

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2066

Introduced by

Industry, Business and Labor Committee

(At the request of the State Board of Dental Examiners)

1 A BILL for an Act to create and enact sections 43-28-02.1 and 43-28-25.1 of the North Dakota
2 Century Code, relating to tribal sovereignty and the ownership of a dental office or clinic; to
3 amend and reenact sections 43-20-01.3, 43-20-03, 43-20-12.3, 43-20-13.2, 43-28-03, 43-28-04,
4 43-28-15, 43-28-18.1, 43-28-18.2, and 43-28-25 of the North Dakota Century Code, relating to
5 the practice and licensing of dental assistants and hygienists and dentists; and to provide a
6 penalty.

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

8 **SECTION 1. AMENDMENT.** Section 43-20-01.3 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **43-20-01.3. Licensure by credential review.**

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

- 15 1. The applicant, ~~for at least three~~within the five years immediately preceding application,
16 has been licensed in good standing and has been actively practicing dental hygiene in
17 another jurisdiction where the requirements are at least substantially equivalent to
18 those of this state.
- 19 2. Grounds for denial of the application under section 43-20-05 do not exist.
- 20 3. The applicant has paid to the board the fee established by the board by rule.
- 21 4. The applicant has delivered to the board a certificate from the examining or licensing
22 board of every jurisdiction in which the individual is licensed to practice, certifying that
23 the individual is a licensed and registered dental hygienist in good standing in that
24 jurisdiction.

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

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

4 **SECTION 2. AMENDMENT.** Section 43-20-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **43-20-03. Dental hygienists - Practice by.**

7 As used in this chapter, "dental hygiene" and the practice thereof means the removal of
8 accumulated matter from the natural and restored surfaces of teeth and from restorations in the
9 human mouth, the polishing of such surfaces, and the topical application of drugs to the surface
10 tissues of the mouth and to the surface of teeth if such acts are performed under the direct,
11 indirect, or general supervision of a licensed dentist. General supervision may be used if the
12 procedures are authorized in advance by the supervising dentist, except procedures which may
13 only be used under indirect or direct supervision as established by the board by rule.

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

17 **SECTION 3. AMENDMENT.** Section 43-20-12.3 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **43-20-12.3. Supervised administration of anesthesia - Board rules.**

20 A licensed dentist may delegate to a dental hygienist licensed by the board the
21 administration of block and infiltration anesthesia ~~to a patient who is at least eighteen years old.~~
22 The dental hygienist must be under the ~~direct~~indirect supervision of a dentist and the dental
23 hygienist must complete the educational requirements as required by the commission on dental
24 accreditation and approved by the board. The board shall adopt rules to implement this section.

25 **SECTION 4. AMENDMENT.** Section 43-20-13.2 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **43-20-13.2. Registered and qualified dental assistant registration.**

28 To be registered as a registered or qualified dental assistant, an individual shall apply ~~and~~
29 ~~meet the requirements established by the board by rule~~to the executive director of the board on
30 forms prescribed by the board. The application must be verified under oath to the effect that all
31 of the statements contained in the application are true of the applicant's own knowledge. The

1 applicant shall enclose with the application a recent autographed picture of the applicant and an
2 application fee as determined by the board by rule. The board may grant a registration to an
3 applicant who has met all of the following requirements:

- 4 1. The applicant passed, within one year of making application, a written examination on
5 the laws and rules governing the practice of dentistry in this state.
- 6 2. Grounds for denial of the application under section 43-20-05 do not exist.
- 7 3. The applicant met any requirement for registration established by the board by rule.

8 **SECTION 5.** Section 43-28-02.1 of the North Dakota Century Code is created and enacted
9 as follows:

10 **43-28-02.1. Tribal sovereignty.**

11 This section reaffirms the sovereignty of native American tribes in the state. The legislative
12 assembly recognizes that in accordance with federal law, a native American tribe in this state
13 may authorize a dental provider, who is licensed, certified, or otherwise sanctioned by another
14 jurisdiction to provide dental services, to provide dental services on that Indian reservation.

15 **SECTION 6. AMENDMENT.** Section 43-28-03 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **43-28-03. State board of dental examiners - Members - Appointment - Terms of office -**
18 **Oath - Vacancies.**

19 The state board of dental examiners consists of ~~seven~~eight members appointed by the
20 governor. The membership of the board must include five dentist members, one dental hygienist
21 member, one registered dental assistant member, and one consumer member. Appointment to
22 the board is for a term of five years, with terms of office arranged so that one term expires on
23 March sixteenth of each year, except that each fifth year there must be two new board members
24 appointed, one of whom is a dentist and the other a dental hygienist ~~and~~, two years later two
25 new board members must be appointed, one of whom is a dentist; and one of whom is a
26 consumer member, and two years later two new board members must be appointed, one of
27 whom is a dentist and one of whom is a registered dental assistant. ~~The first five-year term of~~
28 ~~the consumer member commences on July 1, 1993, and continues through March 15, 1998.~~
29 Each member of the board shall hold office until a successor is appointed and qualified.
30 Persons appointed to the board shall qualify by taking the oath required of civil officers. No
31 member may serve more than ten years or two 5-year terms of office. If the terms of more than

1 two board members expire in the same year, the governor may extend for no more than two
2 years the terms of one or more of those board members in order to comply with this section. If a
3 member of the board is absent from two consecutive regular meetings, the board may declare a
4 vacancy to exist. All vacancies on the board must be filled by the governor by appointment.

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

7 **43-28-04. Qualifications and appointment of members of the board - Limited vote.**

- 8 1. An individual may not be appointed as a dentist member of the board unless that
9 individual:
- 10 a. Is a dentist licensed and registered under this chapter; and
11 b. Is actively engaged in the practice of dentistry and has been so engaged in this
12 state for at least five years immediately preceding the appointment.
- 13 2. An individual may not be appointed as the dental hygienist member of the board
14 unless that individual:
- 15 a. Is a licensed and registered dental hygienist in accordance with chapter 43-20;
16 and
17 b. Is actively engaged in the practice of dental hygiene and has been so engaged in
18 this state for at least five years immediately preceding the dental hygienist's
19 appointment.
- 20 3. An individual may not be appointed as the consumer member of the board unless that
21 individual:
- 22 a. Has been a resident of North Dakota for five years immediately preceding
23 appointment;
24 b. Has no personal or family financial relationship with the dental profession; and
25 c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the
26 spouse of an individual engaged in any of those occupations.
- 27 4. An individual may not be appointed as the registered dental assistant member of the
28 board unless the individual:
- 29 a. Is a registered dental assistant under chapter 43-20; and
30 b. Is actively engaged in the practice of dental assistance in this state for at least
31 five years immediately preceding the dental assistant's appointment.

1 5. The dental hygienist, the registered dental assistant, and consumer member of the
2 board shall exercise full voting privileges in all areas except that the dental hygienist
3 may not participate in the clinical examination of dentists for licensure and the
4 registered dental assistant and the consumer member may not participate in the
5 clinical examination of dentists or hygienists for licensure.

6 **SECTION 8. AMENDMENT.** Section 43-28-15 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **43-28-15. Licensure by credential review.**

9 The board may issue a license and certificate of registration to practice dentistry in this
10 state to an applicant who meets all of the following requirements:

- 11 1. The applicant, ~~for at least~~ within the five years immediately preceding application, has
12 been licensed in good standing and has been actively ~~practicing~~ engaged in the
13 practice of dentistry in another jurisdiction where the requirements are at least
14 substantially equivalent to those of this state.
- 15 2. Grounds for denial of the application under section 43-28-18 do not exist.
- 16 3. The applicant pays to the board the fee determined by the board by rule.
- 17 4. The applicant delivers to the board a certificate from the examining or licensing board
18 of every jurisdiction in which the individual is practicing or is licensed to practice,
19 certifying that the individual is a licensed and registered dentist in good standing in
20 that jurisdiction.
- 21 5. The applicant passes a written examination on the laws and rules governing the
22 practice of dentistry in this state administered by the board at a meeting.
- 23 6. The applicant meets any requirement for licensure established by the board by rule.

24 **SECTION 9. AMENDMENT.** Section 43-28-18.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **43-28-18.1. Duty to report.**

- 27 1. A dentist shall report to the board in writing within sixty days of the event any illegal,
28 unethical, or errant behavior or conduct of the dentist, including the following events,
29 proceedings, or formal or informal actions:
 - 30 a. A dental malpractice judgment or malpractice settlement or a final judgment by a
31 court in favor of any party and against the licensee.

- 1 b. A final disposition regarding the surrender of a license, or adverse action taken
2 against a license by a licensing agency in another state, territory, or country; a
3 governmental agency; a law enforcement agency; or a court for an act or conduct
4 that would constitute grounds for discipline under this chapter.
- 5 c. A mortality or other incident occurring in an outpatient facility of the dentist which
6 results in temporary or permanent physical or mental injury requiring
7 hospitalization of the patient during or as a direct result of a dental procedure or
8 related use of general anesthesia, deep sedation, conscious sedation with a
9 parenteral drug, or enteral sedation.
- 10 d. Actions based on professional conduct or competence resulting in the revocation,
11 suspension, temporary suspension, restriction, reduction, or voluntary surrender
12 or withdrawal of clinical or hospital privileges.
- 13 2. A dentist shall advise the board in a timely manner if the dentist reasonably believes
14 another dentist has committed an illegal or immoral act or has otherwise failed to
15 make a report as required under subsection 1.

16 **SECTION 10. AMENDMENT.** Section 43-28-18.2 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **43-28-18.2. Disciplinary procedure.**

- 19 1. A person may file a written and signed complaint with the board alleging a dentist
20 engaged in conduct identified as grounds for disciplinary action under section
21 43-28-18. The board or board president may also initiate a complaint and investigation
22 on the board's motion.
- 23 2. The board or board president may direct a complaint committee to investigate a
24 complaint and recommend whether the board should initiate a disciplinary action
25 against the dentist.
- 26 3. The board or complaint committee shall notify the dentist of the complaint, and require
27 a written response from the dentist. The board or complaint committee may examine
28 and copy records, including patient records, examine witnesses, obtain expert
29 opinions, require the dentist to be physically or mentally examined, or both, by
30 qualified professionals selected by the board, and take any other action necessary to
31 investigate the complaint. A request by the board or complaint committee is authorized

1 to disclose patient information and records to the board or complaint committee.

2 Patient information and records disclosed to the board or complaint committee are
3 confidential. The dentist shall cooperate with the board or the complaint committee in
4 the investigation, including responding promptly and completely to a request or
5 requirement.

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

9 5. The board shall determine if there is a reasonable basis to believe the dentist engaged
10 in conduct identified as grounds for disciplinary action under section 43-28-18. If the
11 board determines there is not a reasonable basis to believe, the board shall notify the
12 complainant and the dentist. If the board determines there is a reasonable basis to
13 believe, the board shall proceed with a disciplinary action in accordance with chapter
14 28-32.

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

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

21 **SECTION 11. AMENDMENT.** Section 43-28-25 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **43-28-25. Unlawful acts - Penalty.**

24 It is a class A misdemeanor:

25 1. For any unlicensed person to construct, alter, repair, or duplicate any denture, partial
26 denture, bridge, splint, or orthodontic or prosthetic appliance, except as provided by
27 rule adopted by the board.

28 2. For any person:

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

- 1 b. To practice any fraud and deceit either in obtaining a license or a certificate of
- 2 registration;
- 3 c. To falsely claim or pretend to have or hold a license or certificate of registration
- 4 from the board to practice dentistry; or
- 5 d. To practice dentistry in this state without a license and certificate of registration.
- 6 3. For any person, except a dentist, to own more than forty-nine percent of an office
- 7 practice or business at which the practice of dentistry is performed. This provision
- 8 does not apply to a board-approved medical clinic, hospital, or public health setting
- 9 with which a dentist is associated; a board-approved nonprofit organization created to
- 10 serve the dental needs of an underserved population; or the heir or personal
- 11 representative of a deceased dentist. The board may inspect and approve a medical
- 12 clinic, hospital, public health setting, or nonprofit organization at which the practice of
- 13 dentistry is performed. The heir or personal representative ~~may~~shall appoint a dentist
- 14 to operate an office under the name of the deceased dentist for a period of not longer
- 15 than two years from the date of the dentist's death.

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

18 **SECTION 12.** Section 43-28-25.1 of the North Dakota Century Code is created and enacted
19 as follows:

20 **43-28-25.1. Ownership and operation of a dental office or clinic.**

- 21 1. Any individual or organization that owns or operates a dental office or clinic at which
- 22 the practice of dentistry takes place shall designate a dentist or dentists as the dental
- 23 director or directors of the dental office or clinic. The dental director is responsible for
- 24 the clinical practice of dentistry at the dental office or clinic, including:
- 25 a. The overall quality of patient care rendered or performed in the clinical practice of
- 26 dentistry;
- 27 b. The supervision of dental hygienists, dental assistants, and other personnel
- 28 involved in direct patient care and the authorization of procedures performed by
- 29 the dental hygienists, dental assistants, and other personnel in accordance with
- 30 the standards of supervision established by law or rule;

- 1 c. The retention of patient dental records as required by law and the rules adopted
2 by the board;
- 3 d. To ensure each patient receiving services from the dental office or clinic has a
4 dentist of record; and
- 5 e. The maintenance of current records of the names of the dentists who supervise
6 the clinical activities of dental hygienists, dental assistants, or other personnel
7 involved in direct patient care. The records must be available to the board upon
8 written request.
- 9 2. The provisions of this section do not apply to a board-approved medical clinic,
10 hospital, or public health setting with which a dentist is associated; or a board-
11 approved nonprofit organization created to serve the dental needs of an underserved
12 population.