

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
First Regular Session  
2007

# HOUSE BILL 2608

AN ACT

AMENDING SECTIONS 32-1201, 32-1213 AND 32-1263, ARIZONA REVISED STATUTES;  
RELATING TO DENTISTRY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 32-1201. Definitions

5 In this chapter, unless the context otherwise requires:

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

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

10 3. "BUSINESS ENTITY" MEANS A BUSINESS ORGANIZATION THAT OFFERS TO THE  
11 PUBLIC PROFESSIONAL SERVICES THAT ARE REGULATED BY THE BOARD AND THAT IS  
12 ESTABLISHED PURSUANT TO THE LAWS OF ANY STATE OR FOREIGN COUNTRY. UNLESS  
13 EXEMPTED PURSUANT TO SECTION 32-1213, SUBSECTION H, BUSINESS ENTITY INCLUDES  
14 A SOLE PRACTITIONER, PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, CORPORATION  
15 AND LIMITED LIABILITY COMPANY.

16 ~~3-~~ 4. "Dental assistant" means any person who acts as an assistant to  
17 a dentist or a dental hygienist by rendering personal services to a patient  
18 that involve close proximity to the patient while the patient is under  
19 treatment or observation or undergoing diagnostic procedures.

20 ~~4-~~ 5. "Dental hygienist" means any person licensed and engaged in the  
21 general practice of dental hygiene and all related and associated duties,  
22 including educational, clinical and therapeutic dental hygiene procedures.

23 ~~5-~~ 6. "Dental incompetence" means lacking in sufficient dentistry  
24 knowledge or skills, or both, in that field of dentistry in which the  
25 dentist, denturist or dental hygienist concerned engages, to a degree likely  
26 to endanger the health of that person's patients.

27 ~~6-~~ 7. "Dental laboratory technician" means any person, other than a  
28 licensed dentist, who, pursuant to a written work order of a dentist,  
29 fabricates artificial teeth, prosthetic appliances or other mechanical and  
30 artificial contrivances designed to correct or alleviate injuries or defects,  
31 both developmental and acquired, disorders or deficiencies of the human oral  
32 cavity, teeth, investing tissues, maxilla or mandible or adjacent associated  
33 structures.

34 ~~7-~~ 8. "Dental x-ray laboratory technician" means any person, other  
35 than a licensed dentist, who, pursuant to a written work order of a dentist,  
36 performs dental and maxillofacial radiography, including cephalometrics,  
37 panoramic and maxillofacial tomography and other dental related  
38 non-fluoroscopic diagnostic imaging modalities.

39 ~~8-~~ 9. "Dentistry", "dentist" and "dental" means the general practice  
40 of dentistry and all specialties or restricted practices of dentistry.

41 ~~9-~~ 10. "Denturist" means a person practicing denture technology  
42 pursuant to article 5 of this chapter.

43 ~~10-~~ 11. "Disciplinary action" means regulatory sanctions that are  
44 imposed by the board in combination with, or as an alternative to, revocation  
45 or suspension of a license and that may include:

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

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

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

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

10 ~~11-~~ 12. "Irregularities in billing" means:

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

13 (b) Reporting charges for services not rendered.

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

16 (d) Abrogating the copayment provisions of a dental insurance contract  
17 by waiving all or a part of the copayment from the patient if this results in  
18 an excessive or fraudulent charge to a third party.

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

21 ~~12-~~ 13. "Letter of concern" means an advisory letter to notify a  
22 licensee that, while the evidence does not warrant disciplinary action, the  
23 board believes that the licensee should modify or eliminate certain practices  
24 and that continuation of the activities that led to the information being  
25 submitted to the board may result in board action against the practitioner's  
26 license. A letter of concern is not a disciplinary action. A letter of  
27 concern is a public document and may be used in a future disciplinary action.

28 ~~13-~~ 14. "Licensed" means licensed pursuant to this chapter.

29 ~~14-~~ 15. "Place of practice" means each physical location at which a  
30 person licensed pursuant to this chapter performs services subject to this  
31 chapter.

32 ~~15-~~ 16. "Primary mailing address" means the address on file with the  
33 board and to which official board correspondence, notices or documents are  
34 delivered in a manner determined by the board.

35 ~~16-~~ 17. "Recognized dental hygiene school" means a school that has a  
36 dental hygiene program with a minimum two academic year curriculum, or the  
37 equivalent of four semesters, and that is approved by the board and  
38 accredited by the American dental association commission on dental  
39 accreditation.

40 ~~17-~~ 18. "Recognized dental school" means a dental school accredited by  
41 the American dental association commission on dental accreditation.

42 ~~18-~~ 19. "Recognized denturist school" means a denturist school that  
43 maintains standards of entrance, study and graduation and that is accredited  
44 by the United States department of education or the council on higher  
45 education accreditation.

1           ~~19.~~ 20. "Supervised personnel" means all dental hygienists, dental  
2 assistants, dental laboratory technicians, denturists, dental x-ray  
3 laboratory technicians and other persons supervised by licensed dentists.

4           ~~20.~~ 21. "Unprofessional conduct" means the following acts, whether  
5 occurring in this state or elsewhere:

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

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

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

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

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

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

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

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

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

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

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

- 1           (l) Knowingly making any false or fraudulent statement, written or  
2 oral, in connection with the practice of dentistry.
- 3           (m) Refusal, revocation or suspension of a license or any other  
4 disciplinary action taken against a dentist by, or the voluntary surrender of  
5 a license in lieu of disciplinary action to, any other state, territory,  
6 district or country, unless the board finds that this action was not taken  
7 for reasons that relate to the person's ability to safely and skillfully  
8 practice dentistry or to any act of unprofessional conduct.
- 9           (n) Any conduct or practice that constitutes a danger to the health,  
10 welfare or safety of the patient or the public.
- 11           (o) Obtaining a fee by fraud or misrepresentation, or wilfully or  
12 intentionally filing a fraudulent claim with a third party for services  
13 rendered or to be rendered to a patient.
- 14           (p) Repeated irregularities in billing.
- 15           (q) Employing unlicensed persons to perform or aiding and abetting  
16 unlicensed persons in the performance of work that can be done legally only  
17 by licensed persons.
- 18           (r) Practicing dentistry under a false or assumed name in this state,  
19 other than as allowed by section 32-1262.
- 20           (s) Wilfully or intentionally causing or permitting supervised  
21 personnel or auxiliary personnel operating under the licensee's supervision  
22 to commit illegal acts or perform an act or operation other than that  
23 permitted under article 4 of this chapter and rules adopted by the board  
24 pursuant to section 32-1282.
- 25           (t) Violating or attempting to violate, directly or indirectly, or  
26 assisting or abetting the violation of or conspiring to violate any of the  
27 provisions of this chapter or any rule adopted by the board.
- 28           (u) The following advertising practices:
- 29           (i) The publication or circulation, directly or indirectly, of any  
30 false, fraudulent or misleading statements concerning the skill, methods or  
31 practices of the licensee or of any other person.
- 32           (ii) Advertising in any manner that tends to deceive or defraud the  
33 public.
- 34           (v) Failing to dispense drugs and devices in compliance with article 6  
35 of this chapter.
- 36           (w) Failing to comply with a final board order, including an order of  
37 censure or probation.
- 38           (x) Failing to comply with a board subpoena in a timely manner.
- 39           (y) Failing or refusing to maintain adequate patient records.
- 40           (z) Failing to allow properly authorized board personnel, on demand,  
41 to inspect the place of practice and examine and have access to documents,  
42 books, reports and records maintained by the licensee or certificate holder  
43 that relate to the dental practice or dentally related activity.

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

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

7 (cc) FAILING TO REPORT IN WRITING TO THE BOARD ANY EVIDENCE THAT A  
8 DENTIST, DENTURIST OR DENTAL HYGIENIST IS OR MAY BE PROFESSIONALLY  
9 INCOMPETENT, IS OR MAY BE GUILTY OF UNPROFESSIONAL CONDUCT OR IS OR MAY BE  
10 MENTALLY OR PHYSICALLY UNABLE TO SAFELY ENGAGE IN THE ACTIVITIES OF A  
11 DENTIST, DENTURIST OR DENTAL HYGIENIST PURSUANT TO THIS CHAPTER.

12 Sec. 2. Section 32-1213, Arizona Revised Statutes, is amended to read:  
13 32-1213. Business entities; registration; renewal; civil  
14 penalty; exceptions

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

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

18 2. The services are conducted by a dentist licensed pursuant to this  
19 chapter.

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

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

23 2. The name of each licensee who is authorized and who is responsible  
24 for the dental services offered at each office.

25 3. An application fee prescribed by the board in rule.

26 C. A business entity must file a separate registration application for  
27 each branch office in this state.

28 D. A registration expires one year after the date the board issues the  
29 registration. A business entity that wishes to renew a registration must  
30 submit an application for renewal as prescribed by the board on an annual  
31 basis and not sooner than sixty days and not less than thirty days before the  
32 expiration date.

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

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

36 2. In the location of any office.

37 3. Of the licensee who is authorized and who is responsible for the  
38 dental services offered at a particular office.

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

41 1. Refuse to issue a registration.

42 2. Suspend or revoke a registration.

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

45 4. ENTER A DECREE OF CENSURE.

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

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

7           H. This section does not apply to:

8           1. A person who is licensed pursuant to this chapter.

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

10          (a) A service corporation.

11          (b) An insurer authorized to transact disability insurance.

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

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

16          3. A professional corporation or professional limited liability  
17 company formed to engage in the practice of dentistry pursuant to title 10,  
18 chapter 20 or title 29, chapter 4, article 11.

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

22          1. Owned by a licensee.

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

25          J. ~~Nothing in~~ This section ~~shall be construed to~~ DOES NOT:

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

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

35          Sec. 3. Section 32-1263, Arizona Revised Statutes, is amended to read:

36          32-1263. Grounds for disciplinary action; definition

37          A. The board may invoke disciplinary action against any person  
38 licensed under this chapter for any of the following reasons:

39          1. Unprofessional conduct, as defined in section 32-1201.

40          2. Conviction of a felony or of a misdemeanor involving moral  
41 turpitude, in which case the record of conviction or a certified copy is  
42 conclusive evidence.

43          3. Physical or mental incompetence to practice ~~his profession~~ PURSUANT  
44 TO THIS CHAPTER.

- 1           4. Violation of or noncompliance with any provision of this chapter or  
2 of any rules adopted by the board pursuant to this chapter.
- 3           5. Dental incompetence, as defined in section 32-1201.
- 4           B. THE BOARD MAY INVOKE DISCIPLINARY ACTION AGAINST A BUSINESS ENTITY  
5 REGISTERED PURSUANT TO THIS CHAPTER FOR UNETHICAL CONDUCT.
- 6           C. FOR THE PURPOSES OF THIS SECTION, "UNETHICAL CONDUCT" MEANS THE  
7 FOLLOWING ACTS OCCURRING IN THIS STATE OR ELSEWHERE:
- 8           1. FAILING TO REPORT IN WRITING TO THE BOARD ANY EVIDENCE THAT A  
9 DENTIST, DENTURIST OR DENTAL HYGIENIST IS OR MAY BE PROFESSIONALLY  
10 INCOMPETENT, IS OR MAY BE GUILTY OF UNPROFESSIONAL CONDUCT OR IS OR MAY BE  
11 MENTALLY OR PHYSICALLY UNABLE TO SAFELY ENGAGE IN THE PERMISSIBLE ACTIVITIES  
12 OF A DENTIST, DENTURIST OR DENTAL HYGIENIST.
- 13           2. OBTAINING OR ATTEMPTING TO OBTAIN A REGISTRATION OR REGISTRATION  
14 RENEWAL BY FRAUD OR BY MISREPRESENTATION.
- 15           3. KNOWINGLY FILING WITH THE BOARD ANY APPLICATION, RENEWAL OR OTHER  
16 DOCUMENT THAT CONTAINS FALSE INFORMATION.
- 17           4. FAILING TO REGISTER OR FAILING TO SUBMIT A RENEWAL REGISTRATION  
18 WITH THE BOARD PURSUANT TO SECTION 32-1213.
- 19           5. FAILING TO PROVIDE THE FOLLOWING PERSONS WITH ACCESS TO ANY PLACE  
20 FOR WHICH A REGISTRATION HAS BEEN ISSUED OR FOR WHICH AN APPLICATION FOR A  
21 REGISTRATION HAS BEEN SUBMITTED IN ORDER TO CONDUCT A SITE INVESTIGATION,  
22 INSPECTION OR AUDIT:
- 23           (a) THE BOARD OR ITS EMPLOYEES OR AGENTS.
- 24           (b) AN AUTHORIZED FEDERAL OR STATE OFFICIAL.
- 25           6. FRAUDULENTLY CHARGING A FEE FOR A SERVICE.
- 26           7. FAILING TO NOTIFY THE BOARD OF A CHANGE IN OWNERSHIP, AN ADDITION  
27 OR DELETION OF LOCATIONS OR A CHANGE IN THE LIST OF AUTHORIZED LICENSES  
28 PURSUANT TO SECTION 32-1213, SUBSECTION E.
- 29           8. VIOLATING OR FAILING TO COMPLY WITH ANY PROVISION OF THIS CHAPTER  
30 OR ANY RULES ADOPTED BY THE BOARD PURSUANT TO THIS CHAPTER.
- 31           9. FAILING TO COMPLY WITH A FINAL BOARD ORDER, INCLUDING A DECREE OF  
32 CENSURE, A PERIOD OR TERM OF PROBATION, A CONSENT AGREEMENT OR A STIPULATION.