

Title 22: Examining Boards
Part 5: State Board of Dental Examiners
Chapter 10: Sedation and Anesthesia
Rule §110.18: Inspection of Sedation/Anesthesia Providers
Issue: 9/21/2018
Action: Final/Adopted

(a) The Board may conduct inspections to enforce Chapter 110 of the Board's rules, including inspections of a licensee, an office site, equipment, a facility, and any document required by Board rules. The inspections shall not identify violations outside the applicable sedation/anesthesia rules in effect for each permit level at the time of the inspection. The Board may employ Board staff or contract with another state agency or qualified person to conduct these inspections.

(b) Unless it would jeopardize an ongoing investigation, the Board shall provide at least ten business days' notice before conducting an on-site inspection under this section.

(c) Regardless of issue date, all level 2, 3 and 4 permit holders will be subject to at least one inspection prior to September 1, 2022. All level 2, 3, and 4 permit holders who received their initial permit after March 1, 2018, must be inspected within a year of receiving their permit.

(d) Compliance/Tier 1 inspections: The initial inspection will be a compliance inspection, in which a Board staff member will evaluate the permit holder's compliance with the Board's rules through completing a checklist and auditing one sedation/anesthesia record of the inspector's choosing that was completed prior to the date the Board notified the licensee of the inspection. The record shall be of treatment for the highest level of sedation/anesthesia permit held by the permit holder, and will apply the Board rules in effect at the time the patient was treated. The inspector shall be a member of Board staff and will receive training in recognizing the checklist

requirements and in evaluating sedation/anesthesia records. If the inspection results in the identification of a violation of the Board's rules found in Chapter 110, the permit holder must immediately cease providing sedation/anesthesia services until satisfactory proof is provided to Board staff that the violation has been corrected. Board staff shall provide contact information for both an inspector and supervisor of the inspector so that the permit holder may provide proof of remediation as soon as possible. Any violation of this cease and desist requirement shall represent grounds for disciplinary action. A failure by Board staff to respond within two business days to permit holder's satisfactory proof of remediation shall represent an affirmative defense to disciplinary action. Additionally, the permit holder shall pay an amount of not more than five hundred dollars (\$500.00) as necessary to cover the expenses of additional review and inspection by Board staff as a result of any violations identified during the initial inspection. The inspection checklist can be previewed here:

Figure: 22 TAC §110.18(d)

(e) Risk-based/Tier 2 inspections: A permit holder with a violation on a compliance/tier 1 inspection that is not remedied within thirty (30) days shall be referred to a risk-based inspection. Additionally, a Board member sitting on an informal settlement conference panel pursuant to Tex. Occ. Code §263.0072 may refer a permit holder to a risk-based inspection. The risk-based inspection will include the same factors as a compliance inspection, as well as a competency evaluation consisting of an audit of five sedation/anesthesia records of the inspector's choosing. The records shall be of treatment records for the highest level of sedation/anesthesia permit held by the permit holder, and shall apply the Board rules in effect at the time the patient was treated. Review of the five sedation/anesthesia records shall be performed by members of the Board's dental review panel process pursuant to Tex. Occ. Code §255.0065 who currently hold the same or higher level of sedation/anesthesia permit. The dental review panel reviewer shall prepare a report and note any violations or concerns with the permit holder's competency, and the report shall be reviewed following the procedure described in Tex. Occ. Code §255.0067. Any violation found during the risk-based inspection may result in the filing of a complaint and complaint resolution pursuant to the Board's informal disposition process in 22 Texas Administrative Code §107.63. The Executive Committee of the Board may order the emergency temporary suspension of a permit if the risk-based inspection reveals evidence of a clear, imminent, or continuing threat to the health or well-being of the public.

(f) Inactive status: A permit holder may forego an inspection if they submit a notarized, Board-issued affidavit that they will not administer levels 2, 3, or 4 sedation/anesthesia until first notifying the Board in writing that they wish to resume those activities. A permit holder must complete a compliance/Tier 1 inspection prior to resuming the administration of sedation/anesthesia at the inactive permit level. The permit holder must comply with continuing education and any other permit requirements during this time. During the period of inactive status, a permit holder may not delegate any inactive-status level of sedation/anesthesia to a certified registered nurse anesthetist or any other dental or medical professional except a dentist with a permit issued by the Board for the procedure being performed or a physician anesthesiologist licensed by the Texas Medical Board. If the permit holder is later found to have administered or delegated the administration of level 2, 3, or 4 sedation/anesthesia while in inactive status, the Board shall pursue revocation of their dental license.

(g) Exempt-location status: The Board shall not inspect a level 2, 3, or 4 permit holder who provides those services exclusively in a state-licensed hospital or state-licensed ambulatory surgery center. The permit holder must attest to that fact with a notarized, Board-issued affidavit and may not provide those services at a non-exempt location until first notifying the Board in writing and successfully completing a compliance/Tier 1 inspection. During the period of exempt-location status, a permit holder may not delegate the administration of any level of sedation/anesthesia to a dental or medical professional outside a state-licensed hospital or state-licensed ambulatory surgery center. If they are later found to have administered or delegated the administration of level 2, 3, or 4 sedation/anesthesia in a non-exempt location, the Board shall pursue revocation of their dental license.

(h) Group practice inspections. The Board shall permit group practices to request an inspection of all permit holders in a single location during one inspection visit. Permit holders shall inform Board staff upon receiving notice of an inspection their wish to receive a combined group practice inspection, and Board staff shall accommodate this request as feasible while ensuring a group inspection shall not jeopardize an ongoing investigation. Board staff shall ensure that group practice inspection requests do not create unnecessary delays to the completion of the inspection process and may decline the request as needed to ensure timely completion of all scheduled inspections.