

DRAFT DENTAL PRACTICE ACT

New Section. 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;

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

(9) "Dental auxiliary," any person, other than a dental hygienist, that works under the supervision of a dentist and provides dental services to a patient;

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

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

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

10 (13) "Dental specialist," a dentist in a specialty recognized by the board that  
11 has graduated from a postdoctoral specialty program recognized and approved by the  
12 American Dental Association Commission on Dental Accreditation;

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

18 (15) "Dentist," a person licensed as a dentist pursuant to this chapter;

19 (16) "Dentistry," the examination, evaluation, diagnosis, prevention, or  
20 treatment, including surgery and the prescribing of drugs, of diseases, disorders, or  
21 conditions of the human oral cavity or its adjacent or associated tissues and structures or  
22 of the maxillofacial area, and their impact on the human body;

1 (17) "Direct supervision," the supervision of a dental hygienist or registered  
2 dental assistant requiring that a dentist diagnose the condition to be treated, a dentist  
3 authorize the procedure to be performed, a dentist remain in the dental clinic while the  
4 procedure is performed, and before dismissal of the patient a dentist approve the work  
5 performed by the dental hygienist or registered dental assistant;

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

8 (19) "General supervision," the supervision of a dental hygienist requiring that  
9 a dentist authorize the procedures to be carried out, and that the patient to be treated is a  
10 patient of record of the supervising dentist, or a dentist practicing within the same entity  
11 or clinic as the supervising dentist, and has had a complete evaluation within the previous  
12 thirteen months of the delegation of procedures. A written treatment plan contained  
13 within the patient's record shall accompany any authorization of treatment procedures;

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

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

22 (22) "Licensee," a dentist or dental hygienist;

1 (23) "Patient of record," a patient who has undergone a complete evaluation  
2 performed by a dentist;

3 (24) "Personal supervision," a level of supervision whereby the dentist or  
4 dental hygienist is personally treating a patient and authorizes the dental assistant to aid  
5 the treatment by concurrently performing a supportive procedure;

6 (25) "Practitioner," a dentist or dental hygienist;

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

11 (27) "Registrant," a dental radiographer or registered dental assistant;

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

14 (29) "Teledentistry," The practice of dentistry where the patient and the  
15 dentist are not in the same physical location, and which utilizes the exchange of clinical  
16 information and images over remote distances.

17 36-6A-1. Board of Dentistry--Number of members--Qualifications. The ~~State Board of~~  
18 ~~Dentistry board~~ shall consist of seven members. Five members shall be dentists in active  
19 practice in South Dakota for at least five years immediately preceding appointment. One  
20 member shall be a lay person and a resident of this state at least five years. One member  
21 shall be a dental hygienist in active practice in South Dakota at least five years.

1 36-6A-3. Appointment and term of lay member. The lay member shall be appointed by  
2 the Governor and shall have the same term of office as other members of the Board of  
3 Dentistry.

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

11

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

15

16 36-6A-5. Officers of board. The board shall elect annually from its members a president,  
17 vice-president, and a secretary-treasurer. No member may serve as president for more  
18 than three consecutive one year terms.

19

20 36-6A-6. Board continued within Department of Health--Records and reports. The  
21 Board of Dentistryboard shall continue within the Department of Health, and shall retain  
22 all its prescribed functions, including administrative functions. The board shall submit

1 such records, information, and reports in the form and at such times as required by the  
2 secretary of health. However, the board shall report at least annually.

3

4 36-6A-7. Acceptance of funds by board--Separate fund--Payments from fund--Expense  
5 limited by revenue. The board may accept any funds which may be made available to it  
6 from any source. All funds received by the board shall be ~~paid to the secretary-treasurer~~  
7 ~~thereof, or his staff assistant, who shall deposit such funds each month, to be~~ kept in a  
8 separate fund for the sole use and under the sole control of the board ~~carrying out the~~  
9 ~~provisions of this chapter~~. Payments out of the fund shall be made only upon  
10 authorization by the president of the board or the secretary-treasurer thereof. The board  
11 may expend ~~the necessary funds for its offices and furniture, fixtures, and supplies~~ funds  
12 necessary for the board to administer and carry out the provisions of this chapter. No  
13 expense may be incurred by the board in excess of the revenue derived from all sources.

14

15 36-6A-8. Compensation and expenses of board members--Salary of secretary-treasurer--  
16 Payment for services. Out of the funds coming into the possession of the ~~Board of~~  
17 ~~Dentistry~~ board, the board members may receive the compensation and reimbursement of  
18 expenses provided by law. The secretary-treasurer shall in addition thereto be paid a  
19 ~~salary to be set by resolution of~~ stipend approved by the board. The board may expend  
20 funds ~~in accordance with chapter 3 6A for administrative, consultant, secretarial, clerical,~~  
21 ~~and stenographic services for the board~~ necessary for the board to administer and carry  
22 out the provisions of this chapter, the amount of the expenditures to be set by the board.

1 Any member, if serving as a regional or national dental examiner, may receive  
2 compensation from the examining agency.

3

4 36-6A-9. Affiliation with ~~National Associations and American Association and Central~~  
5 ~~Regional Dental Testing Service~~ Regional or National Dental Testing Agencies ~~--Dues--~~  
6 ~~Delegates to M~~meetings. The board may affiliate with the American Association of  
7 Dental ~~Examiners Boards~~ and any regional or national dental testing agency recognized  
8 by the board ~~the Central Regional Dental Testing Service~~ as active members, pay regular  
9 annual dues to such ~~associations~~entities, and send members and agents of the board ~~as~~  
10 ~~delegates~~ to the meetings of such ~~associations~~entities. Such ~~delegates~~ members and  
11 agents may receive the per diem and reimbursement of expenses provided by law for  
12 members of the board.

13

14 36-6A-10. ~~Seal of board~~ Meetings ~~Examinations~~. ~~The board shall have a common~~  
15 ~~seal~~. The board shall hold at least two ~~regular~~ meetings ~~each year~~annually at times and  
16 places to be ~~fixed~~ set by the board. The board may hold other meetings at a time and  
17 place set by the president or by a majority of the board. A majority of the board may call  
18 a meeting without the call of the president. ~~and shall give examinations to applicants at~~  
19 ~~either a regular meeting, a special meeting, or at such other times as may be necessary~~  
20 ~~and as the board may determine. All regular meetings shall be held at such places within~~  
21 ~~this state as the board shall determine. A quorum of the board may hold special meetings~~  
22 ~~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 Dentistry board. ~~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 Dentistry board 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  
5 36-6A-14. Powers and duties of board. The ~~Board of Dentistry shall~~board has the  
6 following powers and duties:

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

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

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

15 (4) Examine, or cause to be examined, for competency, an eligible applicants,  
16 ~~eligible by virtue of graduation from an American Dental Association Commission on~~  
17 ~~Dental Accreditation accredited dental or dental hygiene formal educational program,~~ for  
18 a licenses to practice as a dentist or a dental hygienist ~~dentistry or dental hygiene~~ or a  
19 registration to practice as a dental radiographer or registered dental assistant;

20 (5) Issue a licenses to practice as a dentist or a dental hygienist ~~those~~  
21 ~~applicants who successfully complete the licensure examination~~ to an applicant who has  
22 met the licensure standards of this chapter and the administrative rules promulgated  
23 thereunder and renew the licenses of ~~those practitioners~~ dentists and dental hygienists

1 who continue to meet the licensure standards of this chapter and the administrative rules  
2 promulgated thereunder;

3 (6) Issue a registration to practice as a dental radiographer or a registered  
4 dental assistant to an applicant who meets the registration standards of this chapter and  
5 the administrative rules promulgated thereunder and renew the registrations of dental  
6 radiographers and registered dental assistants that continue to meet the registration  
7 standards of this chapter and the administrative rules promulgated thereunder; Register,  
8 ~~pursuant to rules promulgated pursuant to chapter 1-26, those applicants who successfully~~  
9 ~~complete the registration requirements for dental radiography;~~

10 (7) ~~Register, pursuant to rules promulgated pursuant to chapter 1-26, those~~  
11 ~~applicants who successfully complete certain educational, training and competency~~  
12 ~~requirements for a dental assistant;~~ Establish minimum educational, training and  
13 competency standards governing the practice of dental radiographers, registered dental  
14 assistants and dental assistants;

15 (8) ~~Establish, pursuant to rules promulgated pursuant to chapter 1-26,~~  
16 ~~reasonable requirements governing the reentry into practice of inactive practitioners~~ and  
17 reinstatement of previously licensed practitioners;

18 (9) ~~Establish and collect, pursuant to rules promulgated pursuant to chapter 1-~~  
19 ~~26, fees for licensure, registration, examination, continuing education, license renewal,~~  
20 ~~reinstatement, satellite office, corporations, corporation renewals, limited liability~~  
21 ~~companies, limited liability company renewals, registration renewals and fines, permits~~  
22 ~~and permit renewals~~ as provided for by this chapter and any administrative rule  
23 promulgated thereunder; and

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

4           (11)     Establish continuing education and continuing competency requirements  
5 for dentists, dental hygienists, dental radiographers and registered dental assistants;

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

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

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

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

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

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

16           (18)     Establish standards for teledentistry;

17           (19)     Establish standards and registration requirements governing dental  
18 corporations;

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

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

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

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

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

5  
6 36-6A-15. Restrictions on rule-making power of board. The ~~Board of Dentistry board~~  
7 may not promulgate a rule which:

8           (1) Is not authorized by this chapter or which does not relate to the protection  
9 of the public from unsafe dental practices;

10           (2) Discriminates between licensees or registrants of the same class;

11           (3) Has as its primary purpose the promotion or protection of the economic  
12 interests of ~~practitioners~~licensees or registrants;

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

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

17  
18 ~~36-6A-16. Enforcement of chapter. The duty of the Board of Dentistry shall be to carry~~  
19 ~~out the purposes and enforce the provisions of this chapter.~~

20  
21 36-6A-17. Employment of assistance in enforcement--Action for injunction--Election of  
22 remedies--Legal representation of board. The ~~Board of Dentistry board~~ may use its own  
23 staff or employ or contract with ~~licensed dentists~~, agents or investigators to assist in the

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

11  
12 36-6A-18. Assistance in enforcement proceedings--Expenditure of funds--Employment  
13 of attorney. The board and its members and officers shall assist any person charged with  
14 the enforcement of this chapter, and the board, its members, agents, and officers shall  
15 furnish such person with evidence to assist in the prosecution of any violation or  
16 enforcement of this chapter, and the board may, for that purpose, make a reasonable  
17 expenditure. The board may, if it deems best for the enforcement of this chapter or in the  
18 conduct of its duties, employ an attorney designated by the attorney general. The board  
19 shall fix and determine the compensation and period of service of such attorney who shall  
20 be paid out of the funds of the board.

21  
22 36-6A-19. Subpoena power of board--Administration of oaths. In all matters pending  
23 before it the board has the powers provided by § 1-26-19.1.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

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

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

New Section. Pursuant to a complaint concerning the health or safety of patients or the public, the board, or any of its members, officers, agents or employees so authorized, may enter and inspect, during business hours, any place where dentistry is practiced for the purpose of enforcing this chapter and administrative rules adopted thereunder. The refusal to allow an inspection is a Class 1 misdemeanor. Such inspection may include any dental or drug records, and the copying thereof, and inventories relating to drugs and controlled substances required to be kept under the provisions of chapter 34-20B. The board, its members, officers, agents and employees shall maintain the confidential nature of any records obtained pursuant to this section.

36-6A-22. ~~Complaints filed with board--Records maintained--Investigation--Dismissal--Appeal--Disciplinary procedure. The Board of Dentistry board shall receive complaints from its members, dentists, dental groups, third party carriers providing financial reimbursement for dental services, or the public concerning a practitioner's professional practices regarding the enforcement of this chapter or any administrative rule promulgated thereunder. Each complaint received shall be logged by the secretary~~

1 ~~treasurer recording the practitioner's, name of the complaining party, date of the~~  
2 ~~complaint, a brief statement of the complaint and its ultimate disposition. A record of~~  
3 ~~each complaint shall be maintained by the board.~~ An investigation shall be conducted by  
4 a member, agent or an appointee of the board to determine whether an alleged violation  
5 has been committed. The investigator, if a member of the board, may dismiss a complaint  
6 if it appears to the member, either with or without the consultation of the board, that no  
7 violation has been committed or the member may transfer the complaint to a peer review  
8 committee duly appointed by a state or local professional society comprised of dentists  
9 ~~licensed to practice their profession in the State of South Dakota~~, or the member may  
10 request the board ~~to~~ fix a date for a hearing on the complaint. If the investigator is an  
11 agent or appointee of the board, dismissal of the complaint or transferal to peer review  
12 may only be made by the president. Any agreed disposition made between the  
13 investigator and the ~~practitioner~~ licensee or registrant shall be made known to and  
14 approved by the board. The complaining party shall be notified promptly of the ~~dismissal~~  
15 ~~or the agreed disposition~~ final disposition of the complaint. The complaining party may  
16 appeal the dismissal to the board within thirty days. The decision of the board may be  
17 appealed to the circuit court in accordance with chapter 1-26 within thirty days. A license  
18 or registration shall remain in effect during the pendency of an appeal unless suspended  
19 under § 36-6A-24. All disciplinary proceedings held under the authority of this chapter  
20 shall be conducted in accordance with chapter 1-26.

21  
22 New Section. Every facility licensed by the state where medicine or dentistry is practiced  
23 which suspends or revokes the privilege of a licensee of the board to practice dentistry

1 therein for incompetence or unprofessional conduct as defined in this chapter shall report  
2 it in writing to the board including the factual basis of such revocation or suspension of  
3 the practice privilege. Any report made to the board pursuant to this section shall be  
4 confidential and subject to the same restrictions set forth in SDCL (section below). A  
5 licensed facility, complying in good faith with this section, may not be held liable for any  
6 injury or damage proximately resulting from such compliance.

7  
8 New Section. Testimony or documentary evidence of any kind obtained during the  
9 investigation of a complaint is not subject to discovery or disclosure under chapter 15-6  
10 or any other provision of law, and is not admissible as evidence in any legal proceeding,  
11 until such time as the complaint becomes a contested case as defined in SDCL 1-26-1(2).  
12 No person that has participated in the investigation of a complaint may testify as an  
13 expert witness or be compelled to testify for any party in any action for personal injury or  
14 wrongful death if the subject matter of the complaint investigated is a basis for the action  
15 for personal injury or wrongful death.

16  
17 36-6A-23. Sanctions authorized in disciplinary proceedings. The board may impose any  
18 of the following sanctions, singly or in combination, if it finds that a ~~practitioner person,~~  
19 ~~entity, licensee, registrant, or dental corporation~~ has violated any ~~part of § 36-6A-~~  
20 ~~59~~ provision of this chapter or any administrative rule promulgated thereunder:

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

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

3           (3)    ~~Censure a practitioner;~~ Place on condition or limit a license, registration or  
4 permit;

5           (4)    Issue a censure or a letter of reprimand;

6           (5)    Place a ~~practitioner~~ licensee or registrant on probationary status and  
7 require the ~~practitioner~~ licensee or registrant to report regularly to the board on the  
8 matters which are the basis for probation, limit ~~his~~ the licensee's or registrant's practice  
9 to areas prescribed by the board and ~~continue to renew~~ require professional education  
10 until a satisfactory degree of skill has been attained in those areas which are the basis of  
11 the probation. The board may withdraw the probation if it finds the deficiencies which  
12 require disciplinary action have been remedied;

13           (6)    Other sanctions which the board finds appropriate;

14           (7)    ~~Require the practitioner~~ Impose a fee to reimburse the board in an amount  
15 equal to all or part of the costs incurred for the investigation and ~~disciplinary~~  
16 hearing proceedings resulting in disciplinary action authorized by this chapter or any  
17 administrative rule promulgated thereunder or the issuance of a cease and desist  
18 order. The costs include the amount paid by the board for services from attorneys,  
19 investigators, court reporters, witnesses, expert witnesses, reproduction of records,  
20 board members' per diem compensation, board staff time, and expenses incurred by  
21 these individuals relating to the investigation and disciplinary proceedings; and

22           (8)    Deny an application for a license, registration or permit.

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

3  
4 36-6A-24. Summary suspension of license--Grounds--Hearing--Appeal. The board may  
5 summarily suspend a ~~practitioner's~~ license or registration in advance of a final  
6 adjudication or during the appeals process if the board finds that a ~~practitioner~~ licensee or  
7 registrant would represent a clear and immediate danger to the public health and safety if  
8 ~~he were~~ allowed to continue to practice. A ~~practitioner~~ licensee or registrant whose  
9 ~~license~~ license or registration is suspended under this section is entitled to a hearing  
10 before the board within twenty days after the effective date of the suspension. The  
11 ~~practitioner~~ licensee or registrant may subsequently appeal the suspension to circuit court  
12 in accordance with chapter 1-26.

13  
14 36-6A-25. Reinstatement of suspended or revoked license or registration. Any  
15 ~~practitioner, dental radiographer, or advanced dental assistant~~ licensee or registrant whose  
16 license or registration ~~to practice~~ has been suspended or revoked may ~~be~~ have a license or  
17 registration reinstated or a new license or registration may be issued ~~to him, as the case~~  
18 ~~may be~~, when in the discretion of the board such action is warranted. The board may  
19 require the applicant to pay all costs of the proceedings resulting in ~~his~~ the suspension or  
20 revocation of the license or registration and reinstatement or issuance of a new license or  
21 registration. ~~In addition, the board may, by rule promulgated pursuant to chapter 1-26,~~  
22 ~~require a fee for reinstatement.~~

1 ~~36-6A-26. Definition of terms. Terms used in this chapter mean:~~

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

3 ~~(1A) "Collaborative agreement," a written agreement between a supervising~~  
4 ~~dentist and a dental hygienist authorizing the preventive and therapeutic services~~  
5 ~~that may be performed by the dental hygienist under collaborative supervision;~~

6 ~~(1B) "Collaborative supervision," the supervision of a dental hygienist requiring~~  
7 ~~a collaborative agreement between a supervising dentist and dental hygienist;~~

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

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

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

17 ~~(5) "Dental assistant," a person performing acts authorized under this chapter,~~  
18 ~~who, under the supervision of a dentist or dental hygienist, renders assistance to a dentist,~~  
19 ~~dental hygienist, dental technician, or other dental assistant in the manner described in~~  
20 ~~§ 36-6A-41;~~

21 ~~(6) "Dental auxiliary," a dental hygienist, a dental assistant or a dental~~  
22 ~~technician, employed by a licensed dentist;~~

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

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

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

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

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

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

20 ~~———— (13) ——"Dentistry," the healing art which is concerned with the examination,~~  
21 ~~diagnosis, treatment, planning, and care of conditions within the human oral cavity and~~  
22 ~~its adjacent tissues and structures, including the use of laser or ionizing radiation as~~  
23 ~~authorized by rule by the board pursuant to chapter 1-26 to operate for any disease, pain,~~

1 ~~deformity, deficiency, injury, or physical condition of the human tooth, teeth, alveolar~~  
2 ~~process, gums, or jaw or adjacent or associated structures;~~

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

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

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

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

20 ~~———— (18) ——"Patient of record," a patient who has undergone a complete evaluation~~  
21 ~~performed by a licensed dentist;~~

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

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

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

8 36-6A-27. Immunity from liability for acts of members of professional committees--  
9 Confidentiality of committee communications. There may be no monetary liability on the  
10 part of, and no cause of action for damages may arise against, any member of a duly  
11 appointed committee of a state or local professional society, comprised of dentists or  
12 dental hygienists ~~licensed to practice their profession in the State of South Dakota~~, for  
13 any act or proceeding undertaken or performed within the scope of the functions of any  
14 such committee which is formed to maintain the professional standards of the society  
15 established by its bylaws, if such committee member acts without malice, has made a  
16 reasonable effort to obtain the facts of the matter as to which ~~he~~ the committee member  
17 acts, and acts in reasonable belief that the action taken by ~~him~~ the committee member is  
18 warranted by the facts known to ~~him~~ the committee member after such reasonable effort  
19 to obtain facts. "Professional society" includes dental organizations having as members at  
20 least a majority of the eligible licensees in the area served by the particular society. The  
21 provisions of this section do not affect the official immunity of an officer or employee of  
22 a public corporation. No communications either to or from any such committee or its  
23 members or its proceedings, if acting as a peer review committee concerning the ethical

1 | or professional practices of any ~~licensed~~ dentist are discoverable for any purpose in any  
2 | civil or criminal action. However, such communication is discoverable in an  
3 | administrative proceeding as contemplated by chapter 1- 26. All such communications  
4 | are confidential. The committee shall transfer all documentation material to a complaint  
5 | to the ~~State Board of Dentistry board~~ upon subpoena by the board or upon filing a  
6 | complaint. The confidentiality provided in this section shall cease upon transfer of the  
7 | material to the board.

8 |  
9 | 36-6A-28. Unauthorized practice or representation as dentist, dental hygienist, dental  
10 | radiographer, registered dental assistant or dental specialist as misdemeanor. Every  
11 | person who practices as, -or attempts to practice as, or purports to be dentistry a dentist,  
12 | dental ~~hygienehygienist, or dental radiographyradiographer, or to function as a dental~~  
13 | ~~hygienist, or who purports to be a dentist or dental hygienist~~ or registered dental assistant  
14 | in this state without being licensed or without being registered for that purpose or without  
15 | being exempted from this chapter is guilty of a Class 1 misdemeanor.

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

21 | ~~No person who is not licensed to practice dentistry in this state may sell, offer, or~~  
22 | ~~advertise any dental service including the furnishing, constructing, reproduction, relining,~~  
23 | ~~or repair of dentures, bridges, plates, or other appliances to be used or worn as substitutes~~

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

6 |  
7 | 36-6A-29. Restrictions on advertising--Violation as misdemeanor. ~~No person licensed~~  
8 | ~~by this chapter may engage in advertising~~Advertising pertaining to the practice of  
9 | dentistry ~~which may~~shall not be fraudulent or misleading. A violation of this section is a  
10 | Class 1 misdemeanor.

11 |  
12 | 36-6A-30. Sale, offer, or advertising of dental services by unlicensed person prohibited-  
13 | - Violation as misdemeanor. ~~A No person not licensed to practice dentistry~~ in this state  
14 | may ~~not~~ sell, offer, provide or advertise any dental service including, but not limited to,  
15 | the furnishing, constructing, reproduction, relining, or repair of dentures, bridges, plates,  
16 | or other appliances to be used or worn as substitutes for natural teeth. A violation of this  
17 | section is a Class 1 misdemeanor.

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

1 36-6A-31. ~~Authorization required to practice dentistry~~Scope of practice of a dentist  
2 defined--Exclusive responsibility of dentists. Only a dentist licensed ~~or otherwise~~  
3 ~~permitted~~ to practice under this chapter may ~~carry on the profession of dentistry~~practice  
4 as a dentist in this state, unless otherwise stated in this chapter. Dentists have the  
5 exclusive responsibility for:

6 (1) The diagnosis and treatment planning of conditions within the human oral  
7 cavity and its adjacent tissues and structures;

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

13 (3) The prescribing of drugs which are administered to patients ~~in the practice~~  
14 ~~of dentistry~~ or prescribed to patients in connection with dental related ailments or  
15 conditions;

16 (4) The overall quality of patient care which is rendered or performed in the  
17 practice of dentistry, regardless of whether the care is rendered personally by a dentist,  
18 dental hygienist or dental auxiliary;

19 (5) The supervision of dental auxiliaries and authorization of procedures to be  
20 performed by dental auxiliaries;

21 (6) ~~The review, reading, and evaluation of dental radiographs~~The use of  
22 radiographic imaging for dental diagnostic purposes;  
23

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)     Any other specific services within the scope of dental practice;:

6           (9)     The management, ownership or operation of a business, corporation,  
7 organization or entity through which dentistry, as defined in this chapter, is offered or  
8 provided to the public;

9           (10)    The performance of any dental procedure or operation of any kind  
10 gratuitously, or for a fee, gift, compensation or reward, paid or to be paid, either to the  
11 person providing the service or to another person or entity;

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

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

17           (13)    Performing any irreversible dental procedure.

18  
19 ~~36-6A-32. Scope of dental practice defined. A person shall be deemed to be practicing~~  
20 ~~dentistry within the meaning of this chapter:~~

21           ~~—— (1) —— Who uses a dental degree, or designation, or card, device, directory, sign,~~  
22 ~~or other media whereby he represents himself as being able to diagnose, treat, prescribe,~~

1 ~~or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the~~  
2 ~~human tooth, teeth, alveolar process, gums or jaw, or adjacent or associated structures; or~~

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

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

8 ~~———— (4) ——— Who uses a roentgen or X ray machine for dental treatment, or~~  
9 ~~roentgenograms for dental diagnostic purposes; or~~

10 ~~———— (5) ——— Who extracts a human tooth or corrects or attempts to correct malpositions~~  
11 ~~of the human teeth or jaws; or~~

12 ~~———— (6) ——— Who offers and undertakes, by any means or method, to diagnose, treat or~~  
13 ~~remove stains or accretions from human teeth or jaws; or~~

14 ~~———— (7) ——— Who takes impressions of the human teeth or jaws or performs any phase~~  
15 ~~of any operation incident to the replacement of a part of a tooth, a tooth, teeth or~~  
16 ~~associated tissues by means of a filling, a crown, a bridge, a denture, or other appliance;~~  
17 ~~or~~

18 ~~———— (8) ——— Who furnishes, supplies, constructs, reproduces, or repairs, or offers to~~  
19 ~~furnish, supply, construct, reproduce or repair prosthetic dentures or plates, bridges or~~  
20 ~~other substitutes for natural teeth, to the user or prospective user thereof; or~~

21 ~~———— (9) ——— Who performs any clinical operation included in the curricula of~~  
22 ~~recognized dental schools and colleges.~~

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

3  
4 ~~36-6A-32.1.— Exemption for certain community-based primary health organizations.~~  
5 ~~The provisions of subdivision 36-6A-32(2) do not apply to the practice of dentistry by~~  
6 ~~dentists licensed pursuant to this chapter who are providing dental services for patients~~  
7 ~~under the auspices of a community-based primary health care delivery organization,~~  
8 ~~which is operating as a community health center or migrant health center, receiving~~  
9 ~~funding assistance under § 329 or 330 of the United States Public Health Service Act.~~

10  
11 New Section. A licensee or registrant under this chapter may not perform dental services  
12 that are outside the scope of the licensee’s or registrant’s relevant education, training and  
13 experience.

14  
15 ~~36-6A-32.2.— Exemption for mobile or portable dental unit operated by certain nonprofit~~  
16 ~~organizations. The provisions of subdivision 36-6A-32(2) do not apply to the practice of~~  
17 ~~dentistry provided by any mobile or portable dental unit operated by any nonprofit~~  
18 ~~organization affiliated with a nonprofit dental service corporation organized under~~  
19 ~~chapter 58-39.~~

20  
21 36-6A-33. Acts excluded from practice of ~~dentistry~~a dentist. Section 36-6A-~~3132~~ does  
22 not apply to:

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

5           (2) Any individual enrolled in any American Dental Association Commission  
6 on Dental Accreditation accredited dental or dental hygiene educational program or board  
7 approved dental assisting educational program who works within a formal educational  
8 facility or at a site remote from that educational facility under the ~~direct~~ supervision of a  
9 ~~licensed instructor~~faculty member of that program who is appropriately credentialed or  
10 licensed in a state, whether within a formal education facility or at a practice site remote  
11 from that educational facility;

12           (3) Any dental or dental ~~auxiliary~~hygiene instructor, whether full-time or  
13 part-time, while engaged in teaching activities while ~~employed in accredited~~employed by  
14 or contracting with any dental or dental hygiene educational program accredited by the  
15 American Dental Association Commission on Dental Accreditation or any dental  
16 assisting instructor, whether full-time or part-time, while engaged in teaching activities  
17 while employed by or contracting with any board approved dental ~~auxiliary~~assisting  
18 educational-institutions program;

19           (4) Any ~~dentist-person~~ licensed or registered as a dentist, dental hygienist or  
20 advanced dental assistant in another state who ~~provides~~renders emergency care or  
21 assistance at the scene of the emergency to any person so in need;

1           (5) Any dental hygienist or dental auxiliary who is acting in accordance with  
2 this chapter or any administrative rule promulgated thereunder § 36-6A-40, 36-6A-41, or  
3 36-6A-43.

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

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

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

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

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

1       (11) The practice of dentistry provided by any dental or dental hygiene  
2 program accredited by the American Dental Association Commission on Dental  
3 Accreditation and any dental assisting program approved by the board;

4       (12) The practice of dentistry provided by the state of South Dakota in any  
5 state owned and operated institution;

6       (13) The practice of dentistry provided by the federal government in any  
7 institution owned and operated by the federal government;

8       (14) Any person who ministers or treats the sick or suffering or who treats for  
9 the purpose of preventing sickness or suffering by mental or spiritual means exclusively;  
10 and

11       (15) The estate or agent for a deceased or substantially disabled dentist  
12 contracting with or employing a dentist to manage the deceased or substantially disabled  
13 dentist's practice for a period not to exceed twenty-four months following the date of  
14 death or substantial disability of the dentist, until the entity can be sold or closed.

15  
16 ~~36-6A-34. Out of state dentist's acts not considered practice of dentistry. Section 36-~~  
17 ~~6A-32 does not apply to the practice of dentistry by licensed dentists of other states or~~  
18 ~~countries while appearing as clinicians under the auspices of a duly approved dental~~  
19 ~~school or college, or a reputable dental society, or a reputable dental study club composed~~  
20 ~~of dentists.~~

21  
22 ~~36-6A-35. Federal officers' acts not considered practice of dentistry. Section 36-6A-32~~  
23 ~~does not apply to the practice of dentistry by full time dentists in the discharge of their~~

1 | ~~official duties in any branch of the armed services of the United States, the United States~~  
2 | ~~Public Health Service, or the United States Veterans' Administration.~~

3 |  
4 | ~~36-6A-36. Dental appliance work on dentist's order not considered practice of dentistry.~~  
5 | ~~Section 36-6A-32 does not apply to the service, other than service performed directly~~  
6 | ~~upon the person of a patient, of constructing, altering, repairing, or duplicating any~~  
7 | ~~denture, partial denture, crown, bridge, splint, orthodontic, prosthetic, or other dental~~  
8 | ~~appliance, if performed pursuant to an order from a licensed dentist in accordance with~~  
9 | ~~§ 36-6A-43.~~

10 |  
11 | ~~36-6A-37. Use of X-rays not considered practice of dentistry. Section 36-6A-32 does~~  
12 | ~~not apply to the use of roentgens or other rays for making roentgenograms or similar~~  
13 | ~~records of dental or oral tissues in a hospital or under the supervision of a physician or~~  
14 | ~~dentist.~~

15 |  
16 | ~~36-6A-38. Religious practitioners' acts not considered practice of dentistry. Section 36-~~  
17 | ~~6A-32 does not apply to any person who ministers or treats the sick or suffering or who~~  
18 | ~~treats for the purpose of preventing sickness or suffering by mental or spiritual means~~  
19 | ~~exclusively.~~

20 |  
21 | 36-6A-39. Fee-splitting as misdemeanor--Partnerships and employment excepted.  
22 | Except as permitted by chapter 47-12, it is a Class 2 misdemeanor for any licensee,  
23 | registrant or dental corporation ~~dentist~~ to divide fees with, or to promise to pay a part of

1 ~~his a~~ fee to, or to pay a commission to any dentist or any other person, who ~~calls him in~~  
2 ~~consultation or who~~ sends patients ~~to him~~ for treatment or operation. However, nothing in  
3 this section prohibits ~~licensed~~ dentists from forming a bona fide partnership for the  
4 practice of dentistry, nor the actual employment of a ~~licensed dentist or a licensed dental~~  
5 ~~hygienist licensee or registrant~~.

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

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

20 A dental hygienist may perform preventive and therapeutic services under general  
21 supervision if all individuals treated are patients of record ~~of a licensed dentist~~ and all  
22 care rendered by the dental hygienist is completed under the definition of patient of  
23 record. A dental hygienist may perform preventive and therapeutic services under

1 collaborative supervision if the requirements of § 36-6A-40.1 are met. However, no  
2 dental hygienist may perform preventive and therapeutic services under collaborative  
3 supervision for more than thirteen months for any person who has not had a complete  
4 evaluation by a dentist, unless employed by Delta Dental Plan of South Dakota, a  
5 nonprofit dental service corporation organized under chapter 58-39, providing services  
6 through written agreement with the Indian Health Service or a federally recognized tribe  
7 in South Dakota. The exemption for a dental hygienist employed by Delta Dental Plan of  
8 South Dakota providing services through written agreement with the Indian Health  
9 Service or a federally recognized tribe in South Dakota expires on June 30, 2016.

10

11 36-6A-40.1. Hygienist requirements for preventative and therapeutic services under  
12 collaborative supervision. A dental hygienist may provide preventive and therapeutic  
13 services under collaborative supervision of a dentist if the dental hygienist has met the  
14 following requirements:

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

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

18 (3) Has satisfactorily demonstrated knowledge of medical and dental  
19 emergencies and their management; infection control; pharmacology; disease  
20 transmission; management of early childhood caries; and management of special needs  
21 populations.

22

1 36-6A-40.2. Evidence of hygienist requirements--Fee--Promulgation of rules. A dental  
2 hygienist seeking to provide preventive and therapeutic services under collaborative  
3 supervision shall submit evidence, as prescribed by the board, of meeting the  
4 requirements of § 36-6A-40.1 and a fee not to exceed thirty dollars. The board shall, by  
5 rules promulgated pursuant to chapter 1-26, establish the required fee, the minimum  
6 requirements for a collaborative agreement, the preventive and therapeutic services that  
7 may be performed, the location or facilities where services may be performed, and the  
8 evidence required to demonstrate the active practice and knowledge required pursuant to  
9 § 36-6A-40.1.

10

11 36-6A-41. Dental auxiliaries-- ~~Education and training~~--Dentist's responsibility--  
12 Unauthorized practice. ~~The Board of Dentistry may set educational and training~~  
13 ~~requirements for dental assistants, including the practice of dental radiography and the~~  
14 ~~monitoring of nitrous oxide administration by dental assistants.~~ Every ~~licensed~~ dentist  
15 who uses the services of a dental hygienist or dental auxiliary ~~dental assistant~~ to assist  
16 ~~him the dentist~~ in the practice of dentistry is responsible for the acts of the ~~dental assistant~~  
17 dental hygienist or dental auxiliary while engaged in such assistance. The dentist shall  
18 permit the ~~dental assistant~~ dental hygienist or dental auxiliary to perform only those acts  
19 which ~~he the dentist~~ is authorized under this chapter to delegate to a ~~dental assistant~~ dental  
20 hygienist or dental auxiliary. The acts shall be performed under supervision of a ~~licensed~~  
21 dentist. The board may permit differing levels of dental assistance based upon recognized  
22 educational standards, approved by the board, for the training of dental hygienists or  
23 dental assistants auxiliaries. ~~Any licensed dentist who permits a dental auxiliary to~~

1 ~~perform any dental or dental hygiene service other than that authorized by the board shall~~  
2 ~~be deemed to be enabling an unlicensed person to be practicing dentistry or dental~~  
3 ~~hygiene, and commission of the act by a dental auxiliary is a violation of this chapter.~~

4  
5 ~~36-6A-42. Dental assistants Education and training. The Board of Dentistry may, by~~  
6 ~~rule promulgated pursuant to chapter 1-26, establish minimum educational and training~~  
7 ~~requirements and continuing education requirements to perform as a dental assistant. The~~  
8 ~~board may also require, or substitute, clinical experience in addition to, or in lieu of,~~  
9 ~~educational and training requirements.~~

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

19  
20 36-6A-44. Application for license to practice ~~dentistry as a dentist or dental hygiene--~~  
21 ~~Requirements-- Examination. Any person not already a licensed dentist or dental~~  
22 ~~hygienist of this state desiring to practice dentistry or dental hygiene as a dentist may~~  
23 ~~apply to the secretary treasurer of the Board of Dentistry for licensure. Unless otherwise~~

1 provided obtain a license to practice as a dentist if the applicant satisfies each of the  
2 following criteria and the administrative rules promulgated thereunder:

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

5 (2) ~~An application for a license without examination shall be made in~~  
6 ~~accordance with the provisions of § 36-6A-47 or 36-6A-48;~~The applicant has passed a  
7 standardized national comprehensive examination approved by the board;

8 (3) The applicant has graduated ~~must be a graduate from a dental or dental~~  
9 ~~hygiene school which is accredited by the American dental association commission on~~  
10 ~~dental and shall be examined for a license to practice dentistry or dental~~  
11 ~~hygiene accreditation~~from an American Dental Association Commission on Dental  
12 Accreditation accredited United States dental school, having obtained a Doctor of Dental  
13 Medicine or a Doctor of Dental Surgery degree;

14 (4) ~~Foreign trained and other graduates from nonaccredited dental and dental~~  
15 ~~hygiene programs may apply for a dental or dental hygiene license. The board, by rule~~  
16 ~~promulgated pursuant to chapter 1-26, shall establish requirements to reasonably assure~~  
17 ~~that an applicant's training and education are sufficient for licensure;~~Within five years  
18 preceding the date of application, the applicant has passed a clinical regional or national  
19 examination approved by the board or a state examination or examinations that the board  
20 deems equivalent;

21 (5) ~~The board may require a laboratory examination as a prerequisite to the~~  
22 ~~clinical examination of an applicant if it has reason to believe the applicant cannot~~  
23 ~~practice safely on a clinical patient due to a difference in the applicant's curriculum or~~

1 ~~any other bona fide reason;~~ The applicant has passed an examination concerning the laws  
2 of the State of South Dakota relating to dentistry and the administrative rules  
3 promulgated thereunder;

4 (6) ~~All applicants who are admitted to the examination process shall be~~  
5 ~~evaluated by the same standards in examinations. Skill and performance standards~~  
6 ~~required in the written, laboratory and clinical examinations shall be the same for all~~  
7 ~~applicants;~~ The applicant has no disciplinary proceeding or unresolved disciplinary  
8 complaint pending before a dental board at the time a license is to be issued by the board;  
9 and

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

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

14 Foreign-trained and other graduates from dental programs not accredited by the  
15 American Dental Association Commission on Dental Accreditation may apply for a  
16 dental license. The board, by rule promulgated pursuant to chapter 1-26, shall establish  
17 requirements to reasonably ensure that an applicant's training and education are sufficient  
18 for licensure.

19  
20 ~~(8) Every applicant for a license to practice dentistry or dental hygiene,~~  
21 ~~whether by examination or reciprocity, shall produce evidence satisfactory to the board~~  
22 ~~that he is a citizen of the United States or lawfully admitted alien, or he shall file an~~  
23 ~~affidavit with the board indicating his intent to become a citizen of the United States.~~

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 36-6A-44.1. Criminal background investigation of applicants for licensure as dentist and  
5 licensees under disciplinary investigation--Fees. Each applicant for licensure as a dentist  
6 in this state shall submit to a state and federal criminal background investigation by  
7 means of fingerprint checks by the Division of Criminal Investigation and the Federal  
8 Bureau of Investigation. Upon application, the board shall submit completed fingerprint  
9 cards to the Division of Criminal Investigation. Upon completion of the criminal  
10 background check, the Division of Criminal Investigation shall forward to the board all  
11 information obtained as a result of the criminal background check. This information shall  
12 be obtained prior to permanent licensure of the applicant. The board may require a state  
13 and federal criminal background check for any licensee who is the subject of a  
14 disciplinary investigation by the board. Failure to submit or cooperate with the criminal  
15 background investigation is grounds for denial of an application or may result in  
16 revocation of a license. The applicant shall pay for any fees charged for the cost of  
17 fingerprinting or the criminal background investigation.

18  
19 ~~36-6A-45. Examination required--Scope and nature. Every applicant for licensure who~~  
20 ~~does not qualify for an exception to licensure under this chapter, or for exemption from~~  
21 ~~examination under §§ 36-6A-47 and 36-6A-48 is subject to examination by the Board of~~  
22 ~~Dentistry. The examination shall include an examination of the applicant's knowledge of~~  
23 ~~the laws of South Dakota relating to dentistry and the rules of the South Dakota State~~

1 ~~Board of Dentistry. The board may administer written, laboratory, and clinical~~  
2 ~~examinations to test professional knowledge and skills, or may require the successful~~  
3 ~~completion of a standardized national comprehensive test selected by the board.~~

4  
5 New Section. Application for license to practice as a dental hygienist --Requirements--  
6 Examination. Any person desiring to practice as a dental hygienist may obtain a license  
7 to practice as a dental hygienist if the applicant satisfies each of the following criteria and  
8 the administrative rules promulgated thereunder:

9 (1) The application for a license to practice as a dental hygienist is in writing  
10 and signed by the applicant;

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

13 (3) The applicant has graduated from an American Dental Association  
14 Commission on Dental Accreditation accredited United States dental hygiene school,  
15 having obtained a dental hygiene degree;

16 (4) Within five years preceding the date of application, the applicant has  
17 passed a clinical regional or national examination approved by the board or a state  
18 examination or examinations that the board deems equivalent;

19 (5) The applicant has passed an examination concerning the laws of the State  
20 of South Dakota relating to dentistry and the administrative rules promulgated  
21 thereunder.

1           (6) The applicant has no disciplinary proceeding or unresolved disciplinary  
2 complaint pending before a dental board at the time a license is to be issued by the board;  
3 and

4           (7) The applicant shall provide references that indicate he or she is of good  
5 moral character.

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

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

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~~

1 ~~upon evidence that:~~ Any person licensed in another state desiring to practice as a dentist  
2 may obtain a license to practice as a dentist if the applicant satisfies each of the following  
3 criteria and the administrative rules promulgated thereunder:

4 (1) The application for a license to practice as a dentist is in writing and  
5 signed by the applicant;

6 (2) The applicant has graduated from an American Dental Association  
7 Commission on Dental Accreditation accredited United States dental school, having  
8 obtained a Doctor of Dental Medicine or a Doctor of Dental Surgery degree;

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

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

15 (5) The applicant has passed a clinical regional or national examination  
16 approved by the board or a state examination or examinations that the board deems  
17 equivalent;

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

19 ~~(47)~~ No—The applicant has no disciplinary proceeding or unresolved  
20 disciplinary complaint ~~is~~ pending ~~before a dental board anywhere~~ at the time a license is  
21 to be issued by ~~the board this state~~;

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

1           ~~(96) The applicant is of good moral character.~~ The applicant shall provide  
2 references that indicate he or she is of good moral character; and

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

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

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

13  
14 New Section. Licensing of dental hygienist from another state--Proof of character and  
15 professional standing--Examination on South Dakota rules. Any person licensed in  
16 another state desiring to practice as a dental hygienist may obtain a license to practice as  
17 a dental hygienist if the applicant satisfies each of the following criteria and the  
18 administrative rules promulgated thereunder:

19           (1) The application for a license to practice dental hygiene is in writing and  
20 signed by the applicant;

21           (2) The applicant has graduated from an American Dental Association  
22 Commission on Dental Accreditation accredited United States dental hygiene school,  
23 having 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 clinical regional or national examination  
7 approved by the board or a state examination or examinations that the board deems  
8 equivalent;

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

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

12 (8) 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 (9) The applicant shall provide references that indicate he or she is of good  
15 moral character; and

16 (10) The applicant has passed an examination concerning the laws of the State  
17 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.

21 Foreign-trained and other graduates from dental hygiene programs not accredited by the  
22 American Dental Association Commission on Dental Accreditation may apply for a  
23 dental hygiene license. The board, by rule promulgated pursuant to chapter 1-26, shall

1 establish requirements to reasonably ensure that an applicant's training and education are  
2 sufficient for licensure.

3  
4 New Section. An applicant, licensee or registrant must provide a certified translation of  
5 any document required pursuant to this chapter or any administrative rule promulgated  
6 thereunder.

7  
8 New Section. The board may, in compliance with chapter 1-26, refuse to grant a license  
9 or registration under this chapter because of professional incompetence, or unprofessional  
10 or dishonorable conduct on the part of the applicant.

11  
12 36-6A-48. Issuance or renewal of licenses--Inactive practitioners--Fees for licensing and  
13 testing. The ~~Board of Dentistry~~ board shall, upon applicant's satisfactory completion of  
14 the educational requirements and written, laboratory and clinical examinations authorized  
15 under this chapter and upon receipt of the requisite fees, issue or renew the appropriate  
16 ~~dental or dental hygiene license~~ license to practice as a dentist or license to practice as a  
17 dental hygienist.

18  
19 36-6A-49. Temporary registration--~~Requirements~~ - Volunteer dentist or dental  
20 hygienist. Any dentist or dental hygienist licensed in a state or territory of the United  
21 States whose licensure requirements are equivalent or higher than those of this state and  
22 who has ~~passed a national comprehensive test selected by the Board of Dentistry within~~  
23 ~~five years or who has been in active practice three years immediately preceding his~~

1 completed a minimum of fifteen hundred (1500) clinical practice hours within the five  
2 years preceding the date of application or graduated from an American Dental  
3 Association Commission on Dental Accreditation accredited United States dental or  
4 dental hygiene school within three years preceding the date of application, with all  
5 licenses in good standing and no disciplinary proceeding or unresolved disciplinary  
6 complaint pending before a dental board, may be granted a temporary registration to  
7 practice in conjunction with a dentist licensed in this state or entity pursuant to 36-6A-  
8 33(9), (10), (12) or (13) only until a date set by the board and is subject to the  
9 requirements and conditions set forth in said registration. ~~The dentist or dental hygienist~~  
10 ~~may receive the temporary registration on presentation of evidence that he has passed~~  
11 ~~such test or evidence of his active practice for three years immediately preceding his~~  
12 ~~application and payment of a fee to be set by the board.~~

13  
14 New Section. Temporary registration – Requirements – Dentist or dental hygienist.

15 Any person that has applied for a license to practice as a dentist or a license to practice  
16 as a dental hygienist and has met all of the requirements for said license, as set forth in  
17 this chapter and any administrative rule promulgated thereunder, may be granted a  
18 temporary registration to practice as a dentist or a temporary registration to practice as a  
19 dental hygienist only until a date set by the board and is subject to the requirements and  
20 conditions set forth in said registration.

21  
22 New Section. Temporary registration – jurisdiction. Any person practicing under a  
23 temporary registration shall be subject to supervision and discipline by the board under

1 this chapter in the same manner as any other licensee under this chapter and practice  
2 under a temporary registration is considered to constitute submission to jurisdiction by  
3 the board.

4  
5 New Section. Any person who, while located outside this state, practices dentistry  
6 through electronic means and provides the dental services to a patient located in this  
7 state, is engaged in the practice of dentistry in this state.

8  
9 New Section. Any services provided by a licensee or registrant through electronic means  
10 must meet the same standard of care as services provided in person by a licensee or  
11 registrant.

12  
13 New Section. Nothing contained in this chapter shall be construed to apply to any  
14 licensed person practicing dentistry outside of this state when in actual consultation with  
15 a dentist in this state.

16  
17 36-6A-50. Fees payable to board. The ~~Board of Dentistry~~ board shall promulgate  
18 nonrefundable fees, by rule pursuant to chapter 1-26, provided for in this chapter, within  
19 the following limits:

- 20 (1) Examination fee for dentists, not more than three hundred dollars;
- 21 (2) Examination fee for dental hygienists, not more than one hundred fifty  
22 dollars;
- 23 (3) Annual registration fee for dentists, not more than two hundred dollars;

1 (4) Annual registration fee for dental hygienists, not more than one hundred  
2 dollars;

3 (5) Duplicate license certificate or ~~duplicate~~ annual registration certificate fee,  
4 ~~for dentists or dental hygienists, not less than five dollars nor not~~ more than fifteen  
5 dollars;

6  
7 - (6) Reinstatement fee, an amount equal to the examination fee;

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

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

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

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

13 (11) Examination Application fee for dental radiographers, not more than fifty  
14 dollars;

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

17  
18 (13) Initial registration Application fee for ~~persons practicing~~  
19 dentistry dentists, not more than two hundred dollars;

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

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

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

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

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

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

8  
9 ~~36-6A-51. Fraud in securing license or annual registration as misdemeanor. Any person~~  
10 ~~employing fraud or deception in applying for or securing a license to practice dentistry or~~  
11 ~~dental hygiene or a registration to practice dental radiography or in registering annually~~  
12 ~~under this chapter, is guilty of a Class 1 misdemeanor.~~

13  
14     36-6A-52. Annual renewal of license or registration--Notice--Information and fee  
15 required--Suspension. As a condition of annual renewal of a license or registration, each  
16 licensee or registrant shall, on or before the first day of July each year, transmit to the  
17 ~~secretary treasurer of the Board of Dentistry~~ board, upon a form prescribed by the board,  
18 information ~~as determined by rule~~, reasonably related to the administration of a licensure  
19 or registration system in the interest of public health and safety, together with the fee  
20 established by the board. Failure of a licensee or registrant to renew a license or  
21 registration on or before the first day of July constitutes a suspension of the license or  
22 registration held by the licensee. At least thirty days before July first, the board shall  
23 cause a written notice stating the amount and due date of the fee and the information to

1 be provided by the licensee or registrant, to be sent to each licensee and registrant. Each  
2 licensee and registrant shall report the information as a condition of ~~licensure~~ the license  
3 or registration renewal, ~~except a change in home or office address shall be reported in~~  
4 ~~accordance with § 36-6A-58.~~

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

18  
19 36-6A-54. Display of certificates--Names on office-clinic door. Every ~~licensed dentist or~~  
20 ~~dental hygienist and every registered dental radiographer~~ licensee or registrant shall post  
21 and keep conspicuously his or her name, annual license certificate, and annual  
22 registration certificate in every office-dental clinic in which he or she practices, in plain  
23 sight of his ~~the~~ patients. ~~If there is more than one dentist or dental hygienist or registered~~

1 ~~dental radiographer practicing or employed in any office the manager or proprietor of the~~  
2 ~~office shall post and display the name, license certificate and registration certificate of~~  
3 ~~each dentist, dental hygienist, or registered dental radiographer practicing or employed~~  
4 ~~therein. In addition there shall be posted or displayed near or upon the entrance door to~~  
5 ~~every office in which dentistry is practiced, the name of each dentist practicing therein~~  
6 ~~and the names shall be the name of the person inscribed upon the license certificate and~~  
7 ~~annual registration certificate of each dentist.~~

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

1 ~~36-6A-56. Acceptable proof of continuing education. The board may accept, for~~  
2 ~~compliance with the requirements of § 36-6A-55, any of the following which, in the~~  
3 ~~opinion of the board, contributes directly to the dental education of the licensee:~~

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

6 ~~—— (2) Research, graduate study, teaching, or service as a clinician; and~~

7 ~~—— (3) Any other evidence of continuing education the board may approve.~~

8  
9 36-6A-57. Reexamination on failure to continue education--Suspension of license. Any  
10 ~~licensed person licensee or registrant~~ who fails to comply with the ~~requirements of § 36-~~  
11 ~~6A-55 shall~~continuing education or continuing competency requirements set forth in this  
12 chapter or any administrative rule promulgated thereunder may, at the discretion of the  
13 board, be reexamined to determine his or her competency to continue licensure or  
14 registration. If, in the opinion of the board, a ~~licensed person licensee or registrant~~ does  
15 not qualify for further ~~licensed~~ practice, the board ~~shall~~may, in compliance with chapter  
16 1-26, suspend the license or registration until the time the ~~dentist or dental hygienist~~  
17 licensee or registrant shall provide acceptable evidence to the board of his or her  
18 competency to practice.

19  
20 36-6A-58. Notice to board of change of address--~~Replacement of lost or destroyed~~  
21 ~~license~~. Every ~~dentist, dental hygienist, dental radiographer~~licensee or registrant, upon  
22 changing his or her ~~home~~place of residence, name, or place of employment or place of  
23 business shall, within ten days thereafter, furnish the ~~secretary treasurer of the Board of~~

1 ~~Dentistry board with the new address updated information. In case of a lost or destroyed~~  
2 ~~license, and upon satisfactory proof of the loss or destruction thereof being furnished to~~  
3 ~~the board, the latter may issue a duplicate license, charging a fee, not to exceed twenty~~  
4 ~~dollars, set by the board by rule promulgated pursuant to chapter 1-26.~~

5  
6 36-6A-59. Grounds for disciplinary action--Hearing--Physical and mental examinations.

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

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

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. Acts considered unprofessional conduct. The term, unprofessional or  
15 dishonorable conduct, as used in this chapter includes:

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

19 \_\_\_\_\_ (2) Illegally, fraudulently, or wrongfully obtaining a license or registration or  
20 renewal required by this chapter by the use of any means, devices, deceptions, or help in  
21 passing any examination or by making false statements or misrepresentations in any  
22 applications or information presented;

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

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

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

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

10 (7) Violating any provision of this chapter or administrative rule promulgated  
11 thereunder;

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

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

17 (10) Assisting, enabling or permitting a dental hygienist or dental auxiliary to  
18 perform any dental service other than those authorized by this chapter or administrative  
19 rule promulgated thereunder;

20 (11) Performing dental services other than those authorized by this chapter or  
21 administrative rule promulgated thereunder;

1 (12) Failure to maintain adequate safety and sanitary conditions for a dental  
2 clinic in accordance with the standards set forth in this chapter and administrative rule  
3 promulgated thereunder;

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. Nothing in this subdivision prohibits dentists from  
10 forming a bona fide partnership for the practice of dentistry, nor the actual employment  
11 of a licensee or registrant;

12 (15) Substance use or drug addiction, calculated in the opinion of the board to  
13 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) Continuing to practice after sustaining any physical or mental disability  
20 which renders the further practice of a licensee's or registrant's profession potentially  
21 harmful or dangerous;

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

1 (19) Falsifying the dental records of a patient or any official record regarding  
2 possession and dispensing of narcotics, barbiturates, and habit-forming drugs or  
3 regarding any phase of dental treatment of a patient;

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

8 (21) Engaging in sexual harassment;

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

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

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

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

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

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

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

12  
13 New Section. Citation of chapter. This chapter may be cited as “The Dental Practice  
14 Act.”