

By: Moody

To: Public Health and
Welfare

HOUSE BILL NO. 848

1 AN ACT RELATING TO THE MISSISSIPPI DENTAL PRACTICE ACT; TO
2 AMEND SECTION 73-9-3, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
3 DEFINITION OF THE PRACTICE OF DENTISTRY; TO AMEND SECTION 73-9-5,
4 MISSISSIPPI CODE OF 1972, TO FURTHER DEFINE THE PRACTICE OF DENTAL
5 HYGIENE; TO AMEND SECTION 73-9-7, MISSISSIPPI CODE OF 1972, TO
6 PROVIDE THAT THE ANNUAL BALLOTING PROCESS FOR LICENSED DENTAL
7 HYGIENISTS IS CONSISTENT WITH THAT FOR LICENSED DENTISTS; TO AMEND
8 SECTION 73-9-23, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR CERTAIN
9 REQUIREMENTS FOR A DENTAL OR DENTAL HYGIENE LICENSE BY EXAMINATION
10 WHEN APPLICANTS ARE GRADUATES FROM UNACCREDITED SCHOOLS; TO AMEND
11 SECTION 73-9-24, MISSISSIPPI CODE OF 1972, TO DEFINE THE CRITERIA
12 FOR AN APPLICANT TO QUALIFY FOR A DENTAL OR DENTAL HYGIENE LICENSE
13 BASED ON CREDENTIALS; TO AMEND SECTION 73-9-25, MISSISSIPPI CODE
14 OF 1972, TO CLARIFY AUTHORITY OF THE MISSISSIPPI STATE BOARD OF
15 DENTAL EXAMINERS TO SET THE DATE AND TIME TO ADMINISTER LICENSE
16 EXAMINATIONS; TO AMEND SECTION 73-9-41, MISSISSIPPI CODE OF 1972,
17 TO DEFINE THOSE ACTS BY UNLICENSED PERSONS WHICH ARE PROHIBITED
18 AND TO AUTHORIZE THE MISSISSIPPI STATE BOARD OF DENTAL EXAMINERS
19 TO CONDUCT HEARINGS AND LEVY FINES IN CASES OF UNLICENSED PRACTICE
20 OF DENTISTRY OR DENTAL HYGIENE; TO AMEND SECTION 73-9-43,
21 MISSISSIPPI CODE OF 1972, TO INCREASE THE ANNUAL LICENSE RENEWAL
22 FEE FOR DENTIST AND TO PROVIDE THAT A PORTION OF THOSE FEES MAY BE
23 USED TO SUPPORT A PROGRAM TO AID IMPAIRED LICENSEES; TO AMEND
24 SECTION 73-9-61, MISSISSIPPI CODE OF 1972, TO CLARIFY THE GROUNDS
25 UPON WHICH A DENTAL OR DENTAL HYGIENE LICENSE MAY BE DENIED,
26 REVOKED, SUSPENDED OR OTHER DISCIPLINARY ACTION TAKEN; TO AMEND
27 SECTION 73-9-63, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
28 PROCEDURES USED WHEN INITIATING DISCIPLINARY ACTION BEFORE THE
29 DENTAL BOARD AND TO GRANT CERTAIN SUBPOENA POWERS; TO CODIFY THE
30 MISSISSIPPI DISABLED DENTIST LAW; AND FOR RELATED PURPOSES.

31 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

32 SECTION 1. Section 73-9-3, Mississippi Code of 1972, is
33 amended as follows:[CR1]

34 73-9-3. Any person shall be regarded as practicing dentistry
35 within the meaning of this chapter who * * * performs any act that
36 falls within the definition of the practice of dentistry as may
37 now or hereinafter be adopted by the American Dental Association,
38 and which may be defined from time to time by rule or regulation
39 of the board, provided that nothing herein shall be so construed
40 as to prevent:

- 41 1. The practice of his profession by a regularly
42 licensed and registered physician under the laws of this state
43 unless he practices dentistry as a specialty; or
- 44 2. The performance of mechanical work upon inanimate
45 objects by persons working in dental offices under their
46 supervision; or
- 47 3. The operation of a dental laboratory and taking work
48 by written work authorization from regularly licensed and
49 registered dentists as provided for elsewhere in this chapter; or
- 50 4. Dentists from outside the state from giving
51 educational clinics or demonstrations before a dental society,
52 convention or association; or
- 53 5. Licensed dentists from outside the state from being
54 called into Mississippi by licensed dentists of this state for
55 consultative or operative purposes when such consultative or
56 operative purposes have been authorized or approved by the Board
57 of Dental Examiners for specified periods of time or as provided
58 for by rules and regulations set forth by the board; or
- 59 6. Applicants for license to practice dentistry in this
60 state from working during examination by and under the supervision
61 and direction of the Board of Dental Examiners; or
- 62 7. The practice of dentistry or of dental hygiene by
63 students under the supervision of instructors in any dental
64 school, college, or dental department of any school, college, or
65 university, or school of dental hygiene recognized by the board,
66 but such activities shall not be carried on for profit; or
- 67 8. Dental or dental hygiene students enrolled in
68 accredited dental or dental hygiene schools from participating in
69 off-site training recognized and approved by the board; or
- 70 9. A regularly licensed and registered dentist from the
71 delegation of procedures to a regularly licensed and registered
72 hygienist or other competent dental auxiliary personnel * * *
73 while acting under the direct supervision * * * and full

74 responsibility of the dentist except as follows: Those procedures
75 which require the professional judgment and skill of a dentist
76 such as diagnosis, treatment planning, surgical procedures
77 involving hard or soft tissues, or any intra-oral procedure of an
78 irreversible nature which could result in injury to the patient.
79 Provided, however, the dentist may delegate the removal of
80 calcareous deposits only to a regularly licensed and registered
81 dental hygienist as regulated by the State Board of Dental
82 Examiners.

83 All dentists and dental hygienists serving as
84 instructors, professors or residents, as provided for in
85 subsections 7 and 8 above, shall be required to be licensed by the
86 Mississippi State Board of Dental Examiners.

87 SECTION 2. Section 73-9-5, Mississippi Code of 1972, is
88 amended as follows:[CR2]

89 73-9-5. (1) For the purpose of this chapter, a dental
90 hygienist shall be an individual who has completed an accredited
91 dental hygiene education program, passed the national dental
92 hygiene board and is licensed by the State Board of Dental
93 Examiners to provide, as an auxiliary to the dentist, preventive
94 care services including, but not limited to, scaling and
95 polishing. In fulfilling these services, dental hygienists
96 provide treatment that helps to prevent oral disease such as
97 dental caries and periodontal disease and for educating patients
98 in prevention of these and other dental problems.

99 (2) The work of dental hygienists and dental assistants
100 while working in the office of a regularly licensed and registered
101 dentist shall at all times be under the direct supervision * * *
102 of the dentist. Dental hygienists in the employ of the State
103 Board of Health or public school boards shall be limited to only
104 performing oral hygiene instruction and screening when under the
105 general supervision and direction of regularly licensed and
106 registered dentists. Dental hygienists recognized by the board of

107 dental examiners when making public demonstrations of dental
108 hygiene for educational purposes shall be under the general
109 supervision and direction of regularly licensed and registered
110 dentists.

111 (3) The board of dental examiners may prohibit any dental
112 hygienist or other auxiliary personnel from rendering service that
113 it feels is not in the best interest of the public welfare.

114 SECTION 3. Section 73-9-7, Mississippi Code of 1972, is
115 amended as follows:[CR3]

116 73-9-7. The duties of the Mississippi State Board of Dental
117 Examiners, or "the board," * * * shall be to carry out the
118 purposes and provisions of the laws pertaining to the practice of
119 dentistry and dental hygiene * * *. The board shall consist of
120 seven (7) regularly licensed, registered and practicing dentists,
121 each a graduate of an accredited college of dentistry and each a
122 regularly licensed, registered and practicing dentist within the
123 State of Mississippi for a period of five (5) or more years next
124 preceding his appointment. No dentist shall be eligible for
125 appointment who is connected in any way with any school of
126 dentistry or the dental supply business.

127 In addition, the board shall include one (1) * * * member who
128 shall be a regularly licensed, registered dental hygienist with at
129 least five (5) years' practical experience. The dental hygienist
130 member shall be appointed by the Governor from the state at large
131 from a list of six (6) dental hygienists. Each of the dental
132 hygienists listed shall be the dental hygienist receiving the
133 highest number of votes in his or her individual district from a
134 poll conducted and compiled by the board. The poll shall consist
135 of a blank ballot with three (3) spaces for nomination provided to
136 all licensed dental hygienists in the state by district. The
137 dental hygienist member shall serve for a term of four (4) years
138 and may succeed himself or herself in office. Any vacancy in the
139 dental hygienist board membership shall be filled by the Governor

140 within sixty (60) days, by appointment from the list of nominees
141 submitted for the existing term of office. During the course of
142 each calendar year, the board shall take like polls of all
143 licensed dental hygienists practicing in the state, and shall
144 prepare a new list of six (6) dental hygienists, such list to
145 consist of the dental hygienist receiving the highest number of
146 votes in each district, to be submitted to the Governor, which
147 shall be used in the appointment of the dental hygienist member
148 from the state at large. The terms of the dental hygienist member
149 shall be computed from July 1, 1995.

150 Except as hereinafter provided, each member of the
151 board * * * shall hold office for the particular term of four (4)
152 years to which he is appointed as differentiated and set out in
153 this section and until his successor shall be duly appointed and
154 qualified. Any appointment made to fill a vacancy or to replace
155 an incumbent holding over shall terminate in accordance with the
156 designation of the particular term as set out below and until his
157 successor is duly appointed and qualified.

158 Except for the original appointments, the term of each of the
159 seven (7) dentist appointees provided for herein shall be for a
160 period of four (4) years and shall terminate on and after June
161 30th of the year set out below for each appointive position:

162 Appointments one (1) and two (2) in 1964 and each fourth year
163 thereafter; appointment three (3) in 1965 and each fourth year
164 thereafter; appointment four (4) in 1966 and each fourth year
165 thereafter; and appointments five (5) and six (6) in 1967 and each
166 fourth year thereafter. Each subsequent appointment shall be made
167 in chronological order of respective expiration dates; provided,
168 however, that each appointee holding office at the time of passage
169 of this chapter shall continue to serve until the expiration date
170 of the period for which he was appointed, and appointment of such
171 incumbent's successors shall be made in order of the expiration
172 dates of their present commissions.

173 Upon July 1, 1982, the Governor shall appoint one (1) dentist
174 member of the board from the state at large, with the advice and
175 consent of the Senate.

176 Upon expiration of the term of office of any of the six (6)
177 members of the board who are appointed from districts, the
178 Governor shall appoint his successor from a list of names to be
179 submitted as set out herein. From and after July 1, 1991, all
180 appointments to the Mississippi State Board of Dental Examiners
181 shall be with the advice and consent of the Senate.

182 As soon after passage of this chapter as feasible, the board
183 shall poll all licensed dentists and dental hygienists in the
184 state by dental district as follows:

185 Dental District One: Alcorn, Benton, Calhoun, Chickasaw,
186 Choctaw, Clay, Itawamba, Lafayette, Lee, Lowndes, Marshall,
187 Monroe, Oktibbeha, Pontotoc, Prentiss, Tippah, Tishomingo, Union,
188 Webster;

189 Dental District Two: Bolivar, Carroll, Coahoma, DeSoto,
190 Grenada, Holmes, Humphreys, Issaquena, Leflore, Montgomery,
191 Panola, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tunica,
192 Washington, Yalobusha, Yazoo;

193 Dental District Three: Attala, Clarke, Covington, Forrest,
194 Jasper, Jones, Kemper, Lamar, Lauderdale, Leake, Neshoba, Newton,
195 Noxubee, Perry, Scott, Smith, Wayne, Winston;

196 Dental District Four: Hinds, Madison, Rankin, Warren;

197 Dental District Five: George, Greene, Hancock, Harrison,
198 Jackson, Pearl River, Stone;

199 Dental District Six: Adams, Amite, Claiborne, Copiah,
200 Franklin, Jefferson Davis, Jefferson, Lawrence, Lincoln, Marion,
201 Pike, Simpson, Walthall, Wilkinson;

202 and request the submission from each such dental district of three
203 (3) nominations for appointment as members of the board. Thirty
204 (30) days after submitting such request, the board shall list all
205 nominations by district according to the number of votes each

206 received. The top three (3) names from each district shall then
207 be considered as a list of names to be submitted to the Governor
208 as referred to above each time a vacancy occurs in one (1) of the
209 six (6) positions appointed from districts or whenever the
210 Governor requests such submission. During the course of each
211 calendar year, the board shall take like polls of all licensed
212 dentists practicing in each dental district, and shall prepare new
213 lists therefrom to be submitted to the Governor which shall be
214 used in the appointment of the six (6) members appointed from
215 districts.

216 It is the purpose of this section that no more than one (1)
217 appointee of the six (6) members appointed from districts shall
218 serve from any district at any one (1) time; provided, however,
219 that the members serving on the effective date of this section
220 shall continue until their term of office has expired. All
221 subsequent appointments of the six (6) members appointed from
222 districts shall be made in accordance with the provisions of this
223 section, shall be designated by district, and shall be selected by
224 district in accordance with the appropriate list submitted
225 therefor. The names on the lists shall be given priority in
226 accordance with the votes for each nominee. In case of a tie,
227 such persons receiving tie votes shall have their names placed on
228 the list even though it results in more than three (3) names on
229 such list from that district.

230 The Secretary of State shall, at his discretion, at any time
231 there is sufficient cause, investigate the method and procedure of
232 taking such polls and establishing such lists, and the board shall
233 make available to him all records involved therein; and if the
234 Secretary of State should find cause therefor he may, upon
235 specifying such cause, declare the list invalid, whereupon the
236 board shall follow the procedure set out above to establish a new
237 list. If a vacancy exists and no list is available, the Board of
238 Dental Examiners is * * * to follow the above-described procedure

239 in establishing a new list for the appropriate dental district.

240 A vote for an individual dentist or dental hygienist in all
241 polls may be counted only once for each ballot no matter how many
242 times the name is listed on the ballot.

243 SECTION 4. Section 73-9-23, Mississippi Code of 1972, is
244 amended as follows:[CR4]

245 73-9-23. (1) No person who desires to practice dentistry or
246 dental hygiene in the State of Mississippi shall be licensed until
247 that person has passed an examination by the board. Applicants
248 for examination shall apply in writing to the secretary of the
249 board for an examination at least thirty (30) days prior to the
250 examination and shall upon application pay a nonrefundable
251 fee * * * as elsewhere provided in this chapter.

252 (2) An applicant for licensure by examination * * * as a
253 dentist who is a graduate of a dental school accredited by the
254 Commission on Accreditation of Dental and Dental Auxiliary
255 Educational Programs of the American Dental Association (ADA),
256 shall:

257 (a) * * * Be of good moral character, be possessed of a
258 high school education, and have attained the age of twenty-one
259 (21) years; * * *

260 (b) Exhibit with the application a diploma or
261 certificate of graduation from the ADA accredited dental
262 school * * *; and

263 (c) Have successfully completed Parts I and II of the
264 National Board of Examinations of the Joint Commission on National
265 Dental Examination, unless the applicant graduated from an
266 approved dental school prior to 1960.

267 (3) An applicant for licensure by examination as a dentist
268 who is a graduate of a non-ADA accredited foreign country dental
269 school shall:

270 (a) * * * Be of good moral character and have attained
271 the age of twenty-one (21) years;

272 (b) Be proficient in oral and written communications in
273 the English language;

274 (c) Have completed not less than six (6) academic years
275 of postsecondary study and graduated from a foreign dental school
276 which is recognized by the licensure authorities in that country;

277 (d) Have been licensed as a dentist or admitted to the
278 practice of dentistry in the foreign country in which the
279 applicant received foreign dental school training;

280 (e) Must present documentation of having completed at
281 least two (2) or more years of full-time post-doctoral general
282 dental education in a dental school accredited by the Commission
283 on Accreditation of Dental and Dental Auxiliary Educational
284 Programs of the American Dental Association, and has been
285 certified by the dean of the accredited dental school as having
286 achieved the same level of didactic and clinical competence as
287 expected of a graduate of the school; and

288 (f) Have successfully completed Parts I and II of the
289 National Board Examinations of the Joint Commission on National
290 Dental Examinations, unless the applicant graduated from an
291 approved dental school prior to 1960.

292 (4) An applicant for licensure by examination as a dental
293 hygienist who is a graduate of a dental hygiene school accredited
294 by the Commission on Accreditation of Dental and Dental Auxiliary
295 Educational Programs of the American Dental Association (ADA)
296 shall:

297 (a) * * * Be of good moral character, be possessed of a
298 high school education and have attained the age of eighteen (18)
299 years; and

300 (b) Exhibit with the application a diploma or
301 certificate of graduation from the ADA accredited dental hygiene
302 school * * *; and

303 (c) Have successfully completed the National Board
304 Dental Hygiene Examinations by the Joint Commission on National

305 Dental Examinations.

306 (5) An applicant for licensure by examination as a dental
307 hygienist who is a graduate of a non-ADA accredited foreign
308 country dental hygiene school shall:

309 (a) * * * Be of good moral character and have attained
310 the age of eighteen (18) years;

311 (b) Be proficient in oral and written communications in
312 the English language;

313 (c) Have completed not less than two (2) academic years
314 of postsecondary study and graduated from a foreign dental hygiene
315 school which is recognized by the licensure authorities in that
316 country;

317 (d) Have been licensed as a dental hygienist or
318 admitted to the practice of dental hygiene in the foreign country
319 in which the applicant received foreign dental hygiene school
320 training;

321 (e) Must present documentation of having completed at
322 least one or more years of full-time post-graduate clinical
323 education in a dental hygiene school accredited by the Commission
324 on Accreditation of Dental and Dental Auxiliary Educational
325 Programs of the American Dental Association, and has been
326 certified by the dean of the accredited dental hygiene school as
327 having achieved the same level of didactic and clinical competence
328 as expected of a graduate of the school; and

329 (f) Have successfully completed the National Board of
330 Dental Hygiene Examinations by the Joint Commission on National
331 Dental Examination.

332 (6) Applications shall be made in the form and content as
333 required in this section and as shall be prescribed by the board,
334 and each applicant shall submit upon request such proof as the
335 board may require as to age, character and qualifications.

336 Applications must be signed by two (2) * * * citizens of the state
337 of which the applicant is a resident, attesting under oath that

338 the applicant * * * is of good moral character. All applicants
339 for licensure shall submit an endorsement from all states in which
340 he or she is currently licensed or has ever been licensed to
341 practice dentistry or dental hygiene * * *. The board may
342 disallow the licensure examination to any applicant who has been
343 found guilty of any of the grounds for disciplinary action as
344 enumerated in Section 73-9-61.

345 (7) Examination shall be as elsewhere provided in this
346 chapter and the board may by its rules and regulations prescribe
347 reasonable professional standards for oral, written, clinical and
348 other examinations given to applicants * * *. Each applicant
349 shall appear before the board and be examined to determine his or
350 her learning and skill in dentistry or dental hygiene. If found
351 by the members of the board conducting the examination to possess
352 sufficient learning and skill therein and to be of good moral
353 character, the board shall, as early as practicable, grant to such
354 person a license to practice dentistry or dental hygiene, as the
355 case may be, which shall be signed by each member of the board who
356 attended the examination and approved the issuance of a license.

357 (8) The Board of Dental Examiners may, at its own
358 discretion, accept certification of a licensure applicant, either
359 dentist or dental hygienist, by the National Board of Dental
360 Examiners in lieu of the written examination. However, in all
361 such instances the board shall retain the right to administer such
362 further practical examinations and demonstrations as it deems
363 necessary.

364 (9) Each application or filing made under this section shall
365 include the social security number(s) of the applicant in
366 accordance with Section 93-11-64, Mississippi Code of 1972.

367 SECTION 5. Section 73-9-24, Mississippi Code of 1972, is
368 amended as follows:[CR5]

369 73-9-24. (1) In addition to the method for obtaining a
370 license to practice dentistry or dental hygiene by way of

371 examination as provided by Section 73-9-23, Mississippi Code of
372 1972, the board, in its sole discretion, may grant a license to a
373 candidate who meets the following criteria:

374 (a) Submit proof of graduation from a dental school or
375 school of dental hygiene accredited by the Commission on
376 Accreditation of Dental and Dental Auxiliary Educational Programs
377 of the American Dental Association (ADA).

378 (b) Be engaged in the active practice of dentistry or
379 dental hygiene or in full-time dental education or dental hygiene
380 education for the past five (5) years;

381 (c) Currently hold a valid, unrestricted and unexpired
382 license in a state whose standards for licensure are determined by
383 the board as equivalent to Mississippi's standards, and which
384 state grants reciprocity or licensure by credentials to licensees
385 of the State of Mississippi;

386 (d) Provides an endorsement from all states in which he
387 is currently licensed or has ever been licensed to practice
388 dentistry or dental hygiene;

389 (e) Has not been the subject of pending or final
390 disciplinary action in any state in which the applicant has been
391 licensed;

392 (f) Is not the subject of a pending investigation in
393 any other state or jurisdiction;

394 (g) Has not failed at any time within the past five (5)
395 years, a licensure examination administered by another state or
396 jurisdiction;

397 (h) Has not failed at any time, a licensure examination
398 administered by the Mississippi State Board of Dental Examiners;

399 (i) Provides a written statement agreeing to appear for
400 interviews at the request of the board;

401 (j) Has successfully completed all parts of the
402 National Board of Examinations, unless the applicant graduated
403 from an approved dental or dental hygiene school prior to 1960;

404 (k) Successfully passes a written jurisprudence
405 examination;

406 (l) Provides payment of a nonrefundable application fee
407 as provided in Section 73-9-43; and

408 (m) In addition, the State Board of Dental Examiners
409 may consider the following in accepting, rejecting or denying an
410 application for licensure by credentialing:

411 (i) Information from the National Practitioner
412 Data Bank and/or the American Association of Dental Examiners
413 Clearinghouse for Disciplinary Information.

414 (ii) Questioning under oath.

415 (iii) Results of peer review reports from
416 constituent societies and/or federal dental services.

417 (iv) Substance abuse testing or treatment.

418 (v) Background checks for criminal or fraudulent
419 activities.

420 (vi) Participation in Continuing Education.

421 (vii) A current certificate in cardiopulmonary
422 resuscitation.

423 (viii) Recent patient case reports and/or oral
424 defense of diagnosis and treatment plans.

425 (ix) No physical or psychological impairment that
426 would adversely affect the ability to deliver quality dental care.

427 (x) Agreement to initiate practice in the
428 credentialing jurisdiction within a reasonable period of time.

429 (xi) Proof of professional liability coverage and
430 that such coverage has not been refused, declined, canceled,
431 nonrenewed or modified.

432 (xii) Any additional information or documentation
433 that the board may stipulate by rule or regulation as necessary to
434 qualify for a license by credentialing.

435 (2) The board shall be granted sufficient time to conduct a
436 complete inquiry into the applicant's qualifications for licensure

437 by credentials, and the board may adopt such rules and regulations
438 pertaining to time needed to conduct investigations and
439 responsibility of applicants to produce verifiable documentation.

440 (3) Any applicant failing to meet the criteria in subsection
441 (1) above shall not be eligible for a license based on
442 credentials. Upon meeting the criteria in subsection (1), the
443 Mississippi State Board of Dental Examiners may, in its
444 discretion, issue to the applicant a license to practice
445 dentistry, or dental hygiene, unless grounds for denial of
446 licensure exist as enumerated in Section 73-9-61. Evidence of
447 falsification in the application for licensure through
448 credentialing will result in revocation of such license.

449 (4) Any applicant applying for a specialty license by
450 credentials must stay within his board recognized specialty and
451 must practice only that specialty within the State of Mississippi.
452 A specialty license holder must hold a general dentistry license
453 prior to obtaining a specialty license.

454 SECTION 6. Section 73-9-25, Mississippi Code of 1972, is
455 amended as follows:[CR6]

456 73-9-25. The regular meeting of the state board of dental
457 examiners shall be held annually at such place, date and time as
458 the board may determine in its discretion, for the purpose of
459 examining applicants for license to practice dentistry and dental
460 hygiene, and continue in session until all applicants for license
461 have been examined and their examinations have been approved or
462 disapproved. The board may meet more often if necessary, in the
463 discretion of the board, at such times and places as it may deem
464 proper for the examination of applicants who may wish to practice
465 dentistry or dental hygiene in this state, to administer makeup
466 examinations, or for the purpose of enforcing the dental laws of
467 the state. * * *

468 As far as practicable, all examinations, except as to
469 character, shall be upon written questions. Examinations for

470 license to practice dentistry shall be upon the following
471 subjects: anatomy, anesthesiology, biochemistry, community health,
472 dental auxiliary utilization, dental materials science, diagnosis
473 and treatment planning, embryology, endodontics, ethics, growth
474 and development, history, hospital dental service, internal
475 medicine, jurisprudence, microbiology, occlusion, operative
476 dentistry, oral anatomy, oral and maxillofacial surgery,
477 orthodontics and dentofacial orthopedics, oral and maxillofacial
478 pathology, pediatric dentistry, pharmacology, physiology, practice
479 administration, preventive dentistry, prosthodontics-fixed and
480 removable, oral and maxillofacial radiology and roentgenology, as
481 they pertain to dentistry, together with a practical examination
482 in operative and mechanical dentistry. Examinations for license
483 to practice dental hygiene shall cover the subjects taught in the
484 recognized schools of dental hygiene together with such other
485 subjects and practical demonstrations as the board may require.

486 The state shall furnish necessary equipment for the required
487 practical examinations for dentists and dental hygienists, and
488 properly house and care for same.

489 SECTION 7. Section 73-9-41, Mississippi Code of 1972, is
490 amended as follows:[CR7]

491 73-9-41. (1) No person shall practice, attempt to practice
492 or offer to practice dentistry or dental hygiene within the state
493 without first having been authorized and issued a license by the
494 board; nor shall any person practice, attempt to practice, or
495 offer to practice dentistry or dental hygiene within the state
496 during any period of suspension of his license by the board or
497 after revocation by the board of any license theretofore issued to
498 the offending person.

499 (2) A person not licensed to practice dentistry under the
500 laws of this state shall not perform any act which would
501 constitute the practice of dentistry or dental hygiene as defined
502 in Sections 73-9-3 and 73-9-5, including, but not limited to, the

503 following: (a) take impressions or casts of the human mouth or
504 teeth, (b) construct or supply dentures without the work
505 authorization or prescription of a person licensed under the laws
506 of this state to practice dentistry, and (c) construct or supply
507 dentures from impressions or casts without the work authorization
508 or prescription of a person licensed under the laws of this state
509 to practice dentistry.

510 (3) The fact that any person engages in or performs or
511 offers to engage in or performs any of the practices, acts or
512 operations set forth in Section 73-9-3 or Section 73-9-5 is prima
513 facie evidence that such a person is engaged in the practice of
514 dentistry or dental hygiene.

515 (4) In addition to any other civil remedy or criminal
516 penalty provided for by law, the executive director or the
517 secretary of the board may issue a summons to appear before the
518 board to any person or persons who the executive director or any
519 member of the board has probably cause to believe has violated
520 this section by practicing, attempting to practice, or offering to
521 practice dentistry or dental hygiene without a current, valid
522 license or permit and any necessary witnesses. The summons issued
523 by the board shall command each person to whom it is directed to
524 attend and give testimony at a time and place therein specified.
525 The summons shall be served upon the individual personally or by
526 any type of mailing requiring a return receipt and shall include a
527 statement of the charges and an explanation of the manner in which
528 the unlicensed person shall be required to respond to the board.

529 (5) In proceedings conducted pursuant to subsection (4)
530 above, the board may levy for each and every violation a civil
531 penalty upon any unlicensed person who after a hearing is found to
532 have practiced dentistry or dental hygiene without the benefit of
533 a current, valid license having been issued by the board pursuant
534 to the provisions of this chapter, as follows:

535 (a) For the first violation, a monetary penalty of not

536 more than Five Hundred Dollars (\$500.00).

537 (b) For the second violation, a monetary penalty of not
538 more than One Thousand Dollars (\$1,000.00).

539 (c) For the third and any subsequent violations, a
540 monetary penalty of not more than Five Thousand Dollars
541 (\$5,000.00).

542 (d) For any violation, the board may assess those
543 reasonable costs that are expended by the board in the
544 investigation and conduct of the hearing as provided in subsection
545 (4) above, including, but not limited to, the cost of process
546 service, court reporters, expert witnesses and other witness
547 expenses paid by the board, and investigators. Appeals from the
548 board's decision may be taken as provided in Section 73-9-65. Any
549 monetary penalty or assessment levied under this section shall be
550 paid to the board by the illegal practitioner upon the expiration
551 of the period allowed for appealing such penalties or may be paid
552 sooner if the illegal practitioner elects. Monetary penalties
553 collected by the board under this section shall be deposited to
554 the credit of the General Fund of the State Treasury. Any monies
555 collected for assessment of costs by the board shall be deposited
556 into the special fund of the board.

557 (6) No person practicing dentistry or dental hygiene without
558 a current valid license or temporary permit shall have the right
559 to receive any compensation for services so rendered. In addition
560 to any other penalties imposed under this section, any person who
561 practices dentistry or dental hygiene without a license shall
562 return any fees collected for practicing dentistry or dental
563 hygiene and shall be liable for any damages resulting from
564 negligent conduct. The board or any patient shall have the right
565 to enforce the obligation provided in this section.

566 SECTION 8. Section 73-9-43, Mississippi Code of 1972, is
567 amended as follows:[CR8]

568 73-9-43. (1) The secretary shall collect in advance all

569 fees provided for in this chapter as established by the board, not
570 to exceed:

571 Application for dental license.....\$ 600.00

572 Application for dental license through credentials...2,500.00

573 Application for dental specialty license.....400.00

574 * * *

575 Application for dental institutional, teaching or provisional
576 license.....600.00

577 Application for dental hygiene license.....400.00

578 Application for dental hygiene license through
579 credentials.....750.00

580 Application for dental hygiene institutional,
581 teaching, or provisional license.....400.00

582 Application for general anesthesia permit.....400.00

583 Application for I.V. sedation permit.....400.00

584 Application for radiology permit.....100.00

585 Annual dental license renewal.....300.00

586 Annual dental specialty license renewal.....100.00

587 * * *

588 Annual dental institutional, teaching or provisional
589 license renewal.....300.00

590 Annual dental hygiene license renewal.....150.00

591 Annual dental hygiene institutional, teaching, or
592 provisional license renewal.....150.00

593 Annual general anesthesia * * * permit renewal.....100.00

594 Annual I.V. sedation permit renewal.....100.00

595 Annual radiology permit renewal.....75.00

596 Penalty for delinquent renewal of dental licenses;
597 dental specialty licenses; and dental institutional,
598 teaching, and provisional licenses:

599 First month (plus annual renewal fee).....100.00

600 Second month (plus annual renewal fee).....150.00

601 Third month (plus annual renewal fee).....200.00

602	<u>Penalty for delinquent renewal of dental hygiene</u>	
603	<u>licenses and dental hygiene institutional, teaching,</u>	
604	<u>and provisional licenses:</u>	
605	<u>First month (plus annual renewal fee).....</u>	<u>50.00</u>
606	<u>Second month (plus annual renewal fee).....</u>	<u>75.00</u>
607	<u>Third month (plus annual renewal fee).....</u>	<u>100.00</u>
608	<u>Penalty for delinquent renewal of radiology permits:</u>	
609	<u>First month (plus annual renewal fee).....</u>	<u>45.00</u>
610	<u>Second month (plus annual renewal fee).....</u>	<u>65.00</u>
611	<u>Third month (plus annual renewal fee).....</u>	<u>75.00</u>
612	<u>Penalty for nonnotification of change of address.....</u>	<u>50.00</u>
613	<u>Penalty for duplicate renewal forms and</u>	
614	<u>certification cards.....</u>	<u>50.00</u>
615	<u>Duplicate or replacement license or permit.....</u>	<u>40.00</u>
616	<u>Certification of licensure status.....</u>	<u>40.00</u>
617	<u>Certified copy of license or permit.....</u>	<u>40.00</u>
618	<u>Handling fee for nonsufficient funds check.....</u>	<u>50.00</u>
619	<u>Requests for database information.....</u>	<u>300.00</u>
620	<u>Radiology examinations administered in board's</u>	
621	<u>office.....</u>	<u>100.00</u>
622	<u>Dental and dental hygiene licensure examination</u>	
623	<u>manuals.....</u>	<u>50.00</u>
624	<u>Dental and dental hygiene licensure by</u>	
625	<u>credentials packets.....</u>	<u>50.00</u>
626	<u>Laws and/or regulations.....</u>	<u>50.00</u>
627	<u>Disciplinary action orders.....</u>	<u>25.00</u>
628	<u>Newsletters.....</u>	<u>20.00</u>

629 The payment of annual dentist registration fees shall be
630 optional with all dentists over the age of seventy (70) years.

631 (2) The board may enact and enforce for delinquency in
632 payment for any fees set out in this section a penalty in addition
633 to the fee of an amount up to but not in excess of the fee. An
634 additional fee of an amount equal to the first penalty may be

635 assessed for each thirty (30) days, or part thereof, of
636 delinquency. If any licensed and registered dentist or dental
637 hygienist should be delinquent in payment of registration fees for
638 a period as long as ninety (90) days, such person shall be
639 presumed to be no longer practicing and shall be stricken from the
640 rolls, and in order to practice his or her profession in this
641 state thereafter may, at the discretion of the board, be
642 considered as a new applicant and subject to examination and other
643 licensing requirements as an original applicant.

644 (3) The secretary shall faithfully account for all monies
645 received by the board. All fees and any other monies received by
646 the board, except monetary penalties collected under Section
647 73-9-61, shall be deposited in a special fund that is created in
648 the State Treasury and shall be used for the implementation and
649 administration of this chapter when appropriated by the
650 Legislature for such purpose. The monies in the special fund
651 shall be subject to all provisions of the state budget laws that
652 are applicable to special fund agencies, and disbursements from
653 the special fund shall be made by the State Treasurer only upon
654 warrants issued by the State Fiscal Officer upon requisitions
655 signed by the president, secretary or administrative officer of
656 the board. Any interest earned on this special fund shall be
657 credited by the State Treasurer to the fund and shall not be paid
658 into the State General Fund. Any unexpended monies remaining in
659 the special fund at the end of a fiscal year shall not lapse into
660 the State General Fund.

661 (4) It shall be the duty of the State Auditor to audit the
662 financial affairs of the board, the transactions involving the
663 special fund and the books of the secretary of the board at least
664 once a year in the same manner as for other special fund agencies,
665 and at any time requested to do so by a majority of the board
666 casting their vote for such audit and while in a lawfully called
667 meeting. The report of the State Auditor shall be incorporated in

668 the minute book of the board.

669 (5) All fees collected from applicants, duplicate licenses,
670 certificates of recommendation and certified copies of licenses
671 shall be distributed among the members of the board in such
672 proportion as to allow the secretary twice the remuneration each
673 of the other seven (7) members receive as their compensation for
674 examining applicants for licensure. Provided, however, that for
675 examining applicants for licensure the secretary shall receive no
676 more than Twenty-four Hundred Dollars (\$2400.00) per year and no
677 other member shall receive more than Twelve Hundred Dollars
678 (\$1200.00) per year. The receipt of said compensation shall not
679 entitle members of the board to receive or be eligible for any
680 state employee group insurance, retirement or other fringe
681 benefits. Provided further, that any fees or income other than
682 the maximum allowable for examining applicants for licensure as
683 set out above shall be accounted for and may be used as needed in
684 carrying out the provisions of this chapter.

685 (6) Fees collected from annual registration shall be used to
686 maintain an office adequately staffed insofar as funds are
687 available and provide other services as may be needed for carrying
688 out the powers and duties of the board within the provisions of
689 this chapter. Fees collected from annual registration shall also
690 be used to pay the per diem and defray the expense of members of
691 the board for attendance at meetings other than those for the
692 purpose of examining applicants for licenses. In addition, a
693 portion of the fee charged for annual dentist registration, annual
694 specialty registration, annual dental hygienist registration, and
695 annual institutional, teaching or provisional registration may be
696 used to support a program to aid impaired dentists and/or dental
697 hygienists. The payment of per diem and expense for attending
698 said board meetings shall be in addition to the compensation
699 permitted above for examining applicants for licensure, and the
700 per diem shall not exceed the amount provided in Section 25-3-69.

701 SECTION 9. Section 73-9-61, Mississippi Code of 1972, is
702 amended as follows:[CR9]

703 73-9-61. (1) Upon satisfactory proof, and in accordance
704 with statutory provisions elsewhere set out for such hearings and
705 protecting the rights of accused as well as the public, the State
706 Board of Dental Examiners may deny the issuance or renewal of a
707 license or may revoke or suspend the license of any licensed
708 dentist or dental hygienist practicing in the State of
709 Mississippi, or take any other action in relation to the license
710 as the board may deem proper under the circumstances, for any of
711 the following reasons:

712 (a) Misrepresentation in obtaining a license, or
713 attempting to obtain, obtaining, attempting to renew or renewing a
714 license or professional credential by making any material
715 misrepresentation, including the signing in his professional
716 capacity any certificate that is known to be false at the time he
717 makes or signs such certificate.

718 (b) Willful violation of any of the rules or
719 regulations duly promulgated by the board, or of any of the rules
720 or regulations duly promulgated by the appropriate dental
721 licensure agency of another state or jurisdiction.

722 (c) Being impaired in the ability to practice dentistry
723 or dental hygiene with reasonable skill and safety to patients by
724 reason of illness or use of alcohol, drugs, narcotics, chemicals,
725 or any other type of material or as a result of any mental or
726 physical condition.

727 (d) Administering, dispensing or prescribing any
728 prescriptive medication or drug * * * outside the course of
729 legitimate professional dental practice.

730 (e) Being convicted or found guilty of or entering a
731 plea of nolo contendere to, regardless of adjudication, a
732 violation of any federal or state law regulating the possession,
733 distribution or use of any narcotic drug or any drug considered a

734 controlled substance under state or federal law, a certified copy
735 of the conviction order or judgment rendered by the trial court
736 being prima facie evidence thereof, notwithstanding the pendency
737 of any appeal.

738 (f) Practicing incompetently or negligently, regardless
739 of whether there is actual harm to the patient.

740 (g) Being convicted or found guilty of or entering a
741 plea of nolo contendere to, regardless of adjudication, a crime in
742 any jurisdiction which relates to the practice of dentistry or
743 dental hygiene, a certified copy of the conviction order or
744 judgment rendered by the trial court being prima facie evidence
745 thereof, notwithstanding the pendency of any appeal.

746 (h) Being convicted or found guilty of or entering a
747 plea of nolo contendere to, regardless of adjudication, a felony
748 in any jurisdiction, a certified copy of the conviction order or
749 judgment rendered by the trial court being prima facie evidence
750 thereof, notwithstanding the pendency of any appeal.

751 (i) Delegating professional responsibilities to a
752 person who is not qualified by training, experience or licensure
753 to perform them.

754 (j) The refusal of a licensing authority of another
755 state or jurisdiction to issue or renew a license, permit or
756 certificate to practice dentistry or dental hygiene in that
757 jurisdiction or the revocation, suspension or other restriction
758 imposed on a license, permit or certificate issued by such
759 licensing authority which prevents or restricts practice in that
760 jurisdiction, a certified copy of the disciplinary order or action
761 taken by the other state or jurisdiction being prima facie
762 evidence thereof, notwithstanding the pendency of any appeal.

763 (k) Surrender of a license or authorization to practice
764 dentistry or dental hygiene in another state or jurisdiction when
765 the board has reasonable cause to believe that the surrender is
766 made to avoid or in anticipation of a disciplinary action.

767 (l) Any unprofessional conduct to be determined by the
768 board on a case-by-case basis, which shall include but not be
769 restricted to the following:

770 (i) Committing any crime involving moral
771 turpitude.

772 (ii) Practicing deceit or other fraud upon the
773 public.

774 (iii) Practicing dentistry or dental hygiene under
775 a false or assumed name.

776 (iv) Advertising that is false, deceptive or
777 misleading.

778 (v) Announcing a specialized practice shall be
779 considered advertising that tends to deceive or mislead the public
780 unless the dentist announcing as a specialist conforms to other
781 statutory provisions and the duly promulgated rules or regulations
782 of the board pertaining to practice of dentistry in the State of
783 Mississippi.

784 * * *

785 (m) Failure to provide and maintain reasonable sanitary
786 facilities and conditions or failure to follow board rules
787 regarding infection control.

788 (n) Committing any act which would constitute sexual
789 misconduct upon a patient or upon ancillary staff. For purposes
790 of this subsection, the term sexual misconduct means:

791 (i) Use of the licensee-patient relationship to
792 engage or attempt to engage the patient in sexual activity; or

793 (ii) Conduct of a licensee that is intended to
794 intimidate, coerce, influence or trick any person employed by or
795 for the licensee in a dental practice or educational setting for
796 the purpose of engaging in sexual activity or activity intended
797 for the sexual gratification of the licensee.

798 (o) Violation of a lawful order of the board previously
799 entered in a disciplinary or licensure hearing; failure to

800 cooperate with any lawful request or investigation by the board;
801 or failure to comply with a lawfully issued subpoena of the board.

802 (p) Willful, obstinate * * * and continuing refusal to
803 cooperate with the board in observing its rules and regulations in
804 promptly paying all legal license or other fees required by law.

805 (q) Practicing dentistry or dental hygiene while such
806 person's license is suspended.

807 (2) In lieu of revocation of a license as provided for
808 above, the board may suspend the license of the offending dentist
809 or dental hygienist, suspend the sedation permit of the offending
810 dentist, or take any other action in relation to his license as
811 the board may deem proper under the circumstances.

812 (3) When a license to practice dentistry or dental hygiene
813 is revoked or suspended by the board, the board may, in its
814 discretion, stay such revocation or suspension and simultaneously
815 place the licensee on probation upon the condition that such
816 licensee shall not violate the laws of the State of Mississippi
817 pertaining to the practice of dentistry or dental hygiene and
818 shall not violate the rules and regulations of the board and shall
819 not violate any terms in relation to his license as may be set by
820 the board.

821 (4) In a proceeding conducted under this section by the
822 board for the denial, revocation or suspension of a license to
823 practice dentistry or dental hygiene, the board shall have the
824 power and authority for the grounds stated for such denial,
825 revocation or suspension, and in addition thereto or in lieu of
826 such denial, revocation or suspension may assess and levy upon any
827 person licensed to practice dentistry or dental hygiene in the
828 State of Mississippi, a monetary penalty, as follows:

829 (a) For the first violation of any of subparagraph (a),
830 (b), (c), (d), * * * (f), (i), (l), (m), (n), (o) or (q) of
831 subsection (1) of this section, a monetary penalty of not less
832 than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars

833 (\$500.00).

834 (b) For the second violation of any of subparagraph
835 (a), (b), (c), (d), * * * (f), (i), (l), (m), (n), (o) or (q) of
836 subsection (1) of this section, a monetary penalty of not less
837 than One Hundred Dollars (\$100.00) nor more than One Thousand
838 Dollars (\$1,000.00).

839 (c) For the third and any subsequent violation of any
840 of subparagraph (a), (b), (c), (d), * * * (f), (i), (l), (m), (n),
841 (o) or (q) of subsection (1) of this section, a monetary penalty
842 of not less than Five Hundred Dollars (\$500.00) and not more than
843 Five Thousand Dollars (\$5,000.00).

844 (d) For any violation of any of subparagraphs (a)
845 through (q) of subsection (1) of this section, those reasonable
846 costs that are expended by the board in the investigation and
847 conduct of a proceeding for licensure revocation or suspension,
848 including but not limited to the cost of process service, court
849 reporters, expert witnesses and investigators.

850 (5) The power and authority of the board to assess and levy
851 such monetary penalties hereunder shall not be affected or
852 diminished by any other proceeding, civil or criminal, concerning
853 the same violation or violations except as provided in this
854 section.

855 (6) A licensee shall have the right of appeal from the
856 assessment and levy of a monetary penalty as provided in this
857 section under the same conditions as a right of appeal is provided
858 elsewhere for appeals from an adverse ruling, order or decision of
859 the board.

860 (7) Any monetary penalty assessed and levied under this
861 section shall not take effect until after the time for appeal
862 shall have expired. In the event of an appeal, such appeal shall
863 act as a supersedeas.

864 (8) A monetary penalty assessed and levied under this
865 section shall be paid to the board by the licensee upon the

866 expiration of the period allowed for appeal of such penalties
867 under this section or may be paid sooner if the licensee elects.
868 With the exception of subsection (4)(d) of this section, monetary
869 penalties collected by the board under this section shall be
870 deposited to the credit of the General Fund of the State Treasury.

871 Any monies collected by the board under subsection (4)(d) of this
872 section shall be deposited into the special fund operating account
873 of the board.

874 (9) When payment of a monetary penalty assessed and levied
875 by the board against a licensee in accordance with this section is
876 not paid by the licensee when due under this section, the board
877 shall have power to institute and maintain proceedings in its name
878 for enforcement of payment in the chancery court of the county and
879 judicial district of residence of the licensee, and if the
880 licensee be a nonresident of the State of Mississippi, such
881 proceedings shall be in the Chancery Court of the First Judicial
882 District of Hinds County, Mississippi.

883 (10) In addition to the reasons specified in subsection (1)
884 of this section, the board shall be authorized to suspend the
885 license of any licensee for being out of compliance with an order
886 for support, as defined in Section 93-11-153. The procedure for
887 suspension of a license for being out of compliance with an order
888 for support, and the procedure for the reissuance or reinstatement
889 of a license suspended for that purpose, and the payment of any
890 fees for the reissuance or reinstatement of a license suspended
891 for that purpose, shall be governed by Section 93-11-157 or
892 93-11-163, as the case may be. If there is any conflict between
893 any provision of Section 93-11-157 or 93-11-163 and any provision
894 of this chapter, the provisions of Section 93-11-157 or 93-11-163,
895 as the case may be, shall control.

896 SECTION 10. Section 73-9-63, Mississippi Code of 1972, is
897 amended as follows:[CR10]

898 73-9-63. A complaint may be filed with the secretary or

899 executive director of the board, * * * by any person charging a
900 licensed dentist or dental hygienist with the commission of any of
901 the offenses enumerated in the preceding section. Such complaint
902 shall be in writing and signed by the accuser, or accusers. If
903 upon review of the complaint, the board determines that there is
904 not substantial justification to believe that the accused dentist
905 or dental hygienist has committed any of the offenses enumerated
906 in the preceding section, it may dismiss the complaint * * *. In
907 the event of a dismissal, the person filing the complaint and the
908 accused dentist or dental hygienist shall be given written notice
909 of the board's determination. If the board determines there is
910 reasonable cause to believe the accused has committed the
911 offenses, and a hearing should be held to determine the validity
912 of the complaint, the executive director of the board shall set a
913 day for a hearing, and shall transmit to the accused a true copy
914 of all papers filed with him, relating to such complaint, and
915 shall notify the accused that on the day fixed for hearing he may
916 appear and show cause if any why his or her license to practice
917 dentistry or dental hygiene in the state should not be revoked or
918 have other disciplinary action taken against it. The board may,
919 by regulation, establish an investigative panel consisting of at
920 least two (2) people, one (1) of whom shall be a board member, to
921 review complaints to determine the existence of probable cause and
922 whether such complaints should proceed to formal hearing.

923 Nothing in this section shall prevent the board from
924 determining that it should investigate a licensee without a signed
925 complaint provided that a prior determination is made that
926 probably cause exists that a violation of this chapter may have
927 occurred.

928 For the purpose of such hearings or investigation of
929 complaints, the board * * * is * * * empowered to require the
930 attendance of witnesses, reimburse witnesses for necessary
931 expenses and mileage incurred * * *, subpoena documents and

932 records, employ and compensate expert witnesses, administer oaths,
933 and hear testimony, either oral or documentary, for and against
934 the accused. * * * Hearings shall be conducted by a majority of
935 the members of the board. A record of the hearing shall be made
936 which shall consist * * * of all testimony received and all
937 documents and other material introduced. If after such hearing
938 the board shall be satisfied that the accused has been guilty of
939 the offense charged in the accusation, it shall thereupon, without
940 further notice, order such disciplinary action as it deems proper.

941 SECTION 11. Sections 11 through 19 of this act shall be
942 known as the "Mississippi Disabled Dentist Law."

943 SECTION 12. The license of any dentist or dental hygienist
944 in this state shall be subject to restriction, suspension or
945 revocation, as hereinafter provided, in case of inability of the
946 licensee to practice dentistry or dental hygiene with reasonable
947 skill or safety to patients by reason of one or more of the
948 following:

- 949 (a) Mental illness;
- 950 (b) Physical illness, including, but not limited to,
951 deterioration through the aging process, or loss of motor skill;
- 952 (c) Excessive use or abuse of drugs, including alcohol.

953 SECTION 13. (1) If the State Board of Dental Examiners has
954 reasonable cause to believe that a dentist or dental hygienist
955 licensed to practice dentistry or dental hygiene in this state is
956 unable to practice with reasonable skill and safety to patients
957 because of a condition described in Section 12, such board of
958 dental examiners shall cause an examination of such dentist or
959 dental hygienist to be made as described in subsection (2) of this
960 section and shall, following such examination, take appropriate
961 action within the provisions of Sections 11 through 19.

962 (2) Examination of a dentist or dental hygienist under this
963 section shall be conducted by an examining committee designated by
964 the board. Such examining committee shall be composed of at least

965 two (2) practicing dentists, three (3) practicing physicians, and
966 shall include at least one (1) psychiatrist if a question of
967 mental illness is involved.

968 SECTION 14. (1) The examining committee assigned to examine
969 a dentist or dental hygienist pursuant to referral by the board
970 under Section 13 shall conduct an examination of such dentist or
971 dental hygienist for the purpose of determining his fitness to
972 practice dentistry or dental hygiene with reasonable skill and
973 safety to patients, either on a restricted or unrestricted basis,
974 and shall report its findings and recommendations to the board.
975 The committee shall order the dentist or dental hygienist to
976 appear before the committee for examination and give him ten (10)
977 days' notice of the time and place of the examination, together
978 with a statement of the cause for such examination. Such notice
979 shall be served upon the dentist or dental hygienist either
980 personally or by registered or certified mail with return receipt
981 requested.

982 (2) If the examining committee, in its discretion, should
983 deem an independent mental or physical examination of the dentist
984 or dental hygienist necessary to its determination of the fitness
985 of the dentist or dental hygienist to practice, the committee
986 shall order the dentist or dental hygienist to submit to such
987 examination. Any person licensed to practice dentistry or dental
988 hygiene in this state shall be deemed to have waived all
989 objections to the admissibility of the examining committee's
990 report in any proceedings before the board under Sections 11
991 through 19 on the grounds of privileged communication. Any
992 dentist or dental hygienist ordered to an examination before the
993 committee under this subsection shall be entitled to an
994 independent mental or physical examination if he makes a request
995 therefor.

996 (3) Any dentist or dental hygienist who submits to a
997 diagnostic mental or physical examination as ordered by the

998 examining committee shall have a right to designate another
999 physician to be present at the examination and make an independent
1000 report to the board.

1001 (4) Failure of a dentist or dental hygienist to comply with
1002 a committee order under subsection (1) to appear before it for
1003 examination or to submit to mental or physical examination under
1004 subsection (2) shall be reported by the committee to the board,
1005 and unless due to circumstances beyond the control of the dentist
1006 or dental hygienist, shall be grounds for suspension by the board
1007 of his license to practice dentistry or dental hygiene in this
1008 state until such time as such dentist or dental hygienist has
1009 complied with the order of the committee.

1010 (5) The examining committee may inspect patient records in
1011 accordance with the rules and regulations duly promulgated by the
1012 board of dental examiners.

1013 SECTION 15. A dentist or dental hygienist may request in
1014 writing to the board a restriction of his license to practice
1015 dentistry or dental hygiene. The board may grant such request for
1016 restriction and shall have authority, if it deems appropriate, to
1017 attach conditions to the licensure of the dentist or dental
1018 hygienist to practice dentistry or dental hygiene within specified
1019 limitations, and waive the commencement of any proceeding under
1020 Section 17. Removal of a voluntary restriction on licensure to
1021 practice dentistry or dental hygiene shall be subject to the
1022 procedure for reinstatement of license in Section 18.

1023 SECTION 16. (1) The examining committee shall report to the
1024 board its findings on the examination of the dentist or dental
1025 hygienist under Section 14, the determination of the committee as
1026 to the fitness of the dentist or dental hygienist to engage in the
1027 practice of dentistry or dental hygiene with reasonable skill and
1028 safety to patients, either on a restricted or unrestricted basis,
1029 and any management that the committee may recommend. Such
1030 recommendation by the committee shall be advisory only and shall

1031 not be binding on the board.

1032 (2) The board may accept or reject the recommendation of the
1033 examining committee to permit a dentist or dental hygienist to
1034 continue to practice with or without any restriction on his
1035 license to practice dentistry or dental hygiene, or may refer the
1036 matter back to the examining committee for further examination and
1037 report thereon.

1038 (3) In the absence of a voluntary agreement by a dentist or
1039 dental hygienist under Section 15 for restriction of the licensure
1040 of such dentist or dental hygienist to practice dentistry or
1041 dental hygiene, any dentist or dental hygienist shall be entitled
1042 to a hearing in formal proceedings before the board and a
1043 determination on the evidence as to whether or not restriction,
1044 suspension or revocation of licensure shall be imposed.

1045 SECTION 17. (1) The board may proceed against a dentist or
1046 dental hygienist under Sections 11 through 19 by serving upon such
1047 dentist or dental hygienist at least fifteen (15) days' notice of
1048 a time and place fixed for a hearing, together with copies of the
1049 examining committee's report and diagnosis. Such notice and
1050 reports shall be served upon the dentist or dental hygienist
1051 either personally or by registered or certified mail with return
1052 receipt requested.

1053 (2) At the hearing the dentist or dental hygienist shall
1054 have the right to be present, to be represented by counsel, to
1055 produce witnesses or evidence in his behalf, to cross-examine
1056 witnesses, and to have subpoenas issued by the board.

1057 (3) At the conclusion of the hearing, the board shall make a
1058 determination of the merits and may issue an order imposing one or
1059 more of the following:

1060 (a) Make a recommendation that the dentist or dental
1061 hygienist submit to the care, counseling or treatment by
1062 physicians acceptable to the board.

1063 (b) Suspend or restrict the license to practice

1064 dentistry or dental hygiene for the duration of his impairment.

1065 (c) Revoke the license of the dentist or dental
1066 hygienist.

1067 (4) The board may temporarily suspend the license of any
1068 dentist or dental hygienist without a hearing, simultaneously with
1069 the institution of proceedings for a hearing under this section,
1070 if it finds that the evidence in support of the examining
1071 committee's determination is clear, competent and unequivocal and
1072 that his continuation in practice would constitute an imminent
1073 danger to public health and safety.

1074 (5) Neither the record of the proceedings nor any order
1075 entered against a dentist or dental hygienist may be used against
1076 him in any other legal proceedings except upon judicial review as
1077 provided herein.

1078 SECTION 18. (1) A dentist or dental hygienist whose
1079 licensure has been restricted, suspended or revoked under Sections
1080 11 through 17, voluntarily or by action of the board, shall have a
1081 right, at reasonable intervals, to petition for reinstatement of
1082 his license and to demonstrate that he can resume the competent
1083 practice of dentistry or dental hygiene with reasonable skill and
1084 safety to patients. Such petition shall be made in writing and on
1085 a form prescribed by the board. Action of the board on such
1086 petition shall be initiated by referral to and examination by the
1087 examining committee pursuant to the provisions of Sections 13 and
1088 14. The board may, upon written recommendation of the examining
1089 committee, restore the licensure of the dentist or dental
1090 hygienist on a general or limited basis or institute a proceeding
1091 pursuant to Section 17 for the determination of the fitness of the
1092 dentist or dental hygienist to resume his practice.

1093 (2) All orders of the board entered under Sections 17(3) and
1094 17(4) shall be subject to judicial review by appeal to the
1095 chancery court of the county of the residence of the dentist or
1096 dental hygienist involved against whom the order is rendered,

1097 within thirty (30) days following the date of entry of the order,
1098 the appeal to be taken and perfected in the same manner as
1099 provided in Section 73-9-65.

1100 SECTION 19. There shall be no liability on the part of and
1101 no action for damages against:

1102 (a) Any member of the examining committee or the board
1103 for any action undertaken or performed by such member within the
1104 scope of the functions of such committee or the board under
1105 Sections 11 through 18 when acting without malice and in the
1106 reasonable belief that the action taken by him is warranted; or

1107 (b) Any person providing information to the committee
1108 or to the board without malice in the reasonable belief that such
1109 information is accurate.

1110 SECTION 20. This act shall take effect and be in force from
1111 and after July 1, 2000.