

DRAFT DENTAL PRACTICE ACT WITH STAKEHOLDER FEEBACK  
INCORPORATED:

SD DENTAL HYGIENE ASSOCIATION (SDDHA) – YELLOW

SD DENTAL ASSOCIATION (SDDA) – GREEN

SD DENTAL ASSISTANT ASSOCIATION (SDDAA) – RED

ADDITIONAL PROPOSED REVISIONS/CLARIFICATIONS – GRAY

36-6A-26. Definition of terms. Terms used in this chapter mean:

(1) "Board," the South Dakota State Board of Dentistry;

(2) "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;

(3) "Collaborative supervision," the supervision of a dental hygienist requiring a collaborative agreement between a supervising dentist and a dental hygienist;

(4) "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;

(5) "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;

(6) "Dental," pertaining to dentistry;

(7) "Dental Assistant," a person who, under the supervision of a dentist or dental hygienist, renders assistance as authorized by this chapter and any administrative rule promulgated thereunder;

**Comment [MS1]:** SDDA: We find the inclusion of definitions at Section 26 on page 15 to be confusing. It is common (and for good reason) to include definitions at the beginning of the chapter and we would urge the Board to consider a draft that moves Section 26 to become Section 1 of the code.

*Note: 36-6a-26 moved to first section. All sections will be renumbered if this change is adopted. We did not renumber to keep sections consistent for the discussion on June 20<sup>th</sup>.*

1 (8) "Dental Corporation," any entity formed under SDCL 47-12;

2 (9) "Dental Provider," Any person, dental corporation or other entity that  
3 provides dental services in South Dakota;

4 (10) "Dental auxiliary," any person that works under the supervision of a  
5 dentist and provides dental services to a patient;

6 (11) "Dental hygienist," a person licensed as a dental hygienist pursuant to  
7 this chapter, who, under the supervision of a dentist, renders the diagnostic, preventive, or  
8 therapeutic dental services, and any educational services provided pursuant thereto, as  
9 authorized by this chapter and any administrative rule promulgated thereunder, as well as  
10 any related extra-oral procedure required in the practice of those services;

11 (12) "Dental radiographer," a person registered as a dental radiographer  
12 pursuant to this chapter;

13 (13) "Dental radiography," the application of X- radiation to human teeth and  
14 supporting structures for diagnostic purposes only;

15 (14) "Dental specialist," a dentist in a specialty recognized by the board that  
16 has graduated from a postdoctoral specialty program recognized and approved by the  
17 American Dental Association Commission on Dental Accreditation;

18 (15) "Dental technician," a person performing acts authorized under this  
19 chapter, who, at the authorization of a dentist, makes, provides, repairs, or alters oral  
20 prosthetic appliances and other artificial materials and devices which are returned to a  
21 dentist and inserted into the human oral cavity or which come in contact with its adjacent  
22 structures and tissues;

23 (16) "Dentist," a person licensed as a dentist pursuant to this chapter;

**Comment [MS2]:** SDDHA: The American Dental Hygienists' Association defines Dental hygienist as: *Is a preventative oral health care professional who has graduated from an accredited dental hygiene program in an institution of higher education, licensed in dental hygiene who provides educational, clinical, research, administrative, and therapeutic services supporting total health through the promotion of optimal oral health.*

**Comment [MS3]:** SDDA: In the definition of dental hygienist we question the inclusion of the word "diagnostic"

**Comment [MS4]:** SDDA: We find the definition of "dentists" to be insufficient. We think dentists should probably be defined as "any person licensed as a dentist pursuant to this chapter."

*Note: Definition modified accordingly*

1 (17) "Dentistry," the examination, evaluation, diagnosis, prevention, or  
2 treatment, including surgery and the prescribing of drugs, of diseases, disorders, or  
3 conditions of the human oral cavity or its adjacent or associated tissues and structures or  
4 of the maxillofacial area, and their impact on the human body;

5 (18) "Direct supervision," the supervision of a dental hygienist or registered  
6 dental assistant requiring that a dentist diagnose the condition to be treated, a dentist  
7 authorize the procedure to be performed, a dentist remain in the dental clinic while the  
8 procedure is performed, and before dismissal of the patient a dentist approve the work  
9 performed by the dental hygienist or registered dental assistant;

10 (19) "Expanded functions," reversible procedures which require professional  
11 proficiency and specific training, performed under the direct supervision of a dentist;

12 (20) "General supervision," the supervision of a dental hygienist requiring that  
13 a dentist authorize the procedures to be carried out, and that the patient to be treated is a  
14 patient of record of the supervising dentist, or a dentist practicing within the same entity  
15 or clinic as the supervising dentist, and has had a complete evaluation within the previous  
16 thirteen months of the delegation of procedures;

17 (21) "Indirect supervision," the supervision of a dental hygienist or registered  
18 dental assistant requiring that a dentist authorize the procedure and a dentist be in the  
19 dental clinic while the procedures are performed by the registered dental assistant or  
20 dental hygienist;

21 (22) "Lay member," a person who is not a health professional, and who is not  
22 a parent, spouse, sibling or child of a health professional or health professional student.

**Comment [MS5]:** SDDA: While subpart 14 on page 17 is the ADA definition, the inclusion of the phrase "provided by a dentist" leads us to question whether the definition of dentistry could be used to form the basis of an action brought by the Board for a non-licensed person to cease and desist. In short, it does not adequately protect the profession in terms of setting forth a clear scope of practice. We would prefer the language found below:  
"Dentistry" means 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, or of the maxillofacial area, and their impact on the human body."

*Note: Previous SDDA recommendation, which included "provided by a dentist" modified to current SDDA recommendation.*

**Comment [MS6]:** SDDHA: Practice of Dentistry under the public health code is defined as: means the diagnosis, treatment, prescription, or operation for a disease, pain deformity, deficiency, injury, or physical condition of the human tooth, teeth alveolar process, gums or jaws, or their dependent tissues, or an offer, undertaking, attempt to do, or holding oneself out as able to do any of these acts.  
*Note: If Dentistry only applies to a Dentist then the Practice Act will only apply to Dentists and Registered Dental Hygienists will need to be rewritten.*

*Note: New definition does not define "dentistry" as that "provided by a dentist"*

**Comment [MS7]:** SDDHA: Discussion regarding the practical application of direct supervision in a Dental Office. If two exams are not being performed, it should not be written as factual in the Practice Act. This leaves many offices in jeopardy of being non-compliant. It is suggested that office visits be made to enforce as SDDHA is not comfortable supporting it in the PA if it is not being completed as written.

1 For purposes of board membership, a person with a significant financial interest in a  
2 health service or profession may not be a lay member;

3 (23) "Licensee," a dentist or dental hygienist;

4 (24) "Patient of record," a patient who has undergone a complete evaluation  
5 performed by a dentist;

6 (25) "Personal supervision," a level of supervision whereby the dentist or  
7 dental hygienist is personally treating a patient and authorizes the dental assistant to aid  
8 the treatment by concurrently performing a supportive procedure;

9 (26) "Practitioner," a dentist or dental hygienist;

10 (27) "Registered dental assistant," a person registered as a registered dental  
11 assistant pursuant to this chapter who is authorized to perform expanded functions under  
12 the direct supervision of a dentist as authorized by this chapter and any administrative  
13 rule promulgated thereunder;

14 (28) "Registrant," a dental radiographer or registered dental assistant;

15 (29) "Satellite office," an office, building, or location used regularly by a  
16 dentist for the practice of dentistry other than the clinic listed as the primary clinic;

17 (30) "Teledentistry," a combination of telecommunications and dentistry  
18 involving the exchange of clinical information and images over remote distances for  
19 dental consultation and treatment planning.

20  
21 36-6A-1. Board of Dentistry--Number of members--Qualifications. The ~~State Board of~~  
22 Dentistry board shall consist of seven members. Five members shall be dentists in active  
23 practice in South Dakota for at least five years immediately preceding appointment. One

**Comment [MS8]:** SDDHA: It seems plausible to maintain continuity within the association to not create confusion with Dental Hygiene which are Nationally recognized as Registered Dental Hygienists.

**Comment [MS9]:** SDDAA: Supports change from Advanced Dental Assistant to Registered Dental Assistant.

**Comment [MS10]:** SDDA: We think "teledentistry" might not be the correct word or concept. Could we define "remote practice" as "the use of electronic communications and imaging to practice dentistry when the dentist and patient are not physically at the same location at the same time."

**Comment [MS11]:** SDDHA: Discussion regarding representation of number of licensed Dental Hygienists (701) and number of licensed Dentists(541).

1 member shall be a lay person and a resident of this state at least five years. One member  
2 shall be a dental hygienist in active practice in South Dakota at least five years.

3  
4 **36-6A-3.** Appointment and term of lay member. The lay member shall be appointed by  
5 the Governor and shall have the same term of office as other members of the Board of  
6 Dentistry.

**Comment [MS12]:** SDDHA: Would like further information on the process for the selection of the lay member.

7  
8 **36-6A-4.** Terms of office--Vacancies. No member of the board may serve more than  
9 three consecutive full terms. However, appointment of a person to an unexpired term is  
10 not considered a full term for this purpose. The Governor shall make appointments to the  
11 board for terms of three years. Each member shall hold office until a successor is  
12 appointed and qualified. The Governor shall, by appointment, fill any vacancy for the  
13 balance of the unexpired term. The Governor may stagger terms to enable the board to  
14 have different terms expire each year.

15  
16 The terms of members shall begin on October thirty-first of the calendar year in which  
17 the Governor appoints the member, unless otherwise designated by the Governor. The  
18 appointee's term shall expire on October thirtieth in the third year of appointment.

19  
20 **36-6A-5.** Officers of board. The board shall elect annually from its members a president,  
21 vice-president, and a secretary-treasurer. No member may serve as president for more  
22 than three consecutive one year terms.

1 36-6A-6. Board continued within Department of Health--Records and reports. The  
2 ~~Board of Dentistry~~board shall continue within the Department of Health, and shall retain  
3 all its prescribed functions, including administrative functions. The board shall submit  
4 such records, information, and reports in the form and at such times as required by the  
5 secretary of health. However, the board shall report at least annually.

6  
7 36-6A-7. Acceptance of funds by board--Separate fund--Payments from fund--Expense  
8 limited by revenue. The board may accept any funds which may be made available to it  
9 from any source. All funds received by the board shall be ~~paid to the secretary treasurer~~  
10 ~~thereof, or his staff assistant, who shall deposit such funds each month, to be~~ kept in a  
11 separate fund for the sole use and under the sole control of the board ~~carrying out the~~  
12 ~~provisions of this chapter~~. Payments out of the fund shall be made only upon  
13 authorization by the president of the board or the secretary-treasurer thereof. The board  
14 may expend ~~the necessary funds for its offices and furniture, fixtures, and supplies~~funds  
15 ~~necessary for the board to administer and carry out the provisions of this chapter~~. No  
16 expense may be incurred by the board in excess of the revenue derived from all sources.

17  
18 36-6A-8. Compensation and expenses of board members--Salary of secretary-treasurer--  
19 Payment for services. Out of the funds coming into the possession of the ~~Board of~~  
20 ~~Dentistry~~board, the board members may receive the compensation and reimbursement of  
21 expenses provided by law. The secretary-treasurer shall in addition thereto be paid a  
22 ~~salary to be set by resolution of~~stipend approved by the board. The board may expend  
23 funds ~~in accordance with chapter 3-6A for administrative, consultant, secretarial, clerical,~~

1 ~~and stenographic services for the board~~necessary for the board to administer and carry  
2 out the provisions of this chapter, the amount of the expenditures to be set by the board.  
3 Any member, if serving as a regional or national dental examiner, may receive  
4 compensation from the examining agency.

5  
6 36-6A-9. Affiliation with American Association and ~~Central Regional Dental Testing~~  
7 ~~Service~~Regional or National Dental Testing Agencies--Dues--~~Delegates to M~~meetings.  
8 The board may affiliate with the American Association of Dental ~~Examiners-Boards~~ and  
9 any regional or national dental testing agency recognized by the board ~~the Central~~  
10 ~~Regional Dental Testing Service~~ as active members, pay regular annual dues to such  
11 ~~associations~~entities, and send members and agents of the board ~~as delegates~~ to the  
12 meetings of such ~~associations~~entities. Such ~~delegates-members and agents~~ may receive  
13 the per diem and reimbursement of expenses provided by law for members of the board.

14  
15 36-6A-10. ~~Seal of board~~ Meetings--~~Examinations~~. ~~The board shall have a common~~  
16 ~~seal~~. The board shall hold at least two ~~regular~~ meetings ~~each year~~annually at times and  
17 places to be ~~fixed-set~~ by the board. The board may hold other meetings at a time and  
18 place set by the president or by a majority of the board. A majority of the board may call  
19 a meeting without the call of the president, and shall give examinations to applicants at  
20 either a regular meeting, a special meeting, or at such other times as may be necessary  
21 and as the board may determine. All regular meetings shall be held at such places within  
22 this state as the board shall determine. A quorum of the board may hold special meetings  
23 for the purpose of conducting examinations. However, the cost of the examinations shall

1 ~~be borne entirely by those persons wishing to have the State Board of Dentistry conduct~~  
2 ~~the examinations.~~

3  
4 36-6A-11. Quorum--Majority required for decision ~~Meeting on call of majority of~~  
5 ~~members.~~ A majority of board members constitutes a quorum. A majority vote of those  
6 present shall constitute a decision of the entire Board of Dentistryboard. ~~A majority of the~~  
7 ~~board may call a meeting without the call of the president.~~

8  
9 36-6A-12. Removal of member--Disqualification of member subject to disciplinary  
10 proceedings. A member of the Board of Dentistryboard may be removed from office for  
11 cause, or if ~~he is~~ physically or mentally unable to carry out ~~his the~~ duties ~~as of~~ a board  
12 member, or if found guilty of a violation of any provision of this chapter or any  
13 administrative rule promulgated thereunder- § 36-6A-59. ~~A board member subject to~~  
14 ~~disciplinary proceedings shall disqualify himself from board business until the charge is~~  
15 ~~adjudicated.~~

16  
17 36-6A-13. Immunity of members from civil liability. ~~Any member of the Board of~~  
18 ~~Dentistry is immune from individual civil liability while acting within the scope of his~~  
19 ~~duties as a board member.~~ The board, its members, and its agents are immune from  
20 personal liability for actions taken in good faith in the discharge of the board's duties, and  
21 the state shall hold the board, its members, and its agents harmless from all costs,  
22 damages, and attorney fees arising from claims and suits against them with respect to  
23 matters to which such immunity applies. The attorney general shall represent and appear



1 for them in any action or proceeding brought by or against the board, its members, and its  
2 agents because of such acts.

3  
4 36-6A-14. Powers and duties of board. The ~~Board of Dentistry shall~~board has the  
5 following powers and duties:

6 (1) ~~Through its policies and activities, and by rules promulgated pursuant to~~  
7 ~~chapter 1-26, establish~~Establish standards for, and promote, the safe and qualified  
8 practice of dentistry;

9 (2) ~~Be responsible for~~Conduct all disciplinary proceedings under this chapter;

10 (3) ~~By rules promulgated pursuant to chapter 1-26, establish~~Establish  
11 educational, training and competency standards governing the examination and practice  
12 of ~~practitioners under this chapter dentists and dental hygienists~~ using national  
13 accrediting agencies and accepted nationally established standards if applicable;

14 (4) Establish minimum educational, training and competency standards  
15 governing the practice of dental radiographers, registered dental assistants and dental  
16 assistants;

17 - (5) Establish continuing education and continuing competency requirements  
18 for dentists, dental hygienists, dental radiographers and registered dental assistants;

19 (46) Examine, or cause to be examined, for competency, an eligible  
20 applicants, ~~eligible by virtue of graduation from an American Dental Association~~  
21 ~~Commission on Dental Accreditation accredited dental or dental hygiene formal~~  
22 ~~educational program,~~ for a licenses to practice ~~as a dentist or a dental hygienist dentistry~~

**Comment [MS13]:** SDDA: In that same Section 14, we think that Sections subparts 3 through 7 can be compressed substantially and would urge the Board to consider doing so. We think that it is proper to speak in terms of "applicants who" rather than "applicants that".

Note: "that" changed to "who". Sections 4-6 combined.

1 ~~or dental hygiene~~ or a registration to practice as a dental radiographer or registered dental  
2 ~~assistant~~;

3 (57) Issue ~~a licenses~~ to ~~practice as a dentist or a dental hygienist those~~  
4 ~~applicants who successfully complete the licensure examination~~ to an applicant who has  
5 ~~met the licensure standards of this chapter and the administrative rules promulgated~~  
6 ~~thereunder~~ and renew the licenses of ~~those practitioners dentists and dental hygienists~~  
7 who continue to meet the licensure standards of this chapter ~~and the administrative rules~~  
8 ~~promulgated thereunder~~;

9 (68) Issue a registration to practice as a dental radiographer or a registered  
10 dental assistant to an applicant who meets the registration standards of this chapter and  
11 ~~the administrative rules promulgated thereunder and renew the registrations of dental~~  
12 ~~radiographers and registered dental assistants that continue to meet the registration~~  
13 ~~standards of this chapter and the administrative rules promulgated thereunder~~; Register,  
14 ~~pursuant to rules promulgated pursuant to chapter 1-26, those applicants who successfully~~  
15 ~~complete the registration requirements for dental radiography~~;

16 (7) ~~Register, pursuant to rules promulgated pursuant to chapter 1-26, those~~  
17 ~~applicants who successfully complete certain educational, training and competency~~  
18 ~~requirements for a dental assistant~~;

19 (89) Establish ~~, pursuant to rules promulgated pursuant to chapter 1-26,~~  
20 reasonable requirements governing the reentry into practice of inactive practitioners ~~and~~  
21 ~~reinstatement of previously licensed practitioners~~;

22 (910) Establish and collect ~~, pursuant to rules promulgated pursuant to chapter~~  
23 ~~1-26, fees for licensure, registration, examination, continuing education, license renewal,~~

1 ~~reinstatement, satellite office, corporations, corporation renewals, limited liability~~  
2 ~~companies, limited liability company renewals, registration renewals and fines, permits~~  
3 ~~and permit renewals as provided for by this chapter and any administrative rule~~  
4 ~~promulgated thereunder; and~~

5 (1011) Permit dental hygienists and dental assistants to perform, under the  
6 supervision of a dentist, additional procedures established by rules promulgated pursuant  
7 to chapter 1-26;

8 (12) Establish requirements governing the prescriptive authority of dentists;

9 (13) Establish minimum educational, training and competency standards  
10 governing the administration of sedation and anesthesia;

11 (14) Establish continuing education and continuing competency requirements  
12 for the administration of sedation and anesthesia;

13 (15) Communicate disciplinary actions and license and registration status to  
14 relevant state and federal governing bodies as may be required;

15 (16) Employ personnel in accordance with the needs and budget of the board;

16 (17) Enter into contracts as necessary to carry out the board's responsibilities  
17 pursuant to the provisions of this chapter;

18 (18) Establish standards for teledentistry;

19 (19) Establish standards and registration requirements governing dental  
20 corporations and dental providers;

21 (20) Promulgate rules pursuant to SDCL 1-26 to effectuate the provisions of  
22 this chapter;

**Comment [MS14]:** We question why the Board needs both 14(18) (now 14(16)) and also Section 17. It seems that one or the other can be dispensed with. Likewise Section 18 seems superfluous.

(21) Pursue legal actions against a person or entity that is not authorized to act by this chapter;

~~(22) Carry out the purposes and enforce the provisions of this chapter; and~~

(23) Perform other duties directly related to the provisions of this chapter and any administrative rule promulgated thereunder.

~~The board may authorize a hearing examiner to conduct the hearing required to determine a violation of § 36-6A-22 or 36-6A-59.~~

36-6A-15. Restrictions on rule-making power of board. The ~~Board of Dentistry 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 ~~practitioners~~ licensees or registrants;

(4) Restricts the number of licensees or registrants for reasons other than their qualifications; or

(5) Discriminates between programs approved under this chapter which train prospective licensees or registrants, whether in or out of the state.

~~36-6A-16—Enforcement of chapter. The duty of the Board of Dentistry board shall be to carry out the purposes and enforce the provisions of this chapter.~~

**Comment [MS15]:** SDDA: We do not know what sub 7 "Pursue Legal Actions Against a Person or Entity that is Not Authorized to Act by this Chapter" means. If it means that the board is empowered to pursue actions against non-licensees, the language is out of place. The board would have to seek a court to enjoin or punish someone who is outside the reach of the board.

*Note: Section 36-6a-23(7) moved and is now 36-6a-14(21)*

**Comment [MS16]:** SDDA: At page 5, Section 14, we find an extensive listing of the proposed powers and duties of the Board. At page 8 we then find the curious provision of Section 16, "the duty of the board shall be to carry out and enforce the provisions of this chapter." We fail to understand why Section 16 is necessary given the exhaustive list in Section 14.

*Note: (22) Moved from 36-6a-16*

1 36-6A-17. Employment of assistance in enforcement--Action for injunction--Election of  
2 remedies--Legal representation of board. The ~~Board of Dentistry~~board may use its own  
3 staff or employ or contract with licensed dentists, agents or investigators to assist in the  
4 enforcement of this chapter or any administrative rule promulgated ~~by the~~  
5 ~~board~~thereunder. If it appears to the board that a person is violating any provision or rule  
6 of this chapter, the board may, in its own name or in the name of the state, in the circuit  
7 court in any county in which jurisdiction is proper, bring an action to enjoin the act,  
8 practice or violation and to enforce compliance with this chapter or any administrative  
9 rule promulgated thereunder ~~bring an action for an injunction~~ as an ~~alternate~~alternative  
10 to criminal proceedings, and the commencement of one proceeding by the board  
11 constitutes an election. Such proceedings shall be prosecuted by the attorney general's  
12 office or person designated by the attorney general and retained by the board as provided  
13 in § 36-6A-18.

14  
15 36-6A-18. Assistance in enforcement proceedings--Expenditure of funds--Employment  
16 of attorney. The board and its members and officers shall assist any person charged with  
17 the enforcement of this chapter, and the board, its members, agents, and officers shall  
18 furnish such person with evidence to assist in the prosecution of any violation or  
19 enforcement of this chapter, and the board may, for that purpose, make a reasonable  
20 expenditure. The board may, if it deems best for the enforcement of this chapter or in the  
21 conduct of its duties, employ an attorney designated by the attorney general. The board  
22 shall fix and determine the compensation and period of service of such attorney who shall  
23 be paid out of the funds of the board.

**Comment [MS17]:** SDDHA: Equal representation of board professionals not indicated as hygiene is able to sustain a contractual agreement. Justification: As we move forward in the pursuit of modifying the PA, we should remove any restrictive language that inhibits the State Board of Dentistry employment capacity to assist in the enforcement of this chapter or any administrative rule promulgated thereunder. Recommendation is to use "agent".

Note: "Dentist" eliminated. Agent allows for any professional, including dentists and dental hygienists.

1  
2 36-6A-19. Subpoena power of board--Administration of oaths. In all matters pending  
3 before it the board has the powers provided by § 1-26-19.1.

4  
5 36-6A-20. Depositions. Any deposition may be taken as provided by § 1-26-19.2.

6  
7 ~~36-6A-21. Dental radiography Requirements for practice. The Board of Dentistry~~  
8 ~~may, by rule promulgated pursuant to chapter 1-26, establish minimum educational and~~  
9 ~~training requirements and continuing education requirements to practice dental~~  
10 ~~radiography.~~

11  
12 36-6A-22. Complaints filed with board--Records maintained--Investigation--Dismissal--  
13 Appeal--Disciplinary procedure. The ~~Board of Dentistry board~~ shall receive complaints  
14 ~~from its members, dentists, dental groups, third party carriers providing financial~~  
15 ~~reimbursement for dental services, or the public concerning a practitioner's professional~~  
16 ~~practices regarding the enforcement of this chapter or any administrative rule~~  
17 ~~promulgated thereunder. Each complaint received shall be logged by the secretary~~  
18 ~~treasurer recording the practitioner's, name of the complaining party, date of the~~  
19 ~~complaint, a brief statement of the complaint and its ultimate disposition. Records of each~~  
20 ~~complaint shall be maintained by the board.~~ An investigation shall be conducted by a  
21 member, agent or an appointee of the board to determine whether an alleged violation has  
22 been committed. The investigator, if a member of the board, may dismiss a complaint if it  
23 appears to the member, either with or without the consultation of the board, that no

1 violation has been committed or the member may transfer the complaint to a peer review  
2 committee duly appointed by a state or local professional society comprised of dentists  
3 ~~licensed to practice their profession in the State of South Dakota~~, or the member may  
4 request the board ~~to~~ fix a date for a hearing on the complaint. If the investigator is an  
5 agent or appointee of the board, dismissal of the complaint or transferal to peer review  
6 may only be made by the president. Any agreed disposition made between the  
7 investigator and the ~~practitioner-licensee or registrant~~ shall be made known to and  
8 approved by the board. The complaining party shall be notified promptly of the ~~dismissal~~  
9 ~~or the agreed disposition~~ final disposition of the complaint. The complaining party may  
10 appeal the dismissal to the board within thirty days. The decision of the board may be  
11 appealed to the circuit court in accordance with chapter 1-26 within thirty days. A license  
12 or registration shall remain in effect during the pendency of an appeal unless suspended  
13 under § 36-6A-24. All disciplinary proceedings held under the authority of this chapter  
14 shall be conducted in accordance with chapter 1-26.

15  
16 **NEW SECTION** Pursuant to a complaint concerning the health or safety of patients or  
17 the public, the board, or any of its members, officers, agents or employees so authorized,  
18 may enter and inspect, during business hours, any place where dentistry is practiced for  
19 the purpose of enforcing this chapter and administrative rules adopted thereunder. The  
20 refusal to allow an inspection is a Class 1 misdemeanor. Such inspection may include any  
21 dental or drug records, and the copying thereof, and inventories relating to drugs and  
22 controlled substances required to be kept under the provisions of chapter 34-20B. The

**Comment [MS18]:** SDDA: In the new Section regarding entrance and inspection, we think there should be a requirement along the lines of imminent danger, and notice. We wonder why the draft includes a misdemeanor at that place.

1 board, its members, officers, agents and employees shall maintain the confidential nature  
2 of any records obtained pursuant to this section.

3  
4 NEW SECTION. Every facility licensed by the state where medicine or dentistry is  
5 practiced which suspends or revokes the privilege of a licensee of the board to practice  
6 dentistry therein for incompetence or unprofessional conduct as defined in this chapter  
7 shall report it in writing to the board including the factual basis of such revocation or  
8 suspension of the practice privilege. Any report made to the board pursuant to this section  
9 shall be confidential and subject to the same restrictions set forth in § (statute below). A  
10 licensed facility, complying in good faith with this section, may not be held liable for any  
11 injury or damage proximately resulting from such compliance.

12  
13 NEW SECTION Testimony or documentary evidence of any kind obtained during the  
14 investigation of a complaint is not subject to discovery or disclosure under chapter 15-6  
15 or any other provision of law, and is not admissible as evidence in any legal proceeding  
16 until such time as the complaint becomes a contested case as defined in SDCL 1-26-1(2).  
17 No person that has participated in the investigation of a complaint may testify as an  
18 expert witness or be compelled to testify for any party in any action for personal injury or  
19 wrongful death if the subject matter of the complaint investigated is a basis for the action  
20 for personal injury or wrongful death.

21  
22 36-6A-23. Sanctions authorized in disciplinary proceedings. The board may impose any  
23 of the following sanctions, singly or in combination, if it finds that a practitioner-person.

**Comment [MS19]:** SDDA: We think that perhaps the new section could be combined with the new section on page 11 (both new sections are now located directly above this section) in order to provide for a more thorough understanding of the Board's powers and duties.

*Note: Clarification needed regarding what sections to combine.*

**Comment [MS20]:** SDDA: We think that Section 23 could be substantially compressed. While we acknowledge that the format of the existing Section 23 lends itself to the kind of exhaustive list which has been continued, we can compress that paragraph substantially.



entity, licensee, registrant, dental corporation or dental provider has violated any ~~part of~~  
~~§ 36-6A-59~~ provision of this chapter or any administrative rule promulgated thereunder:

(1) Revoke a ~~practitioner's~~ license, registration or permit to practice for an indefinite period;

(2) Suspend a ~~practitioner's~~ license, registration or permit for a specific or indefinite length of time;

~~(3) Censure a practitioner;~~

~~(34)~~ Issue a censure or a letter of reprimand;

~~(45)~~ Place a ~~practitioner~~ licensee or registrant on probationary status and require the ~~practitioner~~ licensee or registrant to report regularly to the board on the matters which are the basis for probation, limit ~~his~~ the licensee's or registrant's practice to areas prescribed by the board and ~~continue to renew~~ 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 it finds the deficiencies which require disciplinary action have been remedied;

~~(5)~~ Deny an application for a license, registration or permit;

~~(6)~~ Place on condition or limit a license, registration or permit;

~~(7)~~ Impose an administrative fine not to exceed two thousand five hundred dollars for each violation;

~~(68)~~ Other sanctions which the board finds appropriate; and

~~(79)~~ Require the practitioner Impose a fee to reimburse the board in an amount equal to all or part of the costs incurred for the investigation and ~~disciplinary hearing proceedings~~ resulting in disciplinary action authorized by this chapter or any

1 administrative rule promulgated thereunder or the issuance of a cease and desist order.  
2 The costs include the amount paid by the board for services from attorneys, investigators,  
3 court reporters, witnesses, expert witnesses, reproduction of records, board members' per  
4 diem compensation, board staff time, and expenses incurred by these individuals relating  
5 to the investigation and disciplinary proceedings.

6 ~~The board may withdraw the probation if it finds the deficiencies which require~~  
7 ~~disciplinary action have been remedied.~~

8  
9 36-6A-24. Summary suspension of license--Grounds--Hearing--Appeal. The board may  
10 summarily suspend a ~~practitioner's~~ license or registration in advance of a final  
11 adjudication or during the appeals process if the board finds that a ~~practitioner licensee or~~  
12 registrant would represent a clear and immediate danger to the public health and safety if  
13 ~~he were~~ allowed to continue to practice. A ~~practitioner licensee or registrant~~ whose  
14 ~~license~~ license or registration is suspended under this section is entitled to a hearing  
15 before the board within twenty days after the effective date of the suspension. The  
16 ~~practitioner licensee or registrant~~ may subsequently appeal the suspension to circuit court  
17 in accordance with chapter 1-26.

18  
19 36-6A-25. Reinstatement of suspended or revoked license or registration. Any  
20 ~~practitioner, dental radiographer, or advanced dental assistant~~ licensee or registrant whose  
21 license or registration ~~to practice~~ has been suspended or revoked may ~~be~~ have a license or  
22 registration reinstated or a new license or registration may be issued ~~to him, as the case~~  
23 ~~may be,~~ when in the discretion of the board such action is warranted. The board may

1 require the applicant to pay all costs of the proceedings resulting in ~~his~~ the suspension or  
2 revocation of the license or registration and reinstatement or issuance of a new license or  
3 registration. ~~In addition, the board may, by rule promulgated pursuant to chapter 1-26,~~  
4 ~~require a fee for reinstatement.~~

5  
6 ~~36-6A-26. Definition of terms. Terms used in this chapter mean:~~

7 ~~(1) "Board," the Board of Dentistry;~~

8 ~~(1A) "Collaborative agreement," a written agreement between a supervising~~  
9 ~~dentist and a dental hygienist authorizing the preventive and therapeutic services~~  
10 ~~that may be performed by the dental hygienist under collaborative supervision;~~

11 ~~(1B) "Collaborative supervision," the supervision of a dental hygienist requiring~~  
12 ~~a collaborative agreement between a supervising dentist and dental hygienist;~~

13 ~~(2) "Commercial dental laboratory," an enterprise engaged in making,~~  
14 ~~providing, repairing, or altering oral prosthetic appliances and other artificial materials~~  
15 ~~and devices which are returned to a dentist and inserted into the human oral cavity or~~  
16 ~~which come in contact with its adjacent structures and tissues;~~

17 ~~(3) "Complete evaluation," an examination, review of medical and dental~~  
18 ~~history, the formulation of a diagnosis, and the establishment of a written treatment plan,~~  
19 ~~documented in a written record to be maintained in the dentist's office or other treatment~~  
20 ~~facility or institution;~~

21 ~~(4) "Dental," pertaining to dentistry;~~

22 ~~(5) "Dental assistant," a person performing acts authorized under this chapter,~~  
23 ~~who, under the supervision of a dentist or dental hygienist, renders assistance to a dentist,~~

1 ~~dental hygienist, dental technician, or other dental assistant in the manner described in~~  
2 ~~§ 36-6A-41;~~

3 ~~—— (6) —— "Dental auxiliary," a dental hygienist, a dental assistant or a dental~~  
4 ~~technician, employed by a licensed dentist;~~

5 ~~—— (7) —— "Dental hygienist," a person licensed pursuant to this chapter, who, under~~  
6 ~~the supervision of a dentist, renders the educational, preventive, and therapeutic dental~~  
7 ~~services authorized by § 36-6A-40, as well as any related extra-oral procedure required in~~  
8 ~~the practice of those services;~~

9 ~~—— (8) —— "Dental radiographer," a person who has been authorized by the Board of~~  
10 ~~Dentistry board to perform dental radiography;~~

11 ~~—— (9) —— "Dental radiography," the application of X-radiation to human teeth and~~  
12 ~~supporting structures for diagnostic purposes only;~~

13 ~~—— (10) —— "Dental specialist," a dentist who has graduated from a postdoctoral~~  
14 ~~specialty program recognized and approved by the American Dental Association~~  
15 ~~Commission on dental accreditation;~~

16 ~~—— (11) —— "Dental technician," a person performing acts authorized under this~~  
17 ~~chapter, who, at the authorization of a dentist, makes, provides, repairs, or alters oral~~  
18 ~~prosthetic appliances and other artificial materials and devices which are returned to a~~  
19 ~~dentist and inserted into the human oral cavity or which come in contact with its adjacent~~  
20 ~~structures and tissues;~~

21 ~~—— (12) —— "Dentist," a person licensed pursuant to this chapter, who performs any~~  
22 ~~intra-oral or extra-oral procedure required in the practice of dentistry and to whom is~~  
23 ~~reserved the responsibilities specified in § 36-6A-31;~~

1 ~~———— (13) ——"Dentistry," the healing art which is concerned with the examination,~~  
2 ~~diagnosis, treatment, planning, and care of conditions within the human oral cavity and~~  
3 ~~its adjacent tissues and structures, including the use of laser or ionizing radiation as~~  
4 ~~authorized by rule by the board pursuant to chapter 1-26 to operate for any disease, pain,~~  
5 ~~deformity, deficiency, injury, or physical condition of the human tooth, teeth, alveolar~~  
6 ~~process, gums, or jaw or adjacent or associated structures;~~

7 ~~———— (14) ——"Direct supervision," the supervision of a dental hygienist or dental~~  
8 ~~assistant requiring that a dentist diagnose the condition to be treated, a dentist authorize~~  
9 ~~the procedure to be performed, a dentist remain in the dental office while the procedures~~  
10 ~~are performed, and before dismissal of the patient a dentist has approved the work~~  
11 ~~performed by the dental hygienist or dental assistant;~~

12 ~~———— (15) ——"General supervision," the supervision of a dental hygienist requiring that~~  
13 ~~a dentist authorize the procedures to be carried out, and that the patient to be treated is a~~  
14 ~~patient of record of the supervising dentist and has had a complete evaluation within the~~  
15 ~~previous thirteen months of the delegation of procedures;~~

16 ~~———— (16) ——"Indirect supervision," the supervision of a dental hygienist or registered~~  
17 ~~dental assistant requiring that a dentist authorize the procedure and a dentist be in the~~  
18 ~~dental office while the procedures are performed by the dental assistant or dental~~  
19 ~~hygienist;~~

20 ~~———— (17) ——"Lay member," a person who is not a health professional, and who is not~~  
21 ~~a parent, spouse, sibling or child of a health professional or health professional student.~~  
22 ~~For purposes of board membership, a person with a significant financial interest in a~~  
23 ~~health service or profession may not be a lay member;~~

1 ~~\_\_\_\_\_ (18) "Patient of record," a patient who has undergone a complete evaluation~~  
2 ~~performed by a licensed dentist;~~

3 ~~\_\_\_\_\_ (19) "Personal supervision," a level of supervision indicating that the dentist~~  
4 ~~or dental hygienist is personally treating a patient and authorizes the dental hygienist or~~  
5 ~~dental assistant to aid his treatment by concurrently performing a supportive procedure;~~

6 ~~\_\_\_\_\_ (20) "Practitioner," a licensed dentist or dental hygienist;~~

7 ~~\_\_\_\_\_ (21) "Satellite office," an office, building, or location used at any time by a~~  
8 ~~dentist for the practice of dentistry other than the office listed on his annual registration~~  
9 ~~certificate.~~

10 36-6A-27. Immunity from liability for acts of members of professional committees--  
11 Confidentiality of committee communications. There may be no monetary liability on the  
12 part of, and no cause of action for damages may arise against, any member of a duly  
13 appointed committee of a state or local professional society, comprised of dentists or  
14 dental hygienists ~~licensed to practice their profession in the State of South Dakota~~, for  
15 any act or proceeding undertaken or performed within the scope of the functions of any  
16 such committee which is formed to maintain the professional standards of the society  
17 established by its bylaws, if such committee member acts without malice, has made a  
18 reasonable effort to obtain the facts of the matter as to which ~~he the committee member~~  
19 acts, and acts in reasonable belief that the action taken by ~~him the committee member~~ is  
20 warranted by the facts known to ~~him the committee member~~ after such reasonable effort  
21 to obtain facts. "Professional society" includes dental organizations having as members at  
22 least a majority of the eligible licensees in the area served by the particular society. The  
23 provisions of this section do not affect the official immunity of an officer or employee of

1 a public corporation. No communications either to or from any such committee or its  
2 members or its proceedings, if acting as a peer review committee concerning the ethical  
3 or professional practices of any ~~licensed~~ dentist are discoverable for any purpose in any  
4 civil or criminal action. However, such communication is discoverable in an  
5 administrative proceeding as contemplated by chapter 1- 26. All such communications  
6 are confidential. The committee shall transfer all documentation material to a complaint  
7 to the ~~State Board of Dentistry board~~ upon subpoena by the board or upon filing a  
8 complaint. The confidentiality provided in this section shall cease upon transfer of the  
9 material to the board.

11 36-6A-28. Unauthorized practice or representation as dentist, dental hygienist, dental  
12 radiographer, or dental specialist as misdemeanor. Every person who practices ~~as, or~~  
13 attempts to practice ~~as, or purports to be, dentistry~~ a dentist, dental ~~hygiene~~hygienist, or  
14 dental ~~radiographerradiography, or registered dental assistant or to function as a dental~~  
15 ~~hygienist, or who purports to be a dentist or dental hygienist~~ in this state without being  
16 licensed or without being registered for that purpose or without being exempted from this  
17 chapter is guilty of a Class ~~1 misdemeanor~~ 6 Felony.

18 ~~A~~Any dentist who implies, purports or leads ~~his patients a patient~~ to believe that ~~he~~  
19 ~~the dentist~~ is a dental specialist, ~~unless he has met~~without meeting the educational  
20 requirements ~~adopted by the Board of Dentistry before listing or identifying himself to~~  
21 ~~the public as a dental specialist~~set forth in this chapter and the administrative rules  
22 ~~promulgated thereunder~~, is guilty of a Class 1 misdemeanor.

**Comment [MS21]:** SDDA: At Section 28 we note that the definition of dentist and dentistry do not tie in with each other under the proposed language. It does not appear to be a requirement from subparts 13 and 14 of Section 26 and 28, it seems necessary to form the basis for a criminal action. Where is the requirement for a person to be licensed in order to perform these functions? We don't find it in this document. We think the original language is better.

*Note: Original statute modified. Prior proposed language was:  
No person required to be licensed, registered, or to hold a permit under the provisions of this chapter or any administrative rule promulgated thereunder shall practice the person's profession in the State of South Dakota without such active license, registration, or permit and renewal pursuant to the provisions of this chapter and any administrative rule promulgated thereunder except those specifically excepted from the provisions of this chapter. A violation of this section is a Class 6 Felony.*

**Comment [MS22]:** SDDA: We object to the inclusion of any felony penalty in this code. We don't think that is appropriate in a professional act. Furthermore, any criminal act performed by any person which is worthy of a felony is already found in the criminal code. See SDCL 22-18(assault).

1 ~~No person who is not licensed to practice dentistry in this state may sell, offer, or~~  
2 ~~advertise any dental service including the furnishing, constructing, reproduction, relining,~~  
3 ~~or repair of dentures, bridges, plates, or other appliances to be used or worn as substitutes~~  
4 ~~for natural teeth. However, the mere delivery of products to an ultimate consumer or~~  
5 ~~person acting in his behalf for the purpose of transporting products to the licensed dentist~~  
6 ~~who provided the work order does not violate this section. This section does not apply to~~  
7 ~~mailings, displays, and advertisements, the primary distribution of which is to the dental~~  
8 ~~profession or its ancillary trades.~~

**Comment [MS23]:** SDDA: We think that the last paragraph of Section 28 is confusing when read with the provisions in Section 30. We recommend consolidating those two.

*Note: Section 30 modified. This section deleted.*

10 36-6A-29. ~~Restrictions on advertising~~--Violation as misdemeanor. ~~No person licensed~~  
11 ~~by this chapter may engage in advertising~~Advertising pertaining to the practice of  
12 dentistry ~~which may~~shall not be fraudulent or misleading. A violation of this section is a  
13 Class 1 misdemeanor.

**Comment [MS24]:** SDDA: While we have no quarrel with the provisions of Section 29, we think that the enforcement of the notions contained in that paragraph is better handled by the Board in a disciplinary proceeding as opposed to a criminal action which is contemplated by the criminal penalty in the statute. We would invite the Board to engage in dialogue on that topic.

*Note: Language broadened. Advertising restrictions are already included as unprofessional conduct.*

15 36-6A-30. Sale, offer, or advertising of dental services by unlicensed person prohibited--  
16 - Violation as misdemeanor. ~~A No person not licensed to practice dentistry~~in this state  
17 may ~~not~~sell, offer, provide or advertise any dental service including, but not limited to,  
18 the furnishing, constructing, reproduction, relining, or repair of dentures, bridges, plates,  
19 or other appliances to be used or worn as substitutes for natural teeth and the application  
20 of prescription strength bleaching agents to natural teeth unless he or she holds the  
21 appropriate license, registration or permit issued by the board. A violation of this section  
22 is a Class 1 misdemeanor.

**Comment [MS25]:** *Note: Section 30 incorporates changes proposed in last paragraph of 36-6a-28 above, which was deleted.*



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

6  
7 ~~36-6A-31. Authorization required to practice dentistry~~ Scope of practice of a dentist  
8 defined--Exclusive responsibility of dentists. Only a dentist licensed or otherwise  
9 permitted to practice under this chapter may carry on the profession of dentistry  
10 as a dentist in this state, unless otherwise stated in this chapter. Dentists have the  
11 exclusive responsibility for:

- 12 (1) The diagnosis of conditions within the human oral cavity and its adjacent  
13 tissues and structures;
- 14 (2) The treatment plan of a dental patient;
- 15 (3) The prescribing of drugs which are administered to patients in the practice  
16 of dentistry;
- 17 (4) The overall quality of patient care which is rendered or performed in the  
18 practice of dentistry, regardless of whether the care is rendered personally by a dentist or  
19 dental auxiliary;
- 20 (5) The supervision of dental auxiliaries and authorization of procedures to be  
21 performed by dental auxiliaries;
- 22 (6) The review, reading, and evaluation of dental radiographs;

**Comment [MS26]:** SDDA: In Section 31, we find the language provided there to be inconsistent with the definition of dentistry. By stating, "provided by a dentist" in Section 14, haven't we given an escape hatch to anyone seeking to perform the unlicensed practice of dentistry? The inclusion of the language and the definition in Section 14 represents a prima facie case of "unless otherwise stated in this chapter as found in this section of the code". This points out why the discussion of the scope of practice at multiple places in the code is problematic for enforcement purposes.

*Note: Prior SDDA recommended definition of dentistry, which included "provided by a dentist" has been removed and replaced with current SDDA recommended definition.*

**Comment [MS27]:** SDDA: We think that Sections 31 and 32 should be combined with the notions found in the definitions to provide for one singular definition of dentistry. It's best to call out "dentistry" one time, specify what it is, specify that a person must have a license in order to practice dentistry and then move on, rather than redefine scope of practice as we do in the draft.

*Note: Section 31 and 32 combined.*

1 (7) The delegation of procedures to a dental hygienist under general  
2 supervision. ~~The dentist shall have completed the last evaluation of the patient within~~  
3 ~~thirteen months of the delegation of procedures.~~ The written treatment plan contained  
4 within the patient's record shall accompany any delegation of treatment procedures; ~~and~~

5 (8) The use of a dental degree, or designation, or card, device, directory, sign,  
6 or other media whereby the person represents himself or herself as being able to  
7 diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury,  
8 or physical condition of the human tooth, teeth, alveolar process, gums or jaw, or  
9 adjacent or associated structures;

10 (9) The management, ownership or operation of an entity that provides dental  
11 services or that performs dental operations;

12 (10) The performance of dental operations of any kind gratuitously, or for a  
13 fee, gift, compensation or reward, paid or to be paid, either to the person providing the  
14 service or to another person or agency;

15 (11) The use of radiographic imaging for dental diagnostic purposes or  
16 treatment;

17 (12) The extraction of a human tooth or corrections to or attempts to correct  
18 malpositions of the human teeth or jaws; or

19 (13) Offering or undertaking, by any means or method, to diagnose, treat or  
20 remove stains or accretions from or change the color or appearance of human teeth or  
21 jaws;

**Comment [MS28]:** SDDA: Section 32, sub 2  
(now section (9)) we find to be an extremely  
important section of the code for the establishment,  
maintenance and health of the profession of  
dentistry. The notions contained in that sentence are  
important and capable in being stated in a more clear  
and refined manner for the use of those who depend  
on the code. Several states have attempted a suitable  
description of ownership. We are still researching  
which statutes have been most effective.

1       (14) The taking of impressions of the human teeth or jaws or performing any  
2 phase of any operation incident to the replacement of a part of a tooth, a tooth, teeth or  
3 associated tissues by means of a filling, a crown, a bridge, a denture, or other appliance;

4       (15) Furnishing, supplying, constructing, reproducing, repairing, or offering to  
5 furnish, supply, construct, reproduce or repair prosthetic dentures or plates, bridges or  
6 other substitutes for natural teeth, to the user or prospective user thereof;

7       (16) Performing any clinical operation included in the curricula of  
8 Commission on Dental Accreditation accredited dental schools or colleges;

9       (17) Performing any irreversible dental procedure; and

10       (188) Any other specific services within the scope of dental practice.

11  
12  
13 ~~36-6A-32. Scope of dental practice defined. A person shall be deemed to be practicing~~  
14 ~~dentistry within the meaning of this chapter:~~

**Comment [MS29]:** Moved to section 31 above.

15       ~~—— (1) Who uses a dental degree, or designation, or card, device, directory, sign,~~  
16 ~~or other media whereby he represents himself as being able to diagnose, treat, prescribe,~~  
17 ~~or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the~~  
18 ~~human tooth, teeth, alveolar process, gums or jaw, or adjacent or associated structures; or~~

19       ~~—— (2) Who is a manager, proprietor, operator, or conductor of a place where~~  
20 ~~dental operations are performed; or~~

21       ~~—— (3) Who performs dental operations of any kind gratuitously, or for a fee, gift,~~  
22 ~~compensation or reward, paid or to be paid, either to himself or to another person or~~  
23 ~~agency; or~~

1 ~~———— (4) ——— Who uses a roentgen or X-ray machine for dental treatment, or~~  
2 ~~roentgenograms for dental diagnostic purposes; or~~  
3 ~~———— (5) ——— Who extracts a human tooth or corrects or attempts to correct malpositions~~  
4 ~~of the human teeth or jaws; or~~  
5 ~~———— (6) ——— Who offers and undertakes, by any means or method, to diagnose, treat or~~  
6 ~~remove stains or accretions from human teeth or jaws; or~~  
7 ~~———— (7) ——— Who takes impressions of the human teeth or jaws or performs any phase~~  
8 ~~of any operation incident to the replacement of a part of a tooth, a tooth, teeth or~~  
9 ~~associated tissues by means of a filling, a crown, a bridge, a denture, or other appliance;~~  
10 ~~or~~  
11 ~~———— (8) ——— Who furnishes, supplies, constructs, reproduces, or repairs, or offers to~~  
12 ~~furnish, supply, construct, reproduce or repair prosthetic dentures or plates, bridges or~~  
13 ~~other substitutes for natural teeth, to the user or prospective user thereof; or~~  
14 ~~———— (9) ——— Who performs any clinical operation included in the curricula of~~  
15 ~~recognized dental schools and colleges.~~

17 ~~36-6A-32.1. Exemption for certain community based primary health organizations.~~  
18 ~~The provisions of subdivision 36-6A-32(2) do not apply to the practice of dentistry by~~  
19 ~~dentists licensed pursuant to this chapter who are providing dental services for patients~~  
20 ~~under the auspices of a community based primary health care delivery organization,~~  
21 ~~which is operating as a community health center or migrant health center, receiving~~  
22 ~~funding assistance under § 329 or 330 of the United States Public Health Service Act.~~  
23

**Comment [MS30]:** SDDA: We appreciate the inclusion of "irreversible" at (10) on page 24. We also appreciate the deletion of the exemptions for community based prime or health organization in mobile or portable dental unites. It is important that locations where dentistry is being practiced are under the purview of the Board or some other regulatory agency of a similar nature.

*Note: These exemptions were moved to section 33.*

~~36-6A-32.2. Exemption for mobile or portable dental unit operated by certain nonprofit organizations. The provisions of subdivision 36-6A-32(2) do not apply to 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 under chapter 58-39.~~

36-6A-33. Acts excluded from practice of ~~dentistry~~ a dentist. Section 36-6A-31~~32~~ does not apply to:

(1) Any dentist licensed in another state making a clinical presentation sponsored by a ~~bona fide board approved~~ dental society or association or ~~an a~~ Commission on Dental Accreditation accredited dental educational institution;

(2) Any individual enrolled in any Commission on Dental Accreditation accredited dental educational program who works under the direct supervision of a licensed instructor, whether within a formal education facility or at a practice site remote from that educational facility;

~~(3) Any dental or dental auxiliary instructor, whether full time or part time, while engaged in teaching activities while employed in accredited dental or~~ Commission on Dental Accreditation accredited dental and dental hygiene educational programs and ~~board approved~~ dental ~~auxiliary assisting~~ educational ~~programs~~ institutions;

(4) Any dentist licensed in another state who provides emergency care to any person so in need;

**Comment [MS31]:** SDDA: In section 33, we find the extensive inclusion of acts and entities excluded from the practice of dentistry is too long. We would strike subparts 10 and 11, and perhaps 12 as well (*now subparts 9, 10 and 11*). The public would be better served if the board had a more broad and expansive regulatory authority over people and entities that are now exempted. We urge the board to consider the regulation of those entities and organizations included in subparts 10 and 11 (*now 9 and 10*). Several states require the registration of these types of organizations. We would also urge the board to use state and federal institutions for subpart 12. Additionally any exempted entities should be prohibited from interfering with the professional judgment of a licensee of the board.

**Comment [MS32]:** Modified as section 32 was combined with section 31.

1           (5) Any dental auxiliary who is acting in accordance with this chapter or any  
2 administrative rule promulgated thereunder § 36-6A-40, 36-6A-41, or 36-6A-43.

3           (6) Services, other than service performed directly upon the person of a  
4 patient, of constructing, altering, repairing, or duplicating any denture, partial denture,  
5 crown, bridge, splint, orthodontic, prosthetic, or other dental appliance, if performed  
6 pursuant to an order from a dentist in accordance with § 36-6A-43;

7           (7) The practice of dentistry by dentists in the discharge of their official duties  
8 in any branch of the armed services of the United States, the United States Public Health  
9 Service, or the United States Veterans' Administration;

10          (8) The practice of dentistry by licensed dentists of other states or countries  
11 while appearing as clinicians under the auspices of a Commission on Dental  
12 Accreditation accredited dental school or college, or a board approved dental society, or a  
13 board approved dental study club composed of dentists;

14          ~~(9) The use of radiographic imaging or similar records of dental or oral tissues~~  
15 ~~in a hospital and under the supervision of a physician or dentist;~~

16          (9) The practice of dentistry provided by a community-based primary health  
17 care delivery organization, which is operating as a community health center or migrant  
18 health center, receiving funding assistance under § 329 or 330 of the United States Public  
19 Health Service Act;

20          (10) The practice of dentistry provided by any mobile or portable dental unit  
21 operated by any nonprofit organization affiliated with a nonprofit dental service  
22 corporation organized under chapter 58-39;

1        (11) The practice of dentistry provided by the state of South Dakota in any  
2 state owned and operated institution;

3        (12) The practice of dentistry provided by the federal government in any  
4 institution owned and operated by the federal government; and

5        (13) Any person who ministers or treats the sick or suffering or who treats for  
6 the purpose of preventing sickness or suffering by mental or spiritual means exclusively.

7  
8 ~~36-6A-34. Out of state dentist's acts not considered practice of dentistry. Section 36-~~  
9 ~~6A-32 does not apply to the practice of dentistry by licensed dentists of other states or~~  
10 ~~countries while appearing as clinicians under the auspices of a duly approved dental~~  
11 ~~school or college, or a reputable dental society, or a reputable dental study club composed~~  
12 ~~of dentists.~~

13  
14 ~~36-6A-35. Federal officers' acts not considered practice of dentistry. Section 36-6A-32~~  
15 ~~does not apply to the practice of dentistry by full time dentists in the discharge of their~~  
16 ~~official duties in any branch of the armed services of the United States, the United States~~  
17 ~~Public Health Service, or the United States Veterans' Administration.~~

18  
19 ~~36-6A-36. Dental appliance work on dentist's order not considered practice of dentistry.~~  
20 ~~Section 36-6A-32 does not apply to the service, other than service performed directly~~  
21 ~~upon the person of a patient, of constructing, altering, repairing, or duplicating any~~  
22 ~~denture, partial denture, crown, bridge, splint, orthodontic, prosthetic, or other dental~~

**Comment [MS33]:** SDDA: We would also urge the board to use state and federal institutions for subpart 12.

*Note: Federal Government included.*

1 ~~appliance, if performed pursuant to an order from a licensed dentist in accordance with~~  
2 ~~§ 36-6A-43.~~

3  
4 ~~36-6A-37. Use of X rays not considered practice of dentistry. Section 36-6A-32 does~~  
5 ~~not apply to the use of roentgens or other rays for making roentgenograms or similar~~  
6 ~~records of dental or oral tissues in a hospital or under the supervision of a physician or~~  
7 ~~dentist.~~

8  
9 ~~36-6A-38. Religious practitioners' acts not considered practice of dentistry. Section 36-~~  
10 ~~6A-32 does not apply to any person who ministers or treats the sick or suffering or who~~  
11 ~~treats for the purpose of preventing sickness or suffering by mental or spiritual means~~  
12 ~~exclusively.~~

13  
14 ~~36-6A-39.~~ Fee-splitting as misdemeanor--Partnerships and employment excepted.  
15 Except as permitted by chapter 47-12, it is a Class 2 misdemeanor for any licensee,  
16 registrant, dental provider or dental corporation dentist to divide fees with, or to promise  
17 to pay a part of his a fee to, or to pay a commission to any dentist or any other person,  
18 who ~~calls him in consultation or who~~ sends patients ~~to him~~ for treatment or operation.  
19 However, nothing in this section prohibits licensed dentists from forming a bona fide  
20 partnership for the practice of dentistry, nor the actual employment of a licensed dentist  
21 or a licensed dental hygienist.  
22

**Comment [MS34]:** SDDA: In Section 39 on page 28, we question whether it should be included as a class 2 misdemeanor to engage in fee splitting and would encourage the Board to instead consider it to be unprofessional conduct.

*Note: Fee splitting added to unprofessional conduct.*



1 36-6A-40. Employment of hygienist--Scope of permitted practice--Preventive and  
2 therapeutic services. Only a dental hygienist licensed to practice under this chapter may  
3 practice dental hygiene unless otherwise stated in this chapter. ~~Any licensed dentist,~~  
4 ~~public institution, or school authority may use the services of a licensed dental hygienist.~~  
5 Such ~~licensed~~ dental hygienist may perform those services which are ~~educational,~~  
6 diagnostic, therapeutic, or preventive in nature and are authorized by the board and any  
7 educational services provided pursuant thereto ~~Board of Dentistry, including those~~  
8 ~~additional procedures authorized by subdivision 36-6A-14(10).~~ Such services may not  
9 include the establishment of a final diagnosis or treatment plan for a dental patient. Such  
10 services shall be performed under the supervision of a ~~licensed~~ dentist.

11 As an employee of a public institution or school authority, functioning without the  
12 supervision of a ~~licensed~~ dentist, a ~~licensed~~ dental hygienist may only provide  
13 educational services.

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

**Comment [MS35]:** SDDA: Referring to Section 40 and 40.1, we don't think it appropriate for this draft to either expand or diminish the scope of practice for dental hygienists. The careful balance that has been found is one that should be maintained going forward. We do not like the inclusion of "diagnostic" but think that perhaps it could be defined and limited appropriately both here and in Section 8.

**Comment [B36]:** The following language will become effective July 1, 2014.

**Comment [MS37]:** SDDHA: Delta Dental's exemption to the rule suggests that the delivery of dental services to the residents of South Dakota represents discrimination. The 13 month dental examination rule should be deleted if it cannot be enforced. SDDHA suggestion is that RDH's create referrals for patients who would be seen without regular exams.

1 in South Dakota. The exemption for a dental hygienist employed by Delta Dental Plan of  
2 South Dakota providing services through written agreement with the Indian Health  
3 Service or a federally recognized tribe in South Dakota expires on June 30, 2016.

4  
5 36-6A-40.1. Hygienist requirements for preventative and therapeutic services under  
6 collaborative supervision. A dental hygienist may provide preventive and therapeutic  
7 services under collaborative supervision of a dentist if the dental hygienist has met the  
8 following requirements:

9 (1) Possesses a license to practice in the state and has been actively engaged in  
10 the practice of clinical dental hygiene in two of the previous three years;

11 (2) Has a written collaborative agreement with a ~~licensed~~ dentist; and

12 (3) Has satisfactorily demonstrated knowledge of medical and dental  
13 emergencies and their management; infection control; pharmacology; disease  
14 transmission; management of early childhood caries; and management of special needs  
15 populations.

16  
17 36-6A-40.2. Evidence of hygienist requirements--Fee--Promulgation of rules. A dental  
18 hygienist seeking to provide preventive and therapeutic services under collaborative  
19 supervision shall submit evidence, as prescribed by the board, of meeting the  
20 requirements of § 36-6A-40.1 and a fee not to exceed thirty dollars. The board shall, by  
21 rules promulgated pursuant to chapter 1-26, establish the required fee, the minimum  
22 requirements for a collaborative agreement, the preventive and therapeutic services that  
23 may be performed, the location or facilities where services may be performed, and the

1 evidence required to demonstrate the active practice and knowledge required pursuant to  
2 § 36-6A-40.1.

3  
4 36-6A-41. Dental auxiliaries--~~Education and training~~--Dentist's responsibility--  
5 Unauthorized practice. ~~The Board of Dentistry may set educational and training~~  
6 ~~requirements for dental assistants, including the practice of dental radiography and the~~  
7 ~~monitoring of nitrous oxide administration by dental assistants.~~ Every ~~licensed~~ dentist  
8 who uses the services of a ~~dental auxiliary~~ dental assistant to assist ~~him the dentist~~ in the  
9 practice of dentistry is responsible for the acts of the ~~dental auxiliary~~ dental assistant  
10 while engaged in such assistance. The dentist shall permit the ~~dental auxiliary~~ dental  
11 ~~assistant~~ to perform only those acts which ~~he the dentist~~ is authorized under this chapter  
12 to delegate to a ~~dental assistant~~ dental auxiliary. The acts shall be performed under  
13 supervision of a ~~licensed~~ dentist. The board may permit differing levels of dental  
14 assistance based upon recognized educational standards, approved by the board, for the  
15 training of dental ~~assistants~~ auxiliaries. ~~Any licensed dentist who permits a dental~~  
16 ~~auxiliary to perform any dental or dental hygiene service other than that authorized by the~~  
17 ~~board shall be deemed to be enabling an unlicensed person to be practicing dentistry or~~  
18 ~~dental hygiene, and commission of the act by a dental auxiliary is a violation of this~~  
19 ~~chapter.~~

**Comment [MS38]:** This section moved to unprofessional conduct section.

20  
21 36-6A-42. ~~Dental assistants~~ ~~Education and training.~~ The Board of Dentistry may, by  
22 ~~rule promulgated pursuant to chapter 1-26, establish minimum educational and training~~  
23 ~~requirements and continuing education requirements to perform as a dental assistant. The~~

1 ~~board may also require, or substitute, clinical experience in addition to, or in lieu of,~~  
2 ~~educational and training requirements.~~

3  
4 36-6A-43. Dental technicians to work in dental laboratory or under dentist's  
5 supervision-- Dental appliance work on dentist's order--Intra-oral services. Dental  
6 technicians may work either in commercial dental laboratories or under the supervision of  
7 a dentist. Technicians, when not working under the supervision of a dentist, may not  
8 provide for dental patients' use any prosthetic appliances, materials, or devices which are  
9 inserted in the human oral cavity unless ordered by a ~~licensed~~ dentist. Technicians may  
10 not provide intra-oral services to patients. A technician or dental laboratory shall  
11 maintain a record of work orders for a period of two years.

12  
13 NEW SECTION. A licensee or registrant under this chapter may not perform dental  
14 services that are outside the scope of the licensee's or registrant's relevant education,  
15 training and experience.

**Comment [MS39]:** SDDA: Then one could add, if necessary: "a dentist licensed under this chapter may not perform dental services that are outside the scope of the dentist's relevant education training and experience." While an individual dentist's scope of practice is defined and limited by his education and training, the scope of "dentistry" is larger and we have to be careful not to intermix the two concepts.

*Note: Section added that applies to all licensees and registrants.*

16  
17 36-6A-44. Application for license to practice ~~dentistry as a dentist or dental hygiene--~~  
18 Requirements-- Examination. Any person ~~not already a licensed dentist or dental~~  
19 ~~hygienist of this state~~ desiring to practice ~~dentistry as a dentist or dental hygiene that has~~  
20 ~~passed a regional examination approved by the board within five years preceding the date~~  
21 ~~of application~~ may ~~apply to the secretary treasurer of the Board of Dentistry for licensure.~~  
22 ~~Unless otherwise provided~~ obtain a license to practice dentistry if the applicant satisfies  
23 ~~each of the following criteria and the administrative rules promulgated thereunder:~~

(1) Each application for a license to practice ~~dentistry as a dentist or dental hygiene~~ shall be in writing and signed by the applicant;

(2) The applicant has passed a standardized national comprehensive examination approved by the board;

(3) Within five years preceding the date of application, the applicant has passed a regional examination approved by the board or a state examination or examinations that the board deems equivalent to a regional examination approved by the board;

~~(2) An application for a license without examination shall be made in accordance with the provisions of § 36-6A-47 or 36-6A-48;~~

~~(34)~~ The applicant must be a graduate ~~from a dental or dental hygiene school which is accredited by the American dental association commission on dental accreditation~~ of a Commission on Dental Accreditation accredited United States or Canadian dental school, having obtained a Doctor of Dental Medicine or a Doctor of Dental Surgery degree ~~and shall be examined for a license to practice dentistry or dental hygiene;~~

~~(4) Foreign trained and other graduates from nonaccredited dental and dental hygiene programs may apply for a dental or dental hygiene license. The board, by rule promulgated pursuant to chapter 1-26, shall establish requirements to reasonably assure that an applicant's training and education are sufficient for licensure;~~

(5) The board may require a laboratory or clinical examination ~~as a prerequisite to the clinical examination~~ of an applicant if it has reason to believe the

**Comment [MS40]:** SDDA: In Section 44, we think that Section 4 is written in a difficult to understand manner and similarly we object to the inclusion of graduates from dental school in Canada as being qualified to meet the requirement for having graduated from a school accredited by the Commission on Dental Accreditation. See a difference between dental education here and the rest of the world, entirely.

**Comment [MS41]:** SDDA: We question the mechanics of the language in Section 44(5) and would ask the Board to consider the language found there presently as more clearly stating how that language should work in a practical sense. We might instead say, "An applicant may request..." or something like that.

applicant cannot practice safely; ~~on a clinical patient due to a difference in the applicant's curriculum or any other bona fide reason;~~

~~(6) All applicants who are admitted to the examination process shall be evaluated by the same standards in examinations. Skill and performance standards required in the written, laboratory and clinical examinations shall be the same for all applicants;~~

~~(7) All applicants~~ The applicant shall provide satisfactory evidence showing that ~~they are~~ he or she is of good moral character;

~~(7) No disciplinary proceeding or unresolved disciplinary complaint is pending before a dental board~~ at the time a license is to be issued by the board; and

~~(8) The applicant passes an examination concerning the laws of the State of South Dakota relating to dentistry and the administrative rules promulgated thereunder.~~

~~Foreign-trained and other graduates from dental programs not accredited by the Commission on Dental Accreditation may apply for a dental license. 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.~~

~~(8) Every applicant for a license to practice dentistry or dental hygiene, whether by examination or reciprocity, shall produce evidence satisfactory to the board that he is a citizen of the United States or lawfully admitted alien, or he shall file an affidavit with the board indicating his intent to become a citizen of the United States.~~

**Comment [MS42]:** SDDA: In 44(6) on the top of page 34 we have no idea how an applicant could provide satisfactory evidence showing that he or she has a good moral character. We also think it's too subjective. We think it would be possible for an applicant to demonstrate at some level that he or she is not of low moral character but we don't know how the applicant is supposed to show good moral character.

**Comment [MS43]:** SDDA: We think the language in 44(7) can be restated in a more clear fashion as well. "No professional disciplinary action or proceeding is pending before a state dental board in any of the fifty states" might be better said. "Unresolved complaint" catches a lot of other possibilities, most of which are not of interest to the public or the board.

*Note: Revisions limit it to disciplinary complaints.*

**Comment [MS44]:** SDDA: We are confused by the inclusion of language at 44(8) and would ask the board to consider whether that should be in its own section or properly placed elsewhere in the draft. We think CODA equivalency needs to be observed.

*Note: This refers to the Board's jurisprudence examination, which covers the statutes and administrative rules pertaining to dentistry. CODA accreditation would not apply.*

1 ~~However, if citizenship has not been attained within eight years from the filing of such~~  
2 ~~affidavit, he forfeits the right to be licensed under this chapter.~~

3  
4 **NEW SECTION** Application for license to practice as a dental hygienist --  
5 Requirements-- Examination. Any person desiring to practice as a dental hygienist that  
6 has passed a regional examination approved by the board within five years preceding the  
7 date of application may obtain a license to practice dental hygiene if the applicant  
8 satisfies each of the following criteria and the administrative rules promulgated  
9 thereunder:

10 (1) Each application for a license to practice as a dental hygienist shall be in  
11 writing and signed by the applicant;

12 (2) The applicant has passed a standardized national comprehensive  
13 examination approved by the board;

14 (3) Within five years preceding the date of application, the applicant has  
15 passed a regional examination approved by the board or a state examination or  
16 examinations that the board deems equivalent to a regional examination approved by the  
17 board; \_\_\_\_\_

18 (4) The applicant must be a graduate of an American Dental Association  
19 Commission on Dental Accreditation accredited United States or Canadian dental  
20 hygiene school, having obtained a dental hygiene degree;

21 (5) The board may require a laboratory or clinical examination of an applicant  
22 if it has reason to believe the applicant cannot practice safely;

**Comment [MS45]:** SDDA: With respect to the new section we would leave it for the hygienists to state their own objections. However, we find that a number of the suggestions we have made here apply there as well.

*Note: If applicable, any changes adopted for the section 44 would be incorporated in this section as well to maintain consistency.*

1       (6) The applicant shall provide satisfactory evidence showing that he or she is  
2 of good moral character;

3       (7) No disciplinary proceeding or unresolved disciplinary complaint is pending  
4 before a dental board at the time a license is to be issued by the board; and

5       (8) The applicant passes an examination concerning the laws of the State of  
6 South Dakota relating to dentistry and the administrative rules promulgated thereunder.

7  
8 Foreign-trained and other graduates from dental hygiene programs not accredited by the  
9 Commission on Dental Accreditation may apply for a dental hygiene license. The board,  
10 by rule promulgated pursuant to chapter 1-26, shall establish requirements to reasonably  
11 ensure that an applicant's training and education are sufficient for licensure.

12  
13 36-6A-44.1. Criminal background investigation of applicants for licensure as dentist and  
14 licensees under disciplinary investigation--Fees. Each applicant for licensure as a dentist  
15 in this state shall submit to a state and federal criminal background investigation by  
16 means of fingerprint checks by the Division of Criminal Investigation and the Federal  
17 Bureau of Investigation. Upon application, the board shall submit completed fingerprint  
18 cards to the Division of Criminal Investigation. Upon completion of the criminal  
19 background check, the Division of Criminal Investigation shall forward to the board all  
20 information obtained as a result of the criminal background check. This information shall  
21 be obtained prior to permanent licensure of the applicant. The board may require a state  
22 and federal criminal background check for any licensee who is the subject of a  
23 disciplinary investigation by the board. Failure to submit or cooperate with the criminal



1 background investigation is grounds for denial of an application or may result in  
2 revocation of a license. The applicant shall pay for any fees charged for the cost of  
3 fingerprinting or the criminal background investigation.

4  
5 ~~36-6A-45. Examination required—Scope and nature. Every applicant for licensure who~~  
6 ~~does not qualify for an exception to licensure under this chapter, or for exemption from~~  
7 ~~examination under §§ 36-6A-47 and 36-6A-48 is subject to examination by the Board of~~  
8 ~~Dentistry. The examination shall include an examination of the applicant's knowledge of~~  
9 ~~the laws of South Dakota relating to dentistry and the rules of the South Dakota State~~  
10 ~~Board of Dentistry. The board may administer written, laboratory, and clinical~~  
11 ~~examinations to test professional knowledge and skills, or may require the successful~~  
12 ~~completion of a standardized national comprehensive test selected by the board.~~

13  
14 ~~36-6A-46. Examination requirements satisfied by results of a national standardized test.~~  
15 ~~All or any part of the written examination for dentists or dental hygienists, required by~~  
16 ~~§ 36-6A-45, except that pertaining to the law of South Dakota relating to dentistry and~~  
17 ~~the rules of the Board of Dentistry, may, at the discretion of the board, be satisfied by the~~  
18 ~~results of a national standardized comprehensive test selected by the board.~~

19  
20 36-6A-47. Licensing of dentist ~~or hygienist~~ from another state--Proof of character and  
21 professional standing--Examination on South Dakota rules. ~~If an applicant for licensure is~~  
22 ~~already licensed in another state to practice dentistry or dental hygiene, the Board of~~  
23 ~~Dentistry may issue the appropriate dental or dental hygienist license to the applicant~~

**Comment [MS46]:** SDDA: Referring to Section 47, we find that the process of licensing of a dentist from another state is unwieldy as written and would suggest instead that the Board consider licensing dentists from out of state by stating as follows: The Board may grant a license to practice dentistry to an individual who is licensed in good standing, and whose license is not currently under review, to practice dentistry in another state or territory of the United States or in another country if the applicant meets all of the requirements for licensure established in statute and rule and presents his license from the foreign jurisdiction to the Board and pays the appropriate fees. We also think the provision for such licensures can be contained in the previous section of the code dealing with licensing of dentists and doesn't require its own section. We would state the same for the new section on licensing of dental hygienists found at page 39. We don't see the value in the 3000 hours requirement. South Dakota is underserved. Lets

1 ~~upon evidence that:~~ Any person desiring to practice as a dentist that has completed more  
2 than three thousand (3000) dental clinical practice hours within the five years preceding  
3 the date of application may obtain a license to practice as a dentist if the applicant  
4 satisfies each of the following criteria and the administrative rules promulgated  
5 thereunder:

6 (1) Each application for a license to practice as a dentist shall be in writing  
7 and signed by the applicant;

8 (2) The applicant must be a graduate of a Commission on Dental  
9 Accreditation accredited United States or Canadian dental school, having obtained a  
10 Doctor of Dental Medicine or a Doctor of Dental Surgery degree;

11 ~~(43)~~ The applicant is currently an active, competent practitioner, having  
12 completed a minimum of three thousand (3000) dental clinical practice hours within the  
13 five years immediately preceding the date of application;

14 ~~(24)~~ The applicant has passed a standardized national comprehensive test  
15 selected examination approved by the board, and has practiced at least three years out of  
16 the five years immediately preceding his application;

17 (5) The applicant has passed a regional examination approved by the board or  
18 a state examination or examinations that the board deems equivalent to a regional  
19 examination approved by the board;

20 ~~(36)~~ The applicant currently holds a valid license in another state;

21 (47) No disciplinary proceeding or unresolved disciplinary complaint is  
22 pending before a dental board anywhere at the time a license is to be issued by the board  
23 this state;

1           (85)    The licensure requirements in the other state are in the judgment of the  
2 board the same as or higher than those required by this state;

3           (96)    ~~The applicant is of good moral character.~~ The applicant shall provide  
4 satisfactory evidence showing that he or she is of good moral character; and

5  
6           (107)   The applicant successfully passes an examination concerning the laws  
7 of the State of South Dakota relating to dentistry and the ~~rules of the board~~ administrative  
8 rules promulgated thereunder.

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

11  
12 -NEW SECTION.   Licensing of dental hygienist from another state--Proof of character  
13 and professional standing--Examination on South Dakota rules. Any person desiring to  
14 practice dental hygiene that has completed more than three thousand (3000) dental  
15 hygiene clinical practice hours within the five years preceding the date of application  
16 may obtain a license to practice dental hygiene if the applicant satisfies each of the  
17 following criteria and the administrative rules promulgated thereunder:

18           (1)    Each application for a license to practice dental hygiene shall be in  
19 writing and signed by the applicant;

20           (2)    The applicant must be a graduate of a Commission on Dental  
21 Accreditation accredited United States or Canadian dental hygiene school, having  
22 obtained a dental hygiene degree;

1       (3) The applicant is currently an active, competent practitioner, having  
2 completed a minimum of three thousand (3000) dental hygiene clinical practice hours  
3 within the five years immediately preceding the date of application;

4       (4) The applicant has passed a standardized national comprehensive  
5 examination approved by the board;

6       (5) The applicant has passed a regional examination approved by the board or  
7 a state examination or examinations that the board deems equivalent to a regional  
8 examination approved by the board;

9       (6) The applicant currently holds a valid license in another state;

10       (7) No disciplinary proceeding or unresolved disciplinary complaint is  
11 pending before a dental board at the time a license is to be issued by the board;

12       (5) The licensure requirements in the other state are in the judgment of the  
13 board the same as or higher than those required by this state;

14       (6) The applicant shall provide satisfactory evidence showing that he or she is  
15 of good moral character; and

16       (7) The applicant successfully passes an examination concerning the laws of  
17 the State of South Dakota relating to dentistry and the administrative rules promulgated  
18 thereunder.

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

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

**Comment [MS47]:** SDDA: We object to the new section starting at line 12 on page 50 (now line 1-3 on p. 45). The reasons for the Board to refuse to license an individual should be contained in the licensing section and be susceptible to being determined by objective criteria.

*Note: This statute moved from area of code relating to unprofessional conduct to here, behind licensure.*

5 36-6A-48. Issuance or renewal of licenses--Inactive practitioners--Fees for licensing and  
6 testing. The ~~Board of Dentistry board~~ shall, upon applicant's satisfactory completion of  
7 the educational requirements and written, laboratory and clinical examinations authorized  
8 under this chapter and upon receipt of the requisite fees, issue or renew the appropriate  
9 dental or dental hygiene license.

11 ~~36-6A-49. Temporary registration~~ ~~Requirements~~ ~~– Volunteer dentist or dental~~  
12 ~~hygienist~~. Any dentist or dental hygienist licensed in a state or territory of the United  
13 States whose licensure requirements are equivalent or higher than those of this state and  
14 who has ~~passed a national comprehensive test selected by the Board of Dentistry within~~  
15 ~~five years or who has been in active practice three years immediately preceding his~~  
16 ~~completed a minimum of three thousand (3000) clinical practice hours within the five~~  
17 ~~years preceding the date of~~ application, with all licenses in good standing ~~and no~~  
18 ~~disciplinary proceeding or unresolved complaint pending anywhere~~, may be granted a  
19 temporary registration to practice in conjunction with a dentist licensed in this state or  
20 entity pursuant to 36-6a-33 (9), (10), (11) or (12) only until a date set by the board and is  
21 subject to the requirements and conditions set forth in said registration. ~~The dentist or~~  
22 ~~dental hygienist may receive the temporary registration on presentation of evidence that~~

**Comment [MS48]:** Note: this now splits apart the two temporary permit processes.

**Comment [MS49]:** SDDA: We note the provision for temporary registration found in Section 49 and would encourage the Board to consider a temporary license to practice rather than a registration. The language in this section is difficult to comprehend and understand and would urge the Board to consider simplifying it.

1 ~~he has passed such test or evidence of his active practice for three years immediately~~  
2 ~~preceding his application and payment of a fee to be set by the board.~~

4 **36-6A-49.1.** Temporary registration – Requirements – Dentist or dental hygienist.

5 Any person that has applied for a license to practice as a dentist or a license to practice  
6 as a dental hygienist and has met all of the requirements for said license, as set forth in  
7 this chapter and any administrative rules promulgated thereunder, may be granted a  
8 temporary registration to practice as a dentist or a temporary registration to practice as a  
9 dental hygienist only until a date set by the board and is subject to the requirements and  
10 conditions set forth in said registration.

12 **36-6A-49.2.** Temporary registration – jurisdiction. Any person practicing under a  
13 temporary registration shall be subject to supervision and discipline by the board under  
14 this chapter in the same manner as any other licensee under this chapter and practice  
15 under a temporary registration is considered to constitute submission to jurisdiction by  
16 the board.

18 **NEW SECTION.** Any person who, while located outside this state, practices dentistry  
19 through electronic means and provides the dental services to a patient located in this  
20 state, is engaged in the practice of dentistry in this state.

**Comment [MS50]:** Note: These sections now split apart the two temporary permit processes.

**Comment [MS51]:** SDDA: We note the inclusion of a new section on teledentistry and would urge the Board to discuss and define "remote practice" or "teledentistry" only if necessary and then all in one section at one place. We find no utility in the code from having to flip pages back and forth to find provisions regarding the same topic.

1 NEW SECTION. Any services provided by a licensee or registrant through  
2 electronic means must meet the same standard of care as services provided in person by a  
3 licensee or registrant.

5 NEW SECTION. Nothing contained in this chapter shall be construed to apply to any  
6 licensed person practicing dentistry outside of this state when in actual consultation with  
7 a dentist in this state.

9 ~~36-6A-50.~~ Fees payable to board. The Board of Dentistry board shall promulgate  
10 nonrefundable fees, by rule pursuant to chapter 1-26, provided for in this chapter, within  
11 the following limits:

- 12 (1) Examination fee for dentists, not more than three hundred dollars;
- 13 (2) Examination fee for dental hygienists, not more than one hundred fifty  
14 dollars;
- 15 (3) Annual registration fee for dentists, not more than two hundred dollars;
- 16 (4) Annual registration fee for dental hygienists, not more than one hundred  
17 dollars;
- 18 (5) Duplicate license certificate or ~~duplicate~~ annual registration certificate fee,  
19 ~~for dentists or dental hygienists, not less than five dollars nor not~~ more than fifteen  
20 dollars;
- 21
- 22 - (67) Reinstatement fee, an amount equal to the examination fee;

**Comment [MS52]:** SDDA: Section 50 could be in our view compressed and condensed substantially. We would urge the Board to consider collapsing that into an easier to read statute.

(78) Continuing education program annual fee, ~~of~~ not more than twenty dollars;

(8) Registration certificate for satellite offices, not more than ten dollars;

(910) Temporary registration fee, not more than three hundred fifty dollars;

(1011) Annual registration fee for ~~persons practicing dental radiography~~ dental radiographers, not more than fifty dollars;

(1112) ~~Examination~~ Application fee for dental radiographers, not more than fifty dollars;

(1213) Application fee and renewal fee for ~~General anesthesia and, parenteral sedation, and nitrous oxide~~ permits, not more than fifty dollars;

(1316) ~~Initial registration~~ Application fee for ~~persons practicing dentistry~~ dentists, not more than two hundred dollars;

(1417) ~~Initial registration~~ Application fee for ~~persons practicing dental hygiene~~ dental hygienists, not more than two hundred dollars;

(1518) ~~Initial registration~~ Application fee for ~~persons practicing expanded duties~~ registered dental assistants, not more than fifty dollars;

(1619) ~~Initial registration~~ Application fee for ~~persons practicing dental radiography~~ dental radiographers, not more than fifty dollars;

(1720) Annual registration fee for ~~persons practicing expanded duties~~ registered dental assistants, not more than fifty dollars;

(1821) Repealed by SL 2003, ch 199, § 1.



(1922) Endorsement or credentials fee for dentists and dental hygienists, not more than six hundred dollars.

~~36-6A-51. Fraud in securing license or annual registration as misdemeanor. Any person employing fraud or deception in applying for or securing a license to practice dentistry or dental hygiene or a registration to practice dental radiography or in registering annually under this chapter, is guilty of a Class 1 misdemeanor.~~

**Comment [MS53]:** SDDA: We appreciate the deletion of Section 51 on page 44 as we find it to be duplicative of other efforts elsewhere in the code.

~~36-6A-52. Annual renewal of license or registration--Notice--Information and fee required--Suspension. 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 secretary-treasurer of the Board of Dentistryboard, upon a form prescribed by the board, information as determined by rule, 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. 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 licensure renewal, except a change in home or office address shall be reported in accordance with § 36-6A-58.~~

**Comment [MS54]:** SDDA: We think that Sections 52 and 53 are perhaps also duplicative and superfluous.

*Note: Section 52 and 53 have been combined.*

1 ~~36-6A-53. Annual renewal of registration Notice Information and fee required~~  
2 ~~Suspension. As a condition of annual renewal of a registration, each registrant shall, on or~~  
3 ~~before the first day of July, transmit to the secretary-treasurer of the Board of~~  
4 ~~Dentistryboard, upon a form prescribed by the board, information reasonably related to~~  
5 ~~the administration of a registration system in the interest of public health and safety,~~  
6 ~~together with the fee established by the board. Failure of a registrant to renew a~~  
7 ~~registration on or before the first day of July constitutes a suspension of the registration~~  
8 ~~held by the registrant. At least thirty days before the first day of July, the board shall~~  
9 ~~cause a written notice stating the amount and due date of the fee and the information to~~  
10 ~~be provided by the registrant to be sent to each registrant. Each registrant shall report the~~  
11 ~~information as a condition of registration renewal, except change in home or office~~  
12 ~~address shall be reported in accordance with § 36-6A-58.~~

13  
14 36-6A-54. Display of certificates--Names on office-clinic door. Every licensed dentist or  
15 dental hygienist and every registered dental radiographerlicensee or registrant shall post  
16 and keep conspicuously his or her name, license certificate, and ~~annual~~ registration  
17 certificate in every office-dental clinic in which he or she practices, in plain sight of his  
18 the patients. ~~If there is more than one dentist or dental hygienist or registered dental~~  
19 ~~radiographer practicing or employed in any office the manager or proprietor of the office~~  
20 ~~shall post and display the name, license certificate and registration certificate of each~~  
21 ~~dentist, dental hygienist, or registered dental radiographer practicing or employed therein.~~  
22 ~~In addition there shall be posted or displayed near or upon the entrance door to every~~  
23 ~~office in which dentistry is practiced, the name of each dentist practicing therein and the~~

1 ~~names shall be the name of the person inscribed upon the license certificate and annual~~  
2 ~~registration certificate of each dentist.~~

3  
4 **36-6A-55.** Proof of continuing education required. Every five years ~~from original date~~  
5 ~~of licensure or upon becoming registered as an advanced dental assistant~~ of licensure or  
6 registration, each ~~person licensed to practice dentistry or dental hygiene or perform duties~~  
7 ~~as an advanced dental assistant~~ licensee or registrant in this state shall provide the State  
8 Board of Dentistry ~~board~~ evidence, of a nature suitable to the board that a ~~licensed person~~  
9 ~~or advanced dental assistant~~ licensee or registrant has attended, or participated in an  
10 amount of board approved continuing education or continuing competency in dentistry ~~in dentistry~~ as  
11 shall be required by the board. However, for dentists this requirement may not be less  
12 than ~~twenty one hundred~~ ten hours during the preceding five years of licensure, for dental  
13 hygienists this requirement may not be less than ~~ten seventy five~~ ten hours during the  
14 preceding five years of licensure, ~~and~~ and for ~~advanced registered~~ advanced registered dental assistants this  
15 requirement may not be less than ~~ten sixty~~ ten hours during the preceding five years of  
16 registration ~~as an advanced dental assistant~~ and for dental radiographers this requirement  
17 may not be less than five hours during the preceding five years of registration.

18  
19 36-6A-56. Acceptable proof of continuing education. The board may accept, for  
20 compliance with the requirements of § 36-6A-55, any of the following which, in the  
21 opinion of the board, contributes directly to the dental education of the licensee or  
22 registrant:

**Comment [MS55]:** SDDA: It would be our opinion that statutes (Sections 55 and 56) regarding the continuing education requirements of the Board are perhaps better left to rule and would urge the Board to consider deleting them from the draft and providing for them in rule.

1 (1) Attendance at lectures, study clubs, college post-graduate courses, or  
2 scientific session of conventions;

3 (2) Research, graduate study, teaching, or service as a clinician; and

4 (3) Any other evidence of continuing education the board may approve.

5  
6 36-6A-57. Reexamination on failure to continue education--Suspension of license. Any  
7 ~~licensed person-licensee or registrant~~ who fails to comply with the ~~requirements of § 36-~~  
8 ~~6A-55 shall~~continuing education or continuing competency requirements set forth in this  
9 chapter or any administrative rule promulgated thereunder may, at the discretion of the  
10 board, be reexamined to determine his or her competency to continue licensure or  
11 registration. If, in the opinion of the board, a ~~licensed person-licensee or registrant~~ does  
12 not qualify for further ~~licensed~~ practice, the board shall, in compliance with chapter 1-26,  
13 suspend the license or registration until the time the ~~dentist or dental hygienist licensee or~~  
14 registrant shall provide acceptable evidence to the board of his or her competency to  
15 practice.

16  
17 36-6A-58. Notice to board of change of address--~~Replacement of lost or destroyed~~  
18 ~~license~~. Every ~~dentist, dental hygienist, dental radiographer~~licensee or registrant, upon  
19 changing his or her ~~home~~place of residence, name, -or place of employment or place of  
20 business shall, within ten days thereafter, furnish the ~~secretary treasurer of the Board of~~  
21 Dentistry board with the new address updated information. ~~In case of a lost or destroyed~~  
22 ~~license, and upon satisfactory proof of the loss or destruction thereof being furnished to~~

1 ~~the board, the latter may issue a duplicate license, charging a fee, not to exceed twenty~~  
2 ~~dollars, set by the board by rule promulgated pursuant to chapter 1-26.~~

4 **36-6A-59.** Grounds for disciplinary action--Hearing--Physical and mental examinations.

5 ~~Any practitioner~~ Every licensee and registrant subject to this chapter shall conduct his or  
6 her practice in accordance with the standards established by the ~~Board of Dentistry under~~  
7 ~~provisions of §§ 36-6A-14 and 36-6A-16, and board.~~ Any licensee or registrant is subject  
8 to the exercise of the disciplinary sanctions enumerated in ~~§ 36-6A-23 if, after a hearing~~  
9 ~~in the manner provided in chapter 1-26, the board finds that:~~ this chapter or any  
10 administrative rule promulgated thereunder upon satisfactory proof by clear and  
11 convincing evidence in compliance with chapter 1-26 of such licensee's or registrant's  
12 professional incompetence, or unprofessional or dishonorable conduct, or proof of a  
13 violation of this chapter in any respect.

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

**Comment [MS56]:** SDDA: We found Section 59 and the new section on unprofessional conduct to be difficult to read in concert. We question whether this is an improvement.

1 ~~———— (1) A practitioner has employed or knowingly cooperated in fraud or material~~  
2 ~~deception in order to obtain a license to practice the profession, or has engaged in fraud~~  
3 ~~or material deception in the course of professional services or activities;~~

4 ~~———— (2) A practitioner has been convicted in any court of a felony, or other crime~~  
5 ~~which affects the practitioner's ability to continue to practice competently and safely;~~

6 ~~———— (3) A practitioner has engaged in or permitted the performance of~~  
7 ~~unacceptable patient care by himself or by auxiliaries working under his supervision due~~  
8 ~~to his deliberate or negligent act or acts or failure to act;~~

9 ~~———— (4) A practitioner has knowingly violated any provision of this chapter or~~  
10 ~~board rules;~~

11 ~~———— (5) A practitioner has continued to practice although he has become unfit to~~  
12 ~~practice his profession due to professional incompetence, failure to keep abreast of~~  
13 ~~current professional theory or practice, physical or mental disability, or addiction or~~  
14 ~~severe dependency upon or use of alcohol or other drugs which endanger the public by~~  
15 ~~impairing a practitioner's ability to practice safely;~~

16 ~~———— (6) A practitioner has engaged in lewd or immoral conduct in connection with~~  
17 ~~the delivery of dental services to patients;~~

18 ~~———— (7) A practitioner has or is employing, assisting, or enabling in any manner an~~  
19 ~~unlicensed person to practice dentistry, dental hygiene, or to function as a dental~~  
20 ~~hygienist;~~

21 ~~———— (8) A practitioner has failed to maintain adequate safety and sanitary~~  
22 ~~conditions for a dental office in accordance with the standards established by the rules of~~  
23 ~~the board, promulgated pursuant to chapter 1-26;~~

1 ~~(9) A practitioner has engaged in false or misleading advertising.~~

2 ~~Suspension or revocation may not be based on a judgment as to therapeutic value of~~  
3 ~~any individual drug prescribed or any individual treatment rendered, but only upon a~~  
4 ~~repeated pattern or trend of treatment resulting in unexpected or unacceptable results.~~

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

8 The board may order a practitioner-licensee or registrant to submit to a reasonable  
9 physical or mental examination if his-the physical or mental capacity to practice safely is  
10 at issue in a disciplinary proceeding. Failure to comply with a board order to submit to a  
11 physical or mental examination shall render a practitioner-licensee or registrant liable to  
12 the summary revocation procedures described in §§ 36-6A-23 and 36-6A-24.

13  
14 **NEW SECTION** If the board is unable to secure an expert due to a conflict of interest it  
15 may secure an expert from a surrounding state.

**Comment [MS57]:** SDDA: The new section found at line 9 on page 50 (now line 17 on p. 52) is thought to be unnecessary given the other provisions found earlier in the document.

16  
17 **NEW SECTION** Acts considered unprofessional conduct. The term, unprofessional or  
18 dishonorable conduct, as used in this chapter includes:

19 (1) Presenting to the board any license, certificate, or diploma which was  
20 obtained by fraud or deception practiced in passing a required examination or which was  
21 obtained by the giving of false statements or information on applying for the license;

22 (2) Illegally, fraudulently, or wrongfully obtaining a license or registration or  
23 renewal required by this chapter by the use of any means, devices, deceptions, or help in

1 passing any examination or by making false statements or misrepresentations in any  
2 applications or information presented;

3 (3) Engaging in fraud or deception during the course of the applicant's  
4 education;

5 (4) Engaging in fraud or material deception in the course of professional  
6 services or activities;

7 (5) Conviction of any criminal offense of the grade of felony, any conviction  
8 of a criminal offense arising out of the practice of dentistry, or one in connection with  
9 any criminal offense involving moral turpitude;

10 (6) Allowing professional incompetence by dental auxiliaries working under  
11 his or her supervision due to a deliberate or negligent act or acts or failure to act;

12 (7) Violating any provision of this chapter or administrative rule promulgated  
13 thereunder;

14 (8) Engaging in lewd or immoral conduct in connection with the delivery of  
15 dental services to a patient;

16 (9) Employing, assisting, or enabling in any manner an unlicensed person to  
17 practice as a dentist or dental hygienist or a person that does not hold a registration to  
18 practice as a registered dental assistant or radiographer;

19 (10) Assisting, enabling or permitting a dental auxiliary to perform any dental  
20 service other than those authorized by the board;

21 (11) Performing dental services other than those authorized by the board;  
22

**Comment [MS58]:** Moved from 36-6a-41 – last sentence (supervisor violation)

**Comment [MS59]:** Moved from 36-6a-41 – last sentence



1       (12)    Failure to maintain adequate safety and sanitary conditions for a dental  
2 clinic in accordance with the standards established by the rules of the board, promulgated  
3 pursuant to chapter 1-26;

4       (13)    Engaging in false or misleading advertising or advertising of a dental  
5 business or dental services in which untruthful or improbable statements are made or  
6 which are calculated to mislead or deceive the public;

7       (14)    Except as permitted by chapter 47-12, dividing fees with, promising to pay a  
8 part of a fee to, or to pay a commission to any dentist or any other person who sends  
9 patients for treatment or operation. However, this does not prohibit dentists from forming  
10 a bona fide partnership for the practice of dentistry, nor the actual employment of a  
11 dentist or a dental hygienist;

**Comment [MS60]:** SDDA: Fee splitting  
included as unprofessional conduct.

12       (15)    Habits of intemperance or drug addiction, calculated in the opinion of the  
13 board to affect the licensee's practice of the profession;

14       (16)    Prescribing intoxicants, narcotics, barbiturates, or other habit-forming  
15 drugs to any person in quantities and under circumstances making it apparent to the board  
16 that the prescription was not made for legitimate medicinal purposes related to the  
17 practice of dentistry or prescribing in a manner or in amounts calculated in the opinion of  
18 the board to endanger the well-being of an individual patient or the public in general;

19       (17)    Sustaining any physical or mental disability which renders the further  
20 practice of a licensee's or registrant's profession dangerous;

21       (18)    Failure to comply with state or federal laws on keeping records regarding  
22 possessing and dispensing of narcotics, barbiturates, and habit-forming drugs;

23       (19)    Falsifying the dental records of a patient or any official record regarding

1 possession and dispensing of narcotics, barbiturates, and habit-forming drugs or  
2 regarding any phase of dental treatment of a patient;

3 (20) The exercise of influence within the dentist-patient relationship for the  
4 purposes of engaging a patient in sexual activity. For the purposes of this subdivision, the  
5 patient is presumed incapable of giving free, full, and informed consent to sexual activity  
6 with the dentist;

7 (21) Engaging in gross or immoral sexual harassment or sexual contact;

8 (22) Providing or prescribing dental services or treatments which are  
9 inappropriate or unnecessary;

10 (23) Any practice or conduct which tends to constitute a danger to the health,  
11 welfare, or safety of the public or patients or engaging in conduct which is unbecoming  
12 of a dentist, dental hygienist, dental radiographer or registered dental assistant;

13 (24) Discipline by another state, territorial, or provincial licensing board or the  
14 licensing board of the District of Columbia if the violation is also a violation of this  
15 chapter or any administrative rules promulgated thereunder;

16 (25) Not reporting to the board discipline by another state, territorial, or  
17 provincial licensing board or the licensing board of the District of Columbia; and

18 (26) Not reporting to the board a conviction of any criminal offense of the  
19 grade of felony, any conviction of a criminal offense arising out of the practice of  
20 dentistry, or one in connection with any criminal offense involving moral turpitude.

21  
22 NEW SECTION. If any person holding a license or registration by any final order or  
23 adjudication of any court of competent jurisdiction is adjudged to be mentally

**Comment [MS61]:** SDDA: We find the new section found on line 16 on page 53 to be troubling in the respect that it cedes the authority of the Board to a court and for no other reason. We think it extremely appropriate that someone in competent or insane should have his or her license reviewed. However, to use the word "shall" in that section seems to be taking away from the authority of the Board and we think the board should well consider whether that is appropriate

Note: "Shall" now changed to "may."

1 incompetent or insane, the license or registration may be suspended by the board after  
2 proceedings in compliance with chapter 1-26.

3  
4 36-6A-60. Burden of proof as to valid license in prosecution for violations. In the  
5 prosecution of any person for violation of this chapter, it is not necessary to allege or  
6 prove lack of a valid license to practice ~~dentistry or dental hygiene~~ as a dentist or a dental  
7 hygienist or a valid registration ~~of to practice as a dental radiography radiographer or a~~  
8 registered dental assistant but such proof of licensure or registration is a matter of defense  
9 to be established by the defendant.

10  
11 NEW SECTION: A dentist may write prescriptions only in connection with dental related  
12 ailments or conditions.

13  
14 NEW SECTION: An applicant, licensee or registrant must provide a certified translation  
15 of any document required pursuant to this chapter or any administrative rule promulgated  
16 thereunder.

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

21  
22 NEW SECTION: Citation of chapter. This chapter may be cited as “The Dental Practice  
23 Act.”