

AN ACT

ENTITLED, An Act to revise certain provisions regarding licensure of dentists and dental hygienists and registration of dental auxiliaries.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this chapter mean:

- (1) "Allied dental educational program," a dental hygiene, dental assisting, or laboratory technology educational program;
- (2) "Board," the State Board of Dentistry;
- (3) "Collaborative agreement," a written agreement between a supervising dentist and a dental hygienist authorizing the preventive and therapeutic services that may be performed by the dental hygienist under collaborative supervision;
- (4) "Collaborative supervision," the supervision of a dental hygienist requiring a collaborative agreement between a supervising dentist and a dental hygienist;
- (5) "Commercial dental laboratory," an enterprise engaged in making, providing, repairing, or altering oral prosthetic appliances and other artificial materials and devices which are returned to a dentist and inserted into the human oral cavity or which come in contact with its adjacent structures and tissues;
- (6) "Complete evaluation," a comprehensive examination, review of medical and dental history, the formulation of a diagnosis, and the establishment of a written treatment plan, documented in a written or electronic record to be maintained by the dentist's clinic or other treatment facility or institution;
- (7) "Dental," pertaining to dentistry;

- (8) "Dental assistant," a person who, under the supervision of a dentist or dental hygienist, renders assistance as authorized by this chapter;
- (9) "Dental auxiliary," any person, other than a dental hygienist, that works under the supervision of a dentist and provides dental services to a patient;
- (10) "Dental corporation," any entity formed pursuant to chapter 47-12;
- (11) "Dental hygienist," a person licensed as a dental hygienist pursuant to this chapter, who, under the supervision of a dentist, renders the diagnostic, preventive, or therapeutic dental services, and any educational services provided pursuant thereto, as authorized by this chapter, as well as any related extra-oral procedure required in the practice of those services;
- (12) "Dental radiographer," a person registered as a dental radiographer pursuant to this chapter;
- (13) "Dental radiography," the application of X- radiation to human teeth and supporting structures for diagnostic purposes only;
- (14) "Dental specialist," a dentist in a specialty recognized by the board that has graduated from a postdoctoral specialty program recognized and approved by the American Dental Association Commission on Dental Accreditation;
- (15) "Dental technician," a person performing acts authorized pursuant to this chapter, who, at the authorization of a dentist, makes, provides, repairs, or alters oral prosthetic appliances and other artificial materials and devices which are returned to a dentist and inserted into the human oral cavity or which come in contact with its adjacent structures and tissues;
- (16) "Dentist," a person licensed as a dentist pursuant to this chapter;
- (17) "Dentistry," the examination, evaluation, diagnosis, prevention, or treatment, including

surgery and the prescribing of drugs, of diseases, disorders, or conditions of the human oral cavity or its adjacent or associated tissues and structures of the maxillofacial area, and their impact on the human body;

- (18) "Direct supervision," the supervision of a dental hygienist or registered dental assistant requiring that a dentist diagnose the condition to be treated, a dentist authorize the procedure to be performed, a dentist remain in the dental clinic while the procedure is performed, and before dismissal of the patient a dentist approve the work performed by the dental hygienist or registered dental assistant;
- (19) "Expanded functions," reversible procedures which require professional proficiency and specific training, performed under the direct supervision of a dentist;
- (20) "General supervision," the supervision of a dental hygienist requiring that a dentist authorize the procedures to be carried out, and that the patient to be treated is a patient of record of the supervising dentist, or a dentist practicing within the same entity or clinic as the supervising dentist, and has had a complete evaluation within the previous thirteen months of the delegation of procedures. A written treatment plan contained within the patient's record shall accompany any authorization of treatment procedures;
- (21) "Indirect supervision," the supervision of a dental hygienist or registered dental assistant requiring that a dentist authorize the procedures and a dentist be in the dental clinic while the procedures are performed by the registered dental assistant or dental hygienist;
- (22) "Lay member," a person who is not a health professional, and who is not a parent, spouse, sibling, or child of a health professional or health professional student. For purposes of board membership, no person with a significant financial interest in a health service or profession may be a lay member;
- (23) "Licensee," a dentist or dental hygienist;

- (24) "Patient of record," a patient who has undergone a complete evaluation performed by a dentist;
- (25) "Personal supervision," a level of supervision whereby the dentist or dental hygienist is personally treating a patient and authorizes the dental assistant to aid the treatment by concurrently performing a supportive procedure;
- (26) "Practitioner," a dentist or dental hygienist;
- (27) "Registered dental assistant," a person registered as a registered dental assistant pursuant to this chapter who is authorized to perform expanded functions under the direct supervision of a dentist as authorized by this chapter;
- (28) "Registrant," a dental radiographer or registered dental assistant;
- (29) "Satellite office," an office, building, or location used regularly by a dentist for the practice of dentistry other than the clinic listed as the primary clinic; and
- (30) "Teledentistry," the practice of dentistry where the patient and the dentist are not in the same physical location, and which utilizes the exchange of clinical information and images over remote distances.

Section 2. That § 36-6A-1 be amended to read as follows:

36-6A-1. The State Board of Dentistry shall consist of seven members. Five members shall be dentists in active practice in South Dakota for at least five years immediately preceding appointment. One member shall be a lay person and a resident of this state at least five years. One member shall be a dental hygienist in active practice in South Dakota at least five years.

Section 3. That § 36-6A-5 be amended to read as follows:

36-6A-5. The board shall elect annually from its members a president, vice-president, and a secretary-treasurer. No member may serve as president for more than three consecutive one year terms.

Section 4. That § 36-6A-6 be amended to read as follows:

36-6A-6. The board shall continue within the Department of Health, and shall retain all its prescribed functions, including administrative functions. The board shall submit records, information, and reports in the form and at times required by the secretary of health. However, the board shall report at least annually.

Section 5. That § 36-6A-7 be amended to read as follows:

36-6A-7. The board may accept any funds which may be made available to it from any source. All funds received by the board shall be kept in a separate fund for the sole use and under the sole control of the board. Payments out of the fund shall be made only upon authorization by the president of the board or the secretary-treasurer thereof. The board may expend funds necessary for the board to administer and carry out the provisions of this chapter. No expense may be incurred by the board in excess of the revenue derived from all sources.

Section 6. That § 36-6A-8 be amended to read as follows:

36-6A-8. Out of the funds coming into the possession of the board, the board members may receive the compensation and reimbursement of expenses provided by law. The secretary-treasurer shall in addition thereto be paid a stipend approved by the board. The board may expend funds necessary for the board to administer and carry out the provisions of this chapter, the amount of the expenditures to be set by the board. Any member, if serving as a regional or national dental examiner, may receive compensation from the examining agency.

Section 7. That § 36-6A-9 be amended to read as follows:

36-6A-9. The board may affiliate with the American Association of Dental Boards and any regional or national dental testing agency recognized by the board as active members, pay regular annual dues to the entities, and send members and agents of the board to the meetings of the entities. Each member and agent may receive the per diem and reimbursement of expenses provided by law

for members of the board.

Section 8. That § 36-6A-10 be amended to read as follows:

36-6A-10. The board shall hold at least two meetings annually at times and places to be set by the board. The board may hold other meetings at a time and place set by the president or a majority of the board. A majority of the board may call a meeting, without the call of the president.

Section 9. That § 36-6A-11 be amended to read as follows:

36-6A-11. A majority of board members constitutes a quorum. A majority vote of those present shall constitute a decision of the entire board.

Section 10. That § 36-6A-12 be amended to read as follows:

36-6A-12. A member of the board may be removed from office for cause, or if physically or mentally unable to carry out the duties of a board member, or if found guilty of a violation of any provision of this chapter.

Section 11. That § 36-6A-13 be amended to read as follows:

36-6A-13. The board, its members, and its agents are immune from personal liability for actions taken in good faith in the discharge of the board's duties. The state shall hold the board, its members, and its agents harmless from all costs, damages, and attorney fees arising from claims and suits against them with respect to matters to which this immunity applies.

Section 12. That § 36-6A-14 be amended to read as follows:

36-6A-14. The board may:

- (1) Establish standards for, and promote, the safe and qualified practice of dentistry;
- (2) Conduct all disciplinary proceedings under this chapter;
- (3) Establish educational, training and competency standards governing the examination and practice of dentists and dental hygienists using national accrediting agencies and accepted nationally established standards if applicable;

- (4) Examine, or cause to be examined, for competency, an eligible applicant for a license to practice as a dentist or a dental hygienist or a registration to practice as a dental radiographer or registered dental assistant;
- (5) Issue a license to practice as a dentist or a dental hygienist to an applicant who has met the licensure standards of this chapter and renew the licenses of dentists and dental hygienists who continue to meet the licensure standards of this chapter;
- (6) Issue a registration to practice as a dental radiographer or a registered dental assistant to an applicant who has met the registration standards of this chapter and renew the registrations of dental radiographers and registered dental assistants that continue to meet the registration standards of this chapter;
- (7) Establish minimum educational, training and competency standards governing the practice of dental radiographers, registered dental assistants, and dental assistants;
- (8) Establish reasonable requirements governing the reentry into practice of inactive practitioners and reinstatement of previously licensed practitioners;
- (9) Establish and collect fees as provided for by this chapter;
- (10) Permit dental hygienists and dental assistants to perform, under the supervision of a dentist, additional procedures established by rules promulgated pursuant to chapter 1-26;
- (11) Establish continuing education and continuing competency requirements for dentists, dental hygienists, dental radiographers, and registered dental assistants;
- (12) Establish requirements governing the prescriptive authority of dentists;
- (13) Establish minimum educational, training, and competency standards governing the administration of sedation and anesthesia;
- (14) Establish continuing education and continuing competency requirements for the administration of sedation and anesthesia;

- (15) Communicate disciplinary actions and license and registration status to relevant state and federal governing bodies as may be required;
- (16) Employ personnel in accordance with the needs and budget of the board;
- (17) Enter into contracts as necessary to carry out the board's responsibilities pursuant to the provisions of this chapter;
- (18) Establish standards for teledentistry;
- (19) Establish standards and registration requirements governing dental corporations;
- (20) Promulgate rules pursuant to chapter 1-26 to effectuate the provisions of this chapter;
- (21) Pursue legal actions against a person or entity that is not authorized to act by this chapter;
and
- (22) Carry out the purposes and enforce the provisions of this chapter.

Section 13. That § 36-6A-15 be amended to read as follows:

36-6A-15. The board may not promulgate a rule which:

- (1) Is not authorized by this chapter or which does not relate to the protection of the public from unsafe dental practices;
- (2) Discriminates between licensees or registrants of the same class;
- (3) Has as its primary purpose the promotion or protection of the economic interests of licensees or registrants;
- (4) Restricts the number of licensees or registrants for reasons other than their qualifications;
- (5) Discriminates between programs approved under this chapter which train prospective licensees or registrants, whether in or out of the state.

Section 14. That § 36-6A-16 be repealed.

Section 15. That § 36-6A-17 be amended to read as follows:

36-6A-17. The board may use its own staff or employ or contract with agents or investigators to

assist in the enforcement of this chapter or any rule promulgated thereunder. If it appears to the board that a person is violating any provision or rule of this chapter, the board may, in its own name or in the name of the state, in the circuit court in any county in which jurisdiction is proper, bring an action to enjoin the act, practice, or violation and to enforce compliance with this chapter or any rule promulgated thereunder as an alternative to criminal proceedings, and the commencement of one proceeding by the board constitutes an election. Such proceedings shall be prosecuted by the attorney general's office or person designated by the attorney general and retained by the board as provided in § 36-6A-18.

Section 16. That § 36-6A-18 be amended to read as follows:

36-6A-18. The board and its members and officers shall assist any person charged with the enforcement of this chapter, and the board, its members, agents, and officers shall furnish the person with evidence to assist in the prosecution of any violation or enforcement of this chapter, and the board may, for that purpose, make a reasonable expenditure. The board may, if it deems best for the enforcement of this chapter or in the conduct of its duties, employ an attorney designated by the attorney general. The board shall fix and determine the compensation and period of service of the attorney who shall be paid out of the funds of the board.

Section 17. That § 36-6A-21 be repealed.

Section 18. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

Pursuant to a complaint concerning the health or safety of patients or the public, the board, or any of its members, officers, agents, or employees so authorized, may enter and inspect, during business hours, any place where dentistry is practiced for the purpose of enforcing this chapter. The inspection may include any dental or drug records, and the copying thereof, and inventories relating to drugs and controlled substances required to be kept under the provisions of chapter 34-20B. The

board, its members, officers, agents, and employees shall maintain the confidential nature of any records obtained pursuant to this section. Refusal to allow an inspection may constitute unprofessional or dishonorable conduct.

Section 19. That § 36-6A-22 be amended to read as follows:

36-6A-22. The board shall receive complaints regarding the enforcement of this chapter. A record of each complaint shall be maintained by the board. An investigation shall be conducted by a member, or agent or an appointee of the board to determine whether an alleged violation has been committed. The investigator, if a member of the board, may dismiss a complaint if it appears to the member, either with or without the consultation of the board, that no violation has been committed or the member may transfer the complaint to a peer review committee duly appointed by a state or local professional society comprised of dentists, or the member may request the board set a date for hearing on the complaint. If the investigator is an agent or an appointee of the board, dismissal of the complaint or transferal to peer review may only be made by the president. Any agreed disposition made between the investigator and the licensee or registrant shall be made known to and approved by the board. The complaining party shall be notified promptly of the final disposition of the complaint. The complaining party may appeal the dismissal to the board within thirty days. The decision of the board may be appealed to the circuit court in accordance with chapter 1-26 within thirty days. A license or registration shall remain in effect during the pendency of an appeal unless suspended under § 36-6A-24. All disciplinary proceedings held under the authority of this chapter shall be conducted in accordance with chapter 1-26.

Section 20. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

Each facility licensed by the state where medicine or dentistry is practiced that suspends or revokes the privilege of a licensee of the board to practice dentistry therein for professional

incompetence or unprofessional or dishonorable conduct as defined in this chapter shall report it in writing to the board including the factual basis of such revocation or suspension of the practice privilege. Any report made to the board pursuant to this section is confidential and subject to the same restrictions set forth in section 21 of this Act. No licensed facility, complying in good faith with this section, may be held liable for any injury or damage proximately resulting from the compliance.

Section 21. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

Testimony or documentary evidence of any kind obtained during the investigation of a complaint is not subject to discovery or disclosure under chapter 15-6 or any other provision of law, and is not admissible as evidence in any legal proceeding, until such time as the complaint becomes a contested case as defined in subdivision 1-26-1(2). No person that has participated in the investigation of a complaint may testify as an expert witness or be compelled to testify for any party in any action for personal injury or wrongful death if the subject matter of the complaint investigated is a basis for the action for personal injury or wrongful death.

Section 22. That § 36-6A-23 be amended to read as follows:

36-6A-23. The board may impose any of the following sanctions, singly or in combination, if it finds that a person, entity, licensee, registrant, or dental corporation has violated any provision of this chapter or any rule promulgated thereunder:

- (1) Revoke a license, registration, or permit for an indefinite period;
- (2) Suspend a license, registration, or permit for a specific or indefinite length of time;
- (3) Place on condition or limit a license, registration, or permit;
- (4) Issue a censure or a letter of reprimand;
- (5) Place a licensee or registrant on probationary status and require the licensee or registrant

to report regularly to the board on the matters which are the basis for probation, limit the licensee's or registrant's practice to areas prescribed by the board and require professional education until a satisfactory degree of skill has been attained in those areas which are the basis of the probation. The board may withdraw the probation if the board finds the deficiencies which require disciplinary action have been remedied;

- (6) Other sanctions which the board finds appropriate;
- (7) Impose a fee to reimburse the board in an amount equal to all or part of the costs incurred for the investigation and proceedings resulting in disciplinary action authorized by this chapter or the issuance of a cease and desist order. The costs include the amount paid by the board for services from attorneys, investigators, court reporters, witnesses, expert witnesses, reproduction of records, board members' per diem compensation, board staff time, and expenses incurred for the investigation and disciplinary proceedings; and
- (8) Deny an application for a license, registration, or permit.

Section 23. That § 36-6A-24 be amended to read as follows:

36-6A-24. The board may summarily suspend a license or registration in advance of a final adjudication or during the appeals process if the board finds that a licensee or registrant would represent a clear and immediate danger to the public health and safety if allowed to continue to practice. A licensee or registrant whose license or registration is suspended under this section is entitled to a hearing before the board within twenty days after the effective date of the suspension. The licensee or registrant may subsequently appeal the suspension to circuit court in accordance with chapter 1-26.

Section 24. That § 36-6A-25 be amended to read as follows:

36-6A-25. Any licensee or registrant whose license or registration has been suspended or revoked may have a license or registration reinstated or a new license or registration may be issued when in

the discretion of the board the action is warranted. The board may require the applicant to pay all costs of the proceedings resulting in the suspension or revocation of the license or registration and reinstatement or issuance of a new license or registration.

Section 25. That § 36-6A-26 be repealed.

Section 26. That § 36-6A-27 be amended to read as follows:

36-6A-27. There may be no monetary liability on the part of, and no cause of action for damages may arise against, any member of a duly appointed committee of a state or local professional society, comprised of dentists or dental hygienists, for any act or proceeding undertaken or performed within the scope of the functions of the committee which is formed to maintain the professional standards of the society established by its bylaws, if the committee member acts without malice, has made a reasonable effort to obtain the facts of the matter as to which the committee member acts, and acts in reasonable belief that the action taken by the committee member is warranted by the facts known to the committee member after a reasonable effort to obtain facts. For the purposes of this section, the term, professional society, means any dental organization having as members at least a majority of the eligible licensees in the area served by the particular society. The provisions of this section do not affect the official immunity of an officer or employee of a public corporation. No communications either to or from any committee or its members or its proceedings, if acting as a peer review committee concerning the ethical or professional practices of any dentist are discoverable for any purpose in any civil or criminal action. However, a communication is discoverable in an administrative proceeding as contemplated by chapter 1-26. All such communications are confidential. The committee shall transfer all documentation material to a complaint to the board upon subpoena by the board or upon filing a complaint. The confidentiality provided in this section ceases upon transfer of the material to the board.

Section 27. That § 36-6A-28 be amended to read as follows:

36-6A-28. Each person who practices as, attempts to practice as, or purports to be a dentist, dental hygienist, dental radiographer, or registered dental assistant in this state without being licensed or without being registered for that purpose or without being exempted from this chapter is guilty of a Class 1 misdemeanor.

Any dentist who implies, purports or leads a patient to believe that the dentist is a dental specialist without meeting the educational requirements set forth in this chapter, is guilty of a Class 1 misdemeanor.

Section 28. That § 36-6A-29 be amended to read as follows:

36-6A-29. No advertising pertaining to the practice of dentistry may be fraudulent or misleading. A violation of this section is a Class 1 misdemeanor.

Section 29. That § 36-6A-30 be amended to read as follows:

36-6A-30. No person in this state may sell, offer, provide, or advertise any dental service including the furnishing, constructing, reproduction, relining, or repair of dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth unless the person holds the appropriate license, registration, or permit issued by the board. A violation of this section is a Class 1 misdemeanor.

The mere delivery of products to an ultimate consumer or person acting on behalf of the consumer for the purpose of transporting products to the dentist who provided the work order is not a violation of this section. This section does not apply to mailings, displays, and advertisements, the primary distribution of which is to the dental profession or its ancillary trades.

Section 30. That § 36-6A-31 be amended to read as follows:

36-6A-31. Only a dentist licensed to practice under this chapter may practice as a dentist in this state, unless otherwise stated in this chapter. Dentists have the exclusive responsibility for:

- (1) The diagnosis and treatment planning of conditions within the human oral cavity and its

- adjacent tissues and structures;
- (2) The use of a dental degree, designation, card, device, directory, sign, or other media whereby the person represents himself or herself as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the human tooth, teeth, alveolar process, gums or jaw, or adjacent or associated tissues and structures;
 - (3) The prescribing of drugs which are administered to patients or prescribed to patients in connection with dental related ailments or conditions;
 - (4) The overall quality of patient care which is rendered or performed in the practice of dentistry, regardless of whether the care is rendered personally by a dentist, dental hygienist, or dental auxiliary;
 - (5) The supervision of dental hygienists and dental auxiliaries and authorization of procedures to be performed by dental hygienists and dental auxiliaries;
 - (6) The use of radiographic imaging for dental diagnostic purposes;
 - (7) The delegation of procedures to a dental hygienist under general supervision;
 - (8) Any other specific services within the scope of dental practice;
 - (9) The management, ownership, or operation of a business, corporation, organization, or entity through which dentistry, as defined in this chapter, is offered or provided to the public;
 - (10) The performance of any dental procedure or operation of any kind gratuitously, or for a fee, gift, compensation, or reward, paid or to be paid, either to the person providing the service or to another person or entity;
 - (11) Offering or undertaking, by any means or method, to diagnose, treat or remove stains or accretions from or change the color or appearance of human teeth;

(12) Performing any clinical procedure or operation included in the curricula of American Dental Association Commission on Dental Accreditation accredited dental schools or colleges; and

(13) Performing any irreversible dental procedure.

Section 31. That § 36-6A-32 be repealed.

Section 32. That § 36-6A-32.1 be repealed.

Section 33. That § 36-6A-32.2 be repealed.

Section 34. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

A dentist may prescribe or administer drugs only in connection with dental related ailments or conditions.

Section 35. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

No licensee or registrant under this chapter may perform dental services that are outside the scope of the licensee's or registrant's relevant education, training, and experience.

Section 36. That § 36-6A-33 be amended to read as follows:

36-6A-33. The provisions of §§ 36-6A-30 and 36-6A-31 do not apply to:

- (1) Any dentist licensed in another state making a clinical presentation sponsored by a board approved dental society or association or an American Dental Association Commission on Dental Accreditation accredited dental educational institution;
- (2) Any person enrolled in any American Dental Association Commission on Dental Accreditation accredited dental or allied dental educational program or board approved dental assisting educational program who works within a formal educational facility or at a site remote from that educational facility under the supervision of a faculty member

- of that program who is appropriately credentialed or licensed in a state;
- (3) Any dental instructor, whether full-time or part-time, while engaged in teaching activities while employed by or contracting with any dental or allied dental educational program accredited by the American Dental Association Commission on Dental Accreditation or any dental assisting instructor, whether full-time or part-time, while engaged in teaching activities while employed by or contracting with any board approved dental assisting educational program;
 - (4) Any person licensed or registered as a dentist, dental hygienist, or registered dental assistant in another state who renders emergency care or assistance at the scene of the emergency to any person so in need;
 - (5) Any dental hygienist or dental auxiliary who is acting in accordance with this chapter;
 - (6) Any service, other than service performed directly upon the person of a patient, of constructing, altering, repairing, or duplicating any denture, partial denture, crown, bridge, splint, orthodontic, prosthetic, or other dental appliance, if performed pursuant to an order from a dentist in accordance with § 36-6A-43;
 - (7) The practice of dentistry by any dentist in the discharge of the dentist's official duties in any branch of the armed services of the United States, the United States Public Health Service, or the United States Veterans Administration;
 - (8) The practice of dentistry by any licensed dentist of another state or country while appearing as a clinician under the auspices of an American Dental Association Commission on Dental Accreditation accredited dental school or college, or a board approved dental society, or a board approved dental study club composed of dentists;
 - (9) The practice of dentistry provided by a community-based primary health care delivery organization, which is operating as a community health center or migrant health center,

receiving funding assistance under § 329 or 330 of the United States Public Health Service Act;

- (10) The practice of dentistry provided by any mobile or portable dental unit operated by any nonprofit organization affiliated with a nonprofit dental service corporation organized pursuant to chapter 58-39;
- (11) The practice of dentistry provided by any dental or allied dental educational program accredited by the American Dental Association Commission on Dental Accreditation and any dental assisting educational program approved by the board;
- (12) The practice of dentistry provided by the state in any state owned and operated institution;
- (13) The practice of dentistry provided by the federal government in any institution owned and operated by the federal government;
- (14) Any person who ministers or treats the sick or suffering or who treats for the purpose of preventing sickness or suffering by mental or spiritual means exclusively; or
- (15) The estate or agent for a deceased or substantially disabled dentist contracting with or employing a dentist to manage the deceased or substantially disabled dentist's practice for a period not to exceed twenty-four months following the date of death or substantial disability of the dentist, until the entity can be sold or closed.

Section 37. That § 36-6A-34 be repealed.

Section 38. That § 36-6A-35 be repealed.

Section 39. That § 36-6A-36 be repealed.

Section 40. That § 36-6A-37 be repealed.

Section 41. That § 36-6A-38 be repealed.

Section 42. That § 36-6A-39 be amended to read as follows:

36-6A-39. Except as permitted by chapter 47-12, it is a Class 2 misdemeanor for any licensee,

registrant, or dental corporation to divide fees with, or to promise to pay a part of a fee to, or to pay a commission to any dentist or any other person, who sends patients for treatment or operation. However, nothing in this section prohibits dentists from forming a bona fide partnership for the practice of dentistry, nor the actual employment of a licensee or registrant.

Section 43. That § 36-6A-40 be amended to read as follows:

36-6A-40. Only a dental hygienist licensed to practice pursuant to this chapter may practice dental hygiene unless otherwise stated in this chapter. A dental hygienist may perform those services which are diagnostic, therapeutic, or preventive in nature and are authorized by the board and any educational services provided pursuant to those authorized services. Such services may not include the establishment of a final diagnosis or treatment plan for a dental patient. The services shall be performed under the supervision of a dentist.

A dental hygienist may perform preventive and therapeutic services under general supervision if all individuals treated are patients of record and all care rendered by the dental hygienist is completed under the definition of patient of record. A dental hygienist may perform preventive and therapeutic services under collaborative supervision if the requirements of § 36-6A-40.1 are met. However, no dental hygienist may perform preventive and therapeutic services under collaborative supervision for more than thirteen months for any person who has not had a complete evaluation by a dentist, unless employed by Delta Dental Plan of South Dakota, a nonprofit dental service corporation organized under chapter 58-39, providing services through written agreement with the Indian Health Service or a federally recognized tribe in South Dakota. The exemption for a dental hygienist employed by Delta Dental Plan of South Dakota providing services through written agreement with the Indian Health Service or a federally recognized tribe in South Dakota expires on June 30, 2016.

Section 44. That § 36-6A-40.1 be amended to read as follows:

36-6A-40.1. A dental hygienist may provide preventive and therapeutic services under collaborative supervision of a dentist if the dental hygienist has met the following requirements:

- (1) Possesses a license to practice in the state and has been actively engaged in the practice of clinical dental hygiene in two of the previous three years;
- (2) Has a written collaborative agreement with a dentist; and
- (3) Has satisfactorily demonstrated knowledge of medical and dental emergencies and their management; infection control; pharmacology; disease transmission; management of early childhood caries; and management of special needs populations.

Section 45. That § 36-6A-41 be amended to read as follows:

36-6A-41. Each dentist who uses the services of a dental hygienist or dental auxiliary to assist the dentist in the practice of dentistry is responsible for the acts of the dental hygienist or dental auxiliary while engaged in such assistance. The dentist shall permit the dental hygienist or dental auxiliary to perform only those acts which the dentist is authorized under this chapter to delegate to a dental hygienist or dental auxiliary. The acts shall be performed under supervision of a dentist. The board may permit differing levels of dental assistance based upon recognized educational standards, approved by the board, for the training of dental hygienists or dental auxiliaries.

Section 46. That § 36-6A-42 be repealed.

Section 47. That § 36-6A-43 be amended to read as follows:

36-6A-43. Dental technicians may work either in commercial dental laboratories or under the supervision of a dentist. Technicians, when not working under the supervision of a dentist, may not provide for dental patients' use any prosthetic appliances, materials, or devices which are inserted in the human oral cavity unless ordered by a dentist. Technicians may not provide intra-oral services to patients. A technician or dental laboratory shall maintain a record of work orders for a period of two years.

Section 48. That § 36-6A-44 be amended to read as follows:

36-6A-44. Any person desiring to practice as a dentist may obtain a license to practice as a dentist if the applicant satisfies each of the following criteria:

- (1) The application for a license to practice as a dentist is in writing and signed by the applicant;
- (2) The applicant has passed a standardized national comprehensive examination approved by the board;
- (3) The applicant has graduated from an American Dental Association Commission on Dental Accreditation accredited United States dental school, having obtained a doctor of dental medicine or a doctor of dental surgery degree;
- (4) Within five years preceding the date of application, the applicant has passed a clinical regional or national examination approved by the board or a state examination or examinations that the board deems equivalent;
- (5) The applicant has passed an examination concerning the state laws and rules relating to dentistry;
- (6) The applicant has no disciplinary proceeding or unresolved disciplinary complaint pending before a dental board at the time a license is to be issued by the board; and
- (7) The applicant provides references that indicate the applicant is of good moral character.

The board may require a laboratory or clinical examination of any applicant if it has reason to believe the applicant cannot practice safely.

Any foreign-trained or any other graduate from a dental program not accredited by the American Dental Association Commission on Dental Accreditation may apply for a license to practice as a dentist. The board, by rule promulgated pursuant to chapter 1-26, shall establish requirements to reasonably ensure that an applicant's training and education are sufficient for licensure.

Section 49. That § 36-6A-45 be repealed.

Section 50. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

Any person desiring to practice as a dental hygienist may obtain a license to practice as a dental hygienist if the applicant satisfies each of the following criteria:

- (1) The application for a license to practice as a dental hygienist is in writing and signed by the applicant;
- (2) The applicant has passed a standardized national comprehensive examination approved by the board;
- (3) The applicant has graduated from an American Dental Association Commission on Dental Accreditation accredited United States dental hygiene school, having obtained a dental hygiene degree;
- (4) Within five years preceding the date of application, the applicant has passed a clinical regional or national examination approved by the board or a state examination or examinations that the board deems equivalent;
- (5) The applicant has passed an examination concerning the state laws and rules relating to dentistry;
- (6) The applicant has no disciplinary proceeding or unresolved disciplinary complaint pending before a dental board at the time a license is to be issued by the board; and
- (7) The applicant provides references that indicate the applicant is of good moral character.

The board may require a laboratory or clinical examination of an applicant if it has reason to believe the applicant cannot practice safely.

Any foreign-trained or any other graduate from a dental hygiene program not accredited by the American Dental Association Commission on Dental Accreditation may apply for a license to

practice as a dental hygienist. The board, by rule promulgated pursuant to chapter 1-26, shall establish requirements to reasonably ensure that an applicant's training and education are sufficient for licensure.

Section 51. That § 36-6A-46 be repealed.

Section 52. That § 36-6A-47 be amended to read as follows:

36-6A-47. Any person licensed in another state desiring to practice as a dentist may obtain a license to practice as a dentist if the applicant satisfies each of the following criteria:

- (1) The application for a license to practice as a dentist is in writing and signed by the applicant;
- (2) The applicant has graduated from an American Dental Association Commission on Dental Accreditation accredited United States dental school, having obtained a doctor of dental medicine or a doctor of dental surgery degree;
- (3) The applicant is currently an active, competent practitioner, having completed a minimum of three thousand dental clinical hours within the five years immediately preceding the date of application;
- (4) The applicant has passed a standardized national comprehensive examination approved by the board;
- (5) The applicant has passed a clinical regional or national examination approved by the board or a state examination or examinations that the board deems equivalent;
- (6) The applicant currently holds a valid license in another state;
- (7) The applicant has no disciplinary proceeding or unresolved disciplinary complaint pending before a dental board at the time a license is to be issued by the board;
- (8) The licensure requirements in the other state are in the judgment of the board the same as or higher than those required by this state;

- (9) The applicant provides references that indicate the applicant is of good moral character;
and
- (10) The applicant has passed an examination concerning the state laws and rules relating to dentistry.

The board may require a laboratory or clinical examination of an applicant if it has reason to believe the applicant cannot practice safely.

Any foreign-trained or any other graduate from a dental program not accredited by the American Dental Association Commission on Dental Accreditation may apply for a license to practice as a dentist. The board, by rule promulgated pursuant to chapter 1-25, shall establish requirements to reasonably ensure that an applicant's training and education are sufficient for licensure.

Section 53. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

Any person licensed in another state desiring to practice as a dental hygienist may obtain a license to practice as a dental hygienist if the applicant satisfies each of the following criteria:

- (1) The application for a license to practice as a dental hygienist is in writing and signed by the applicant;
- (2) The applicant has graduated from an American Dental Association Commission on Dental Accreditation accredited United States dental hygiene school, having obtained a dental hygiene degree;
- (3) The applicant is currently an active, competent practitioner, having completed a minimum of three thousand dental hygiene clinical practice hours within the five years immediately preceding the date of application;
- (4) The applicant has passed a standardized national comprehensive examination approved by the board;

- (5) The applicant has passed a clinical regional or national examination approved by the board or a state examination or examinations that the board deems equivalent;
- (6) The applicant currently holds a valid license in another state;
- (7) The applicant has no disciplinary proceeding or unresolved disciplinary complaint pending before a dental board at the time a license is to be issued by the board;
- (8) The licensure requirements in the other state are in the judgment of the board the same as or higher than those required by this state;
- (9) The applicant provides references that indicate the applicant is of good moral character;
and
- (10) The applicant has passed an examination concerning the state laws and rules relating to dentistry.

The board may require a laboratory or clinical examination of an applicant if it has reason to believe the applicant cannot practice safely.

Any foreign-trained or any other graduate from a dental hygiene program not accredited by the American Dental Association Commission on Dental Accreditation may apply for a license to practice as a dental hygienist. The board, by rule promulgated pursuant to chapter 1-26, shall establish requirements to reasonably ensure that an applicant's training and education are sufficient for licensure.

Section 54. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

An applicant, licensee, or registrant shall provide a certified translation of any document required pursuant to this chapter.

Section 55. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

The board may, in compliance with chapter 1-26, refuse to grant a license or registration pursuant to this chapter because of professional incompetence, or unprofessional or dishonorable conduct on the part of the applicant.

Section 56. That § 36-6A-48 be amended to read as follows:

36-6A-48. The board shall, upon applicant's satisfactory completion of the educational requirements and written, laboratory and clinical examinations authorized pursuant to this chapter and upon receipt of the requisite fees, issue or renew the appropriate license to practice as a dentist or dental hygienist.

Section 57. That § 36-6A-49 be amended to read as follows:

36-6A-49. Any dentist or dental hygienist licensed in a state or territory of the United States whose licensure requirements are equivalent or higher than those of this state and who has completed a minimum of fifteen hundred clinical practice hours within the five years preceding the date of application or graduated from an American Dental Association Commission on Dental Accreditation accredited United States dental or dental hygiene school within three years preceding the date of application, with all licenses in good standing and no disciplinary proceeding or unresolved disciplinary complaint pending before a dental board, may be granted a temporary registration to practice in conjunction with a dentist or entity pursuant to subdivision 36-6A-33(9), (10), (12), or (13) only until a date set by the board and is subject to the requirements and conditions set forth in said registration.

Section 58. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

Any person who has applied for a license to practice as a dentist or a dental hygienist and has met all of the requirements for the license, may be granted a temporary registration to practice as a dentist or a dental hygienist only until a date set by the board. The person is subject to the requirements and

conditions set forth in the registration.

Section 59. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

Any person practicing under a temporary registration is subject to supervision and discipline by the board pursuant to this chapter in the same manner as any other licensee pursuant to this chapter. A person practicing under a temporary registration submits to jurisdiction by the board.

Section 60. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

Any person who, while located outside this state, practices dentistry through teledentistry and provides the dental services to a patient located in this state, is engaged in the practice of dentistry in this state.

Section 61. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

Any services provided by a licensee or registrant through teledentistry or electronic means shall comply with the provisions of this chapter as if the services were provided in person by a licensee or registrant.

Section 62. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

Nothing contained in this chapter may be construed to apply to any licensed person practicing dentistry outside of this state when in actual consultation with a dentist in this state.

Section 63. That § 36-6A-50 be amended to read as follows:

36-6A-50. The board shall promulgate nonrefundable fees, by rule pursuant to chapter 1-26, provided for in this chapter, within the following limits:

- (1) Examination fee for dentists, not more than three hundred dollars;

- (2) Examination fee for dental hygienists, not more than one hundred fifty dollars;
- (3) Annual registration fee for dentists, not more than two hundred dollars;
- (4) Annual registration fee for dental hygienists, not more than one hundred dollars;
- (5) Duplicate license certificate or annual registration certificate fee, not more than fifteen dollars;
- (6) Reinstatement fee, an amount equal to the examination fee;
- (7) Continuing education program annual fee, not more than twenty dollars;
- (8) Registration certificate for satellite offices, not more than ten dollars;
- (9) Temporary registration fee, not more than three hundred fifty dollars;
- (10) Annual registration fee for dental radiographers, not more than fifty dollars;
- (11) Application fee for dental radiographers, not more than fifty dollars;
- (12) Application fee and renewal fee for anesthesia and sedation permits, not more than fifty dollars;
- (13) Application fee for dentists, not more than two hundred dollars;
- (14) Application fee for dental hygienists, not more than two hundred dollars;
- (15) Application fee for registered dental assistants, not more than fifty dollars;
- (16) Application fee for dental radiographers, not more than fifty dollars;
- (17) Annual registration fee for registered dental assistants, not more than fifty dollars; and
- (18) Endorsement or credentials fee for dentists and dental hygienists, not more than six hundred dollars.

Section 64. That § 36-6A-51 be repealed.

Section 65. That § 36-6A-52 be amended to read as follows:

36-6A-52. As a condition of annual renewal of a license or registration, each licensee or registrant shall, on or before the first day of July each year, transmit to the board, upon a form

prescribed by the board, information reasonably related to the administration of a licensure or registration system in the interest of public health and safety, together with the fee established by the board. Failure of a licensee or registrant to renew a license or registration on or before the first day of July constitutes a suspension of the license or registration held by the licensee or registrant. At least thirty days before July first, the board shall cause a written notice stating the amount and due date of the fee and the information to be provided by the licensee or registrant, to be sent to each licensee and registrant. Each licensee and registrant shall report the information as a condition of the license or registration renewal

Section 66. That § 36-6A-53 be repealed.

Section 67. That § 36-6A-54 be amended to read as follows:

36-6A-54. Each licensee or registrant shall post and keep conspicuously his or her name, annual license certificate, and annual registration certificate in each dental clinic in which he or she practices, in plain sight of the patients.

Section 68. That § 36-6A-55 be amended to read as follows:

36-6A-55. Every five years of licensure or registration, each licensee or registrant shall provide the board evidence, of a nature suitable to the board that a licensee or registrant has attended, or participated in an amount of board approved continuing education or continuing competency as shall be required by the board.

Section 69. That § 36-6A-56 be repealed.

Section 70. That § 36-6A-57 be amended to read as follows:

36-6A-57. Any licensee or registrant who fails to comply with the continuing education or continuing competency requirements set forth in this chapter may, at the discretion of the board, be reexamined to determine his or her competency to continue licensure or registration. If, in the opinion of the board, a licensee or registrant does not qualify for further practice, the board may, in

compliance with chapter 1-26, suspend the license or registration until the time the licensee or registrant provides acceptable evidence to the board of his or her competency to practice.

Section 71. That § 36-6A-58 be amended to read as follows:

36-6A-58. Each licensee or registrant, upon changing his or her place of residence, name, place of employment, or place of business shall, within ten days thereafter, furnish the board with updated information.

Section 72. That § 36-6A-59 be amended to read as follows:

36-6A-59. Each licensee and registrant subject to this chapter shall conduct his or her practice in accordance with the standards established by the board. Each licensee or registrant is subject to the exercise of the disciplinary sanctions enumerated in this chapter upon satisfactory proof by clear and convincing evidence in compliance with chapter 1-26 of the licensee's or registrant's professional incompetence, or unprofessional or dishonorable conduct, or proof of a violation of this chapter in any respect.

For the purposes of this section, professional incompetence is a deviation from the statewide standard of competence, which is that minimum degree of skill and knowledge necessary for the performance of characteristic tasks of a licensee or registrant in at least a reasonably safe and effective way. If the services are not commonly provided by a licensee or registrant in this state, professional incompetence is a deviation from the national standard of competence, which is that minimum degree of skill and knowledge necessary for the performance of characteristic tasks of a licensee or registrant in at least a reasonable safe and effective way.

No sanctions may be authorized based solely on monetary concerns or business practices that do not violate any provision of this chapter or any rule promulgated thereunder.

The board may order a licensee or registrant to submit to a reasonable physical or mental examination if the physical or mental capacity to practice safely is at issue in a disciplinary

proceeding. Failure to comply with a board order to submit to a physical or mental examination renders a licensee or registrant liable to the summary revocation procedures described in §§ 36-6A-23 and 36-6A-24.

Section 73. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

The term, unprofessional or dishonorable conduct, as used in this chapter includes:

- (1) Presenting to the board any license, certificate, or diploma which was obtained by fraud or deception practiced in passing a required examination or which was obtained by the giving of false statements or information on applying for the license;
- (2) Illegally, fraudulently, or wrongfully obtaining a license or registration or renewal required by this chapter by the use of any means, devices, deceptions, or help in passing any examination or by making false statements or misrepresentations in any applications or information presented;
- (3) Engaging in fraud or deception during the course of the applicant's education;
- (4) Engaging in fraud or material deception in the course of professional services or activities;
- (5) Conviction of a felony, conviction of a criminal offense arising out of the practice of dentistry, or conviction of a criminal offense involving moral turpitude;
- (6) Allowing professional incompetence by a dental hygienist or dental auxiliary working under his or her supervision due to a deliberate or negligent act or acts or failure to act;
- (7) Violating any provision of this chapter or any rule promulgated thereunder;
- (8) Engaging in lewd or immoral conduct in connection with the delivery of dental services to a patient;
- (9) Employing, assisting, or enabling in any manner an unlicensed person to practice as a dentist or dental hygienist or a person that does not hold a registration to practice as a

- registered dental assistant or dental radiographer;
- (10) Assisting, enabling, or permitting a dental hygienist or dental auxiliary to perform any dental service other than those authorized by this chapter or any rule promulgated thereunder;
 - (11) Performing dental services other than those authorized by this chapter or any rule promulgated thereunder;
 - (12) Failure to maintain adequate safety and sanitary conditions for a dental clinic in accordance with the standards set forth in this chapter or any rule promulgated thereunder;
 - (13) Engaging in false or misleading advertising or advertising of a dental business or dental services in which untruthful or improbable statements are made or which are calculated to mislead or deceive the public;
 - (14) Except as permitted by chapter 47-12, dividing fees with, promising to pay a part of a fee to, or to pay a commission to any dentist or any other person who sends patients for treatment or operation. Nothing in this subdivision prohibits dentists from forming a bona fide partnership for the practice of dentistry, nor the actual employment of a licensee or registrant;
 - (15) Substance use or drug addiction, calculated in the opinion of the board to affect the licensee's or registrant's practice of the profession;
 - (16) Prescribing intoxicants, narcotics, barbiturates, or other habit-forming drugs to any person in quantities and under circumstances making it apparent to the board that the prescription was not made for legitimate medicinal purposes related to the practice of dentistry or prescribing in a manner or in amounts calculated in the opinion of the board to endanger the well-being of an individual patient or the public in general;
 - (17) Continuing to practice after sustaining any physical or mental disability which renders the

- further practice of a licensee's or registrant's profession potentially harmful or dangerous;
- (18) Failure to comply with state or federal laws on keeping records regarding possessing and dispensing of narcotics, barbiturates, and habit-forming drugs;
 - (19) Falsifying the dental records of a patient or any official record regarding possession and dispensing of narcotics, barbiturates, and habit-forming drugs or regarding any phase of dental treatment of a patient;
 - (20) The exercise of influence within the dentist-patient relationship for the purposes of engaging a patient in sexual activity. For the purposes of this subdivision, the patient is presumed incapable of giving free, full, and informed consent to sexual activity with the dentist;
 - (21) Engaging in sexual harassment;
 - (22) Providing or prescribing dental services or treatments which are inappropriate or unnecessary;
 - (23) Any practice or conduct which tends to constitute a danger to the health, welfare, or safety of the public or patients or engaging in conduct which is unbecoming of a dentist, dental hygienist, dental radiographer or registered dental assistant;
 - (24) Discipline by another state, territorial, or provincial licensing board or the licensing board of the District of Columbia if the violation is also a violation of this chapter or any rule promulgated thereunder;
 - (25) Not reporting to the board discipline by another state, territorial, or provincial licensing board or the licensing board of the District of Columbia; and
 - (26) Not reporting to the board a conviction of any criminal offense of the grade of felony, any conviction of a criminal offense arising out of the practice of dentistry, or one in connection with any criminal offense involving moral turpitude.

Section 74. That chapter 36-6A be amended by adding thereto a NEW SECTION to read as follows:

No contract entered into between a licensee or registrant and any other party under which the licensee or registrant renders dental services may require the licensee or registrant to act in a manner which violates the professional standards for dentistry set forth in this chapter.

Section 75. That § 36-6A-60 be amended to read as follows:

36-6A-60. In the prosecution of any person for violation of this chapter, it is not necessary to allege or prove lack of a valid license to practice as a dentist or a dental hygienist or a valid registration to practice as a dental radiographer or a registered dental assistant but such proof of licensure or registration is a matter of defense to be established by the defendant.

An Act to revise certain provisions regarding licensure of dentists and dental hygienists and registration of dental auxiliaries.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1045

Chief Clerk

=====

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1045
File No. _____
Chapter No. _____

=====

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State