

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1313
(Representatives Kasper, Dosch, Grande, Ruby)
(Senators Cook, Wardner)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24 and two new sections to chapter 43-28 of the North Dakota Century Code, relating to criminal background checks for dentists and powers of the board of dental examiners; and to amend and reenact sections 43-20-12.2 and 43-20-13, subsection 1 of section 43-20-13.1, and 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 43-28-18 of the North Dakota Century Code, relating to the regulation of dentists and dental assistants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

43-20-13. Dental assistant - Scope of permitted practice. A dental assistant is an auxiliary to the practice of dentistry. To the extent applicable and to the extent they are not inconsistent with this chapter, the requirements and rules adopted by the board of dental examiners under chapter 43-28 apply to the practice of dental assistants. A dentist may delegate to a dental assistant who is under that dentist's direct, indirect, or general supervision, procedures over which the dentist exercises full responsibility as provided by rules adopted by the board of dental examiners. ~~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 4. AMENDMENT. Subsection 1 of section 43-20-13.1 of the North Dakota Century Code is amended and reenacted as follows:

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~~ registrant fails to pay the fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default, the board may cancel the ~~license~~ registration without a hearing. The board shall record the cancellation and notify the dental assistant of the cancellation. Each individual registered as a dental assistant shall provide the board evidence satisfactory to the board that the individual has attended or participated in the

amount of continuing education as is required by the board. The board may establish a minimum continuing education requirement which may not be less than eight hours during a twelve-month registration. The board may accept for compliance with the continuing education requirement any of the following activities which may contribute directly to the dental education of the registrant:

- a. Proof of attendance at a lecture, study club, college postgraduate course, or scientific session of a convention.
- b. Proof of research, graduate study, teaching, or service as a clinician.
- c. Proof of any other continuing education approved by the board.

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

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

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

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

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 ~~or legal entity~~, 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 ~~students~~ a student enrolled in and regularly attending any dental college ~~or~~, dental hygiene, or dental assisting program recognized as such by the board, if ~~their~~ the student's acts are done in the dental college or the, dental hygiene, or dental assisting program and under the direct supervision of ~~their~~ the student's instructor; or to ~~students~~ a student who

~~are~~ is in training in ~~any dental programs~~ program recognized as such by the board and who ~~are~~ is continuing ~~their~~ the student's training and performing the duties of an extern under the supervision of a ~~licensed and registered~~ dentist who has received approval to supervise an externship by the appropriate accrediting committee, including the board.

3. To a legally qualified and licensed ~~physicians~~ physician, surgeons surgeon, and or other practitioners practitioner authorized by law, who ~~perform~~ in emergency cases performs any act ~~defined herein as~~ within the scope of the practice of dentistry in emergency cases.
4. To a duly licensed and registered dentist of another state temporarily operating in this state as a clinician ~~or~~, 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 state department of health.

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

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

1. ~~A person~~ An individual may not be appointed as a dentist member of the board unless that ~~person~~ individual:
 - a. Is a ~~licensed and registered~~ dentist ~~in accordance with~~ licensed and registered under this chapter 43-28-; 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. ~~A person~~ An individual may not be appointed as the dental hygienist member of the board unless that ~~person~~ 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. ~~A person~~ An individual may not be appointed as the consumer member of the board unless that ~~person~~ individual:
 - a. Has been a resident of North Dakota for five years immediately preceding appointment-; and
 - b. Has no personal or family 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 ~~a person~~ an individual engaged in any of those occupations.
4. The dental hygienist and 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 consumer member may not participate in the clinical examination of dentists or hygienists for licensure.

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

43-28-05. Meeting of board - Officers - Bond - Compensation of members - Quorum. The board shall hold a regular annual meeting at a place designated by the board and special meetings when necessary. At the regular meeting of the board, the members shall elect from their number a president, a member who has at least two years remaining on that member's term, president elect, a member who has at least three years remaining on that member's term, and a secretary-treasurer. The executive director shall furnish a bond in the amount fixed by the board. Each member of the board shall receive as compensation ~~the sum of one hundred ten dollars~~ 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. Four members of the board constitute a quorum but a smaller number may adjourn from time to time.

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

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.

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

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

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

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

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

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

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

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

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

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

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

43-28-17. Failure to pay annual biennial fee - Cancellation of license - Inactive status. If a licensed dentist fails to pay the biennial fee for the renewal of the certificate of registration on or before the due date of the payment, after thirty days' written notice of the default without proper payment, the board may cancel the license, notify the dentist of the cancellation, and record the cancellation. The payment of the biennial fee within the thirty-day period, with an additional sum determined by the board, will excuse the default. Upon payment of a fee determined by the board, a licensee 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 14. A new section to chapter 43-28 of the North Dakota Century Code is created and enacted as follows:

Duty to report.

1. A dentist shall report to the board in writing within ninety 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.

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.

SECTION 15. 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 the individual's ability to serve the public as a dentist, or the board determines, following conviction for any offense, that the individual is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Been adjudged mentally ill and not judicially restored by the regularly constituted authorities.
4. Been guilty of habitual intemperance or addicted to the use of drugs.
5. Employed or permitted an unlicensed 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. Shared any professional fee with anyone or paid anyone for sending or referring patients to the dentist. However, this does not prohibit licensed dentists from practicing in a partnership and sharing one another's professional fees, nor prohibit a licensed dentist from employing any other licensed dentist or licensed dental hygienist.
10. Used any advertising of any character tending to mislead and deceive the public, including advertising the public could reasonably interpret as indicating the dentist is qualified to practice a dental specialty, if the practice of that dental specialty would be outside the scope of practice for which the dentist is qualified to practice.
11. Failed to demonstrate 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.
12. Prescribed, administered, or dispensed medications for reasons or conditions outside the scope of dental practice.
13. Fraudulently, carelessly, negligently, or inappropriately prescribed drugs or medications.

14. Directed auxiliary personnel to perform acts or provide dental services for which the personnel are not licensed or qualified or are prohibited by law or rule.
15. Willfully engaged in fraudulent submission of insurance claims.
16. Made any false or untrue statements in the application for an examination to obtain a license to practice dentistry.
17. Made any false representations that the individual is the holder of a license or certificate of registration to practice dentistry.
18. Made any false claims that the individual is a graduate of a dental college or the holder of any diploma or degree from a dental college.
19. Failed to comply with commonly accepted national infection control guidelines and standards.
20. Abandoned the dentist's practice as defined by rules adopted by the board.
21. ~~Violated this chapter~~ Failed to report to the board as required under section 14 of this Act.

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 Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1313.

House Vote: Yeas 92 Nays 0 Absent 2

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,

at _____ o'clock _____ M.

Secretary of State