

Sixtieth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1313

Introduced by

Representatives Kasper, Dosch, Grande, Ruby

Senators Cook, Wardner

1 A BILL for an Act to create and enact a new subdivision to subsection 2 of section 12-60-24  
2 and two new sections to chapter 43-28 of the North Dakota Century Code, relating to criminal  
3 background checks for dentists and powers of the board of dental examiners; and to amend  
4 and reenact sections 43-20-12.2 and 43-20-13, subsection 1 of section 43-20-13.1, and  
5 sections 43-28-01, 43-28-02, 43-28-04, 43-28-05, 43-28-10, 43-28-11, 43-28-15, 43-28-17, and  
6 43-28-18 of the North Dakota Century Code, relating to the regulation of dentists and dental  
7 assistants.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota  
10 Century Code is created and enacted as follows:

11 The board of dental examiners for investigations of applicants or dentists  
12 under section 9 of this Act, except that criminal history record checks need  
13 not be made unless required by the board.

14 **SECTION 2. AMENDMENT.** Section 43-20-12.2 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **43-20-12.2. Notice to board of change of address.** A licensed dental hygienist shall  
17 notify the ~~secretary-treasurer~~ executive director of the board of dental examiners of any new  
18 address within thirty days of the address change. The notice required under this section must  
19 be given by certified mail, return receipt requested. A licensed dental hygienist may not  
20 practice in this state for more than thirty days after the change of address without complying  
21 with this section.

22 **SECTION 3. AMENDMENT.** Section 43-20-13 of the North Dakota Century Code is  
23 amended and reenacted as follows:

1           **43-20-13. Dental assistant - Scope of permitted practice.** A dental assistant is an  
2 auxiliary to the practice of dentistry. To the extent applicable and to the extent they are not  
3 inconsistent with this chapter, the requirements and rules adopted by the board of dental  
4 examiners under chapter 43-28 apply to the practice of dental assistants. A dentist may  
5 delegate to a dental assistant who is under that dentist's direct, indirect, or general supervision,  
6 procedures over which the dentist exercises full responsibility as provided by rules adopted by  
7 the board of dental examiners. ~~A dental assistant may perform any delegated procedure over~~  
8 ~~which the dentist exercises direct, indirect, or general supervision as permitted by rules~~  
9 ~~adopted by the board of dental examiners.~~

10           **SECTION 4. AMENDMENT.** Subsection 1 of section 43-20-13.1 of the North Dakota  
11 Century Code is amended and reenacted as follows:

- 12           1. At least thirty days before January first of each year the board of dental examiners  
13 shall send a renewal notice that includes an affidavit for continuing education  
14 reporting and an application for registration renewal to each registrant at the  
15 registrant's last place of residence as noted in the records of the board. If a  
16 ~~licensee~~ registrant fails to pay the fee for the renewal of the certificate of  
17 registration on or before the due date of the payment, after thirty days' written  
18 notice of the default, the board may cancel the ~~license~~ registration without a  
19 hearing. The board shall record the cancellation and notify the dental assistant of  
20 the cancellation. Each individual registered as a dental assistant shall provide the  
21 board evidence satisfactory to the board that the individual has attended or  
22 participated in the amount of continuing education as is required by the board.  
23 The board may establish a minimum continuing education requirement which may  
24 not be less than eight hours during a twelve-month registration. The board may  
25 accept for compliance with the continuing education requirement any of the  
26 following activities which may contribute directly to the dental education of the  
27 registrant:
- 28           a. Proof of attendance at a lecture, study club, college postgraduate course, or
  - 29           scientific session of a convention.
  - 30           b. Proof of research, graduate study, teaching, or service as a clinician.
  - 31           c. Proof of any other continuing education approved by the board.

1           **SECTION 5. AMENDMENT.** Section 43-28-01 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **43-28-01. Definitions.** As used in this chapter, unless the context otherwise requires:

- 4           1. "Advertising" means to invite the attention of or give notice to the public, by any  
5           means, medium, or manner whatsoever of any fact, information, or data pertaining  
6           to or being conducive of the practice of dentistry in this state.
- 7           2. ~~The "board"~~ "Board" means the state board of dental examiners.
- 8           3. "Certificate of registration" means a written statement of the board declaring that a  
9           licensed dentist has paid the biennial registration fee required by this chapter.
- 10          4. ~~"Legal entity" includes foreign and domestic corporations, foreign and domestic~~  
11          ~~limited liability companies, partnerships, trade or firm names and public and private~~  
12          ~~institutions~~ "Dentist" means an individual who has a license to practice in this state  
13          and who holds a valid biennial certificate of registration.
- 14          5. "License" means the right, authority, or permission granted by the ~~state board of~~  
15          ~~dental examiners~~ to practice dentistry in this state.
- 16          6. For the purposes of this chapter, the term "practice of dentistry" includes  
17          examination, diagnosis, treatment, repair, administration of local or general  
18          anesthetics, prescriptions, or surgery of or for any disease, disorder, deficiency,  
19          deformity, condition, lesion, injury, or pain of the human oral cavity, teeth, gingivae,  
20          and soft tissues, and the diagnosis, surgical, and adjunctive treatment of the  
21          diseases, injuries, and defects of the upper and lower human jaw and associated  
22          structures.

23           **SECTION 6. AMENDMENT.** Section 43-28-02 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25           **43-28-02. Exceptions.** The provisions of this chapter do not apply:

- 26          1. To the filling of written prescriptions of a licensed and registered dentist by any  
27          person ~~or legal entity~~, for the construction, reproduction, or repair of prosthetic  
28          dentures, bridges, plates, or appliances, to be used or worn as substitutes for  
29          natural teeth, provided, that such person or legal entity may not solicit or advertise,  
30          directly or indirectly, by mail, card, newspaper, pamphlet, radio, television, or  
31          otherwise to the general public to construct, reproduce, repair prosthetic dentures,

- 1 bridges, plates, or other appliances to be used or worn as substitutes for natural  
2 teeth.
- 3 2. To ~~students~~ a student enrolled in and regularly attending any dental college ~~or,~~  
4 dental hygiene, or dental assisting program recognized as such by the board, if  
5 ~~their~~ the student's acts are done in the dental college ~~or the,~~ dental hygiene, or  
6 dental assisting program and under the direct supervision of ~~their~~ the student's  
7 instructor; or to ~~students~~ a student who ~~are~~ is in training in any dental ~~programs~~  
8 program recognized as such by the board and who ~~are~~ is continuing ~~their~~ the  
9 student's training and performing the duties of an extern under the supervision of a  
10 ~~licensed and registered~~ dentist who has received approval to supervise an  
11 externship by the appropriate accrediting committee, including the board.
- 12 3. To a legally qualified and licensed ~~physicians~~ physician, ~~surgeons~~ surgeon, ~~and or~~  
13 other ~~practitioners~~ practitioner authorized by law, who ~~perform~~ in emergency cases  
14 performs any act ~~defined herein as~~ within the scope of the practice of dentistry ~~in~~  
15 emergency cases.
- 16 4. To a duly licensed and registered dentist of another state temporarily operating in  
17 this state as a clinician ~~or,~~ lecturer, or attendant of an educational program under  
18 the auspices of a dental college, a reputable dental society, dental hygienist  
19 society, or dental assistant society.
- 20 5. To the practice of dentistry in the discharge of their official duties by graduate  
21 dentists or dental surgeons in the United States army, navy, air force, public health  
22 service, coast guard, veterans bureau, or director of the dental division of the state  
23 department of health.

24 **SECTION 7. AMENDMENT.** Section 43-28-04 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **43-28-04. Qualifications and appointment of members of the board - Limited vote.**

- 27 1. ~~A person~~ An individual may not be appointed as a dentist member of the board  
28 unless that ~~person~~ individual:
- 29 a. Is a ~~licensed and registered~~ dentist ~~in accordance with~~ licensed and  
30 registered under this chapter ~~43-28;~~ and

- 1           b. Is actively engaged in the practice of dentistry and has been so engaged in  
2           this state for at least five years immediately preceding the appointment.
- 3           2. ~~A person~~ An individual may not be appointed as the dental hygienist member of  
4           the board unless that ~~person~~ individual:
- 5           a. Is a licensed and registered dental hygienist in accordance with chapter  
6           43-20-; and
- 7           b. Is actively engaged in the practice of dental hygiene and has been so  
8           engaged in this state for at least five years immediately preceding the dental  
9           hygienist's appointment.
- 10          3. ~~A person~~ An individual may not be appointed as the consumer member of the  
11          board unless that ~~person~~ individual:
- 12          a. Has been a resident of North Dakota for five years immediately preceding  
13          appointment-;
- 14          b. Has no personal or family financial relationship with the dental profession-;  
15          and
- 16          c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or  
17          the spouse of ~~a person~~ an individual engaged in any of those occupations.
- 18          4. The dental hygienist and consumer member of the board shall exercise full voting  
19          privileges in all areas except that the dental hygienist may not participate in the  
20          clinical examination of dentists for licensure and the consumer member may not  
21          participate in the clinical examination of dentists or hygienists for licensure.

22           **SECTION 8. AMENDMENT.** Section 43-28-05 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24           **43-28-05. Meeting of board - Officers - Bond - Compensation of members -**

25 **Quorum.** The board shall hold a regular annual meeting at a place designated by the board  
26 and special meetings when necessary. At the regular meeting of the board, the members shall  
27 elect from their number a president, a member who has at least two years remaining on that  
28 member's term, president elect, a member who has at least three years remaining on that  
29 member's term, and a secretary-treasurer. The executive director shall furnish a bond in the  
30 amount fixed by the board. Each member of the board shall receive as compensation ~~the sum~~  
31 ~~of one hundred ten dollars~~ for each day actually engaged in the duties of the office per diem at

1 a rate established by the board and reimbursement for expenses as provided in section  
2 54-06-09 while attending meetings of the board. The executive director may be paid an annual  
3 salary in an amount determined by the board. Four members of the board constitute a quorum  
4 but a smaller number may adjourn from time to time.

5 **SECTION 9.** A new section to chapter 43-28 of the North Dakota Century Code is  
6 created and enacted as follows:

7 **Fitness - Criminal history record check - Costs.** The board may investigate an  
8 applicant's or a dentist's fitness, qualification, and previous professional record and  
9 performance. The board may seek information sought under this section from recognized data  
10 sources, including the national practitioners data bank, data repositories, licensing and  
11 disciplinary authorities of other jurisdictions, professional education and training institutions,  
12 liability insurers, health care institutions, and law enforcement agencies. An applicant or a  
13 dentist for whom the board is performing an investigation under this section shall cooperate  
14 with the board if necessary to access the information sought by the board. The board or the  
15 board's investigative disciplinary panels may require an applicant or a dentist who is the subject  
16 of a disciplinary investigation to submit to a statewide and nationwide criminal history record  
17 check. The criminal history record check must be conducted in the manner provided by section  
18 12-60-24. All costs associated with a criminal history record check performed under this  
19 section are the responsibility of the dentist or applicant.

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

22 **43-28-10. License and certificate required - Scope of practice.** ~~No~~ A person may  
23 not practice dentistry in this state unless:

- 24 1. ~~The person first obtains a license to practice in this state; and~~  
25 2. ~~The person holds a valid biennial certificate of registration~~ that person is a dentist.  
26 A dentist shall practice within the scope of that dentist's education, advanced  
27 training as recognized by the board and any specialty practice recognized by the  
28 American dental association or other professional entity recognized by the board.

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

1           **43-28-11. Examination required - Application - Qualifications - Fees.** ~~Any person~~  
2 ~~who desires to obtain a license~~ An individual seeking to practice dentistry in this state shall  
3 apply to the executive director of the board on forms prescribed by the board and shall submit  
4 to an examination by the board. The application must be verified under oath to the effect that  
5 all of the statements contained in the application are true of applicant's own knowledge, and  
6 must be received by the executive director of the board at least thirty days before the date of  
7 the examination. The applicant shall enclose with the application a recent autographed picture  
8 of the applicant and an application fee as determined by the board. Additional costs of regional  
9 or other state's examinations as set out in section 43-28-12.1 and chargeable under section  
10 43-28-05 as board member compensation may be assessed against the applicant or  
11 applicants. The applicant shall show proof that the applicant:

- 12           1. Is a graduate of a dental college recognized by the board.
- 13           2. Is ~~a person~~ of good moral character.

14           **SECTION 12. AMENDMENT.** Section 43-28-15 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16           **43-28-15. Licensure by credential review.** The board may issue a license and  
17 certificate of registration to practice dentistry in this state to any ~~person~~ individual who wishes  
18 to practice dentistry in North Dakota upon a practical examination, if the ~~person~~ individual:

- 19           1. Has been licensed and has been actively practicing dentistry for at least five years  
20           immediately preceding application to practice dentistry in another state where the  
21           requirements are at least equivalent to those of this state.
- 22           2. Is a reputable, competent dentist of good moral character as evidenced by  
23           reference letters from three licensed dentists attesting to clinical competence,  
24           professional attainment, and good moral character.
- 25           3. Pays to the board the fee determined by the board.
- 26           4. Delivers to the board a certificate from the examining or licensing board of every  
27           state in which the ~~person~~ individual is practicing or is licensed to practice, certifying  
28           that the ~~person~~ individual is a licensed and registered dentist in that state, and is of  
29           good moral character.
- 30           5. Demonstrates the ~~person's~~ individual's ability to the satisfaction of the board.

1 The requirement of a practical clinical examination to demonstrate competency may be waived  
2 by the board if the applicant meets the other requirements of this section.

3 **SECTION 13. AMENDMENT.** Section 43-28-17 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **43-28-17. Failure to pay ~~annual~~ biennial fee - Cancellation of license - Inactive**  
6 **status.** If a licensed dentist fails to pay the biennial fee for the renewal of the certificate of  
7 registration on or before the due date of the payment, after thirty days' written notice of the  
8 default without proper payment, the board may cancel the license, notify the dentist of the  
9 cancellation, and record the cancellation. The payment of the biennial fee within the thirty-day  
10 period, with an additional sum determined by the board, will excuse the default. Upon payment  
11 of a fee determined by the board, a licensee may request to have the licensee's license placed  
12 on inactive status upon expiration of the license. While on inactive status, the licensee may not  
13 engage in the practice of dentistry in the state until the individual submits a reinstatement  
14 application, pays a renewal fee, and meets any additional requirements established by rule of  
15 the board.

16 **SECTION 14.** A new section to chapter 43-28 of the North Dakota Century Code is  
17 created and enacted as follows:

18 **Duty to report.**

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

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

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

28 c. A mortality or other incident occurring in an outpatient facility of the dentist  
29 which results in temporary or permanent physical or mental injury requiring  
30 hospitalization of the patient during or as a direct result of a dental procedure

1                   or related use of general anesthesia, deep sedation, conscious sedation with  
2                   a parenteral drug, or enteral sedation.

3           2. A dentist shall advise the board in a timely manner if the dentist reasonably  
4           believes another dentist has committed an illegal or immoral act or has otherwise  
5           failed to make a report as required under subsection 1.

6           **SECTION 15. AMENDMENT.** Section 43-28-18 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **43-28-18. Grounds for revocation or suspension of license and certificate.** The  
9 board may revoke, suspend, limit, or restrict the scope of the license and the certificate of  
10 registration of any dentist who has:

- 11           1. Been guilty of dishonorable, unprofessional, or immoral conduct.
- 12           2. Been convicted of an offense determined by the board to have a direct bearing  
13           upon the individual's ability to serve the public as a dentist, or the board  
14           determines, following conviction for any offense, that the individual is not  
15           sufficiently rehabilitated under section 12.1-33-02.1.
- 16           3. Been adjudged mentally ill and not judicially restored by the regularly constituted  
17           authorities.
- 18           4. Been guilty of habitual intemperance or addicted to the use of drugs.
- 19           5. Employed or permitted an unlicensed individual to practice dentistry in the office  
20           under the dentist's control.
- 21           6. Become grossly negligent in the practice of the profession.
- 22           7. Practiced fraud and deceit in obtaining the license or in the practice of dentistry.
- 23           8. Willfully betrayed confidential relations.
- 24           9. Shared any professional fee with anyone or paid anyone for sending or referring  
25           patients to the dentist. However, this does not prohibit licensed dentists from  
26           practicing in a partnership and sharing one another's professional fees, nor prohibit  
27           a licensed dentist from employing any other licensed dentist or licensed dental  
28           hygienist.
- 29           10. Used any advertising of any character tending to mislead and deceive the public,  
30           including advertising the public could reasonably interpret as indicating the dentist

- 1            is qualified to practice a dental specialty, if the practice of that dental specialty  
2            would be outside the scope of practice for which the dentist is qualified to practice.
- 3            11. Failed to demonstrate minimum professional competency in certain areas of  
4            clinical practice if the clinical deficiency represents a threat to the public but is not  
5            so severe as to be termed gross negligence. When those deficiencies are noted,  
6            the license and registration may be suspended or restricted in scope until the  
7            dentist obtains additional professional training that is acceptable to the board and  
8            has demonstrated sufficient improvement in clinical competency to justify  
9            reissuance of an unrestricted license and registration.
- 10           12. Prescribed, administered, or dispensed medications for reasons or conditions  
11           outside the scope of dental practice.
- 12           13. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or  
13           medications.
- 14           14. Directed auxiliary personnel to perform acts or provide dental services for which  
15           the personnel are not licensed or qualified or are prohibited by law or rule.
- 16           15. Willfully engaged in fraudulent submission of insurance claims.
- 17           16. Made any false or untrue statements in the application for an examination to obtain  
18           a license to practice dentistry.
- 19           17. Made any false representations that the individual is the holder of a license or  
20           certificate of registration to practice dentistry.
- 21           18. Made any false claims that the individual is a graduate of a dental college or the  
22           holder of any diploma or degree from a dental college.
- 23           19. Failed to comply with commonly accepted national infection control guidelines and  
24           standards.
- 25           20. Abandoned the dentist's practice as defined by rules adopted by the board.
- 26           21. ~~Violated this chapter~~ Failed to report to the board as required under section 14 of  
27           this Act.