CHAPTER 43-28
DENTISTS

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.
3. "Board" means the state board of dental examiners.
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.
5. "Dentist" means an individual who has a license to practice in this state and who holds a valid biennial certificate of registration.
6. "License" means the right, authority, or permission granted by the board to practice dentistry in this state.
7. "Practice of dentistry" 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.
8. "Telehealth" has the same meaning as in section 26.1-36-09.15.

43-28-02. Exceptions.

The provisions of this chapter do not apply:

1. To the filling of written prescriptions of a licensed and registered dentist by any person for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances, to be used or worn as substitutes for natural teeth, provided, that such person or legal entity may not solicit or advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio, television, or otherwise to the general public to construct, reproduce, repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth.
2. To a student enrolled in and regularly attending any dental college, dental hygiene, or dental assisting program recognized as such by the board, if the student's acts are done in the dental college, dental hygiene, or dental assisting program and under the direct supervision of the student's instructor; or to a student who is in training in any dental program recognized as such by the board and who is continuing the student's training and performing the duties of an extern under the supervision of a dentist who has received approval to supervise an externship by the appropriate accrediting committee, including the board.
3. To a legally qualified and licensed physician, surgeon, or other practitioner authorized by law, who in emergency cases performs any act within the scope of the practice of dentistry.
4. To a duly licensed and registered dentist of another state temporarily operating in this state as a clinician, lecturer, or attendant of an educational program under the auspices of a dental college, a reputable dental society, dental hygienist society, or dental assistant society.
5. To the practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States army, navy, air force, public health service, coast guard, veterans' bureau, or director of the dental division of the department of health and human services.
6. To a registered nurse, licensed practical nurse, dental hygienist, or dental assistant who is applying topical fluoride varnish to an individual and is acting under the direct or

general supervision of a physician or licensed dentist if the registered nurse, licensed practical nurse, dental hygienist, or dental assistant has successfully completed a training program approved by the board.

7. To an advanced practice registered nurse licensed under chapter 43-12.1 who is applying topical fluoride varnish to an individual and is acting within the scope of practice of the advanced practice registered nurse and has successfully completed a training program approved by the board.
8. 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.

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

1. The state board of dental examiners consists of nine members appointed by the governor. The membership of the board must include:
   a. Six dentist members, at least one of whom is a board-eligible or board-certified oral and maxillofacial surgeon;
   b. One dental hygienist member;
   c. One dental assistant member; and
   d. One independent consumer member.
2. Appointment to the board is for a term of five years, with terms of office arranged so no more than two terms expire on March sixteenth of each year. Each member of the board shall hold office until a successor is appointed and qualified. An individual appointed to the board qualifies by taking the oath required of civil officers.
3. A member may not serve more than two full and consecutive 5-year appointed terms of office. An appointment to fill a vacancy occurring for reasons other than the expiration of a term may be made only for the remainder of the unexpired term, and does not constitute a full term or apply to term limits.
4. If a member of the board is absent from two consecutive regular meetings, the board may declare a vacancy to exist.
5. All vacancies on the board must be filled by the governor by appointment.

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

1. An individual may not be appointed as a dentist member of the board unless that individual:
   a. Is a dentist licensed and registered under this chapter; and
   b. Is actively engaged in the practice of dentistry and has been so engaged in this state for at least five years immediately preceding the appointment.
2. An individual may not be appointed as the dental hygienist member of the board unless that individual:
   a. Is a licensed and registered dental hygienist in accordance with chapter 43-20; and
   b. Is actively engaged in the practice of dental hygiene and has been so engaged in this state for at least five years immediately preceding the dental hygienist's appointment.
3. An individual may not be appointed as the dental assistant member of the board unless that individual:
   a. Is a registered dental assistant in accordance with chapter 43-20; and
   b. Is actively practicing as a registered dental assistant and has been so practicing in this state for at least five years immediately preceding the dental assistant's appointment.
4. An individual may not be appointed as the independent consumer member of the board unless that individual:
   a. Has been a resident of North Dakota for five years immediately preceding appointment;
   b. Has no personal, family, or financial relationship with the dental profession; and

c. Is not a dentist, a dental hygienist, a dental assistant, a physician, a nurse, or the spouse of an individual engaged in any of those occupations.

5. The dental hygienist, dental assistant, and independent consumer member of the board shall exercise full voting privileges in all areas except that the dental hygienist may not participate in the clinical examination of dentists for licensure and the dental assistant and independent consumer member may not participate in the clinical examination of dentists or hygienists for licensure. Each appointee must continue to meet the criteria for appointment for the duration of the appointee's term.

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

1. The board shall hold a regular annual meeting at a place designated by the board and special meetings when necessary. The board shall elect from its members:
   a. A president;
   b. A president-elect; and
   c. A secretary-treasurer.
2. Each member of the board shall receive as compensation for each day actually engaged in the duties of the office per diem at a rate established by the board and reimbursement for expenses as provided in section 54-06-09 while attending meetings of the board. The executive director may be paid an annual salary in an amount determined by the board.

43-28-06. Powers of board.

The board may:

1. Adopt and enforce reasonable rules to govern its proceedings and to carry out this chapter.
2. Examine applicants for licenses, or registration to practice dentistry, 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.
3. Issue, suspend, revoke, limit, cancel, restrict, and reinstate licenses registrations, permits, credentials, or endorsements related to the practice of dentistry, dental assisting, or dental hygiene and the biennial certificates of registration upon any grounds authorized by this chapter or rules adopted by the board.
4. Issue subpoenas to require the attendance of witnesses and the production of documentary evidence and may administer oaths. Any member or executive officer of the board may administer oaths to witnesses, or issue subpoenas.
5. Employ and compensate an executive director, attorneys, investigative staff, and clerical assistants and may perform any other duties imposed upon the board by this chapter.
6. Establish minimum continuing professional education requirements for dentists, dental hygienists, and dental assistants.
7. Enter an agreement with the same professional organization with which the North Dakota board of medicine has entered an agreement under subsection 6 of section 43-17-07.1 and adopt rules to establish an alternative to discipline program through that contract. Records of an alternative to discipline program, including the identity of a licensee participating in the alternative to discipline program, are exempt records under section 44-04-17.1. Records of an alternative to discipline program may be disclosed by the board if the board determines disclosure of the records is necessary to protect health, safety, and welfare of the public, if ordered by a court of competent jurisdiction, or if otherwise determined by the board. Fees assessed by rule for this program are not new fees as contemplated by subsection 7 of section 54-35-27.
8. Impose fines, not to exceed five thousand dollars for each violation of section 43-28-18.2. All fines collected by the board must be deposited in the general fund.

43-28-07. Expenses of board - How paid - Funds held by secretary-treasurer.

Repealed by S.L. 1971, ch. 510, § 15.

43-28-08. Records of board - Use as evidence.

The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements and a full and accurate list of all persons licensed and registered by the board, and shall maintain all records in full compliance with chapter 44-04.

43-28-09. Biennial report.

The board may submit a report to the governor and the secretary of state in accordance with section 54-06-04.

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.

43-28-10.1. 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 or the national dental examining board of Canada.
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.
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.

43-28-10.2. Volunteer license.

The board may establish rules governing the issuance of a volunteer license to practice dentistry to an individual previously licensed in this state or an individual who holds a license, in good standing, to practice dentistry issued by another state.

43-28-11. Application - Fees.

1. An individual seeking a license, registration, permit, credential, or endorsement related to the practice of dentistry, shall apply to the executive director on forms prescribed by the board.
2. The application must:
   a. Be verified under oath that all statements contained in the application are true to the applicant's knowledge;
   b. Contain a recent autographed picture of the applicant; and
   c. Include the application fee established by the board.
3. The board may, by rule, create or modify fees associated with any license, registration, permit, credential, or renewal. A fee created or modified under this section is not a new fee for purposes of subsection 7 of section 54-35-27.

43-28-11.1. Conviction not bar to licensure - Exceptions.

Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a dentist, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

43-28-11.2. Fitness - Criminal history record check - Costs.

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

43-28-11.3. Standard of care and professional ethics - Telehealth.

A dentist is held to the same standard of care and ethical standards, whether practicing traditional in-person dentistry or telehealth. The following apply in the context of telehealth:

1. Professional ethical standards require a dentist to practice only in areas in which the dentist has demonstrated competence, based on the dentist's training, ability, and experience.
2. A dentist may not practice telehealth unless a bona fide dentist-patient relationship is established in person or through telehealth. A dentist practicing telehealth shall verify the identity of the patient seeking care and shall disclose to the patient the dentist's identity, physical location, contact information, and licensure status.
3. Before a dentist initially diagnoses or treats a patient for a specific illness, disease, or condition, the dentist shall perform an examination or evaluation. A dentist may perform an examination or evaluation entirely through telehealth if the examination or evaluation may be performed in accordance with the standard of care required for an in-person dental examination or evaluation. A dentist may not use telehealth to perform an initial examination or evaluation in circumstances in which the standard of care necessitates an in-person dental examination.
    a. An appropriate telehealth examination or evaluation may include an examination utilizing secure videoconferencing in conjunction with store-and-forward technology or appropriate diagnostic testing that would be required during an in-person examination or evaluation or an examination conducted with an appropriately licensed intervening dental health care provider, practicing within the scope of the dental health care provider's profession, providing necessary physical findings to the dentist during a live, two-way telehealth encounter. An examination or evaluation consisting only of a static online questionnaire or an audio conversation does not meet the standard of care.
    b. The use of telehealth does not expand the scope of practice for a dental health care provider, and may not be used to circumvent the licensure requirements established for dental health care providers in this state.
    c. A dentist who practices telehealth in this state must have adequate knowledge of the availability and location of local dentists and dental health care providers to provide followup care to a patient following a dental telehealth encounter, including emergent and acute care facilities, in order to enable a patient to receive followup care. Once a dentist conducts an appropriate examination or evaluation, whether in-person or by telehealth, and establishes a patient-dentist relationship, subsequent followup care may be provided as deemed appropriate by the treating dentist, or by another dentist licensed by the board designated by the treating dentist to act temporarily in the treating dentist's absence.
4. A dentist practicing telehealth is subject to all North Dakota laws governing the adequacy of dental records and the provision of dental records to the patient and other dental health care providers treating the patient.

5. A dentist practicing telehealth must have procedures for providing in-person services or for the referral of a patient requiring dental services that cannot be provided by telehealth to another dentist who practices in the area of the state and the patient can readily access.

43-28-12. Examination - Subjects covered.
Repealed by S.L. 2009, ch. 369, § 31.

43-28-12.1. Regional or other states' examination.
Repealed by S.L. 2009, ch. 369, § 31.

43-28-12.2. Continuing educational requirement for dentists - Audit.
Repealed by S.L. 2009, ch. 369, § 31.

43-28-13. When re-examination required.
An individual who does not undertake the actual practice of dentistry within five years from the date of the individual's license and registration or any holder of any privilege related to the practice of dentistry shall, before engaging in the practice of dentistry in this state, notify the board of the intention in writing. The board, after a full investigation, may re-examine the individual as to the individual's qualifications to practice dentistry in this state, if the board deems such re-examination necessary. The failure of the individual to give the written notice to the board before engaging in the practice of dentistry in this state is grounds for disciplinary action.

43-28-14. Re-examination - Fee - Additional education.
Repealed by S.L. 2009, ch. 369, § 31.

43-28-15. Licensure by credential review.
1. The board may issue a license and certificate of registration to practice dentistry in this state to an applicant who meets the following requirements:
   a. The applicant, for at least five years immediately preceding application, has been licensed in good standing and has been actively practicing dentistry in another jurisdiction where the requirements are at least substantially equivalent to those of this state;
   b. Grounds for denial of the application under section 43-28-18 do not exist;
   c. The applicant pays to the board the fee determined by the board by rule;
   d. The applicant delivers to the board a certificate from the examining or licensing board of every 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 jurisdiction;
   e. 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; and
   f. The applicant meets any requirement for licensure established by the board by rule.
2. The board may issue a license and certificate of registration to practice dentistry in this state to an applicant who is in good standing under the laws of another jurisdiction, has passed a hand skills examination approved by the board, and possesses qualifications, education, and experience substantially similar to the requirements in subsection 1.

43-28-16. Certificate - Displayed in place of business.
The holder of a license and certificate of registration shall display the license and certificate conspicuously in the holder's place of business.

43-28-16.1. Death certificate issuance by dentist.

Any dentist licensed and registered may issue a death certificate in an emergency, when the cause of death is known to the dentist.

43-28-16.2. 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 grounds for denial under section 43-28-18 do not exist as determined by the board.
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 individual 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. Between sixty-one days and one year after December thirty-first of the odd-numbered year, an expired license may be renewed if the individual submits a renewal application, pays the renewal fee, pays an amount equal to twice the late renewal fee, and submits other documentation sought by the board confirming the individual retains the skills necessary to practice.
6. If the renewal application, renewal fee, proof of completion of continuing education, and late fee are not received within one year after December thirty-first of the odd-numbered year, the license may not be renewed, and the individual must apply for and meet the requirements for licensure to be granted a license.
7. The board may extend the renewal deadlines for an individual providing proof of medical or other hardship rendering the individual unable to meet the deadline.

43-28-17. Inactive status.

Upon payment of a fee determined by the board, a dentist may request to have the dentist's license placed on inactive status. While on inactive status, the dentist may not engage in the practice of dentistry in the state until the dentist applies for reinstatement, pays a renewal fee, and meets any additional requirements established by rule.

43-28-18. Grounds for denial of or disciplinary action against license and certificate.

The board may deny an application or take disciplinary action against the license and the certificate of registration of any applicant or dentist who has:

1. 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 or have a physical or mental disability materially affecting the ability to carry out the duties within the scope of practice in a competent manner.
4. Used alcohol or drugs to such a degree as to interfere with the licensee's ability to safely perform the duties within the scope of practice for dentistry.
5. Employed or permitted an unlicensed individual to practice dentistry in the office under the dentist's control.
6. Been grossly negligent in the practice of dentistry.
7. Engaged in fraud or deceit in obtaining the license or in the practice of dentistry.
8. Disclosed confidential information.
9. Shared any professional fee with anyone or paid anyone for sending or referring patients to the dentist. However, this does not prohibit dentists from practicing in a

partnership and sharing one another's professional fees, nor prohibit a dentist from employing any other dentist or 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 meet minimum standards of professional competence.
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 others to perform acts or provide dental services for which they were not licensed or qualified or were prohibited by law or rule from performing or providing.
15. Submitted fraudulent insurance claims.
16. Made any false, fraudulent, deceptive, or untrue statements in connection with the practice of dentistry, or in 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 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, within a reasonable time, copies of dental or medical records requested by a patient of record or violated section 23-12-14, or failure to provide a complying written statement to a patient, the board, or other requester. 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. Within ten days after receipt of request, a dentist who fails to release patient records shall provide a written statement, detailing the cause of delay and an estimation of when records will be produced, to the patient or requester.
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.
30. Maintained a lack of appropriate documentation in dental records for diagnosis, testing, or treatment of patients.

31. Failed to fully and completely cooperate in an investigation by the board, including failure to promptly provide legally sought information to the board or any investigative panel, investigator, or authorized agent of the board.
32. Failed to comply with the terms of a program contracted for under section 43-28-06.

43-28-18.1. Duty to report.

1. A dentist shall report to the board in writing within 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.
   d. An arrest by a law enforcement officer or criminal charges filed by a prosecutor.
2. A dentist shall advise the board in a timely manner if the dentist reasonably believes another dentist has committed an illegal or immoral act or has otherwise failed to make a report as required under subsection 1.

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 provides sufficient authorization 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, truthfully, and completely to a request or requirement.
4. The complaint, response, and any record received by the board during the investigation of a complaint or other allegation 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 investigation or 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.

8. In any agreement, order, or decision arising out of any disciplinary investigation or action undertaken by the board, the board may direct the licensee or registrant to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorneys fees incurred by the board or investigative panels of the board in the investigation or prosecution. The board may suspend a license or registration until costs are paid to the board. Within thirty days of the issuance of an agreement, order, or decision, a licensee or registrant may challenge the reasonableness of any cost item by requesting a hearing under chapter 28-32. An administrative law judge may approve, deny, or modify any cost item, and the determination of the judge is final. The hearing must occur before the license or registration may be suspended for nonpayment.

43-28-18.3. 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 to the dentist of the ex parte temporary suspension, which must include a copy of the order and complaint, the date set for a full hearing on the merits of the evidence that resulted in the ex parte temporary suspension, 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 ex parte temporary suspension which, upon request, must be made available to the dentist.
2. Unless the ex parte temporary suspension is otherwise terminated by the board, an ex parte temporary suspension remains in effect until a final order is issued following a full hearing on the merits conducted under chapter 28-32 or following an appeal under this section.
3. The full 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 temporary suspension must be held not later than thirty days from the issuance of the ex parte temporary suspension order or as soon as practicable as determined by the hearing officer. 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 on the merits occurs. The appeal must be filed with the district court of Burleigh County. The district court shall decide whether the board acted reasonably or arbitrarily when ordering the ex parte temporary suspension. The district 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, obtained by the board is confidential.

43-28-19. Revocation of license and certificate - Proceedings, how initiated - Service of notice and hearing.

Repealed by S.L. 2009, ch. 369, § 31.

43-28-20. Plea - Answer - Trial of issues - Witnesses and cost.

Repealed by S.L. 2009, ch. 369, § 31.

43-28-21. Determination - Order - Appeal and review.

Repealed by S.L. 2009, ch. 369, § 31.

43-28-22. Reinstatement of license - Renewal of certificate - When issued - Fees.

Repealed by S.L. 2009, ch. 369, § 31.

43-28-23. Notice to board of change of address.

Within thirty days after a licensed and registered dentist changes the dentist's place of business, the dentist shall notify the executive director of the board of the new address. The notice must be given by certified mail and return receipt requested. Such licensed and registered dentist may not practice dentistry in the state for more than thirty days after such removal without giving such notice.

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 for a fee established by rule.

43-28-25. Unlawful acts - Penalty.

It is a class A misdemeanor:

1. For any unlicensed person 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.
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.
3. For any person, except a 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.

43-28-25.1. Prohibition - Waivers.

A dentist practicing dentistry may not require a patient to sign a form or statement waiving the patient's right to file a complaint against the dentist with an appropriate state entity or shielding the dentist from liability for injury resulting from a dental encounter.

43-28-26. Punishment for misdemeanors.

Repealed by S.L. 1975, ch. 106, § 673.

43-28-27. Fees.

All license fees, registration fees, and other fees authorized to be assessed and collected by the board must be established by rules adopted by the board.

43-28-28. Joint negotiations by dental providers with dental insurers.

1. As authorized under this section, a dental provider and a dental insurer may enter into voluntary non-fee-related joint negotiations. Before commencing voluntary joint negotiations, a joint negotiation representative shall notify the attorney general of its intent to engage in voluntary joint negotiations. The notice must be in writing and include:
   a. The matters, including terms and conditions, to be negotiated;
   b. The identity and location of all dental providers participating in the voluntary joint negotiations;
   c. The identity, location, and market share of the dental insurer the dental providers seek to engage in voluntary joint negotiations;
   d. A statement explaining the circumstances create the need for voluntary joint negotiations and the benefits anticipated from the voluntary joint negotiations; and
   e. The joint negotiation representative's procedures to ensure compliance with this section.
2. At the time of the filing with the attorney general, the joint negotiation representative shall provide a copy to the dental insurer of its notice and any other materials submitted to the attorney general. The dental insurer may provide additional information to the attorney general regarding matters described in this section.
3. The attorney general shall review the notice to determine whether the proposed voluntary joint negotiations comply with law and public policy, and shall, within ninety days, unless a thirty day extension is approved by the parties, notify the joint negotiation representative and the dental insurer whether voluntary joint negotiations are authorized under this section. The attorney general, in determining whether voluntary joint negotiations are authorized, shall consider the following factors:
   a. The stated necessity and anticipated benefits of voluntary joint negotiations;
   b. The market and bargaining power of the parties;
   c. A party's ability to control or steer consumers, dictate terms of contracts, impose final or nonnegotiable terms, or dictate or limit products or services available or offered to consumers;
   d. The contract terms to be negotiated, and the contract terms' potential effect on the ability to provide quality care or medically appropriate care without delay and difficulty;
   e. The risk of anticompetitive effects; and
   f. The potential effect on price, quality, choice, or access to products or services for consumers or others.
4. The attorney general may request additional information from the parties at any point during the process or during the parties' negotiations.
5. Upon a determination by the attorney general that voluntary joint negotiation is authorized under this section, and after a duly authorized officer of the dental insurer and all dental providers seeking voluntary joint negotiations have granted written consent, two or more dental providers practicing in the service area of the dental insurer may jointly engage in voluntary negotiations with the dental insurer regarding the following non-fee-related matters:
   a. Definition of medical necessity and other conditions of coverage.
   b. Utilization management criteria and procedures.
   c. Clinical practice guidelines.
   d. Preventative care and other medical management policies.
   e. Patient referral standards and procedures.
   f. Drug formularies and standards for prescribing off-formulary drugs.
   g. Quality assurance programs.
   h. Liability terms for a dental provider and dental insurer.
   i. Administrative procedures.
   j. Credentialing standards and procedures for selection, retention, and termination of participating dentists.

k. Mechanisms for resolving disputes between the dental insurer and dental providers.

l. Inclusion or alteration of a contractual term or condition, unless the inclusion or alteration is otherwise required by federal or state law.

6. As used in this section, "fee-related matters" includes the amount of payment, the amount of discount, procedure codes or descriptions of services covered by payment, appropriate grouping of procedure codes, and any other matter directly relating to the amount of reimbursements paid to or revenue received by dental providers.

7. a. Upon a determination by the attorney general that voluntary joint negotiations are authorized under this section, dental providers may communicate with each other and a joint negotiation representative authorized to negotiate on behalf of the dental providers with the dental insurer concerning any contractual term or condition to be negotiated, subject to any limitations imposed by the attorney general. As used in this section, a "joint negotiation representative" means a representative selected by two or more independent dental providers to engage in voluntary joint negotiations with a dental insurer on behalf of the dental providers.

b. The dental providers may agree to be bound by the terms and conditions negotiated by the joint negotiation representative.

8. A person may not act as a joint negotiation representative without express permission from the office of the attorney general.

9. a. Upon the joint negotiation representative and dental insurer determining a voluntary agreement has been reached on contractual terms or conditions that are the subject matter of the negotiations, the joint negotiation representative shall submit to the attorney general, for its determination, a copy of the proposed contract or agreed upon terms between the dental providers and the dental insurer. At the time of the submission to the attorney general, the joint negotiation representative shall provide a copy of the proposed materials submitted to the attorney general to the dental insurer, which may provide additional information to the attorney general regarding the matters in this section.

b. Within ninety days of receipt of the proposed contract or agreed upon terms, the attorney general shall review the proposed contract or agreed upon terms and provide a determination.

c. The attorney general may consider the following factors in reviewing a proposed contract or term, a negotiated contract or term, and the plan of action for implementing a negotiated contract or term under this section:

(1) Fairness of the contract and whether the contract terms are consistent with applicable laws and regulations;

(2) Details provided about the negotiation process;

(3) The market and bargaining power of the parties;

(4) The contract terms and the benefits achieved by the parties;

(5) Potential benefit to consumers and other purchasers of dental insurance;

(6) Risk of harm to consumers and others, including the likelihood of increase in prices or reduction in quality, choice, or access to dental care or dental insurance;

(7) Risk of anticompetitive effects and potential effects on third parties, including creation of barriers to entry for new market participants, unfair competition, or exclusionary effects; and

(8) Promotion of increased infrastructure and innovation in a market.

d. Upon request from the attorney general, the joint negotiation representative, a participating dental provider, and the dental insurer shall provide additional information to inform the attorney general's determination under this section.

10. The attorney general may adopt rules and procedures as necessary to carry out the responsibilities of this section.

11. This section does not apply to dental benefit plans providing covered services exclusively or primarily to individuals who are eligible for medical assistance.

12. This section may not be construed to:
    a. Permit a coordinated cessation, reduction, or limitation of dental services.
    b. Affect government approval of, or otherwise restrict activity by, dental providers which is not prohibited under federal antitrust law or require approval or contract terms to the extent the terms are exempt from state regulation under federal law.