House Engrossed Senate Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

CHAPTER 191

SENATE BILL 1287

AN ACT

AMENDING SECTIONS 32-1201, 32-1206, 32-1207, 32-1213, 32-1232, 32-1235, 32-1236, 32-1261, 32-1263, 32-1264, 32-1287, 32-1295, 32-1296 AND 32-1297.01, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 11, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-1270; REPEALING SECTIONS 32-1297 AND 32-1297.02, ARIZONA REVISED STATUTES; RELATING TO THE STATE BOARD OF DENTAL EXAMINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-1201, Arizona Revised Statutes, is amended to read:

32-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.

2. "Board" means the state board of dental examiners.

3. "BUSINESS ENTITY" MEANS A BUSINESS ORGANIZATION THAT HAS AN OWNERSHIP THAT INCLUDES ANY PERSONS WHO ARE NOT LICENSED OR CERTIFIED TO PROVIDE DENTAL SERVICES IN THIS STATE, THAT OFFERS TO THE PUBLIC PROFESSIONAL SERVICES REGULATED BY THE BOARD AND THAT IS ESTABLISHED PURSUANT TO THE LAWS OF ANY STATE OR FOREIGN COUNTRY.

~~3.~~ 4. "Dental assistant" means any person who acts as an assistant to a dentist or a dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.

~~4.~~ 5. "Dental hygienist" means any person licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.

~~5.~~ 6. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.

~~6.~~ 7. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.

~~7.~~ 8. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography, including cephalometrics, panoramic and maxillofacial tomography and other dental related non-fluoroscopic diagnostic imaging modalities.

~~8.~~ 9. "Dentistry", "dentist" and "dental" means the general practice of dentistry and all specialties or restricted practices of dentistry.

~~9.~~ 10. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.

~~10.~~ 11. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:

(a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

(b) Imposition of restrictions on the scope of practice.

(c) Imposition of peer review and professional education requirements.

(d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.

~~11.~~ 12. "Irregularities in billing" means SUBMITTING ANY CLAIM, BILL OR GOVERNMENT ASSISTANCE CLAIM TO ANY PATIENT, RESPONSIBLE PARTY OR THIRD-PARTY PAYOR FOR DENTAL SERVICES RENDERED THAT IS MATERIALLY FALSE WITH THE INTENT TO RECEIVE UNEARNED INCOME AND AS EVIDENCED BY ANY OF THE FOLLOWING:

~~(a) Reporting excessive charges for the purpose of obtaining payment not earned.~~

~~(b) Reporting charges for services not rendered.~~

~~(c) Incorrectly reporting services rendered for the purpose of obtaining payment not earned.~~

(a) CHARGES FOR SERVICES NOT RENDERED.

(b) ANY TREATMENT DATE THAT DOES NOT ACCURATELY REFLECT THE DATE WHEN THE SERVICE AND PROCEDURES WERE ACTUALLY COMPLETED.

(c) ANY DESCRIPTION OF A DENTAL SERVICE OR PROCEDURE THAT DOES NOT ACCURATELY REFLECT THE ACTUAL WORK COMPLETED.

(d) ANY CHARGE FOR A SERVICE OR PROCEDURE THAT CANNOT BE CLINICALLY JUSTIFIED OR DETERMINED TO BE NECESSARY.

(e) ANY STATEMENT THAT IS MATERIAL TO THE CLAIM AND THAT THE LICENSEE KNOWS IS FALSE OR MISLEADING.

~~(d)~~ (f) ~~Abrogating~~ AN ABROGATION OF the copayment provisions of a dental insurance contract by ~~waiving~~ A WAIVER OF all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party OR IF THE WAIVER IS USED AS AN ENTICEMENT TO RECEIVE DENTAL SERVICES FROM THAT PROVIDER. THIS SUBDIVISION DOES NOT INTERFERE WITH A CONTRACTUAL RELATIONSHIP BETWEEN A THIRD PARTY PAYOR AND A LICENSEE OR BUSINESS ENTITY REGISTERED WITH THE BOARD.

~~(e)~~ (g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

~~12.~~ 13. "Letter of concern" means an advisory letter to notify a licensee OR A REGISTERED BUSINESS ENTITY that, while the evidence does not warrant disciplinary action, the board believes that the licensee OR REGISTERED BUSINESS ENTITY should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license OR THE BUSINESS ENTITY'S REGISTRATION. A letter of concern is not a

disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.

~~13.~~ 14. "Licensed" means licensed pursuant to this chapter.

~~14.~~ 15. "Place of practice" means each physical location at which a person licensed pursuant to this chapter performs services subject to this chapter.

~~15.~~ 16. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.

~~16.~~ 17. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.

~~17.~~ 18. "Recognized dental school" means a dental school accredited by the American dental association commission on dental accreditation.

~~18.~~ 19. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.

~~19.~~ 20. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.

~~20.~~ 21. "Unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

(a) Intentional betrayal of a professional confidence or intentional violation of a privileged communication except as either of these may otherwise be required by law. This subdivision does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.

(b) Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, denturist or dental hygienist to practice that person's profession.

(c) Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's dental needs.

(d) Gross malpractice, or repeated acts constituting malpractice.

(e) Acting or assuming to act as a member of the board if this is not true.

(f) Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.

(g) Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.

(h) Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.

(i) Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.

(j) Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in the treatment of a condition, disease, injury, ailment or infirmity.

(k) Giving or receiving, or aiding or abetting the giving or receiving, of rebates, either directly or indirectly.

(l) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.

(m) Refusal, revocation or suspension of a license or any other disciplinary action taken against a dentist by, or the voluntary surrender of a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.

(n) Any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

(o) Obtaining a fee by fraud or misrepresentation, or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

(p) Repeated irregularities in billing.

(q) Employing unlicensed persons to perform or aiding and abetting unlicensed persons in the performance of work that can be done legally only by licensed persons.

(r) Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.

(s) Wilfully or intentionally causing or permitting supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that permitted under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.

~~(t) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any of the provisions of this chapter or any rule adopted by the board.~~

~~(u)~~ (t) The following advertising practices:

(i) The publication or circulation, directly or indirectly, of any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.

(ii) Advertising in any manner that tends to deceive or defraud the public.

~~(v)~~ (u) Failing to dispense drugs and devices in compliance with article 6 of this chapter.

~~(w)~~ (v) Failing to comply with a final board order, including an order of censure or probation.

~~(x)~~ (w) Failing to comply with a board subpoena in a timely manner.

~~(y)~~ (x) Failing or refusing to maintain adequate patient records.

~~(z)~~ (y) Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dentally related activity.

~~(aa)~~ (z) Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.

~~(bb)~~ (aa) Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.

(bb) FAILING TO REPORT IN WRITING TO THE BOARD ANY EVIDENCE THAT A DENTIST, DENTURIST OR DENTAL HYGIENIST IS OR MAY BE:

(i) PROFESSIONALLY INCOMPETENT.

(ii) ENGAGING IN UNPROFESSIONAL CONDUCT.

(iii) IMPAIRED BY DRUGS OR ALCOHOL.

(iv) MENTALLY OR PHYSICALLY UNABLE TO SAFELY ENGAGE IN THE ACTIVITIES OF A DENTIST, DENTURIST OR DENTAL HYGIENIST PURSUANT TO THIS CHAPTER.

(cc) FILING A FALSE REPORT PURSUANT TO SUBDIVISION (bb) OF THIS PARAGRAPH.

(dd) PRACTICING DENTISTRY, DENTAL HYGIENE OR DENTURISM IN A BUSINESS ENTITY THAT IS NOT REGISTERED WITH THE BOARD AS REQUIRED BY SECTION 32-1213.

Sec. 2. Section 32-1206, Arizona Revised Statutes, is amended to read:

32-1206. Compensation of board

Members of the board are entitled to receive compensation in the amount of ~~one hundred~~ TWO HUNDRED FIFTY dollars for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

Sec. 3. Section 32-1207, Arizona Revised Statutes, is amended to read:

32-1207. Powers and duties

A. The board shall:

1. Adopt rules not inconsistent with this chapter for the regulation of its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel AND REGISTERED BUSINESS ENTITIES, provided:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to section 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, or dental hygienist in consultation with a dentist, may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Keep a record of its proceedings and reports.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools and dental hygiene schools in order to be classified as recognized dental schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

~~7. Determine the eligibility of applicants for examination, examine those found eligible and issue licenses to those who pass the examination.~~

7. ISSUE LICENSES TO THOSE IT DETERMINES ARE ELIGIBLE FOR LICENSURE PURSUANT TO THIS CHAPTER.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action, but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.

2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within its jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

(b) Prescribing educational and experience prerequisites for the administration of intravenous or intramuscular drugs for the purpose of sedation or for use of general anesthetics in conjunction with a dental treatment procedure.

(c) Prescribing requirements for obtaining licenses for disabled or retired licensees, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as it deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. Order and evaluate physical, psychological, psychiatric and competency testing of licensed dentists and dental hygienists and certified denturists and candidates for licensure and certification as the board determines necessary.

C. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

D. The board by rule shall require that a licensee obtain a permit for the application of general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than three hundred dollars to cover administrative costs connected with issuing the permit and shall conduct inspections to assure compliance.

E. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

Sec. 4. Section 32-1213, Arizona Revised Statutes, is amended to read:

32-1213. Business entities; registration; renewal; civil penalty; exceptions

A. A business entity may not offer dental services pursuant to this chapter unless:

1. The entity is registered with the board pursuant to this section.

2. The services are conducted by a ~~dentist licensed~~ LICENSEE pursuant to this chapter.

B. The business entity must file a registration application on a form provided by the board. The application must include:

1. A description of the entity's services offered to the public.

2. The name of ~~each licensee who is authorized~~ ANY DENTIST WHO IS AUTHORIZED TO PROVIDE and who is responsible for PROVIDING the dental services offered at each office.

3. THE NAMES AND ADDRESSES OF THE OFFICERS AND DIRECTORS OF THE BUSINESS ENTITY.

~~3.~~ 4. ~~An application~~ A REGISTRATION fee prescribed by the board in rule.

C. A business entity must file a separate registration application AND PAY A FEE for each branch office in this state.

D. A registration expires ~~one year~~ THREE YEARS after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on ~~an annual~~ A TRIENNIAL basis ~~and not sooner than sixty days and not less than thirty days before the expiration date~~ ON A FORM PROVIDED BY THE BOARD BEFORE THE EXPIRATION DATE. AN ENTITY THAT FAILS TO RENEW THE REGISTRATION BEFORE THE EXPIRATION DATE IS SUBJECT TO A LATE FEE AS PRESCRIBED BY THE BOARD BY RULE. THE BOARD MAY STAGGER THE DATES FOR RENEWAL APPLICATIONS.

E. The business entity must notify the board in writing within thirty days after any change:

1. In the entity's name, address or telephone number.

2. In the ~~location of any office~~ OFFICERS OR DIRECTORS OF THE BUSINESS ENTITY.

3. ~~Of the licensee~~ IN THE NAME OF ANY DENTIST who is authorized TO PROVIDE and who is responsible for PROVIDING the dental services ~~offered at a particular office~~ IN ANY FACILITY.

F. THE BUSINESS ENTITY SHALL ESTABLISH A WRITTEN PROTOCOL FOR THE SECURE STORAGE, TRANSFER AND ACCESS OF THE DENTAL RECORDS OF THE BUSINESS ENTITY'S PATIENTS. THIS PROTOCOL MUST INCLUDE, AT A MINIMUM, PROCEDURES FOR:

1. NOTIFYING PATIENTS OF THE FUTURE LOCATIONS OF THEIR RECORDS IF THE BUSINESS ENTITY TERMINATES OR SELLS THE PRACTICE.

2. DISPOSING OF UNCLAIMED DENTAL RECORDS.

3. THE TIMELY RESPONSE TO REQUESTS BY PATIENTS FOR COPIES OF THEIR RECORDS.

G. THE BUSINESS ENTITY MUST NOTIFY THE BOARD WITHIN THIRTY DAYS AFTER THE DISSOLUTION OF ANY REGISTERED BUSINESS ENTITY OR THE CLOSING OR RELOCATION OF ANY FACILITY AND MUST DISCLOSE TO THE BOARD THE ENTITY'S PROCEDURE BY WHICH ITS PATIENTS MAY OBTAIN THEIR RECORDS.

~~F.~~ H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:

1. Refuse to issue a registration.

2. Suspend or revoke a registration.

3. Impose a civil penalty of not more than two thousand dollars for each violation.

4. ENTER A DECREE OF CENSURE.

5. ISSUE AN ORDER PRESCRIBING A PERIOD AND TERMS OF PROBATION THAT ARE BEST ADAPTED TO PROTECT THE PUBLIC WELFARE AND THAT MAY INCLUDE A REQUIREMENT FOR RESTITUTION TO A PATIENT FOR A VIOLATION OF THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER.

6. ISSUE A LETTER OF CONCERN IF A BUSINESS ENTITY'S ACTIONS MAY CAUSE THE BOARD TO TAKE DISCIPLINARY ACTION.

~~G.~~ I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.

~~H.~~ J. This section does not apply to:

1. A ~~person~~ SOLE PROPRIETORSHIP OR PARTNERSHIP THAT CONSISTS EXCLUSIVELY OF PERSONS who ~~is~~ ARE licensed pursuant to this chapter.

2. Any of the following entities licensed under title 20:

(a) A service corporation.

(b) An insurer authorized to transact disability insurance.

(c) A prepaid dental plan organization that does not provide directly for prepaid dental services.

(d) A health care services organization that does not provide directly for dental services.

3. A professional corporation or professional limited liability company, THE SHARES OF WHICH ARE EXCLUSIVELY OWNED BY PERSONS WHO ARE LICENSED PURSUANT TO THIS CHAPTER AND THAT IS formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29, chapter 4, article 11.

4. A FACILITY REGULATED BY THE FEDERAL GOVERNMENT OR A STATE, DISTRICT OR TERRITORY OF THE UNITED STATES.

5. AN ADMINISTRATOR OR EXECUTOR OF THE ESTATE OF A DECEASED DENTIST OR A PERSON WHO IS LEGALLY AUTHORIZED TO ACT FOR A DENTIST WHO HAS BEEN ADJUDICATED TO BE MENTALLY INCOMPETENT FOR NOT MORE THAN ONE YEAR FROM THE DATE THE BOARD RECEIVES NOTICE OF THE DENTIST'S DEATH OR INCAPACITATION PURSUANT TO SECTION 32-1270.

~~I.~~ K. A facility that offers dental services to the public by persons licensed under this chapter shall be licensed by the board unless the facility is any of the following:

1. Owned by a licensee.

2. Regulated by the federal government or a state, district or territory of the United States.

~~J.~~ L. ~~Nothing in~~ EXCEPT FOR ISSUES RELATING TO INSURANCE CODING AND BILLING THAT REQUIRE THE NAME, SIGNATURE AND LICENSE NUMBER OF THE DENTIST PROVIDING TREATMENT, this section ~~shall be construed to~~ DOES NOT:

1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.

2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the professional judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.

M. THE BOARD SHALL ADOPT RULES THAT PROVIDE A METHOD FOR THE BOARD TO RECEIVE THE ASSISTANCE AND ADVICE OF BUSINESS ENTITIES LICENSED PURSUANT TO THIS CHAPTER IN ALL MATTERS RELATING TO THE REGULATION OF BUSINESS ENTITIES.

Sec. 5. Section 32-1232, Arizona Revised Statutes, is amended to read:

32-1232. Qualifications of applicant; application; fee

A. An applicant for licensure shall be of good moral character, shall meet the requirements of section 32-1233 and shall hold a diploma CONFERRING A DEGREE OF DOCTOR OF DENTAL MEDICINE OR DOCTOR OF DENTAL SURGERY from a recognized dental school. ~~If the school is not recognized, the candidate shall meet the requirements of subsection B of this section.~~

~~B. A candidate who is a graduate of a dental school that is not recognized by the board shall meet the examination requirements of this article and shall do all of the following:~~

~~1. Present evidence of completion of a two year program in clinical dentistry at a dental school accredited by the American dental association commission on accreditation.~~

~~2. Pass parts I and II of the national dental board examinations.~~

~~3. Have passed the western regional examining board examination within the last five years.~~

~~4. Demonstrate to the satisfaction of the board an ability to read, write, speak, understand and be understood in the English language.~~

~~C.~~ B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of three hundred dollars. The board shall waive this fee for candidates who are holders of valid restricted permits.

~~D.~~ C. The board may deny an application for a license, an application to take an examination for a license or an application for a restricted permit if the applicant:

1. Committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction AND that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction AND that constitutes unprofessional conduct pursuant to this chapter.

6. Surrendered, relinquished or gave up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction AND that constitutes unprofessional conduct pursuant to this chapter.

~~E.~~ D. The board shall suspend an application for a license, an application to take an examination for a license or an application for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

Sec. 6. Section 32-1235, Arizona Revised Statutes, is amended to read:

32-1235. <u>Reinstatement of license; application for previously denied license</u>

A. On written application the board may issue a new license or certificate to a dentist, dental hygienist or denturist whose license or certificate was previously suspended or revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection ~~D~~ C may apply for licensure not less than five years after the denial.

Sec. 7. Section 32-1236, Arizona Revised Statutes, is amended to read:

32-1236. Dentist triennial licensure; forfeiture of license; reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled licensees; penalties

A. On or before June 30 of every third year, every licensed dentist shall submit to the board a passport size photograph taken of the dentist within the previous six months and pay a fee of six hundred fifty dollars. ~~This requirement does not apply to a disabled or retired dentist.~~ THE FEE PRESCRIBED BY THIS SUBSECTION DOES NOT APPLY TO A DISABLED OR RETIRED LICENSEE.

B. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the next June 30. This fee shall not exceed one-third of the fee established pursuant to subsection A OF THIS SECTION. Subsequent licensure renewal shall be conducted pursuant to this section.

C. A person who fails to pay a fee prescribed by this section forfeits the license. A license may be reinstated in the fiscal year in which it is forfeited by submitting a written application with payment of the fee plus a penalty of one hundred dollars. During the second fiscal year following forfeiture, reinstatement may be effected by submitting a written application and payment of the fees and all accumulated penalty fees. If a person fails to pay the fees for reinstatement before the beginning of the third fiscal year following the forfeiture of the license, the board shall require that person to successfully complete the regular examination before the board reinstates the license. Whenever issued, reinstatement is as of the date of

application and entitles the applicant to licensure only for the remainder of the applicable three year period.

D. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.

2. The address for each place of practice.

E. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days of opening the additional place or places of practice. The board shall impose a penalty of fifty dollars for failure to notify the board.

F. A LICENSEE WHO IS OVER SIXTY-FIVE YEARS OF AGE AND WHO IS FULLY RETIRED AND A LICENSEE WHO IS PERMANENTLY DISABLED MAY CONTRIBUTE SERVICES TO A RECOGNIZED CHARITABLE INSTITUTION AND STILL RETAIN THAT CLASSIFICATION FOR TRIENNIAL REGISTRATION PURPOSES ON PAYMENT OF A REDUCED RENEWAL FEE AS PRESCRIBED BY THE BOARD BY RULE.

G. A LICENSEE APPLYING FOR RETIRED OR DISABLED STATUS SHALL RELINQUISH ANY PRESCRIBING PRIVILEGES AND SHALL PROVIDE EVIDENCE THAT THE LICENSEE HAS SURRENDERED TO THE UNITED STATES DRUG ENFORCEMENT ADMINISTRATION ANY REGISTRATION ISSUED PURSUANT TO THE FEDERAL CONTROLLED SUBSTANCE ACT AND HAS SURRENDERED TO THE BOARD ANY REGISTRATION ISSUED PURSUANT TO SECTION 36-2606. IF THE LICENSEE HOLDS A PERMIT TO DISPENSE DRUGS AND DEVICES PURSUANT TO SECTION 32-1298, THE LICENSEE SHALL SURRENDER THAT PERMIT TO THE BOARD.

~~F.~~ H. A licensee who changes the licensee's primary mailing address or place of practice address shall~~, within ten days,~~ notify the board of that change in writing WITHIN TEN DAYS. The board shall impose a penalty of fifty dollars if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to one hundred dollars if a licensee fails to notify it of the change within thirty days.

Sec. 8. Section 32-1261, Arizona Revised Statutes, is amended to read:

32-1261. Practicing without license; classification

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license OR BUSINESS ENTITY REGISTRATION as prescribed by this chapter:

1. Practices dentistry or any branch ~~thereof~~ OF DENTISTRY.

2. In any manner or by any means, direct or indirect, advertises, represents or ~~holds himself out as~~ CLAIMS TO BE engaged or ready and willing to ~~forthwith~~ engage in ~~such~~ THAT practice.

3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or ~~which~~ THAT is advertised, represented or held out to the public ~~as such~~ FOR THAT PURPOSE.

1 Sec. 9. Section 32-1263, Arizona Revised Statutes, is amended to read:
2 32-1263. Grounds for disciplinary action; definition
3 A. The board may invoke disciplinary action against any person
4 licensed under this chapter for any of the following reasons:
5 1. Unprofessional conduct, as defined in section 32-1201.
6 2. Conviction of a felony or of a misdemeanor involving moral
7 turpitude, in which case the record of conviction or a certified copy is
8 conclusive evidence.
9 3. Physical or mental incompetence to practice ~~his profession~~ PURSUANT
10 TO THIS CHAPTER.
11 4. COMMITTING OR AIDING, DIRECTLY OR INDIRECTLY, A violation of or
12 noncompliance with any provision of this chapter or of any rules adopted by
13 the board pursuant to this chapter.
14 5. Dental incompetence, as defined in section 32-1201.
15 B. NOTHING IN THIS SECTION CREATES A CAUSE OF ACTION AGAINST A
16 LICENSEE OR A REGISTERED BUSINESS ENTITY THAT MAKES A REPORT OF
17 UNPROFESSIONAL CONDUCT OR UNETHICAL CONDUCT IN GOOD FAITH.
18 C. THE BOARD MAY TAKE DISCIPLINARY ACTION AGAINST A BUSINESS ENTITY
19 REGISTERED PURSUANT TO THIS CHAPTER FOR UNETHICAL CONDUCT.
20 D. FOR THE PURPOSES OF THIS SECTION, "UNETHICAL CONDUCT" MEANS THE
21 FOLLOWING ACTS OCCURRING IN THIS STATE OR ELSEWHERE:
22 1. FAILING TO REPORT IN WRITING TO THE BOARD ANY EVIDENCE THAT A
23 DENTIST, DENTURIST OR DENTAL HYGIENIST IS OR MAY BE PROFESSIONALLY
24 INCOMPETENT, IS OR MAY BE GUILTY OF UNPROFESSIONAL CONDUCT, IS OR MAY BE
25 IMPAIRED BY DRUGS OR ALCOHOL OR IS OR MAY BE MENTALLY OR PHYSICALLY UNABLE TO
26 SAFELY ENGAGE IN THE PERMISSIBLE ACTIVITIES OF A DENTIST, DENTURIST OR DENTAL
27 HYGIENIST.
28 2. FALSELY REPORTING TO THE BOARD THAT A DENTIST, DENTURIST OR DENTAL
29 HYGIENIST IS OR MAY BE GUILTY OF UNPROFESSIONAL CONDUCT, IS OR MAY BE
30 IMPAIRED BY DRUGS OR ALCOHOL OR IS OR MAY BE MENTALLY OR PHYSICALLY UNABLE TO
31 SAFELY ENGAGE IN THE PERMISSIBLE ACTIVITIES OF A DENTIST, DENTURIST OR DENTAL
32 HYGIENIST.
33 3. OBTAINING OR ATTEMPTING TO OBTAIN A REGISTRATION OR REGISTRATION
34 RENEWAL BY FRAUD OR BY MISREPRESENTATION.
35 4. KNOWINGLY FILING WITH THE BOARD ANY APPLICATION, RENEWAL OR OTHER
36 DOCUMENT THAT CONTAINS FALSE INFORMATION.
37 5. FAILING TO REGISTER OR FAILING TO SUBMIT A RENEWAL REGISTRATION
38 WITH THE BOARD PURSUANT TO SECTION 32-1213.
39 6. FAILING TO PROVIDE THE FOLLOWING PERSONS WITH ACCESS TO ANY PLACE
40 FOR WHICH A REGISTRATION HAS BEEN ISSUED OR FOR WHICH AN APPLICATION FOR A
41 REGISTRATION HAS BEEN SUBMITTED IN ORDER TO CONDUCT A SITE INVESTIGATION,
42 INSPECTION OR AUDIT:
43 (a) THE BOARD OR ITS EMPLOYEES OR AGENTS.
44 (b) AN AUTHORIZED FEDERAL OR STATE OFFICIAL.

7. FAILING TO NOTIFY THE BOARD OF A CHANGE IN OFFICERS AND DIRECTORS, A CHANGE OF ADDRESS OR A CHANGE IN THE DENTISTS PROVIDING SERVICES PURSUANT TO SECTION 32-1213, SUBSECTION E.

8. FAILING TO PROVIDE PATIENT RECORDS PURSUANT TO SECTION 32-1264.

9. OBTAINING A FEE BY FRAUD OR MISREPRESENTATION OR WILFULLY OR INTENTIONALLY FILING A FRAUDULENT CLAIM WITH A THIRD PARTY FOR SERVICES RENDERED OR TO BE RENDERED TO A PATIENT.

10. ENGAGING IN REPEATED IRREGULARITIES IN BILLING.

11. ENGAGING IN THE FOLLOWING ADVERTISING PRACTICES:

(a) THE PUBLICATION OR CIRCULATION, DIRECTLY OR INDIRECTLY, OF ANY FALSE OR FRAUDULENT OR MISLEADING STATEMENTS CONCERNING THE SKILL, METHODS OR PRACTICES OF A REGISTERED BUSINESS ENTITY, A LICENSEE OR ANY OTHER PERSON.

(b) ADVERTISING IN ANY MANNER THAT TENDS TO DECEIVE OR DEFRAUD THE PUBLIC.

12. FAILING TO COMPLY WITH A BOARD SUBPOENA IN A TIMELY MANNER.

13. FAILING TO COMPLY WITH A FINAL BOARD ORDER, INCLUDING A DECREE OF CENSURE, A PERIOD OR TERM OF PROBATION, A CONSENT AGREEMENT OR A STIPULATION.

14. EMPLOYING OR AIDING AND ABETTING UNLICENSED PERSONS TO PERFORM WORK THAT MUST BE DONE BY A PERSON LICENSED PURSUANT TO THIS CHAPTER.

15. ENGAGING IN ANY CONDUCT OR PRACTICE THAT CONSTITUTES A DANGER TO THE HEALTH, WELFARE OR SAFETY OF THE PATIENT OR THE PUBLIC.

Sec. 10. Section 32-1264, Arizona Revised Statutes, is amended to read:

32-1264. Maintenance of records

A. A person licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnosis, evaluation and treatment of each patient of record. A licensee or certificate holder shall maintain records stored or produced electronically in retrievable paper form. These records shall include:

1. All treatment notes, including current health history and clinical examinations.

2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.

3. Diagnosis and treatment planning.

4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.

5. All radiographs.

B. Records ~~shall be~~ ARE available for review and for treatment purposes to the dentist, dental hygienist or denturist providing care.

C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board as part of an investigation process.

D. ~~On~~ WITHIN FIFTEEN BUSINESS DAYS OF a patient's WRITTEN request, that patient's dentist, dental hygienist or denturist OR A REGISTERED BUSINESS ENTITY shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. THE BOARD BY RULE SHALL PRESCRIBE THE REASONABLE COSTS OF REPRODUCTION. A DENTIST, DENTAL HYGIENIST, DENTURIST OR REGISTERED BUSINESS ENTITY MAY REQUIRE THAT PAYMENT OF REPRODUCTION COSTS BE MADE IN ADVANCE, UNLESS THE RECORDS ARE NECESSARY FOR CONTINUITY OF CARE, IN WHICH CASE THE RECORDS SHALL NOT BE WITHHELD. COPIES OF RECORDS SHALL NOT BE WITHHELD BECAUSE OF AN UNPAID BALANCE FOR DENTAL SERVICES.

E. Unless otherwise required by law, a person licensed or certified pursuant to this chapter OR A BUSINESS ENTITY REGISTERED PURSUANT TO THIS CHAPTER must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.

2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

Sec. 11. Title 32, chapter 11, article 3, Arizona Revised Statutes, is amended by adding section 32-1270, to read:

32-1270. Deceased or incapacitated dentists; notification

A. AN ADMINISTRATOR OR EXECUTOR OF THE ESTATE OF A DECEASED DENTIST, OR A PERSON WHO IS LEGALLY AUTHORIZED TO ACT FOR A DENTIST WHO HAS BEEN ADJUDICATED TO BE MENTALLY INCOMPETENT, MUST NOTIFY THE BOARD WITHIN SIXTY DAYS AFTER THE DENTIST'S DEATH OR INCAPACITATION. THE ADMINISTRATOR OR EXECUTOR MAY EMPLOY A LICENSED DENTIST FOR A PERIOD OF NOT MORE THAN ONE YEAR TO:

1. CONTINUE THE DECEASED OR INCAPACITATED DENTIST'S PRACTICE.

2. CONCLUDE THE AFFAIRS OF THE DECEASED OR INCAPACITATED DENTIST, INCLUDING THE SALE OF ANY ASSETS.

B. AN ADMINISTRATOR OR EXECUTOR OPERATING A PRACTICE PURSUANT TO THIS SECTION FOR MORE THAN ONE YEAR MUST REGISTER AS A BUSINESS ENTITY PURSUANT TO SECTION 32-1213.

Sec. 12. Section 32-1287, Arizona Revised Statutes, is amended to read:

32-1287. Dental hygienist triennial licensure; forfeiture of license; reinstatement; notice of change of address; penalties; retired and disabled licensees

A. On or before June 30 of every third year, every licensed dental hygienist shall pay a license renewal fee of three hundred twenty-five dollars. ~~This requirement does not apply to a disabled or retired dental hygienist.~~ THE FEE PRESCRIBED BY THIS SECTION DOES NOT APPLY TO A RETIRED OR DISABLED HYGIENIST.

B. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the next June 30. This fee shall not exceed one-third of the fee established pursuant to subsection A. Subsequent registrations shall be conducted pursuant to this section.

C. A person who fails to pay a fee prescribed by this section forfeits the license. A license may be reinstated in the fiscal year in which it is forfeited by submitting a written application with payment of the fee plus a penalty of one hundred dollars. During the second fiscal year following forfeiture, reinstatement may be effected by submitting a written application and payment of the fees and all accumulated penalty fees. If a person fails to pay the fees for reinstatement before the beginning of the third fiscal year following forfeiture of the license, the board shall require that the person successfully complete the regular examination before the board reinstates the license. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three year period.

D. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of fifty dollars if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to one hundred dollars if a licensee fails to notify it of the change within thirty days.

E. A LICENSEE WHO IS OVER SIXTY-FIVE YEARS OF AGE AND WHO IS FULLY RETIRED AND A LICENSEE WHO IS PERMANENTLY DISABLED MAY CONTRIBUTE SERVICES TO A RECOGNIZED CHARITABLE INSTITUTION AND STILL RETAIN THAT CLASSIFICATION FOR TRIENNIAL REGISTRATION PURPOSES ON PAYMENT OF A REDUCED RENEWAL FEE AS PRESCRIBED BY THE BOARD BY RULE.

Sec. 13. Section 32-1295, Arizona Revised Statutes, is amended to read:

32-1295. <u>Board of dental examiners; additional powers and duties</u>

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.

2. Determine the eligibility of applicants for ~~examination, examine eligible applicants~~ CERTIFICATION and issue certificates to applicants who ~~pass the examination~~ IT DETERMINES ARE QUALIFIED FOR CERTIFICATION.

3. Investigate charges of misconduct on the part of certified denturists.

4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.

2. Hire consultants to assist the board in the performance of its duties.

C. In all matters relating to discipline and certifying of denturists and the ~~giving and grading~~ APPROVAL of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

Sec. 14. Section 32-1296, Arizona Revised Statutes, is amended to read:

32-1296. Qualifications of applicant

A. To be eligible for ~~examination a candidate for a certificate~~ CERTIFICATION to practice denture technology AN APPLICANT shall:

1. Be of good moral character.

2. Hold a high school diploma or its equivalent.

3. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.

4. PASS A BOARD APPROVED EXAMINATION.

B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

Sec. 15. Section 32-1297.01, Arizona Revised Statutes, is amended to read:

32-1297.01. Application for certification

A. Each ~~candidate~~ APPLICANT FOR CERTIFICATION shall ~~make~~ SUBMIT A written application to the board accompanied by ~~the~~ A NONREFUNDABLE jurisprudence examination fee ~~which shall not be refunded~~.

B. The board may deny an application to take an examination if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.

2. Has knowingly made any false statement in the application.

3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.

4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction AND that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under investigation, suspension or restriction by a regulatory board IN ANOTHER JURISDICTION in the United States or Canada for an act that occurred in that jurisdiction AND that constitutes unprofessional conduct pursuant to this chapter. If the applicant is under investigation by a regulatory board in another jurisdiction, the board shall suspend the

application process and may not issue or deny a certificate to the applicant until the investigation is resolved.

6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction AND that constitutes unprofessional conduct pursuant to this chapter.

Sec. 16. Repeal

Sections 32-1297 and 32-1297.02, Arizona Revised Statutes, are repealed.

APPROVED BY THE GOVERNOR MAY 12, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2008.