Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009

HOUSE BILL NO. 1176
(Human Services Committee)
(At the request of the State Board of Dental Examiners)

AN ACT to create and enact five new sections to chapter 43-20, a new subsection to section 43-28-02, three new sections to chapter 43-28, and section 43-28-18.2 of the North Dakota Century Code, relating to licensing of dental assistants and hygienists and dentists; to amend and reenact sections 43-20-03, 43-20-05, 43-20-06, 43-20-08, 43-20-09, 43-20-10, 43-20-12.2, 43-20-13.1, and 43-28-01, subsection 2 of section 43-28-06, sections 43-28-10, 43-28-11, 43-28-13, 43-28-15, 43-28-16, 43-28-17, and 43-28-18, subsection 1 of section 43-28-18.1, and sections 43-28-24 and 43-28-25 of the North Dakota Century Code, relating to the practice and licensing of dental assistants and hygienists and dentists; to repeal sections 43-20-01, 43-20-02, 43-20-07, 43-20-12.1, 43-28-12, 43-28-12.1, 43-28-12.2, 43-28-14, 43-28-19, 43-28-20, 43-28-21, and 43-28-22 of the North Dakota Century Code, relating to the practice and licensing of dental hygienists and dentists; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter and chapter 43-28, unless the context otherwise requires:

1. "Dental assistant" means an individual who provides dental assistance under the supervision of a dentist and within the scope of practice established by rule and section 43-20-13.

2. "Dental hygienist" means an individual licensed to practice dental hygiene.

3. "Qualified dental assistant" means an individual registered as a qualified dental assistant to provide dental assistance as established by rule.

4. "Registered dental assistant" means an individual registered as a registered dental assistant to provide dental assistance as established by rule.

SECTION 2. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Dental hygienist licensing. An individual seeking to practice dental hygiene in this state shall apply to the executive director of the board on forms prescribed by the board. The application must be verified under oath to the effect that all of the statements contained in the application are true to the applicant's own knowledge, and must be received by the executive director of the board at least thirty days before the board meeting at which the application is considered. The applicant shall enclose with the application a recent autographed picture of the applicant and an application fee established by the board by rule. The board may grant a license to practice dental hygiene to an applicant who has met all of the following requirements:

1. The applicant is a graduate of a dental hygiene school accredited by the American dental association's commission on dental accreditation.

2. The applicant has passed an examination administered by the joint commission on national dental examinations.

3. The applicant has passed a clinical competency examination administered by a regional dental testing service or a licensing jurisdiction approved by the board by rule.

4. The applicant has passed, within one year of making application, a written examination on the laws and rules governing the practice of dentistry in this state.

5. Grounds for denial of the application under section 43-20-05 do not exist.

6. The applicant has met any requirement for licensure established by the board by rule.

SECTION 3. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Licensure by credential review. Applications for licensure to practice dental hygiene by credential review must be made on forms provided by the board and submitted thirty days before the examination administered by the board. The board may issue a license and certificate of registration to practice dental hygiene to an applicant who meets all of the following requirements:

1. The applicant, for at least three years immediately preceding application, has been licensed in good standing and has been actively practicing dental hygiene in another jurisdiction where the requirements are at least substantially equivalent to those of this state.

2. Grounds for denial of the application under section 43-20-05 do not exist.

3. The applicant has paid to the board the fee established by the board by rule.

4. The applicant has delivered to the board a certificate from the examining or licensing board of every jurisdiction in which the individual is licensed to practice, certifying that the individual is a licensed and registered dental hygienist in good standing in that jurisdiction.

5. The applicant has passed a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.

6. The applicant has met any requirement for licensure established by the board by rule.

SECTION 4. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

License renewal - Audit.

1. Dental hygienist licenses expire on December thirty-first of every odd-numbered year.

2. Licenses may be renewed by December thirty-first of the odd-numbered year by submitting a renewal application, a renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the dental hygienist's license is not revoked or grounds for denial under section 43-20-05 do not exist.

3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the odd-numbered year, the license expires and the dental hygienist may not practice dental hygiene.

4. Within sixty days after December thirty-first of the odd-numbered year, an expired license may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.

5. If the renewal application, renewal fee, proof of completion of continuing education, and late fee are not received within sixty days after December thirty-first of the odd-numbered

year, the license may not be renewed, and the dental hygienist must apply for and meet the requirements for licensure to be granted a license.

6. The board may extend the renewal deadlines for a dental hygienist providing proof of medical or other hardship rendering the dental hygienist unable to meet the deadline.

7. The board may select a random sample of the license renewal applications for audit of continuing education credits. Each licensee shall maintain certificates or records of continuing education activities. Upon receiving notice of an audit from the board, a licensee shall provide satisfactory documentation of attendance at, or participation in, the continuing education activities listed on the licensee's continuing education form. Failure to comply with the audit is grounds for nonrenewal of or disciplinary action against the license.

SECTION 5. AMENDMENT. Section 43-20-03 of the North Dakota Century Code is amended and reenacted as follows:

43-20-03. Dental hygienists - Practice by. As used in this chapter, "dental hygiene" and the practice thereof means the removal of accumulated matter from the natural and restored surfaces of teeth and from restorations in the human mouth, the polishing of such surfaces, and the topical application of drugs to the surface tissues of the mouth and to the surface of teeth if such acts are performed under the direct, modified general, or general supervision of a licensed dentist. General supervision may be ~~utilized only~~ used if the ~~following conditions are met:~~

~~1. The patient is a patient of record who has been examined by the dentist within the past twelve months;~~

~~2. The patient is being treated at the primary or satellite practice location of the supervising dentist, a public health setting, a hospital, a long-term care facility, or in an institutional type setting;~~

~~3. A current treatment plan is in place; and~~

~~4. Any delegated procedure is preauthorized by the supervising dentist.~~ procedures are authorized in advance by the supervising dentist, except procedures which may only be used under direct supervision as established by the board by rule.

Only a person licensed as a dental hygienist may be referred to as a dental hygienist. Additional tasks permitted to be performed by licensed dental hygienists may be outlined by the board of dental examiners by appropriate rules.

SECTION 6. AMENDMENT. Section 43-20-05 of the North Dakota Century Code is amended and reenacted as follows:

43-20-05. Licenses and registrations - ~~Suspension, revocation, refusal to renew, and reinstatements~~ Denial and discipline. The board ~~of dental examiners~~ may ~~suspend or revoke, with power to reinstate, or refuse to renew~~ deny an application for or take disciplinary action against a dental hygienist's license or a registered or qualified dental assistant's registration, upon any one or more of the following grounds:

1. Gross immorality or unprofessional conduct, which includes knowingly failing to comply with commonly accepted national infection control guidelines and standards.

2. Failure, neglect, or refusal to renew a license biennially.

3. Nonobservance or violation of this chapter, or of any board rule adopted under this chapter.

4. Gross ~~inefficiency~~ incompetency in the practice of dental hygiene. ~~The board may suspend or revoke, with power to reinstate, the license of any licensed dentist who permits any dental hygienist, operating under the dentist's supervision, to perform any operation other than that permitted under this chapter, or who knowingly permits any person who is not a licensed dental hygienist to perform any operations or services as such under that dentist's supervision.~~

5. Conviction of an offense determined by the board to have a direct bearing on the individual's ability to serve the public as a dental hygienist or a registered or qualified dental assistant, or the board determines, following conviction for any offense, that the individual is not sufficiently rehabilitated under section 12.1-33-02.1.

6. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.

7. Abused, is dependent on, or addicted to the use of alcohol or drugs.

8. Engaged in fraud or deceit in obtaining a dental hygiene license or dental assisting registration.

9. Disclosed confidential information.

10. Received a fee for the referral of patients to a dentist or dental hygienist.

11. Used unethical measures to draw dental patronage from the practice of another licensee.

12. Fraudulently prescribed or dispensed drugs or medications.

13. Knowingly submitted misleading, deceptive, untrue, or fraudulent information on a claim form, bill, or statement to a third party.

14. Advised or directed patients to dental laboratories or dental laboratory technicians for a dental service or advised or directed patients to deal directly with laboratories or dental laboratory technicians.

15. Violated the code of ethics adopted by the board by rule.

16. Had a registration or license suspended, revoked, or disciplined in another jurisdiction.

17. Failed to report to the board in writing within sixty days a violation of this chapter or chapter 43-28.

18. Practiced outside the scope of practice established by the board by rules and this chapter.

The procedure to be followed ~~in the case of a suspension, revocation, or reinstatement must~~ for taking disciplinary action must be the same as ~~that prescribed by law in the case of suspension, revocation, or reinstatement of a licensed dentist~~ the procedure required by section 43-28-18.2.

SECTION 7. AMENDMENT. Section 43-20-06 of the North Dakota Century Code is amended and reenacted as follows:

43-20-06. ~~License - Cancellation -~~ Inactive status. ~~At least thirty days before January first of each even-numbered year, the board of dental examiners shall send a renewal notice that includes a form for continuing education reporting and an application for license renewal to each licensee at the licensee's last place of residence as noted in the records of the board. If a licensee fails to pay the biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default, the board may cancel the license without a hearing. The board shall record the cancellation and notify the dental hygienist of the cancellation. The payment of the biennial fee within that thirty-day period, with an additional sum determined by the board, excuses~~

~~the default.~~ Upon payment of a fee determined by the board, a ~~licensee~~ dental hygienist may request to have the ~~licensee's~~ dental hygienist's license placed on inactive status ~~upon expiration of the license~~. While on inactive status, the ~~individual~~ dental hygienist may not engage in the practice of dental hygiene in the state until the ~~individual~~ dental hygienist submits a renewal application, pays the renewal fee, and meets any additional requirements established by rule ~~of the board~~.

SECTION 8. AMENDMENT. Section 43-20-08 of the North Dakota Century Code is amended and reenacted as follows:

43-20-08. ~~Unlawful to employ unlicensed hygienist -~~ Unlawful to practice without license or registration. ~~No~~ A person may not practice dental hygiene or practice as a registered or qualified dental assistant in the state ~~of North Dakota~~, without first obtaining from the ~~North Dakota state~~ board ~~of dental examiners~~ a license ~~authorizing such person to practice dental hygiene in this state, and it is unlawful for any person to employ an unlicensed dental hygienist for the performance of any operations or services as such, or permit such unlicensed person to perform any operations or services as such, under that person's supervision~~ or registration. A person may not practice as a dental assistant outside the scope of practice established by the board by rule and section 43-20-13.

SECTION 9. AMENDMENT. Section 43-20-09 of the North Dakota Century Code is amended and reenacted as follows:

43-20-09. Violation ~~of chapter~~ a misdemeanor. ~~Any~~ A person violating ~~any provision of this chapter~~ section 43-20-08 is guilty of a class B misdemeanor.

SECTION 10. AMENDMENT. Section 43-20-10 of the North Dakota Century Code is amended and reenacted as follows:

43-20-10. State board of dental examiners - Authority - Duty. The ~~North Dakota state~~ board ~~of dental examiners~~ has the power and it is its duty to enforce the provisions of this chapter. The board has the power to make such rules and regulations, not inconsistent with this chapter, as may, in its judgment, be necessary for the proper enforcement of this chapter, and the examination of dental hygienists and registered and qualified dental assistants for their conduct and practice. For purposes of this chapter, the board has the powers set forth in section 43-28-06.

SECTION 11. AMENDMENT. Section 43-20-12.2 of the North Dakota Century Code is amended and reenacted as follows:

43-20-12.2. Notice to board of change of address. A licensed dental hygienist, registered dental assistant, or qualified dental assistant shall notify the executive director of the board of dental examiners of any new address within thirty days of the address change. The notice required under this section must be given by certified mail, return receipt requested. A licensed dental hygienist, registered dental assistant, or qualified dental assistant may not practice in this state for more than thirty days after the change of address without complying with this section.

SECTION 12. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Registered and qualified dental assistant registration. To be registered as a registered or qualified dental assistant, an individual shall apply and meet the requirements established by the board by rule.

SECTION 13. AMENDMENT. Section 43-20-13.1 of the North Dakota Century Code is amended and reenacted as follows:

43-20-13.1. ~~Continuing education requirement for registered dental assistants~~ Registration renewal.

1. ~~At least thirty days before January first of each year the board of dental examiners shall send a renewal notice that includes an affidavit for continuing education reporting and an~~

~~application for registration renewal to each registrant at the registrant's last place of residence as noted in the records of the board. If a registrant fails to pay the fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default, the board may cancel the registration without a hearing. The board shall record the cancellation and notify the dental assistant of the cancellation. Each individual registered as a dental assistant shall provide the board evidence satisfactory to the board that the individual has attended or participated in the amount of continuing education as is required by the board. The board may establish a minimum continuing education requirement which may not be less than eight hours during a twelve-month registration. The board may accept for compliance with the continuing education requirement any of the following activities which may contribute directly to the dental education of the registrant:~~

~~a. Proof of attendance at a lecture, study club, college postgraduate course, or scientific session of a convention.~~

~~b. Proof of research, graduate study, teaching, or service as a clinician.~~

~~c. Proof of any other continuing education approved by the board.~~

~~2. The board may select a random sample of the registrants for audit of continuing education credits. Each registrant shall maintain certificates or records of continuing education credit. The board shall notify a registered dental assistant selected for a continuing education audit. If a registered dental assistant is selected for a continuing education audit, the dental assistant shall provide satisfactory documentation of attendance at or participation in the continuing education activities included on the registrant's sworn affidavit. The failure to comply with an audit may be grounds for nonrenewal of the registration. A dental assistant who fails to comply with the continuing education requirements may be reexamined by the board to determine the individual's competency to continue engaging in dental assisting activities. If the board determines that the dental assistant is not qualified, the board shall suspend the registration until the individual provides acceptable evidence to the board of the individual's competency to practice as a dental assistant.~~ All registrations of registered and qualified dental assistants expire on December thirty-first of every even-numbered year.

2. A registration may be renewed by submitting a renewal application, renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the registration is not revoked or grounds for denial under section 43-20-05 do not exist.

3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the even-numbered year, the registration expires and the registered or qualified dental assistant may not practice as a registered or qualified dental assistant.

4. Within sixty days after December thirty-first of the even-numbered year, an expired registration may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.

5. If the renewal application, renewal fee, proof of completion of continuing education, and late fee are not received within sixty days after December thirty-first of the even-numbered year, the registration may not be renewed, and the registered or qualified dental assistant must apply for and meet the requirements for registration to be granted registration.

6. The board may extend the renewal deadline for a registered or qualified dental assistant providing proof of medical or other hardship rendering the registered or qualified dental assistant unable to meet the deadline.

SECTION 14. AMENDMENT. Section 43-28-01 of the North Dakota Century Code is amended and reenacted as follows:

43-28-01. Definitions. As used in this chapter and chapter 43-20, unless the context otherwise requires:

1. "Accredited dental school" means a dental school, college, or university accredited by the commission on dental accreditation of the American dental association or its successor.

2. "Advertising" means to invite the attention of or give notice to the public, by any means, medium, or manner whatsoever of any fact, information, or data pertaining to or being conducive of the practice of dentistry in this state.

~~2.~~ 3. "Board" means the state board of dental examiners.

~~3.~~ 4. "Certificate of registration" means a written statement of the board declaring that a licensed dentist has paid the biennial registration fee required by this chapter.

~~4.~~ 5. "Dentist" means an individual who has a license to practice in this state and who holds a valid biennial certificate of registration.

~~5.~~ 6. "License" means the right, authority, or permission granted by the board to practice dentistry in this state.

~~6.~~ 7. ~~For the purposes of this chapter, the term~~ "~~practice~~ Practice of dentistry" ~~includes~~ means examination, diagnosis, treatment, repair, administration of local or general anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency, deformity, discoloration, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae, and soft tissues, and the diagnosis, surgical, and adjunctive treatment of the diseases, injuries, and defects of the upper and lower human jaw and associated structures.

SECTION 15. A new subsection to section 43-28-02 of the North Dakota Century Code is created and enacted as follows:

To registered dental hygienists, registered dental assistants, qualified dental assistants, and dental assistants practicing within the scope of practice and under supervision as required by chapter 43-20 and by rule.

SECTION 16. AMENDMENT. Subsection 2 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

2. Examine applicants for licenses or registration to practice dentistry ~~or~~, dental hygiene, or dental assisting in this state, either by direct examination or by accepting the results of national or regional dental testing services in which the board participates or which the board recognizes.

SECTION 17. AMENDMENT. Section 43-28-10 of the North Dakota Century Code is amended and reenacted as follows:

43-28-10. License and certificate required - Scope of practice. A person may not practice dentistry in this state unless that person is a dentist. ~~A dentist shall practice within the scope of that dentist's education, advanced training as recognized by the board, and any specialty practice recognized by the American dental association or other professional entity recognized by the board.~~

SECTION 18. AMENDMENT. Section 43-28-11 of the North Dakota Century Code is amended and reenacted as follows:

43-28-11. ~~Examination required -~~ Application ~~- Qualifications~~ - Fees. An individual seeking to practice dentistry in this state shall apply to the executive director of the board on forms prescribed

by the board ~~and shall submit to an examination by the board~~. The application must be verified under oath to the effect that all of the statements contained in the application are true of the applicant's own knowledge, and must be received by the executive director of the board at least thirty days before the ~~date of the examination~~ board meeting at which it is considered. The applicant shall enclose with the application a recent autographed picture of the applicant and an application fee as determined by the board by rule. ~~Additional costs of regional or other states' examinations as set out in section 43-28-12.1 and chargeable under section 43-28-05 as board member compensation may be assessed against the applicant or applicants. The applicant shall show proof that the applicant:~~

~~1. Is a graduate of a dental college recognized by the board.~~

~~2. Is of good moral character.~~

SECTION 19. A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

Requirements for licensure. The board may grant a license to practice dentistry to an applicant who has met all of the following requirements:

1. The applicant has a doctorate of dental surgery or doctorate of dental medicine degree from an accredited dental school.

2. The applicant has passed the examination administered by the joint commission on national dental examinations.

3. The applicant has passed a clinical competency examination administered by a regional dental testing service approved by the board by rule.

4. The applicant has passed, within one year of making application, a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.

5. Grounds for denial of the application under section 43-28-18 do not exist.

6. The applicant has met any requirement for licensure established by the board by rule.

SECTION 20. A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

License renewals.

1. Licenses expire on December thirty-first of every odd-numbered year.

2. Licenses may be renewed by December thirty-first of the odd-numbered year by submitting a renewal application, a renewal fee established by the board by rule, and proof of completion of the continuing education requirements established by the board by rule, provided the dentist's license is not revoked or grounds for denial under section 43-28-18 do not exist.

3. If the renewal application, renewal fee, and proof of completion of continuing education are not received by December thirty-first of the odd-numbered year, the license expires and the dentist may not practice dentistry.

4. Within sixty days after December thirty-first of the odd-numbered year, an expired license may be renewed by submitting the renewal application, renewal fee, proof of completion of continuing education, and a late fee established by the board by rule.

5. If the renewal application, renewal fee, proof of completion of continuing education, and late fee are not received within sixty days after December thirty-first of the odd-numbered

year, the license may not be renewed, and the dentist must apply for and meet the requirements for licensure to be granted a license.

6. The board may extend the renewal deadlines for a dentist providing proof of medical or other hardship rendering the dentist unable to meet the deadline.

SECTION 21. AMENDMENT. Section 43-28-13 of the North Dakota Century Code is amended and reenacted as follows:

43-28-13. ~~License - When certificate issued -~~ When reexamination required. ~~If an applicant has the necessary qualifications and successfully passes the examination for a license to practice dentistry in this state, or an equivalent examination in another state as set out in section 43-28-12.1, the board may:~~

~~1. Issue to the applicant a license to practice dentistry in this state, which must be entered upon the records of the board.~~

~~2. Issue said licensed dentist a certificate of registration in the form prescribed by the board.~~ Any dentist ~~so licensed and registered,~~ who does not undertake the actual practice of dentistry ~~in this state~~ within five years from the date of the dentist's license and registration, shall, before engaging in the practice of dentistry in this state, notify the board of the intention in writing ~~so to do, whereupon the~~. The board, after a full investigation, may reexamine ~~said~~ the dentist as to the dentist's qualifications to practice dentistry in this state ~~should~~, if the board ~~deem~~ deems such reexamination necessary ~~and notify such dentist thereof~~. The failure of ~~such~~ the dentist to give the written notice to the board ~~required herein~~ before engaging in the practice of dentistry in this state ~~operates as a forfeiture of the dentist's license to practice dentistry~~ is grounds for disciplinary action.

SECTION 22. AMENDMENT. Section 43-28-15 of the North Dakota Century Code is amended and reenacted as follows:

43-28-15. Licensure by credential review. The board may issue a license and certificate of registration to practice dentistry in this state to ~~any individual who wishes to practice dentistry in North Dakota upon a practical examination, if the individual~~ an applicant who meets all of the following requirements:

1. ~~Has~~ The applicant, for at least five years immediately preceding application, has been licensed in good standing and has been actively practicing dentistry ~~for at least five years immediately preceding application to practice dentistry~~ in another ~~state~~ jurisdiction where the requirements are at least substantially equivalent to those of this state.

2. ~~Is a reputable, competent dentist of good moral character as evidenced by reference letters from three licensed dentists attesting to clinical competence, professional attainment, and good moral character~~ Grounds for denial of the application under section 43-28-18 do not exist.

3. ~~Pays~~ The applicant pays to the board the fee determined by the board by rule.

4. ~~Delivers~~ The applicant delivers to the board a certificate from the examining or licensing board of every ~~state~~ jurisdiction in which the individual is practicing or is licensed to practice, certifying that the individual is a licensed and registered dentist in good standing in that ~~state, and is of good moral character~~ jurisdiction.

5. ~~Demonstrates the individual's ability to the satisfaction of the board.~~

~~The requirement of a practical clinical examination to demonstrate competency may be waived by the board if the applicant meets the other requirements of this section.~~ The applicant passes a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.

6. The applicant meets any requirement for licensure established by the board by rule.

SECTION 23. AMENDMENT. Section 43-28-16 of the North Dakota Century Code is amended and reenacted as follows:

43-28-16. Certificate ~~- Term~~ - Displayed in place of business ~~- Renewal - Fee~~. ~~A certificate of registration issued under this chapter is valid for two years and must be renewed in the month prior to expiration. The fee for renewal of the certificate must be determined by the board and must be submitted at the time of renewal.~~ The holder of a license and certificate of registration shall display the license and certificate conspicuously in the holder's place of business. ~~The certificate of registration or the renewal of the certificate is prima facie evidence of the right of the holder to practice dentistry in this state during the time for which it is issued. All fees provided for in this chapter may be collected by the board in a civil action.~~

SECTION 24. AMENDMENT. Section 43-28-17 of the North Dakota Century Code is amended and reenacted as follows:

43-28-17. ~~Failure to pay biennial fee - Cancellation of license~~ - Inactive status. ~~If a licensed dentist fails to pay the biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default without proper payment, the board may cancel the license, notify the dentist of the cancellation, and record the cancellation. The payment of the biennial fee within the thirty-day period, with an additional sum determined by the board, will excuse the default.~~ Upon payment of a fee determined by the board, a ~~licensee~~ dentist may request to have the ~~licensee's~~ dentist's license placed on inactive status ~~upon expiration of the license~~. While on inactive status, the ~~licensee~~ dentist may not engage in the practice of dentistry in the state until the ~~individual submits a~~ dentist applies for reinstatement ~~application~~, pays a renewal fee, and meets any additional requirements established by rule ~~of the board~~.

SECTION 25. AMENDMENT. Section 43-28-18 of the North Dakota Century Code is amended and reenacted as follows:

43-28-18. Grounds for ~~revocation or suspension~~ denial of or disciplinary action against license and certificate. The board may ~~revoke, suspend, limit, or restrict the scope of~~ deny an application or take disciplinary action against the license and the certificate of registration of any applicant or dentist who has:

1. ~~Been guilty of~~ Engaged in dishonorable, unprofessional, or immoral conduct.

2. Been convicted of an offense determined by the board to have a direct bearing upon the individual's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that the individual is not sufficiently rehabilitated under section 12.1-33-02.1.

3. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.

4. ~~Been guilty of habitual intemperance~~ Abused, is dependent on, or addicted to the use of alcohol or drugs.

5. Employed or permitted an unlicensed individual to practice dentistry in the office under the dentist's control.

6. ~~Become~~ Been grossly negligent in the practice of ~~the profession~~ dentistry.

7. ~~Practiced~~ Engaged in fraud ~~and~~ or deceit in obtaining the license or in the practice of dentistry.

8. ~~Willfully betrayed~~ Disclosed confidential ~~relations~~ information.

9. Shared any professional fee with anyone or paid anyone for sending or referring patients to the dentist. However, this does not prohibit ~~licensed~~ dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a ~~licensed~~ dentist from employing any other ~~licensed~~ dentist or ~~licensed~~ dental hygienist.

10. Used any advertising of any character tending to mislead and deceive the public, including advertising the public could reasonably interpret as indicating the dentist is qualified to practice a dental specialty, if the practice of that dental specialty would be outside the scope of practice for which the dentist is qualified to practice.

11. Failed to ~~demonstrate~~ meet minimum standards of professional ~~competency in certain areas of clinical practice if the clinical deficiency represents a threat to the public but is not so severe as to be termed gross negligence~~ competence. ~~When those deficiencies are noted, the license and registration may be suspended or restricted in scope until the dentist obtains additional professional training that is acceptable to the board and has demonstrated sufficient improvement in clinical competency to justify reissuance of an unrestricted license and registration.~~

12. Prescribed, administered, or dispensed medications for reasons or conditions outside the scope of dental practice.

13. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.

14. Directed ~~auxiliary personnel~~ others to perform acts or provide dental services for which ~~the personnel are~~ they were not licensed or qualified or ~~are~~ were prohibited by law or rule from performing or providing.

15. ~~Willfully engaged in~~ Submitted fraudulent ~~submission of~~ insurance claims.

16. Made any false or untrue statements in ~~the~~ an application for an examination to obtain a license to practice dentistry.

17. Made any false representations that the individual is the holder of a license or certificate of registration to practice dentistry.

18. Made any false claims that the individual is a graduate of a dental college or the holder of any diploma or degree from a dental college.

19. Failed to comply with commonly accepted national infection control guidelines and standards.

20. Abandoned the dentist's practice ~~as defined by~~ in violation of rules adopted by the board.

21. Failed to report to the board as required under section 43-28-18.1.

22. Failed to practice within the scope of that dentist's education or advanced training as recognized by the board, the American dental association, or other professional entity recognized by the board.

23. Failed to release copies of dental or medical records requested by a patient of record or violated section 23-12-14. Dental records may include any document, charting, study models, doctor's notations, billing information, insurance document or combination of documents that pertains to a patient's medical history, diagnosis, prognosis, or medical condition, which is generated and maintained in the process of the patient's dental health care treatment.

24. Advised or directed patients to dental laboratories or dental laboratory technicians for any dental service or advised or directed patients to deal directly with laboratories or dental

laboratory technicians without first having furnished the dental laboratory or dental laboratory technician a written prescription.

25. Worked or cooperated with dental laboratories that advertise for public patronage by delegating work to such laboratories in return for the referral of laboratory patrons for professional services.

26. Used the services of a person or entity not licensed to practice dentistry in this state, or constructed, altered, repaired, or duplicated a denture, plate, partial plate, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.

27. Violated the code of ethics adopted by the board by rule.

28. Violated this chapter or rules adopted by the board.

29. Had the applicant's or dentist's license suspended, revoked, or disciplined in another jurisdiction.

SECTION 26. AMENDMENT. Subsection 1 of section 43-28-18.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A dentist shall report to the board in writing within ~~ninety~~ sixty days of the event any illegal, unethical, or errant behavior or conduct of the dentist, including the following events, proceedings, or formal or informal actions:

   a. A dental malpractice judgment or malpractice settlement or a final judgment by a court in favor of any party and against the licensee.

   b. A final disposition regarding the surrender of a license, or adverse action taken against a license by a licensing agency in another state, territory, or country; a governmental agency; a law enforcement agency; or a court for an act or conduct that would constitute grounds for discipline under this chapter.

   c. A mortality or other incident occurring in an outpatient facility of the dentist which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a direct result of a dental procedure or related use of general anesthesia, deep sedation, conscious sedation with a parenteral drug, or enteral sedation.

SECTION 27. Section 43-28-18.2 of the North Dakota Century Code is created and enacted as follows:

43-28-18.2. Disciplinary procedure.

1. A person may file a written and signed complaint with the board alleging a dentist engaged in conduct identified as grounds for disciplinary action under section 43-28-18. The board may also initiate a complaint and investigation on the board's motion.

2. The board may direct a complaint committee to investigate a complaint and recommend whether the board should initiate a disciplinary action against the dentist.

3. The board or complaint committee shall notify the dentist of the complaint, and require a written response from the dentist. The board or complaint committee may examine and copy records, including patient records, examine witnesses, obtain expert opinions, require the dentist to be physically or mentally examined, or both, by qualified professionals selected by the board, and take any other action necessary to investigate the complaint. A request by the board or complaint committee is authorized to disclose patient information and records to the board or complaint committee. Patient information and records disclosed to the board or complaint committee are confidential. The dentist shall

cooperate with the board or the complaint committee in the investigation, including responding promptly and completely to a request or requirement.

4. The complaint, response, and any record received by the board in investigating the complaint are exempt records, as defined in section 44-04-17.1, until the board determines to proceed with a disciplinary action.

5. The board shall determine if there is a reasonable basis to believe the dentist engaged in conduct identified as grounds for disciplinary action under section 43-28-18. If the board determines there is not a reasonable basis to believe, the board shall notify the complainant and the dentist. If the board determines there is a reasonable basis to believe, the board shall proceed with a disciplinary action in accordance with chapter 28-32.

6. The board, at any time, may offer or accept a proposal for informal resolution of the complaint or disciplinary action.

7. The board may impose a fee on the dentist for all or part of the costs of an action resulting in discipline, including administrative costs, investigation costs, attorney's fees, witness fees, the cost of the office of administrative hearings' services, and court costs.

SECTION 28. A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

Temporary suspension - Appeal.

1. When, based on verified evidence, the board determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the dentist would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the dentist's license is required to reasonably protect the public from that risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension to the dentist, which must include a copy of the order and complaint, the date set for a full hearing, and a specific description of the nature of the evidence, including a list of all known witnesses and a description of any documents relied upon by the board in ordering the temporary suspension which, upon request, must be made available to the dentist.

2. An ex parte temporary suspension remains in effect until a final order is issued after a full hearing or appeal under this section or until the suspension is otherwise terminated by the board.

3. The board shall conduct a hearing on the merits of the allegations to determine what disciplinary action, if any, must be taken against the dentist who is the subject of the ex parte suspension. That hearing must be held not later than thirty days from the issuance of the ex parte temporary suspension order. The dentist is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.

4. The dentist may appeal the ex parte temporary suspension order before the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition.

5. A dental or medical record of a patient, or other document containing personal information relating to a patient, which is obtained by the board is confidential.

SECTION 29. AMENDMENT. Section 43-28-24 of the North Dakota Century Code is amended and reenacted as follows:

43-28-24. Duplicate license and certificate - When issued - Fee. If a license or certificate of registration to practice dentistry in this state is lost or destroyed, the board shall issue and deliver a duplicate license or certificate ~~upon satisfactory proof by the applicant of the loss or destruction. The fee for a duplicate license must be determined by the board and the fee for issuing a duplicate certificate of registration must be determined by the board~~ for a fee established by rule.

SECTION 30. AMENDMENT. Section 43-28-25 of the North Dakota Century Code is amended and reenacted as follows:

43-28-25. Unlawful acts - Penalty. It is a class A misdemeanor:

1. ~~For any dentist, dental hygienist, legal entity, or unlicensed person, who owns, operates, or controls any room or office where dental work of any kind is done or contracted for, to employ, keep, or retain any unregistered dentist, dental hygienist, dental assistant, or other unregistered persons to do any dental work whatsoever, except as otherwise provided by statute or rule.~~

2. ~~For any dentist to help or assist any unlicensed person to perform any act or operation that is defined as the practice of dentistry.~~

3. ~~For any dentist to advise or direct patients to dental laboratories or dental laboratory technicians for any dental service, or to advise or direct patients to deal directly with laboratories or dental laboratory technicians.~~

4. ~~For any dentist to work or cooperate with dental laboratories that advertise for public patronage by delegating work to such laboratories in return for the reference of laboratory patrons for professional services.~~

5. ~~For any dentist to use the services of any person or legal entity not licensed to practice dentistry in this state, to construct, alter, repair, or duplicate any denture, plate, partial plate, bridge, splint, or orthodontic or prosthetic appliance, without first furnishing such unlicensed person a written prescription on forms prescribed by the board which must contain:~~

   a. ~~The name and address of such unlicensed person;~~

   b. ~~The patient's name or number and, in the event such number is used, the name of the patient must be written upon the duplicate copy of such prescription retained by the dentist;~~

   c. ~~The date on which it was written;~~

   d. ~~A prescription of the work to be done, with diagram, if necessary;~~

   e. ~~A specification of the type and quality of materials to be used; and~~

   f. ~~The signature of the dentist and the number of the dentist's North Dakota license.~~

   ~~Such unlicensed person shall retain the original prescription and the dentist shall retain a duplicate copy thereof for inspection by the board or the board's agent for two years.~~

6. ~~For any dentist:~~

   a. ~~To use the service of any unlicensed persons without first having furnished the unlicensed person such prescription;~~

   b. ~~To fail to retain a duplicate copy thereof for two years; or~~

   c. ~~To refuse to allow the board or the board's agent to inspect such prescription during the two-year period of time.~~

~~7.~~ For any unlicensed person~~:~~

~~a. To perform any such service without first having obtained such prescription;~~

~~b. To fail to retain the original thereof for two years; or~~

~~c. To refuse to allow the board or the board's agent to inspect it during such two year period of time.~~

to construct, alter, repair, or duplicate any denture, partial denture, bridge, splint, or orthodontic or prosthetic appliance, except as provided by rule adopted by the board.

~~8.~~ 2. For any person:

a. To falsely claim or pretend to be a graduate from any dental college or the holder of any diploma or degree from such college;

b. To practice any fraud and deceit either in obtaining a license or a certificate of registration;

c. To falsely claim or pretend to have or hold a license or certificate of registration from the board to practice dentistry; or

d. To practice dentistry in this state without a license and certificate of registration.

~~9.~~ 3. For any person, except a North Dakota licensed practicing dentist, to own more than forty-nine percent of an office practice or business at which the practice of dentistry is performed. This provision does not apply to a board-approved medical clinic, hospital, or public health setting with which a dentist is associated; a board-approved nonprofit organization created to serve the dental needs of an underserved population; or the heir or personal representative of a deceased dentist. The board may inspect and approve a medical clinic, hospital, public health setting, or nonprofit organization at which the practice of dentistry is performed. The heir or personal representative may operate an office under the name of the deceased dentist for a period of not longer than two years from the date of the dentist's death.

The board may institute a civil action for an injunction prohibiting violations of this section without proof that anyone suffered actual damages.

SECTION 31. REPEAL. Sections 43-20-01, 43-20-02, 43-20-07, 43-20-12.1, 43-28-12, 43-28-12.1, 43-28-12.2, 43-28-14, 43-28-19, 43-28-20, 43-28-21, and 43-28-22 of the North Dakota Century Code are repealed.

SECTION 32. EFFECTIVE DATE. Section 13 of this Act becomes effective on March 1, 2010.

_____	_____
Speaker of the House	President of the Senate
_____	_____
Chief Clerk of the House	Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1176.

House Vote:	Yeas	93	Nays	0	Absent	1
Senate Vote:	Yeas	46	Nays	1	Absent	0

_____
Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

_____
Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

_____
Secretary of State