

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §108.2, pertaining to fair dealing. The amendment pertains to the sale, design, and manufacture of orthodontic devices as set out in House Bill 4070 of the 89th Texas Legislature, Regular Session (2025), and codified at Section 431.024 of the Health and Safety Code. The bill seeks to protect patients from unsafe practices by establishing requirements for a person selling an orthodontic device or providing a service related to the design or manufacture of such a device to patients in Texas. The amendment also includes grammatical changes.

FISCAL NOTE: Casey Nichols, Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: Casey Nichols has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: Casey Nichols has also determined that the proposed rule does not affect local economies and employment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: Casey Nichols has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this proposed rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule creates a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

Comments on the proposed rule may be submitted to Casey Nichols, Executive Director, 1801 Congress Avenue, Suite 8.600, Austin, Texas 78701, by fax to (512) 649-2482, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register*. To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety; and Texas Health and Safety Code §431.024.

This proposed rule implements Section 431.024 of the Health and Safety Code as set out in House Bill 4070 of the 89th Texas Legislature, Regular Session (2025).

Legal counsel for the Board has reviewed the proposed rule and has found it to be within the Board's authority to adopt.

<rule>

§108.2. Fair Dealing.

(a) The dentist has special knowledge which a dental patient does not have; therefore, to avoid misunderstanding, the dentist shall advise a patient, before beginning treatment, of the proposed treatment, and any reasonable alternatives, in a manner that allows the patient to become involved in treatment decisions.

(b) Such advice shall include, at a minimum:

- (1) the nature and extent of the treatment needed by such patient;
- (2) the approximate time required to perform the recommended dental treatment and services;
- (3) the terms and conditions of the payment of his or her fee; and
- (4) any further or additional service or returns by the patient or adjustments, repair, or consultation and the time within which this shall occur.

(c) On the written request of a patient, the licensed dentist shall provide, in plain language, a written explanation of the charges for professional services previously made on a bill or statement for the patient. For this rule, the term "plain language" means language that avoids terms of art or usage of words having specialized meaning in a context typically understood only by health care professionals.

(d) Neither the dentist nor his or her employee(s) shall mislead dental patients as to the gravity or lack thereof of such patient's dental needs.

(e) A dentist shall not flagrantly or persistently overcharge, overdiagnose, or overtreat a patient. For this rule the meaning of the term "overcharge" includes, but is not limited to, collecting or attempting to collect a fee without reasonable justification for any element of dental services provided to a patient that is in excess of the fee the dentist ordinarily charges to others for the same service.

(f) In accordance with Section 431.024(f) of the Health and Safety Code, a dentist may not require a patient to agree to use a particular type of orthodontic device as a condition of performing an examination or review.

(g) [(f)] A dentist may not employ an auxiliary to perform any dental procedure which he or she cannot personally perform.