness, produced by a pharmacological method, that retains the patient’s ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal command. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. The term “minimal sedation” also means “antianxiety premedication” or “anxiolysis.” A dentist providing minimal sedation shall meet the requirements of rule 650—29.7(153).

“Moderate sedation” means a drug-induced depression of consciousness, either by enteral or parenteral means, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway and

DENTAL BOARD[650](cont'd)

spontaneous ventilation is adequate. Cardiovascular function is usually maintained. Prior to January 1, 2010, moderate sedation was referred to as conscious sedation.

"*Pediatric*" means patients aged 12 or under.

ITEM 5. Strike "conscious" wherever it appears in rules ~~650—29.2(153)~~ to ~~650—29.7(153)~~, ~~650—29.11(153)~~ and ~~650—29.12(153)~~ and insert "moderate" in lieu thereof.

ITEM 6. Amend paragraph **29.3(1)"a"** as follows:

a. Has successfully completed ~~Part II of the American Dental Association Council on Dental Education Guidelines~~ an advanced education program accredited by the Commission on Dental Accreditation that provides training in deep sedation and general anesthesia; and

ITEM 7. Amend subrule 29.4(1) as follows:

29.4(1) A permit may be issued to a licensed dentist to use ~~conscious~~ moderate sedation ~~on an outpatient basis~~ for dental patients provided the dentist meets the following requirements:

a. Has successfully completed a training program approved by the board that meets ~~Parts I and III of the American Dental Association Council on Dental Education Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students~~ and that consists of a minimum of 60 hours of instruction and management of at least 20 patients; and

b. and *c.* No change.

ITEM 8. Adopt the following new subrule 29.4(9):

29.4(9) A dentist utilizing moderate sedation on pediatric or ASA category 3 or 4 patients must have completed an accredited residency program that includes formal training in anesthesia and clinical experience in managing pediatric or ASA category 3 or 4 patients. A dentist who does not meet the requirements of this subrule is prohibited from utilizing moderate sedation on pediatric or ASA category 3 or 4 patients.

ITEM 9. Amend subrule 29.5(8) as follows:

29.5(8) Permit holders shall follow the American Dental Association's guidelines for the use of ~~conscious sedation, deep~~ sedation and general anesthesia for dentists, except as otherwise specified in these rules.

ITEM 10. Adopt the following new subrule 29.5(9):

29.5(9) A dentist utilizing moderate sedation on pediatric or ASA category 3 or 4 patients must have completed an accredited residency program that includes formal training in anesthesia and clinical experience in managing pediatric or ASA category 3 or 4 patients. A dentist who does not meet the requirements of this subrule is prohibited from utilizing moderate sedation on pediatric or ASA category 3 or 4 patients.

ITEM 11. Amend rule 650—29.7(153) as follows:

650—29.7(153) Antianxiety premedication Minimal sedation.

29.7(1) ~~Antianxiety premedication is the prescription or administration of pharmacologic substances for the relief of anxiety and apprehension. The term "minimal sedation" also means "antianxiety premedication" or "anxiolysis."~~

~~**29.7(2)** The regulation and monitoring of this modality of treatment are the responsibility of the ordering dentist.~~

~~**29.7(3)**~~ **29.7(2)** If a dentist intends to achieve a state of ~~conscious~~ moderate sedation from the administration of ~~an antianxiety premedication~~ minimal sedation, the rules for ~~conscious~~ moderate sedation shall apply.

~~**29.7(4)**~~ **29.7(3)** A dentist utilizing ~~antianxiety premedication~~ minimal sedation and the dentist's auxiliary personnel shall be trained in and capable of administering basic life support.

29.7(4) Minimal sedation for adults.

a. Minimal sedation for adults is limited to a dentist's prescribing or administering a single enteral drug that is no more than 1.0 times the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. A single supplemental dose of the same drug may be administered,

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provided the supplemental dose is no more than one-half of the initial dose and the dentist does not administer the supplemental dose until the dentist has determined the clinical half-life of the initial dose has passed.

b. The total aggregate dose shall not exceed 1.5 times the MRD on the day of treatment.

c. For adult patients, a dentist may also utilize nitrous oxide inhalation analgesia in combination with a single enteral drug.

d. Combining two or more enteral drugs, excluding nitrous oxide, prescribing or administering drugs that are not recommended for unmonitored home use, or administering any intravenous drug constitutes moderate sedation and the dentist must hold a moderate sedation permit.

29.7(5) Minimal sedation for ASA category 3 or 4 patients or pediatric patients.

a. Minimal sedation for ASA category 3 or 4 patients or pediatric patients is limited to a dentist's prescribing or administering a single dose of a single enteral drug that can be prescribed for unmonitored home use and that is no more than 1.0 times the maximum recommended dose.

b. A dentist may administer nitrous oxide inhalation analgesia for minimal sedation of ASA category 3 or 4 patients or pediatric patients provided the concentration does not exceed 50 percent and is not used in combination with any other drug.

c. The use of one or more enteral drugs in combination with nitrous oxide, the use of more than a single enteral drug, or the administration of any intravenous drug in ASA category 3 or 4 patients or pediatric patients constitutes moderate sedation and the dentist must hold a moderate sedation permit.

29.7(6) A dentist providing minimal sedation shall not bill for non-IV conscious or moderate sedation.

29.7(7) A dentist shall ensure that any advertisements related to the availability of antianxiety premedication, anxiolysis, or minimal sedation clearly reflect the level of sedation provided and are not misleading.

ITEM 12. Amend rule 650—29.9(153), catchwords, as follows:

650—29.9(153) Reporting of adverse occurrences related to ~~deep sedation/general anesthesia, conscious sedation, nitrous oxide inhalation analgesia, and antianxiety premedication.~~

ITEM 13. Amend subrules 29.9(1) and 29.9(2) as follows:

29.9(1) Reporting. All licensed dentists in the practice of dentistry in this state must submit a report within a period of 30 days to the board of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during, or as a result of, antianxiety premedication, nitrous oxide inhalation analgesia, ~~conscious sedation or deep sedation/general anesthesia related thereto~~ sedation. The report shall include responses to at least the following:

a. to f. No change.

29.9(2) Failure to report. Failure to comply with subrule 29.9(1), when the occurrence is related to the use of ~~deep sedation/general anesthesia, conscious sedation, nitrous oxide inhalation analgesia, or antianxiety premedication,~~ may result in the dentist's loss of authorization to administer ~~deep sedation/general anesthesia, conscious sedation, nitrous oxide inhalation analgesia, or antianxiety premedication or in other sanctions~~ any other sanction provided by law.

Felony legislation

New 153.17(4)

Those who engage in the practice of dentistry without a license or who violate the provisions of sections 147.84 or 147.85 shall upon conviction be guilty of a class "D" felony.