

REFERENCE TITLE: board of dental examiners

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HB 2530

Introduced by
Representatives Yee, Meyer, Pancrazi, Smith D, Senator McComish:
Representatives Alston, Barton, Brophy McGee, Carter, Crandell, Hobbs,
Senator Gray

AN ACT

AMENDING SECTIONS 32-1201, 32-1202, 32-1213 AND 32-1261, ARIZONA REVISED
STATUTES; RELATING TO THE STATE BOARD OF DENTAL EXAMINERS.

(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 has an
11 ownership that includes any persons who are not licensed or certified to
12 provide dental services in this state, that offers to the public professional
13 services regulated by the board and that is established pursuant to the laws
14 of any state or foreign country.
15 4. "Dental assistant" means any person who acts as an assistant to a
16 dentist or a dental hygienist by rendering personal services to a patient
17 that involve close proximity to the patient while the patient is under
18 treatment or observation or undergoing diagnostic procedures.
19 5. "Dental hygienist" means any person licensed and engaged in the
20 general practice of dental hygiene and all related and associated duties,
21 including educational, clinical and therapeutic dental hygiene procedures.
22 6. "Dental incompetence" means lacking in sufficient dentistry
23 knowledge or skills, or both, in that field of dentistry in which the
24 dentist, denturist or dental hygienist concerned engages, to a degree likely
25 to endanger the health of that person's patients.
26 7. "Dental laboratory technician" means any person, other than a
27 licensed dentist, who, pursuant to a written work order of a dentist,
28 fabricates artificial teeth, prosthetic appliances or other mechanical and
29 artificial contrivances designed to correct or alleviate injuries or defects,
30 both developmental and acquired, disorders or deficiencies of the human oral
31 cavity, teeth, investing tissues, maxilla or mandible or adjacent associated
32 structures.
33 8. "Dental x-ray laboratory technician" means any person, other than a
34 licensed dentist, who, pursuant to a written work order of a dentist,
35 performs dental and maxillofacial radiography, including cephalometrics,
36 panoramic and maxillofacial tomography and other dental related
37 non-fluoroscopic diagnostic imaging modalities.
38 9. "Dentistry", "dentist" and "dental" means the general practice of
39 dentistry and all specialties or restricted practices of dentistry.
40 10. "Denturist" means a person practicing denture technology pursuant
41 to article 5 of this chapter.
42 11. "Disciplinary action" means regulatory sanctions that are imposed
43 by the board in combination with, or as an alternative to, revocation or
44 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 12. "Irregularities in billing" means submitting any claim, bill or
11 government assistance claim to any patient, responsible party or third-party
12 payor for dental services rendered that is materially false with the intent
13 to receive unearned income ~~and~~ as evidenced by any of the following:

14 (a) Charges for services not rendered.

15 (b) Any treatment date that does not accurately reflect the date when
16 the service and procedures were actually completed.

17 (c) Any description of a dental service or procedure that does not
18 accurately reflect the actual work completed.

19 (d) Any charge for a service or procedure that cannot be clinically
20 justified or determined to be necessary.

21 (e) Any statement that is material to the claim and that the licensee
22 knows is false or misleading.

23 (f) An abrogation of the copayment provisions of a dental insurance
24 contract by a waiver of all or a part of the copayment from the patient if
25 this results in an excessive or fraudulent charge to a third party or if the
26 waiver is used as an enticement to receive dental services from that
27 provider. This subdivision does not interfere with a contractual
28 relationship between a third-party payor and a licensee or business entity
29 registered with the board.

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

32 13. "Letter of concern" means an advisory letter to notify a licensee
33 or a registered business entity that, while the evidence does not warrant
34 disciplinary action, the board believes that the licensee or registered
35 business entity should modify or eliminate certain practices and that
36 continuation of the activities that led to the information being submitted to
37 the board may result in board action against the practitioner's license or
38 the business entity's registration. A letter of concern is not a
39 disciplinary action. A letter of concern is a public document and may be
40 used in a future disciplinary action.

41 14. "Licensed" means licensed pursuant to this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (g) Having professional connection with or lending one's name to an
2 illegal practitioner of dentistry or any of the other healing arts.
- 3 (h) Representing that a manifestly not correctable condition, disease,
4 injury, ailment or infirmity can be permanently corrected, or that a
5 correctable condition, disease, injury, ailment or infirmity can be corrected
6 within a stated time, if this is not true.
- 7 (i) Offering, undertaking or agreeing to correct, cure or treat a
8 condition, disease, injury, ailment or infirmity by a secret means, method,
9 device or instrumentality.
- 10 (j) Refusing to divulge to the board, on reasonable notice and demand,
11 the means, method, device or instrumentality used in the treatment of a
12 condition, disease, injury, ailment or infirmity.
- 13 ~~(k) Giving or receiving, or aiding or abetting the giving or~~
14 ~~receiving, of rebates, either directly or indirectly.~~
- 15 (k) DIVIDING A PROFESSIONAL FEE OR RECEIVING ANY CONSIDERATION FOR
16 PATIENT REFERRALS AMONG OR BETWEEN DENTAL CARE PROVIDERS OR DENTAL CARE
17 INSTITUTIONS OR ENTITIES. THIS SUBDIVISION DOES NOT PROHIBIT THE DIVISION OF
18 FEES AMONG LICENSEES WHO ARE ENGAGED IN A BONA FIDE EMPLOYMENT, PARTNERSHIP,
19 CORPORATE OR CONTRACTUAL RELATIONSHIP FOR THE DELIVERY OF PROFESSIONAL
20 SERVICES.
- 21 (l) Knowingly making any false or fraudulent statement, written or
22 oral, in connection with the practice of dentistry.
- 23 (m) Refusal, revocation or suspension of a license or any other
24 disciplinary action taken against a dentist by, or the voluntary surrender of
25 a license in lieu of disciplinary action to, any other state, territory,
26 district or country, unless the board finds that this action was not taken
27 for reasons that relate to the person's ability to safely and skillfully
28 practice dentistry or to any act of unprofessional conduct.
- 29 (n) Any conduct or practice that constitutes a danger to the health,
30 welfare or safety of the patient or the public.
- 31 (o) Obtaining a fee by fraud or misrepresentation, or wilfully or
32 intentionally filing a fraudulent claim with a third party for services
33 rendered or to be rendered to a patient.
- 34 (p) Repeated irregularities in billing.
- 35 (q) Employing unlicensed persons to perform or aiding and abetting
36 unlicensed persons in the performance of work that can be done legally only
37 by licensed persons.
- 38 (r) Practicing dentistry under a false or assumed name in this state,
39 other than as allowed by section 32-1262.
- 40 (s) Wilfully or intentionally causing or permitting supervised
41 personnel or auxiliary personnel operating under the licensee's supervision
42 to commit illegal acts or perform an act or operation other than that
43 permitted under article 4 of this chapter and rules adopted by the board
44 pursuant to section 32-1282.
- 45 (t) The following advertising practices:

- 1 (i) The publication or circulation, directly or indirectly, of any
2 false, fraudulent or misleading statements concerning the skill, methods or
3 practices of the licensee or of any other person.
- 4 (ii) Advertising in any manner that tends to deceive or defraud the
5 public.
- 6 (u) Failing to dispense drugs and devices in compliance with article 6
7 of this chapter.
- 8 (v) Failing to comply with a final board order, including an order of
9 censure or probation.
- 10 (w) Failing to comply with a board subpoena in a timely manner.
- 11 (x) Failing or refusing to maintain adequate patient records.
- 12 (y) Failing to allow properly authorized board personnel, on demand,
13 to inspect the place of practice and examine and have access to documents,
14 books, reports and records maintained by the licensee or certificate holder
15 that relate to the dental practice or dentally related activity.
- 16 (z) Refusing to submit to a body fluid examination as required through
17 a monitored treatment program or pursuant to a board investigation into a
18 licensee's or certificate holder's alleged substance abuse.
- 19 (aa) Failing to inform a patient of the type of material the dentist
20 will use in the patient's dental filling and the reason why the dentist is
21 using that particular filling.
- 22 (bb) Failing to report in writing to the board any evidence that a
23 dentist, denturist or dental hygienist is or may be:
- 24 (i) Professionally incompetent.
- 25 (ii) Engaging in unprofessional conduct.
- 26 (iii) Impaired by drugs or alcohol.
- 27 (iv) Mentally or physically unable to safely engage in the activities
28 of a dentist, denturist or dental hygienist pursuant to this chapter.
- 29 (cc) Filing a false report pursuant to subdivision (bb) of this
30 paragraph.
- 31 (dd) Practicing dentistry, dental hygiene or denturism in a business
32 entity that is not registered with the board as required by section 32-1213.
- 33 Sec. 2. Section 32-1202, Arizona Revised Statutes, is amended to read:
- 34 32-1202. Scope of practice; practice of dentistry
- 35 ~~A-~~ **FOR THE PURPOSES OF THIS CHAPTER**, the practice of dentistry is the
36 ~~evaluation, diagnosis, prevention and treatment of human diseases, disorders~~
37 ~~and conditions of the oral cavity, the maxillofacial area and the adjacent~~
38 ~~and associated structures within the dentist's scope of education, training~~
39 ~~and experience and according to the ethics of the profession and applicable~~
40 **law SURGICAL OR NONSURGICAL TREATMENT AND PERFORMANCE OF RELATED ADJUNCTIVE**
41 **PROCEDURES FOR ANY DISEASE, PAIN, DEFORMITY, DEFICIENCY, INJURY OR PHYSICAL**
42 **CONDITION OF THE HUMAN TOOTH OR TEETH, ALVEOLAR PROCESS, GUMS, LIPS, CHEEK,**
43 **JAWS, ORAL CAVITY AND ASSOCIATED TISSUES, INCLUDING THE REMOVAL OF STAINS,**
44 **DISCOLORATIONS AND CONCRETIONS.**

1 ~~B. For the purposes of this section, "treatment" includes surgical and~~
2 ~~nonsurgical treatment and related procedures.~~

3 Sec. 3. Section 32-1213, Arizona Revised Statutes, is amended to read:

4 32-1213. Business entities; registration; renewal; civil
5 penalty; exceptions

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

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

9 2. The services are conducted by a licensee pursuant to this chapter.

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

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

13 2. The name of any dentist who is authorized to provide and who is
14 responsible for providing the dental services offered at each office.

15 3. The names and addresses of the officers and directors of the
16 business entity.

17 4. A registration fee prescribed by the board in rule.

18 C. A business entity must file a separate registration application and
19 pay a fee for each branch office in this state.

20 D. A registration expires three years after the date the board issues
21 the registration. A business entity that wishes to renew a registration must
22 submit an application for renewal as prescribed by the board on a triennial
23 basis on a form provided by the board before the expiration date. An entity
24 that fails to renew the registration before the expiration date is subject to
25 a late fee as prescribed by the board by rule. The board may stagger the
26 dates for renewal applications.

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

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

30 2. In the officers or directors of the business entity.

31 3. In the name of any dentist who is authorized to provide and who is
32 responsible for providing the dental services in any facility.

33 F. The business entity shall establish a written protocol for the
34 secure storage, transfer and access of the dental records of the business
35 entity's patients. This protocol must include, at a minimum, procedures for:

36 1. Notifying patients of the future locations of their records if the
37 business entity terminates or sells the practice.

38 2. Disposing of unclaimed dental records.

39 3. The timely response to requests by patients for copies of their
40 records.

41 G. The business entity must notify the board within thirty days after
42 the dissolution of any registered business entity or the closing or
43 relocation of any facility and must disclose to the board the entity's
44 procedure by which its patients may obtain their records.

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

- 3 1. Refuse to issue a registration.
- 4 2. Suspend or revoke a registration.
- 5 3. Impose a civil penalty of not more than two thousand dollars for
6 each violation.
- 7 4. Enter a decree of censure.
- 8 5. Issue an order prescribing a period and terms of probation that are
9 best adapted to protect the public welfare ~~and that may include a requirement~~
10 ~~for restitution to a patient~~ for a violation of this chapter or rules adopted
11 pursuant to this chapter.

12 6. ISSUE AN ORDER REQUIRING THE PAYMENT OF RESTITUTION TO A PATIENT
13 FOR MONIES RECEIVED FOR SERVICES PROVIDED BY EMPLOYEES OF THE BUSINESS
14 ENTITY.

15 ~~6-~~ 7. Issue a letter of concern if a business entity's actions may
16 cause the board to take disciplinary action.

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

19 J. This section does not apply to:

- 20 1. A sole proprietorship or partnership that consists exclusively of
21 persons who are licensed pursuant to this chapter.
- 22 2. Any of the following entities licensed under title 20:
 - 23 (a) A service corporation.
 - 24 (b) An insurer authorized to transact disability insurance.
 - 25 (c) A prepaid dental plan organization that does not provide directly
26 for prepaid dental services.
 - 27 (d) A health care services organization that does not provide directly
28 for dental services.

29 3. A professional corporation or professional limited liability
30 company, the shares of which are exclusively owned by persons who are
31 licensed pursuant to this chapter and that is formed to engage in the
32 practice of dentistry pursuant to title 10, chapter 20 or title 29, chapter
33 4, article 11.

34 4. A facility regulated by the federal government or a state, district
35 or territory of the United States.

36 5. An administrator or executor of the estate of a deceased dentist or
37 a person who is legally authorized to act for a dentist who has been
38 adjudicated to be mentally incompetent for not more than one year from the
39 date the board receives notice of the dentist's death or incapacitation
40 pursuant to section 32-1270.

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

- 44 1. Owned by a licensee.

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

3 L. Except for issues relating to insurance coding and billing that
4 require the name, signature and license number of the dentist providing
5 treatment, this section does not:

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

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

15 M. The board shall adopt rules that provide a method for the board to
16 receive the assistance and advice of business entities licensed pursuant to
17 this chapter in all matters relating to the regulation of business entities.

18 N. A PERSON WHOSE LICENSE TO PRACTICE DENTISTRY IN ANY STATE OR
19 JURISDICTION IN THE UNITED STATES IS CURRENTLY SUSPENDED, SURRENDERED OR
20 REVOKED IS PROHIBITED FROM HAVING AN OWNERSHIP INTEREST IN ANY BUSINESS
21 ENTITY REGISTERED PURSUANT TO THIS SECTION.

22 Sec. 4. Section 32-1261, Arizona Revised Statutes, is amended to read:
23 32-1261. Practicing without license; classification

24 Except as otherwise provided a person is guilty of a class 6 felony
25 who, without a valid license or business entity registration as prescribed by
26 this chapter:

27 1. Practices dentistry or any branch of dentistry AS DESCRIBED IN
28 SECTION 32-1202.

29 2. In any manner or by any means, direct or indirect, advertises,
30 represents or claims to be engaged or ready and willing to engage in that
31 practice AS DESCRIBED IN SECTION 32-1202.

32 3. Manages, maintains or carries on, in any capacity or by any
33 arrangement, a practice, business, office or institution for the practice of
34 dentistry, or that is advertised, represented or held out to the public for
35 that purpose.