

CS FOR HOUSE BILL NO. 93(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 1/20/06

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVE ANDERSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to dentists and dental hygienists and the Board of Dental Examiners;**
2 **establishing certain committees for the discipline and peer review of dentists; excluding**
3 **the adjudicatory proceedings of the Board of Dental Examiners and its committees from**
4 **the Administrative Procedure Act and from the jurisdiction of the office of**
5 **administrative hearings; and providing for an effective date."**

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 PURPOSE. It is the purpose of this Act to modify the existing framework used to
10 license and discipline dentists and dental hygienists in order to improve the practice of
11 dentistry and dental hygiene in the state and to better protect the public. It is the further
12 purpose of this Act to provide peer review and to ensure confidentiality for the complainants
13 and the licensee, to involve licensed dentists and dental hygienists in the decision-making

1 process, and to better address patient and public complaints.

2 * **Sec. 2.** AS 08.01.080 is amended to read:

3 **Sec. 08.01.080. Department regulations.** The department shall adopt
4 regulations to carry out the purposes of this chapter including but not limited to
5 describing

6 (1) how an examination is to be conducted;

7 (2) what is contained in application forms;

8 (3) how a person applies for an examination or license;

9 **(4) how to maintain the confidentiality of information required to**
10 **be confidential under AS 08.01.087.**

11 * **Sec. 3.** AS 08.01.087 is amended by adding new subsections to read:

12 (d) Except as otherwise provided under AS 08.36, the department shall
13 maintain the confidentiality of information involving a dental hygienist or dentist
14 licensed in the state under AS 08.32 or AS 08.36 or a person who is a patient or
15 complainant of a licensed dentist or dental hygienist if the information pertains to the
16 health, discipline, or rehabilitation of the licensee or other person.

17 (e) Not more than 30 days after receiving confidential information under (d) of
18 this section, the department shall make available for inspection and copying by a
19 licensee all information pertaining to a complaint against the licensee, including the
20 name of the accuser, the nature of the complaint, and all evidence provided to the
21 department in support of the complaint. If the department fails to make the
22 information available as required under this subsection, the information withheld from
23 the licensee must be excluded from a disciplinary hearing involving the licensee.

24 * **Sec. 4.** AS 08.32.160 is amended to read:

25 **Sec. 08.32.160. Grounds for discipline, suspension, or revocation of license.**

26 The board may revoke or suspend the license of a dental hygienist, or may reprimand,
27 censure, or discipline a licensee, **or impose another form of discipline that the**
28 **board determines is warranted and necessary,** if, after a hearing, the board finds
29 that the licensee

30 (1) **knowingly** used [OR KNOWINGLY COOPERATED IN] deceit,
31 fraud, or intentional misrepresentation to obtain a license or registration;

1 (2) engaged in deceit, fraud, or intentional misrepresentation in the
2 course of providing or billing for professional services or engaging in professional
3 activities;

4 (3) advertised professional services in a false or misleading manner;

5 (4) has been convicted of a felony or other crime that affects the
6 licensee's ability to continue to practice competently and safely;

7 (5) failed to comply with this chapter, with a regulation adopted under
8 this chapter or under AS 08.36, or with an order of the board;

9 (6) continued to practice after becoming unfit due to

10 (A) professional incompetence;

11 (B) addiction or dependence on alcohol or other drugs that
12 **threatens or compromises patient care, has the potential to compromise**
13 **patient care, or** impairs the licensee's ability to practice safely;

14 (C) physical or mental disability, **not overcome through an**
15 **accommodation for purposes of complying with this chapter, that**
16 **threatened or compromised patient care, had the potential to compromise**
17 **patient care, or impaired the licensee's ability to practice safely;**

18 (D) failure to keep informed of or use current professional
19 theories and practices;

20 (7) engaged in lewd or immoral conduct in connection with the
21 delivery of professional service to patients;

22 (8) performed clinical procedures [FOR COMPENSATION] without
23 being under the supervision of a licensed dentist.

24 * **Sec. 5.** AS 08.32.171 is repealed and reenacted to read:

25 **Sec. 08.32.171. Disciplinary sanctions.** The board may summarily suspend
26 the license of a licensee who refuses to submit to a physical or mental examination
27 under AS 08.36.070(b)(1) upon proof by clear and convincing evidence that the
28 licensee poses an immediate threat of harm to patient care in the absence of a physical
29 or mental examination. A decision to suspend a license under this section is a final
30 administrative decision subject to judicial review under AS 44.62.560 and 44.62.570.

31 * **Sec. 6.** AS 08.36.010(a) is amended to read:

1 (a) There is created the Board of Dental Examiners consisting of nine
 2 members who reside in the state. Six members shall be currently licensed dentists
 3 under this chapter who have been engaged in the practice of dentistry in the state for
 4 at least five years immediately preceding appointment, two members shall be dental
 5 hygienists currently licensed under AS 08.32 who have been engaged in the clinical
 6 practice of dental hygiene in the state for at least five years immediately preceding
 7 appointment, and one member shall be a public member.

8 * **Sec. 7.** AS 08.36.010 is amended by adding new subsections to read:

9 (c) At least five board members who are licensed dentists must maintain a
 10 practice of dentistry in the state during the term of the appointment, and at least one
 11 member who is a licensed dental hygienist must maintain a practice of dental hygiene
 12 in the state during the term of the appointment.

13 (d) In this section, "practice of dentistry" and "practice of dental hygiene"
 14 must include at least an average of 20 hours a week of private clinical practice in the
 15 state, excluding temporary absences because of illness or travel, that is regulated by
 16 the board under this chapter.

17 * **Sec. 8.** AS 08.36.025 is amended to read:

18 **Sec. 08.36.025. Suspension of board members.** A member against whom an
 19 accusation or complaint has been filed under this chapter [AS 44.62] for violation of
 20 AS 08.32.160 or AS 08.36.315 is suspended from the board until the decision of the
 21 board on the accusation or complaint takes effect [UNDER AS 44.62.520].

22 * **Sec. 9.** AS 08.36.030 is repealed and reenacted to read:

23 **Sec. 08.36.030. Officers.** The board shall elect a president, vice-president, and
 24 secretary from among its members, each to serve a term of not more than two years. If
 25 the president is absent or incapable of performing the duties of president, the vice-
 26 president shall succeed to the presidency until the president is able to return to the
 27 duties of president. All officers must be licensed dentists except for the position of
 28 secretary. The president's duties include coordination, supervision, and direction of the
 29 functions of the board, with the assistance of the department or other staff and the
 30 concurrence of the board.

31 * **Sec. 10.** AS 08.36.040 is amended to read:

1 **Sec. 08.36.040. Meetings.** The board shall meet at the call of the president at
 2 least four times annually and at other times necessary to conduct its business. In the
 3 absence of a call of the president, a majority of the board may call a meeting. **A**
 4 **meeting of the board may be conducted telephonically except for a meeting**
 5 **conducted for the purpose of holding a disciplinary hearing. A disciplinary**
 6 **hearing shall be conducted in person.**

7 * **Sec. 11.** AS 08.36.070 is amended to read:

8 **Sec. 08.36.070. General powers.** (a) The board shall

9 (1) provide for the examination of applicants and issue licenses to
 10 those applicants it finds qualified;

11 (2) register licensed dentists and licensed dental hygienists who are in
 12 good standing;

13 (3) affiliate with the American Association of Dental Examiners and
 14 pay annual dues to the association;

15 (4) **establish peer review and confidentiality procedures for**
 16 **hearings, direct investigations,** hold hearings, and order the disciplinary sanction of a
 17 person who violates this chapter, AS 08.32, or a regulation of the board;

18 (5) supply forms for applications, licenses, permits, certificates, and
 19 other papers and records;

20 (6) enforce the provisions of this chapter and AS 08.32 and adopt or
 21 amend the regulations necessary to make the provisions of this chapter and AS 08.32
 22 effective;

23 (7) adopt regulations ensuring that renewal of registration is contingent
 24 upon proof of continued professional competence by a licensed dentist or licensed
 25 dental hygienist;

26 (8) provide the department with the requirements for proof of
 27 continued professional competence and request the department to make these
 28 requirements available to each licensed dentist and licensed dental hygienist at least
 29 one year before the date on which the dentist or dental hygienist must renew
 30 registration;

31 (9) at least annually cause to be published in a newspaper of general

1 circulation in each major city in the state a summary of disciplinary actions the board
 2 has taken during the preceding calendar year **that identifies only the name of the**
 3 **licensee, the type of discipline imposed, and a reference to the statute or**
 4 **regulation violated by the licensee; a copy of the summary published under this**
 5 **paragraph shall be delivered to the named licensee; if possible, the delivery shall**
 6 **be by electronic mail or facsimile;**

7 (10) issue permits or certificates to licensed dentists, licensed dental
 8 hygienists, and dental assistants who meet standards determined by the board for
 9 specific procedures that require specific education and training;

10 (11) regulate the reentry into practice of inactive dentists and dental
 11 hygienists;

12 (12) require, as a condition of a license or license renewal issued by
 13 the board, that an applicant or licensee has, at the time of licensing or renewal and
 14 maintains throughout the period of a license, current certification in cardiopulmonary
 15 resuscitation techniques, except that the board may waive this requirement under an
 16 agreement with the applicant or licensee if the applicant or licensee documents, to the
 17 satisfaction of the board, the existence of a physical impairment that results in an
 18 inability to be certified in cardiopulmonary resuscitation techniques and the agreement
 19 specifies that the applicant or licensee will ensure that another person who is certified
 20 in cardiopulmonary resuscitation techniques will be in the same **office** [ROOM] as the
 21 applicant or licensee whenever the applicant or licensee is practicing dentistry [ON A
 22 LIVING PATIENT WHO IS ALSO PRESENT]; the board may include in the
 23 agreement an expiration date or provide that the agreement remains in effect until
 24 reviewed by the board;

25 **(13) maintain confidentiality over patient, complainant, and**
 26 **licensee information that contains personal health information or is otherwise**
 27 **required to be kept confidential under federal or state law;**

28 **(14) rely on the department for legal, investigative, and**
 29 **administrative services as necessary to carry out the board's duties under this**
 30 **chapter.**

31 (b) The board may

1 (1) order a licensed dentist or licensed dental hygienist to submit to a
 2 reasonable physical or mental examination if **there is substantial evidence that** the
 3 dentist's or the dental hygienist's physical or mental capacity to practice safely **during**
 4 **the past 12 months** is at issue **and the examination is reasonably necessary to**
 5 **determine whether the licensee has violated AS 08.32 or this chapter; an**
 6 **examination ordered by the board shall be conducted in the state by a person**
 7 **who is licensed in the state and otherwise qualified to perform the examination,**
 8 **as determined by the board; a licensee may submit for the board's consideration**
 9 **another medical evaluation in addition to an examination ordered by the board;**
 10 [AND]

11 (2) authorize its representative to inspect the practice facilities or
 12 patient or professional records of a dentist at reasonable times and in a reasonable
 13 manner to monitor compliance with this chapter and with AS 08.32; **and**

14 **(3) monitor informal and confidential chemical dependency**
 15 **intervention programs that may include a licensee's colleague, family member, or**
 16 **friend.**

17 * **Sec. 12.** AS 08.36.080 is repealed and reenacted to read:

18 **Sec. 08.36.080. Application of Administrative Procedure Act.** (a) The
 19 administrative adjudication procedures of AS 44.62 (Administrative Procedure Act)
 20 do not apply to adjudicatory proceedings of the board or the board's committees
 21 except that final administrative determinations by the board are subject to judicial
 22 review as provided in AS 44.62.560 and 44.62.570.

23 (b) AS 44.62.010 - 44.62.320 and 44.62.640 apply to regulations adopted by
 24 the board.

25 (c) An order issued under AS 08.36.070(b)(1) may be appealed to the superior
 26 court. The court shall review the matter de novo.

27 * **Sec. 13.** AS 08.36.315 is amended to read:

28 **Sec. 08.36.315. Grounds for discipline, suspension, or revocation of license.**
 29 The board may revoke or suspend the license of a dentist, or may reprimand, censure,
 30 or discipline a dentist, or both, **or impose another form of discipline that the board**
 31 **determines is warranted and necessary,** if the board finds after a hearing that the

1 dentist

2 (1) **knowingly** used or knowingly cooperated in deceit, fraud, or
3 intentional misrepresentation to obtain a license;

4 (2) engaged in deceit, fraud, or intentional misrepresentation in the
5 course of providing or billing for professional dental services or engaging in
6 professional activities;

7 (3) advertised professional dental services in a false or misleading
8 manner;

9 (4) received compensation for referring a person to another dentist or
10 dental practice;

11 (5) has been convicted of a felony or other crime that affects the
12 dentist's ability to continue to practice dentistry competently and safely;

13 (6) engaged in the performance of patient care, or permitted the
14 performance of patient care by persons under the dentist's supervision, that does not
15 conform to minimum professional standards of dentistry regardless of whether actual
16 injury to the patient occurred;

17 (7) failed to comply with this chapter, with a regulation adopted under
18 this chapter, or with an order of the board;

19 (8) continued to practice after becoming unfit due to

20 (A) professional incompetence;

21 (B) failure to keep informed of or use current professional
22 theories or practices;

23 (C) addiction or dependence on alcohol or other drugs that
24 **threatens or compromises patient care, has the potential to compromise**
25 **patient care, or** impairs the dentist's ability to practice safely;

26 (D) physical or mental disability, **not overcome through an**
27 **accommodation for purposes of complying with this chapter, that**
28 **threatened or compromised patient care, had the potential to compromise**
29 **patient care, or impaired the licensee's ability to practice safely;**

30 (9) engaged in lewd or immoral conduct in connection with the
31 delivery of professional service to patients;

1 (10) permitted a dental hygienist or dental assistant who is employed
 2 by the dentist or working under the dentist's supervision to perform a dental procedure
 3 in violation of AS 08.32.110 or AS 08.36.070(a)(10);

4 (11) failed to report to the board a death that occurred on the premises
 5 used for the practice of dentistry within 48 hours.

6 * **Sec. 14.** AS 08.36.315 is amended by adding new subsections to read:

7 (b) A dentist's choice to employ one of several treatment modalities
 8 recognized or approved by an accredited dental school or an approved provider of
 9 continuing education for dentists may not be grounds for discipline imposed under (a)
 10 of this section.

11 (c) The board may not discriminate against a licensee solely on the basis of a
 12 mental or physical impairment or disability. The board may reinstate a license of a
 13 person who suffers from a mental or physical impairment or disability on proof of
 14 completion of rehabilitation through an accredited rehabilitation program designed for
 15 professionals and consistent with regulations adopted under this chapter. When
 16 making a decision under this section that is based on the existence of a physical or
 17 mental impairment or disability, the board shall comply with federal law. The board
 18 shall consider voluntary rehabilitation completed by a licensee as a mitigating
 19 circumstance in determining the form of discipline to impose on a licensee. The board
 20 shall consider a failure to complete a rehabilitation program by a licensee as an
 21 aggravating circumstance in determining the form of discipline to impose on a
 22 licensee.

23 (d) In this section, a "mental or physical impairment or disability" includes
 24 addiction to drugs or alcohol.

25 * **Sec. 15.** AS 08.36 is amended by adding a new section to read:

26 **Sec. 08.36.316. Disciplinary and peer review procedures.** (a) The board
 27 shall conduct disciplinary proceedings consistent with principles of substantive and
 28 procedural due process and by using peer review, when applicable, as described in this
 29 section.

30 (b) The board shall appoint one or more disciplinary committees and one or
 31 more peer review committees to address disciplinary matters. The committees shall be

1 made up of dentists who are currently licensed in Alaska, who have at least five years
2 private practice experience, and who are unbiased.

3 (c) A person may file a written complaint with the board on a form provided
4 by the board and signed by the complainant for actions involving a person licensed
5 under this chapter. The complaint must contain a clear statement of the details of each
6 act of alleged misconduct, including the approximate place and time of the act.

7 (d) The department shall mail a copy of the complaint by certified mail to the
8 licensee within 30 days after receipt of the complaint and shall provide notice to the
9 licensee of the requirement to provide an answer within 30 days after receipt of the
10 notice. Failure to file a timely answer may be presumed to be an admission of guilt
11 except that a licensee may not be compelled to provide evidence of criminal
12 wrongdoing.

13 (e) The department shall conduct a preliminary investigation and determine
14 whether to dismiss the complaint for insufficiency of evidence to support the
15 allegation. If the department determines that a complaint contains some factual basis,
16 the department shall present the complaint and supporting documentation to the board
17 president. The board president may return the complaint to the department for further
18 investigation or submit the complaint and supporting documentation to the board with
19 a recommendation for dismissal of the complaint, submission of the complaint to a
20 disciplinary committee, or submission of the complaint to mediation by a peer review
21 committee. The board president may not recommend mediation by a peer review
22 committee, nor may the board refer a matter for mediation by a peer review
23 committee, if the allegations in the complaint include fraud, sexual misconduct,
24 criminal activity, or prescription medication abuse.

25 (f) The peer review committee may decide to dismiss a complaint, subject to
26 the approval of the board, mediate the complaint, refer the matter to the disciplinary
27 committee, or refer the matter to the board. The peer review committee shall issue a
28 written report to the board that includes its recommendations. Mediation shall be
29 informally conducted without regard to the rules of evidence. If mediation is
30 successful, the complaint shall be closed subject to the terms of the mediation and the
31 approval of the board. The board shall approve a mediated agreement under this

1 subsection unless good cause is shown that the agreement is contrary to law or the
2 facts of the case. The peer review committee may oversee a resolution that the parties
3 agree on, including refunds, payment of damages, release of claims, fines, disciplinary
4 action, or other action that is just and equitable under the circumstances. The peer
5 review committee proceedings and records are confidential and are not subject to the
6 public records law under AS 40.25.100 - 40.25.220. The committee may request the
7 assistance of counsel through the department and the Department of Law.

8 (g) Within 30 days after service of the peer review committee findings and
9 decision, a party to the peer review may appeal the peer review committee's findings
10 and decision to the board if the decision includes a recommendation for disciplinary
11 action by the board. The appeal shall be limited to a decision by the board of whether
12 sufficient evidence supported the findings and decision of the peer review committee.
13 An appeal to the board under this subsection does not disqualify the board from
14 reviewing further decisions on the matter.

15 (h) The board shall appoint a disciplinary committee made up of three
16 currently licensed dentists who have each been engaged in the practice of dentistry in
17 the state for at least five years in the same field as the licensee. The disciplinary
18 committee shall review complaints referred to it by a peer review committee or by the
19 board. The disciplinary committee is not bound by a peer review committee's findings
20 in cases that have involved peer review and may fully reconsider the issues and
21 conduct an evidentiary hearing consistent with the court rules of evidence and civil
22 procedure. The parties may be represented by counsel at a proceeding of the
23 disciplinary committee. After a hearing, the disciplinary committee shall issue written
24 findings and a decision that dismisses the case, accepts the findings of a peer review
25 committee with or without modification and orders disciplinary action, remands the
26 matter back to a peer review committee, or orders disciplinary action. The department
27 shall provide necessary staff to support the disciplinary committee except that
28 disciplinary and enforcement recommendations shall be made only by a member of
29 the disciplinary committee, the peer review committee, or the board. Each member of
30 the disciplinary committee shall be present during the presentation of evidence in
31 order to participate in the decision on a matter. The disciplinary committee may

1 resolve a complaint through a stipulated agreement with the licensee in lieu of a
2 hearing at any stage in the proceedings.

3 (i) At the next regularly scheduled board meeting, the board shall conduct a
4 review of the disciplinary committee recommendations and shall either affirm the
5 decision or remand the matter to the disciplinary committee with instructions. A party
6 may appeal a board decision to the superior court within 30 days after the filing and
7 service of the board decision.

8 (j) Decisions made under this section shall be made by a quorum of the
9 committee membership.

10 (k) The department, with the assistance of the Department of Law, shall
11 investigate and present a complaint involving a dentist or dental hygienist and may
12 negotiate a settlement agreement with a licensee, subject to the approval of the
13 committee and the board. The department and the Department of Law may not have ex
14 parte contact with the board or a disciplinary or peer review committee member. The
15 disciplinary committee shall appoint an attorney to serve as administrative law judge
16 who shall rule on matters of law and procedure and who may issue subpoenas. The
17 committee shall serve as the sole fact finder and shall issue written findings, based on
18 clear and convincing evidence, and a recommendation of discipline or dismissal of the
19 complaint to the board, within 180 days following the conclusion of the hearing.

20 (l) A licensee may appeal a decision of the disciplinary committee to the full
21 board by filing a written notice of appeal on a form provided by the board within 30
22 days after receiving notice of a decision of the disciplinary committee. The board shall
23 review the evidence and the conclusions and recommendations. The board shall issue
24 a written decision within 90 days after receiving the notice of appeal and shall mail a
25 copy of the decision to the licensee. A board decision under this section is a final
26 administrative decision subject to appeal to the superior court. Documents pertaining
27 to an administrative appeal are confidential, and the heading shall be styled "in the
28 matter of" followed by the licensee's initials.

29 (m) Evidence at any stage of a disciplinary proceeding shall be admitted under
30 the standards set out in the Alaska Rules of Evidence except that rebuttal testimony of
31 patients of the licensee may not be excluded. An expert shall be allowed to testify

1 before the board only if the expert is a licensed dentist in good standing and is actively
 2 engaged in the clinical practice of dentistry. The conduct of the hearing shall adhere to
 3 the extent practicable to the Alaska Rules of Civil Procedure.

4 (n) The attorney for the licensee is entitled to receive copies of all relevant
 5 material, including names of witnesses and investigative records in the possession and
 6 control of the department or the Department of Law. The department shall provide
 7 copies to the licensee not later than 120 days before a disciplinary hearing. Failure to
 8 timely disclose relevant evidence shall result in the exclusion of the nondisclosed
 9 evidence.

10 (o) Disciplinary committees and peer review committees established under
 11 this section are review organizations for the purposes of AS 18.23.005 - 18.23.070.

12 (p) An administrative law judge appointed to a disciplinary matter may enter
 13 an order requiring the licensee to pay a portion of the reasonable costs of the
 14 disciplinary hearing if the judge finds by clear and convincing evidence that the
 15 licensee acted maliciously or outrageously toward a patient. A cost order may not
 16 exceed 50 percent of actual costs. A licensee shall be entitled to a portion of the
 17 licensee's reasonable defense costs and fees incurred as part of a disciplinary matter if
 18 the administrative law judge determines that the department or the Department of Law
 19 acted in bad faith or recklessly in pursuing the disciplinary matter. Not more than 50
 20 percent of the licensee's reasonable costs and fees may be imposed.

21 (q) Investigative, peer review, and disciplinary records shall be confidential
 22 and related disciplinary and peer review proceedings shall be closed to the public
 23 except that a summary of the results of a disciplinary proceeding may be released to
 24 the public after the board has issued a final decision in a matter. Information and
 25 records obtained through disciplinary investigations and peer review and disciplinary
 26 proceedings are not subject to disclosure under subpoena or court order.

27 * **Sec. 16.** AS 08.36.317 is amended to read:

28 **Sec. 08.36.317. Civil fine authority.** Notwithstanding AS 08.01.075(a), in a
 29 disciplinary action, the board may impose a civil fine not to exceed \$250,000
 30 [~~\$25,000~~] for each complaint resulting in a finding of a violation or violations of
 31 this chapter or of a regulation adopted under this chapter.

1 * **Sec. 17.** AS 08.36.320(c) is amended to read:

2 (c) The board may summarily suspend the license of a licensee who refuses to
3 submit to a physical or mental examination under AS 08.36.070(b)(1). A person
4 whose license is suspended under this section is entitled to a hearing conducted by the
5 **board** [OFFICE OF ADMINISTRATIVE HEARINGS (AS 44.64.010)] within seven
6 days after the effective date of the order. If, after a hearing, the board upholds the
7 suspension, the licensee may appeal the suspension to a court of competent
8 jurisdiction.

9 * **Sec. 18.** AS 08.36.320 is amended by adding a new subsection to read:

10 (f) For purposes of implementing the board's power to summarily suspend a
11 license under AS 08.01.075(c), the term "clear and immediate danger to the public
12 health and safety" in AS 08.01.075(c), as applied to persons licensed under this
13 chapter, means that the licensee's physical or mental condition or professional
14 judgment is such that patients will likely suffer serious injury or death if the licensee is
15 permitted to continue to practice dentistry. Proof of "clear and immediate danger to the
16 public health and safety" shall be by clear and convincing evidence and shall be based
17 on verifiable recent harm to patients when there was a substantial probability of death
18 or serious personal injury to the patient.

19 * **Sec. 19.** AS 08.36 is amended by adding new sections to read:

20 **Sec. 08.36.325. Statute of limitations.** A disciplinary action may not be
21 considered by the board or a committee of the board if the conduct giving rise to a
22 complaint or accusation has occurred, or is discovered after reasonable inquiry, more
23 than two years before the filing of a complaint or accusation except when the licensee
24 has actively attempted to conceal the conduct.

25 **Sec. 08.36.330. Disciplinary action; board principles.** The board shall be
26 ultimately responsible for approving and imposing all disciplinary actions. The
27 governing principle of all disciplinary investigations and proceedings shall be direct,
28 confidential, and candid peer review, with a focus on solving and correcting
29 deficiencies, not on punishment or public humiliation. The board shall establish
30 standards in regulation for the imposition of consistent discipline linked to each action
31 giving rise to the discipline.

1 * **Sec. 20.** AS 08.36.365 is amended by adding new paragraphs to read:

2 (5) be judged by the dentist's peers who are licensed dentists in the
3 state;

4 (6) be treated consistently and fairly, in light of the goal of upholding
5 the professional and personal dignity of the licensee and the profession in general;

6 (7) be afforded privacy and confidentiality; in light of the number of
7 unfounded patient allegations made and the harmful effects those allegations have on
8 the professional reputation of the licensee, and in order to promote true peer review,
9 investigations and disciplinary hearings shall be closed to the public and the records
10 shall be confidential.

11 * **Sec. 21.** AS 18.23.070(5) is amended to read:

12 (5) "review organization" means

13 (A) a hospital governing body or a committee whose
14 membership is limited to health care providers and administrative staff, except
15 where otherwise provided for by state or federal law, and that is established by
16 a hospital, by a clinic, by one or more state or local associations of health care
17 providers, by an organization of health care providers from a particular area or
18 medical institution, or by a professional standards review organization
19 established under 42 U.S.C. 1320c-1, to gather and review information relating
20 to the care and treatment of patients for the purposes of

21 (i) evaluating and improving the quality of health care
22 rendered in the area or medical institution;

23 (ii) reducing morbidity or mortality;

24 (iii) obtaining and disseminating statistics and
25 information relative to the treatment and prevention of diseases, illness,
26 and injuries;

27 (iv) developing and publishing guidelines showing the
28 norms of health care in the area or medical institution;

29 (v) developing and publishing guidelines designed to
30 keep the cost of health care within reasonable bounds;

31 (vi) reviewing the quality or cost of health care services

1 provided to enrollees of health maintenance organizations;

2 (vii) acting as a professional standards review
3 organization under 42 U.S.C. 1320c;

4 (viii) reviewing, ruling on, or advising on controversies,
5 disputes, or questions between a health insurance carrier or health
6 maintenance organization and one or more of its insured or enrollees;
7 between a professional licensing board, acting under its powers of
8 discipline or license revocation or suspension, and a health care
9 provider licensed by it when the matter is referred to a review
10 organization by the professional licensing board; between a health care
11 provider and the provider's patients concerning diagnosis, treatment, or
12 care, or a charge or fee; between a health care provider and a health
13 insurance carrier or health maintenance organization concerning a
14 charge or fee for health care services provided to an insured or enrollee;
15 or between a health care provider or the provider's patients and the
16 federal or a state or local government, or an agency of the federal or a
17 state or local government;

18 (ix) acting on the recommendation of a credential
19 review committee or a grievance committee;

20 (B) the State Medical Board established by AS 08.64.010;

21 (C) a committee established by the commissioner of health and
22 social services and approved by the State Medical Board to review public
23 health issues regarding morbidity or mortality; at least 75 percent of the
24 committee members must be health care providers;

25 (D) the Joint Commission on Accreditation of Healthcare
26 Organizations (JCAHO);

27 **(E) the state Board of Dental Examiners established under**
28 **AS 08.36.010 and a disciplinary or peer review committee established by**
29 **the Board of Dental Examiners.**

30 * **Sec. 22.** AS 44.64.030(a)(6) is amended to read:

31 (6) AS 08 (occupational licensing), other than AS 08.08, **AS 08.32,**

1 AS 08.36, and AS 08.62.046;

2 * **Sec. 23.** AS 44.62.330(a)(2) is repealed.

3 * **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 APPLICABILITY. AS 08.36.316, added by sec. 15 of this Act, applies to complaints
6 filed on or after the effective date of this Act.

7 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 TRANSITIONAL PROVISION; BOARD MEMBERS. Notwithstanding
10 AS 08.36.010, as amended by secs. 6 and 7 of this Act, a member of the Board of Dental
11 Examiners who holds a position on the board on the day before the effective date of this Act
12 may continue to hold the position, subject to removal as provided by law, until the person's
13 term expires. Appointments occurring on or after the effective date of this Act are governed
14 by AS 08.36.010, as amended by secs. 6 and 7 of this Act, whether the appointment is for a
15 new term or to fill the unexpired portion of a term.

16 * **Sec. 26.** This Act takes effect immediately under AS 01.10.070(c).