

**Fifty-ninth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1258  
(Representative Porter)

AN ACT to create and enact two new sections to chapter 43-20 of the North Dakota Century Code, relating to a scope of practice and continuing education requirements for dental assistants; and to amend and reenact subsection 2 of section 43-20-05, sections 43-20-06, 43-20-12, and 43-20-12.1, subsection 3 of section 43-28-01, subsection 2 of section 43-28-02, subsection 3 of section 43-28-06, subsection 2 of section 43-28-10, sections 43-28-12.2, 43-28-17, and 43-28-18, and subsection 2 of section 43-28-22 of the North Dakota Century Code, relating to the regulation of dentists, dental hygienists, and dental assistants.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 43-20-05 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 2. AMENDMENT.** Section 43-20-06 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-06. License - Fees Cancellation - Display Inactive status.** ~~In the month prior to expiration, every licensed dental hygienist shall pay to the board of dental examiners a registration fee as required by the board of dental examiners, and in default of the payment, the board, upon thirty days' notice, may revoke or suspend the license of the hygienist in default. 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. The board may collect the fee by suit. Each licensed hygienist shall display conspicuously at the place of employment the annual registration license. Upon payment of a fee determined by the board, a licensee may request to have the licensee's license placed on inactive status upon expiration of the license. While on inactive status, the individual may not engage in the practice of dental hygiene in the state until the individual submits a renewal application, pays the renewal fee, and meets any additional requirements established by rule of the board.~~

**SECTION 3. AMENDMENT.** Section 43-20-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-12. Dental hygienist - ~~Dental assistant~~ - Scope of permitted practice.**

4. A licensed dentist may delegate to a competent dental hygienist ~~or dental assistant~~ those procedures over which the dentist exercises full responsibility, except those procedures that require professional judgment and skill such as diagnosis and treatment planning, the cutting of hard or soft tissue, or any intraoral procedure which would lead to the fabrication of any appliance that, when worn by the patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury. ~~A dental hygienist or dental assistant may take impressions for athletic mouthguards, for rapid palatal expanders, and for passive posttreatment orthodontic retainers that do not replace missing teeth. A dental~~

~~hygienist may prepare oral hygiene treatment plans to be approved by the supervising dentist.~~

- ~~2. A dental assistant may perform such delegated procedures over which a dentist exercises direct supervision as are established by rules adopted by the state board of dental examiners. The board of dental examiners may adopt rules governing the scope of practice of dental hygienists.~~

**SECTION 4. AMENDMENT.** Section 43-20-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-20-12.1. Continuing educational requirement for dental hygienists.** ~~Upon the second anniversary of the issuance of a certificate of registration to practice dental hygiene and each two years thereafter, each person~~

1. At least thirty days before January first of each even-numbered year, the board of dental examiners shall send a renewal notice that includes an affidavit for reporting of continuing education 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. Each individual licensed to practice dental hygiene in this state shall provide the state board of dental examiners evidence, of a nature suitable to the board, that the licensed person licensee has attended, or participated in, the amount of continuing education in dental hygiene as is required by the board. The minimum requirement may not be less than sixteen hours during the preceding two years of licensure. The board may accept for compliance with this the continuing education requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:
  - ~~1.~~ a. Attendance Proof of attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
  - ~~2.~~ b. Research Proof of research, graduate study, teaching, or service as a clinician.
  - ~~3.~~ c. Any Proof of any other evidence of continuing education approved by the board.
2. 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 credit from continuing education activities. If a licensee is selected for an audit of the licensee's continuing education activities, the licensee shall provide satisfactory documentation of attendance at or participation in the continuing education activities listed on the licensee's sworn affidavit. The failure to comply with the audit may be grounds for nonrenewal of the licensee's license. Any licensed person licensee who fails to comply with this the continuing education requirement may, at the discretion of the board, be reexamined to determine the person's individual's competency to continue licensure. If, in the opinion of the board, the licensed person individual does not qualify for further licensed practice, the board shall suspend the license until the dental hygienist provides acceptable evidence to the board of the hygienist's competency to practice.

**SECTION 5.** A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

**Dental assistant - Scope of permitted practice.** A dentist may delegate to a dental assistant procedures over which the dentist exercises full responsibility. A dental assistant may perform any delegated procedure over which the dentist exercises direct, indirect, or general supervision as permitted by rules adopted by the board of dental examiners.

**SECTION 6.** A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

**Continuing education requirement for registered dental assistants.**

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 licensee 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 license 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.

**SECTION 7. AMENDMENT.** Subsection 3 of section 43-28-01 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 8. AMENDMENT.** Subsection 2 of section 43-28-02 of the North Dakota Century Code is amended and reenacted as follows:

2. To students enrolled in and regularly attending any dental college or dental hygiene or dental assisting program recognized as such by the board, if their acts are done in dental college or the dental hygiene or dental assisting program and under the direct supervision of their instructor; or to students who are in training in dental ~~colleges~~ programs recognized as such by the board and who are continuing their training and performing the duties of an extern under the supervision of a licensed and registered dentist who has received approval to supervise ~~such externships~~ an externship by the appropriate accrediting committee, including the board.

**SECTION 9. AMENDMENT.** Subsection 3 of section 43-28-06 of the North Dakota Century Code is amended and reenacted as follows:

3. Issue, suspend, revoke, limit, ~~cancel~~, restrict, and reinstate licenses to practice dentistry or dental hygiene and the ~~annual~~ biennial certificates of registration upon any grounds authorized by this chapter.

**SECTION 10. AMENDMENT.** Subsection 2 of section 43-28-10 of the North Dakota Century Code is amended and reenacted as follows:

2. The person holds a valid ~~annual~~ biennial certificate of registration.

**SECTION 11. AMENDMENT.** Section 43-28-12.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-12.2. Continuing educational requirement for dentists - Audit.** ~~Upon the second anniversary of the issuance of a certificate of registration to practice dentistry and each two years thereafter, each person~~

1. At least thirty days before January first of each even-numbered year, the board 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. Each individual licensed to practice dentistry in this state shall provide the board evidence, of a nature suitable to the board, that the ~~licensed person~~ licensee has attended, or participated in, the amount of continuing education in dentistry required by the board. The minimum requirement may not be less than thirty-two hours during the preceding two years of licensure. The board may accept for compliance with ~~this~~ the continuing education requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. ~~a.~~ a. Attendance ~~Proof of attendance~~ at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. ~~b.~~ b. Research ~~Proof of research~~, graduate study, teaching, or service as a clinician.
3. ~~c.~~ c. Any ~~Proof of any other evidence of~~ continuing education approved by the board.

2. 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. The failure to comply with the audit is grounds for nonrenewal of the license. Any licensed dentist who fails to comply with this requirement may, at the discretion of the board, be reexamined to determine the dentist's competency to continue licensure. If, in the opinion of the board, the licensed dentist does not qualify for further licensed practice, the board shall suspend the license until the dentist provides acceptable evidence to the board of the dentist's competency to practice.

**SECTION 12. AMENDMENT.** Section 43-28-17 of the North Dakota Century Code is amended and reenacted as follows:

**43-28-17. Failure to pay annual fee - ~~Revocation~~ Cancellation of license - Inactive status.** ~~Whenever~~ If a licensed dentist fails to pay the ~~annual~~ 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 ~~revoke~~ cancel the license to practice dentistry and ~~notify the dentist of the revocation~~, notify the dentist of the cancellation, and record the cancellation. The payment of the ~~annual~~ 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 may request to have the licensee's license placed on inactive status upon expiration of the license. While on inactive status, the licensee may not engage in the practice of dentistry in the state until the

individual submits a reinstatement application, pays a renewal fee, and meets any additional requirements established by rule of the board.

**SECTION 13. 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 of license and certificate.** The board may revoke, suspend, limit, or restrict the scope of the license and the certificate of registration of any dentist who has:

1. Been guilty of dishonorable, unprofessional, or immoral conduct.
2. Been convicted of an offense determined by the board to have a direct bearing upon a ~~person's~~ the individual's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that ~~a person~~ 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 or addicted to the use of drugs.
5. Employed or permitted an unlicensed ~~persons~~ individual to practice dentistry in the office under the dentist's control.
6. Become grossly negligent in the practice of the profession.
7. Practiced fraud and deceit in obtaining the license or in the practice of dentistry.
8. Willfully betrayed confidential relations.
9. ~~Practiced dentistry under a trade name or a false name other than a partnership name containing the names of one or more of the partners or deceased partners. However, a licensed dentist, who is associated with an ethical medical clinic, may announce the fact of the association.~~
- ~~10.~~ 10. 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.
- ~~11.~~ 10. Used any advertising of any character tending to mislead and deceive the public.
- ~~12.~~ 11. Failed to demonstrate minimum 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. 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.
- ~~13.~~ 12. Prescribed medications for reasons or conditions outside the scope of dental practice.
- ~~14.~~ 13. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.
- ~~15.~~ 14. Directed auxiliary personnel to perform acts or provide dental services for which the personnel are not licensed or qualified or are prohibited by law or rule.
- ~~16.~~ 15. Willfully engaged in fraudulent submission of insurance claims.

- 47. 16. Made any false or untrue statements in the application for an examination to obtain a license to practice dentistry.
- 48. 17. Made any false representations that the ~~person~~ individual is the holder of a license or certificate of registration to practice dentistry.
- 49. 18. Made any false claims that the ~~person~~ individual is a graduate of a dental college or the holder of any diploma or degree from a dental college.
- 20. 19. Failed to comply with commonly accepted national infection control guidelines and standards.
- 20. Abandoned the dentist's practice as defined by rules adopted by the board.
- 21. Violated this chapter.

**SECTION 14. AMENDMENT.** Subsection 2 of section 43-28-22 of the North Dakota Century Code is amended and reenacted as follows:

- 2. Where the license and certificate of registration has been revoked for nonpayment of ~~annual~~ biennial registration fees required by this chapter, the dentist may be reinstated upon payment to the board of the amount of renewal fees then in default, with an additional administrative fee to be fixed by the board. However, the board, after an investigation, may require a dentist whose license has been revoked for nonpayment of the ~~annual~~ biennial registration fee to submit to a reexamination as to the ~~person's~~ individual's qualification to practice dentistry before the ~~person~~ individual is reinstated, if the board ~~in the exercise of its discretion finds and~~ determines that the best interests of the public, and the applicant, will be served thereby.

\_\_\_\_\_  
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 Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1258.

House Vote:      Yeas    91      Nays    0      Absent    3

Senate Vote:    Yeas    44      Nays    0      Absent    3

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2005.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2005,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State