

market for distribution for consumption: PROVIDED FURTHER, That in any industry in which federal law provides for an overtime payment based on a work week other than forty hours then provisions of this section shall not apply; however the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state: PROVIDED FURTHER, That "industry" as that term is used in this section shall mean a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259).

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CHAPTER 5

[Substitute House Bill No. 23]

DENTAL DISCIPLINARY BOARD ACT

AN ACT Relating to the practice of dentistry; amending section 22, chapter 112, Laws of 1935 and RCW 18.32.080; amending section 8, chapter 112, Laws of 1935 and RCW 18.32.230; amending section 7, chapter 93, Laws of 1953 as amended by section 38, chapter 52, Laws of 1957 and RCW 18.32.350; amending section 23, chapter 112, Laws of 1935 and RCW 18.32.380; adding new sections to chapter 18.32 RCW; repealing section 32, chapter 52, Laws of 1957 and RCW 18.32.240; repealing section 33, chapter 52, Laws of 1957 and RCW 18.32.250; repealing section 6, chapter 93, Laws of 1953, section 34, chapter 52, Laws of 1957 and RCW 18.32.260; repealing section 35, chapter 52, Laws of 1957 and RCW 18.32.270; repealing section 36, chapter 52, Laws of 1957, section 59, chapter 81, Laws of 1971 and RCW 18.32.280; prescribing penalties; and making an appropriation.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. The legislature finds that the health and well-being of the people of this state are of paramount importance.

The legislature further finds that the conduct of members of the dental profession licensed to practice dentistry in this state plays a vital role in preserving the health and well-being of the people of the state.

The legislature further finds that there is no effective means of handling disciplinary proceedings against members of the dental profession licensed in this state when such proceedings are necessary for the protection of the public health.

Therefore, the legislature declares its intention to exercise the police power of the state to protect the public health, to promote the welfare of the state, and to provide a dental disciplinary board to act as a disciplinary body for the members of the dental profession licensed to practice dentistry in this state.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definitions contained in this section shall apply throughout sections 1, and 3 through 28 of this 1977 amendatory act.

(1) "Board" means the dental disciplinary board created in section 6 of this 1977 amendatory act.

- (2) "License" means a certificate or license to practice dentistry in this state as provided for in this chapter.
- (3) "Member" means member of the dental disciplinary board.
- (4) "Secretary" means the secretary of the dental disciplinary board.
- (5) "Director" means the director of motor vehicles of the state of Washington.
- (6) "To practice dentistry" means to engage in the practice of dentistry as defined in RCW 18.32.020.

NEW SECTION. Sec. 3. The term "unprofessional conduct" as used in sections 3 through 28 of this 1977 amendatory act and in RCW 18.32.230 as now or hereafter amended shall mean any one of the following items or any combination thereof:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption, which act relates to a person's fitness to practice dentistry; and if the act constitutes a crime, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action. Upon conviction, however, the judgment and sentence shall be conclusive evidence at an ensuing disciplinary hearing of the guilt of the respondent dentist of the crime described in the indictment or information, and of said respondent dentist's violation of the statute upon which it is based: PROVIDED, That nothing herein shall be construed to affect or alter the provisions of RCW 9.96A.020;

(2) Making any misrepresentation or false promise directly or indirectly to influence, persuade or induce dental patronage, or engaging in any other improper, unprofessional, or dishonorable conduct in the practice of dentistry;

(3) Misrepresentation or concealment of a material fact in the obtaining of a license to practice dentistry or in the reinstatement of such license;

(4) Division of fees or agreeing to split or divide the fees received for dental services with any person for bringing or referring a patient, or for assisting in the care or treatment of a patient, without the knowledge of said patient or the patient's legal representative;

(5) Employing, procuring, inducing, aiding, or abetting a person not licensed or registered as a dentist to engage in the practice of dentistry. The person practiced upon shall not be deemed an accomplice, employer, procurer, inducer, aider, or abettor within the meaning of sections 3 through 28 of this 1977 amendatory act;

(6) Professional connection or association with or lending a dentist's name to another for the illegal practice of dentistry by another, or professional connection or association with any person, firm or corporation holding itself out in any manner contrary to this chapter;

(7) The impersonation of another licensed practitioner;

(8) Suspension or revocation of the dentist's license to practice dentistry by competent authority in any state, federal, or foreign jurisdiction;

(9) Gross incompetency in the practice of dentistry;

(10) Gross, wilful and continued overcharging for professional services;

(11) Wilful or repeated violations of lawful rules established by any health officer of the state or any municipal corporation or division thereof;

(12) Habitual intoxication or addiction to the use of controlled substances;

(13) The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for therapeutic purposes or in violation of law;

(14) Any conduct in violation of this chapter;

(15) Wilful violation of section 4 of this 1977 amendatory act or wilful disregard of a subpoena or notice of the dental disciplinary board.

NEW SECTION. Sec. 4. It shall be the duty and obligation of a dentist against whom a complaint is made and who is being investigated by the dental disciplinary board to cooperate with the board as requested by it by:

(1) Furnishing any papers or documents;

(2) Furnishing in writing a full and complete explanation covering the matter contained in such complaint;

(3) Appearing before the board at the time and place designated.

Should such dentist fail to cooperate with the board in the manner provided for in this section, such conduct shall be deemed to be unprofessional conduct.

NEW SECTION. Sec. 5. (1) In the event that a dentist is determined by a court of competent jurisdiction to be mentally incompetent or mentally ill, said dentist's license shall be suspended automatically by the dental disciplinary board upon entry of the court's decree or judgment, regardless of the pendency of an appeal.

(2) If it appears to the dental disciplinary board that there is reasonable cause to believe that a dentist who has not been judicially determined to be mentally incompetent or mentally ill is unable to practice dentistry with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of controlled substances, chemicals, or any other type of material, or as a result of any mental or physical condition, a complaint in the name of the board shall be served upon such dentist for a hearing on the sole issue of the capacity of the dentist to adequately conduct practice. In enforcing this subsection the board shall, upon probable cause, have authority to compel a dentist to submit to a mental or physical examination by two or more physicians designated by the board and at least one of whom may be chosen by the charged party. Failure of a dentist to submit to such examination when directed constitutes grounds for immediate suspension of such dentist's license, unless the failure was due to circumstances beyond the dentist's control, and as a result of such refusal a default and final order may be entered without the taking of testimony or presentation of evidence. A dentist affected under this subsection shall at reasonable intervals be afforded an opportunity by the board to demonstrate that said dentist can resume the competent practice of dentistry with reasonable skill and safety to patients.

For the purpose of this subsection, every dentist licensed under this chapter who shall accept the privilege to practice dentistry in this state shall by so practicing or by the making and filing of annual registration to practice dentistry in this state, be deemed to have given consent to submit to a mental or physical examination when directed in writing by the board and further to have waived all objections to the admissibility of the examining physicians' testimony or examination reports on the ground that the same constitute a privileged communication.

In any proceeding under this subsection, neither the record of proceedings nor the orders entered by the board shall be used against a dentist in any other proceeding.

NEW SECTION. Sec. 6. There is hereby created the Washington state dental disciplinary board, which shall be composed of five members, each of whom shall be a resident of this state engaged in the active practice of dentistry and who shall have been licensed to practice dentistry in this state for a period of five years or more prior to appointment to the board. Of the five members appointed to the board, two members shall reside and engage in the active practice of dentistry east of the summit of the Cascade range and the other three members shall reside and engage in the active practice of dentistry west of the summit of the Cascade range.

The attorney general shall be counsel to the board and shall represent it in all legal proceedings.

NEW SECTION. Sec. 7. Members of the board shall be appointed by the governor from among the holders of licenses to practice dentistry residing in this state and shall hold office until their successors are appointed and qualified. The members of the first board shall serve for the following terms: Two members for two years, two members for four years, and one member for six years. Thereafter members of the board shall be appointed to terms of six years. The position of the members first appointed for the term of four years shall be held in such first term and in successive terms by the members residing east of the Cascade summit. The terms of office of members shall commence on October 1st.

NEW SECTION. Sec. 8. Vacancies in the board shall be filled by the governor and a member appointed to fill a vacancy on the board shall serve for the balance of the unexpired term of the position to which said member was appointed and until the successor is appointed and takes office.

NEW SECTION. Sec. 9. Any member of the board may be removed by the governor for neglect of duty, misconduct, or malfeasance or misfeasance in office. Whenever the governor is satisfied that any member of the board has been guilty of neglect of duty, misconduct, or malfeasance or misfeasance in office, the governor shall file with the secretary of state a statement showing the governor's reasons, with the order of removal, and the secretary of state shall forthwith send a certified copy of such order of removal and statement of causes by registered mail to the last known post office address of the member in question.

NEW SECTION. Sec. 10. Members of the board shall be paid thirty-five dollars per day for time spent in performing their duties as members of the board and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03-.060 as now or hereafter amended while engaged in business of the board.

NEW SECTION. Sec. 11. The board may meet, function, and exercise its powers at any geographical location within the state.

NEW SECTION. Sec. 12. The board shall elect from its members a chairman, vice chairman, and secretary, who shall serve for one year and until their successors are elected and qualified. The board shall meet at least once a year or upon the call of the chairman at such times and places as the chairman shall designate. Three members shall constitute a quorum to transact business.

NEW SECTION. Sec. 13. Members of the board shall be immune from suit in any action, civil or criminal, based upon any disciplinary proceedings or other official acts performed in good faith as members of such board.

NEW SECTION. Sec. 14. The board shall have the following powers and duties:

(1) To adopt, amend and rescind such rules as it deems necessary to carry out the provisions of sections 1, and 3 through 28 of this 1977 amendatory act;

(2) To investigate all complaints and charges of unprofessional conduct against any holder of a license and to hold hearings to determine whether or not such charges can be substantiated;

(3) To employ necessary stenographic or clerical help under the provisions of chapter 41.06 RCW;

(4) To issue subpoenas and administer oaths in connection with any investigation, hearing, or disciplinary proceeding;

(5) To take or cause depositions to be taken as needed in any investigation, hearing, or proceeding;

(6) To investigate complaints and charges of malpractice, unsafe conditions and practices, and to analyze equipment, procedures, and training, in such cases, and to direct corrective action.

NEW SECTION. Sec. 15. Any person, firm, corporation, or public officer may submit a written complaint to the secretary charging the holder of a license to practice dentistry with unprofessional conduct, specifying the grounds therefor. If the board determines that such complaint merits consideration, or if the board shall have reason to believe, without a formal complaint, that any holder of a license has been guilty of unprofessional conduct, the board may order that a hearing be held.

NEW SECTION. Sec. 16. When a hearing is ordered by the board, the secretary shall prepare a specification of the charge or charges of unprofessional conduct made against a license holder, a copy of which shall be served upon the accused, together with a notice of the hearing, as provided in section 17 of this 1977 amendatory act.

NEW SECTION. Sec. 17. The time of hearing shall be fixed by the secretary as soon as convenient, but not earlier than thirty days after service of the charges upon the accused. The secretary shall issue a notice of hearing of the charges, which notice shall specify the time and place of hearing and shall notify the accused that he may file with the secretary a written response within twenty days of the date of service. Such notice shall also notify the accused that a stenographic record of the proceeding will be kept, that the accused shall have the opportunity to appear personally and to have counsel present, with the right to produce witnesses and evidence, to cross-examine witnesses testifying against the accused, to examine witnesses testifying for the accused, to examine such documentary evidence as may be produced against the accused, and to have subpoenas issued by the board.

NEW SECTION. Sec. 18. The procedures governing contested cases before agencies under chapter 34.04 RCW shall govern all hearings before the board, insofar as applicable and to the extent such procedures are not inconsistent with the procedures prescribed in sections 3 through 28 of this 1977 amendatory act; and the board shall have, in addition to the powers and duties set forth in sections 3

through 28 of this 1977 amendatory act, all of the powers and duties granted to, or imposed upon, an agency by the provisions of chapter 34.04 RCW, which shall include, without limitation, all powers relating to the administration of oaths, the receipt of evidence, the issuance and enforcing of subpoenas, and the taking of depositions.

NEW SECTION. Sec. 19. Within a reasonable time after holding a hearing under the provisions of sections 3 through 28 of this 1977 amendatory act, the board shall render its decision. If a majority of the members of the board vote in favor of finding the accused guilty of unprofessional conduct as specified in the charges, or any of them, the board shall prepare written findings of fact and may thereafter prepare and file in the office of the director a certificate or order of revocation or suspension of the license to practice, in which case a copy thereof shall be served upon the accused, or the board may reprimand the accused, as it deems most appropriate. If the license holder is found not guilty, or if less than a majority of the members vote for a finding of guilty, the board shall forthwith order a dismissal of the charges and the exoneration of the accused. When a proceeding has been dismissed, either on the merits or otherwise, the board shall relieve the accused from any possible odium that may attach by reason of the charges made against the accused by such public exoneration as is necessary, if requested by the accused to do so.

NEW SECTION. Sec. 20. The filing by the board in the office of the director of a certificate or order of revocation or suspension after due notice, hearing, and findings in accordance with the procedure specified in sections 3 through 28 of this 1977 amendatory act, certifying that any holder of a license has been found guilty of unprofessional conduct by the board, shall constitute a revocation or suspension of the license to practice dentistry in this state in accordance with the terms and conditions imposed by the board and embodied in the certificate or order of revocation or suspension. Such certificate or order of revocation or suspension, if appealed, may be stayed by the board or by the reviewing court upon such terms as are deemed proper.

NEW SECTION. Sec. 21. The certificate or order of revocation or suspension shall contain a brief and concise statement of the ground or grounds upon which the certificate or order is based and the specific terms and conditions of such revocation or suspension, and shall be retained as a permanent record by the director.

NEW SECTION. Sec. 22. The director shall not issue any license or any renewal thereof to any person whose license has been revoked or suspended by the board except in conformity with the terms and conditions of the certificate or order of revocation or suspension, or in conformity with any order of reinstatement issued by the board, or in accordance with the final judgment in any proceeding for review instituted under the provisions of sections 3 through 28 of this 1977 amendatory act.

NEW SECTION. Sec. 23. Any person whose license has been revoked or suspended by the board shall have the right to a judicial review of the board's decision. Such review shall be initiated by serving on the secretary a notice of appeal and filing such notice of appeal either in the superior court of Thurston county, or in the superior court of the county in which the appellant resides, within thirty days

after the filing of the certificate or order of revocation or suspension in the office of the director.

NEW SECTION. Sec. 24. The secretary shall, within twenty days after the service of the notice of appeal, transmit to the clerk of the superior court to which the appeal is taken a transcript of the record before the board, certified under the seal of the board, together with a certified copy of the board's written findings.

NEW SECTION. Sec. 25. The findings of the board, if supported by the preponderance of evidence, shall be final and conclusive. The review in the superior court shall be limited to determining whether the findings of the board are supported by the preponderance of evidence and whether the proceedings of the board were erroneous as a matter of law, or in violation of due process, or so arbitrary or capricious as to amount to an abuse of discretion, or contrary to any constitutional right, power, privilege, or immunity.

NEW SECTION. Sec. 26. The procedure governing appeals to the superior court by those provisions of chapter 34.04 RCW relating to contested cases, shall govern in matters of appeal from a decision of the board, insofar as applicable and to the extent such procedure is not inconsistent with the type of appeal provided in sections 3 through 28 of this 1977 amendatory act. The accused may secure a review of any final judgment of the superior court by appeal to the court of appeals or the supreme court as provided in other civil cases.

NEW SECTION. Sec. 27. If the board finds the holder of any license guilty of unprofessional conduct and fails to file a certificate or order of revocation or suspension in the office of the director within thirty days, the license holder shall have the right to a judicial review of such finding of the board in the same manner and to the same extent as if the certificate or order had been filed.

NEW SECTION. Sec. 28. Any person whose license has been suspended or revoked under the provisions of sections 3 through 28 of this 1977 amendatory act may apply to the board for reinstatement at any time and the board may hold hearings on any such petition and may order reinstatement and impose terms and conditions thereof and issue a certificate of reinstatement to the director.

Sec. 29. Section 22, chapter 112, Laws of 1935 and RCW 18.32.080 are each amended to read as follows:

The said director is charged with the duty of enforcing this chapter and it shall be the duty of any prosecuting attorney on the complaint of the director ~~((or))~~, the state board of dental examiners, the dental disciplinary board, or of any member ~~((thereof))~~ of either board to prosecute any violation of this chapter. The certificate of the county auditor of the county in which any such proceeding shall be pending and/or the certificate of said director ~~((of licenses))~~ certifying in substance to the facts shown of record in their respective offices, or of the facts that no license required by this chapter has been issued, registered or renewed, shall be prima facie evidence in such proceeding of the truth of such certificate.

Sec. 30. Section 8, chapter 112, Laws of 1935 and RCW 18.32.230 are each amended to read as follows:

The director ~~((may))~~ shall refuse to issue the license provided for in this chapter ~~((; and any license now in force or that shall be hereafter given may be revoked~~

or suspended, if issued)) to ((an)) any individual who ((has, by false or fraudulent representations, obtained or sought to obtain practice, or, by false or fraudulent representations obtained or sought to obtain money or any other thing of value, or for any other improper, unprofessional, or dishonorable conduct in the practice of dentistry, or is convicted of a felony, or when the licensee is found guilty of any of the following acts or offenses:

- (1) ~~Fraud in procuring license.~~
- (2) ~~Habitual intoxication or addiction to the use of drugs.~~
- (3) ~~Wilful or repeated violations of lawful rules established by any health officer of the state or any municipal corporation or division thereof.~~
- (4) ~~Division of fees or agreeing to split or divide the fees received for dental services with any person for bringing or referring a patient, or assisting in the care or treatment of a patient without the knowledge of said patient or his legal representative.~~
- (5) ~~Employing, procuring, inducing, aiding or abetting a person not licensed or registered as a dentist to engage in the practice of dentistry: PROVIDED, That the person practiced upon shall not be deemed an accomplice, employer, procurer, inducer, aider, or abettor within the meaning of this chapter.~~
- (6) ~~Making any misrepresentation or false promises, directly or indirectly to influence, persuade, or induce dental patronage.~~
- (7) ~~Professional connection or association with, or lending his name to another for the illegal practice of dentistry by another, or professional connection or association with any person, firm, or corporation holding himself, themselves, or itself out in any manner contrary to this chapter:)) is guilty of unprofessional conduct as defined in section 3 of this 1977 amendatory act.~~

Upon refusal of a license upon the ground of unprofessional conduct, the applicant may apply for a hearing before the dental disciplinary board. Such hearing shall be governed by the procedure set forth in this chapter and the applicant shall have all the rights accorded to an accused license holder, including the right to appeal from an adverse decision. In case of the refusal of a license by the dental disciplinary board, said board shall file a brief and concise statement of the grounds and reasons therefor in the office of the director which, together with the decision of the hearing committee of the dental disciplinary board, in writing, shall remain of record therein.

Sec. 31. Section 7, chapter 93, Laws of 1953 as amended by section 38, chapter 52, Laws of 1957 and RCW 18.32.350 are each amended to read as follows:

No manager, proprietor, partnership, or association owning, operating, or controlling any room, office, or dental parlors, where dental work is done, provided, or contracted for, shall employ or retain any unlicensed person or dentist as an operator; nor shall fail, within ten days after demand made by the director ((or)), the state board of dental examiners, or the dental disciplinary board in writing sent by ((registered)) certified mail, addressed to any such manager, proprietor, partnership, or association at said room, office, or dental parlor, to furnish the director ((or)), the state board of dental examiners, or the dental disciplinary board with the names and addresses of all persons practicing or assisting in the practice of dentistry in his place of business or under his control, together with a sworn statement showing by what license or authority said persons are practicing dentistry.

The sworn statement shall not be used as evidence in any subsequent court proceedings, except in a prosecution for perjury connected with its execution.

Any violation of the provisions of this section shall constitute improper, unprofessional, and dishonorable conduct; it shall also constitute grounds for injunction proceedings as provided by this chapter and in addition shall constitute a gross misdemeanor, except that the failure to furnish the information as may be requested in accordance with this section shall constitute a misdemeanor.

Sec. 32. Section 23, chapter 112, Laws of 1935 and RCW 18.32.380 are each amended to read as follows:

The attorney general, each prosecuting attorney, the director, the state board of dental examiners, the dental disciplinary board, or any citizen of any county where any person shall engage in the practice of dentistry as herein defined without possessing a valid license so to do, may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin such person from engaging in the practice of dentistry as herein defined until a valid license to practice dentistry be secured: PROVIDED, HOWEVER, That such injunction shall not relieve such person so practicing dentistry without a valid license from criminal prosecution therefor, but such remedy by injunction shall be in addition to the liability of such offender to criminal prosecution.

NEW SECTION. Sec. 33. The following acts or parts of acts are each hereby repealed:

- (1) Section 32, chapter 52, Laws of 1957 and RCW 18.32.240;
- (2) Section 33, chapter 52, Laws of 1957 and RCW 18.32.250;
- (3) Section 6, chapter 93, Laws of 1953, section 34, chapter 52, Laws of 1957 and RCW 18.32.260;
- (4) Section 35, chapter 52, Laws of 1957 and RCW 18.32.270; and
- (5) Section 36, chapter 52, Laws of 1957, section 59, chapter 81, Laws of 1971 and RCW 18.32.280.

NEW SECTION. Sec. 34. There is hereby appropriated from the general fund to the dental disciplinary fund the sum of seventy thousand dollars, or so much thereof as may be necessary for the purpose of carrying out the provisions of this 1977 amendatory act during the 1977-79 biennium.

NEW SECTION. Sec. 35. Sections 1 through 28, and section 37 of this 1977 amendatory act shall be added to chapter 18.32 RCW.

NEW SECTION. Sec. 36. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 37. Sections 1 through 28 of this 1977 amendatory act shall be known and may be cited as the "Dental Disciplinary Board Act".

Passed the House April 11, 1977.

Passed the Senate April 5, 1977.

Approved by the Governor April 19, 1977.

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