

**CS FOR HOUSE BILL NO. 93(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 3/1/06**

**Referred: 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

14 (1) a dental hygienist or dentist licensed in the state under AS 08.32 or  
15 AS 08.36 unless the licensee is disciplined by the board and, even if the licensee is  
16 disciplined by the board, shall maintain the confidentiality of the licensee's personal  
17 medical records; and

18 (2) a person who is a patient or complainant of a licensed dentist or  
19 dental hygienist if the information pertains to the health or rehabilitation of the person.

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

27 \* **Sec. 4.** AS 08.32.160 is amended to read:

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

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

1 that the licensee

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

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

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

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

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

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

13 (A) professional incompetence;

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

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

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

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

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

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

28 **Sec. 08.32.171. Disciplinary sanctions.** The board may summarily suspend  
29 the license of a licensee who refuses to submit to a physical or mental examination  
30 under AS 08.36.070(b)(1) upon proof by clear and convincing evidence that the  
31 licensee poses an immediate threat of harm to patient care in the absence of a physical

1 or mental examination. A decision to suspend a license under this section is a final  
2 administrative decision subject to judicial review under AS 44.62.560 and 44.62.570.

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

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

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

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

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

20 \* **Sec. 8.** AS 08.36.025 is amended to read:

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

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

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

1 functions of the board, with the assistance of the department or other staff and the  
2 concurrence of the board.

3 \* **Sec. 10.** AS 08.36.040 is amended to read:

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

10 \* **Sec. 11.** AS 08.36.070 is amended to read:

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

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

14 (2) register licensed dentists and licensed dental hygienists who are in  
15 good standing;

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

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

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

23 (6) enforce the provisions of this chapter and AS 08.32 and adopt or  
24 amend the regulations necessary to make the provisions of this chapter and AS 08.32  
25 effective;

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

29 (8) provide the department with the requirements for proof of  
30 continued professional competence and request the department to make these  
31 requirements available to each licensed dentist and licensed dental hygienist at least

1 one year before the date on which the dentist or dental hygienist must renew  
2 registration;

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

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

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

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

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

31 **(14) rely on the department for legal, investigative, and**

1 administrative services as necessary to carry out the board's duties under this  
 2 chapter.

3 (b) The board may

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

13 [AND]

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

17 (3) monitor informal and confidential chemical dependency  
 18 intervention programs that may include a licensee's colleague, family member, or  
 19 friend.

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

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

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

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

30 \* **Sec. 13.** AS 08.36.315 is amended to read:

31 **Sec. 08.36.315. Grounds for discipline, suspension, or revocation of license.**

1 The board may revoke or suspend the license of a dentist, or may reprimand, censure,  
 2 or discipline a dentist, or both, **or impose a lesser form of discipline that the board**  
 3 **determines is warranted and necessary,** if the board finds after a hearing that the  
 4 dentist

5 (1) used or knowingly cooperated in deceit, fraud, or intentional  
 6 misrepresentation to obtain a license;

7 (2) engaged in deceit, fraud, or intentional misrepresentation in the  
 8 course of providing or billing for professional dental services or engaging in  
 9 professional activities;

10 (3) advertised professional dental services in a false or misleading  
 11 manner;

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

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

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

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

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

23 (A) professional incompetence;

24 (B) failure to keep informed of or use current professional  
 25 theories or practices;

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

29 (D) physical or mental disability, **not overcome through an**  
 30 **accommodation for purposes of complying with this chapter, that**  
 31 **threatened or compromised patient care, had the potential to compromise**

1                    **patient care, or impaired the licensee's ability to practice safely;**

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

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

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

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

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

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

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

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

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

1 section.

2 (b) The board shall appoint one or more disciplinary committees and one or  
3 more peer review committees to address disciplinary matters. The committees shall be  
4 made up of dentists who are currently licensed in Alaska, who have at least five years  
5 private practice experience, and who are unbiased.

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

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

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

28 (f) The peer review committee may decide to dismiss a complaint, subject to  
29 the approval of the board, mediate the complaint, refer the matter to the disciplinary  
30 committee, or refer the matter to the board. The peer review committee shall issue a  
31 written report to the board that includes its recommendations. Mediation shall be

1 informally conducted without regard to the rules of evidence. If mediation is  
2 successful, the complaint shall be closed subject to the terms of the mediation and the  
3 approval of the board. The board shall approve a mediated agreement under this  
4 subsection unless good cause is shown that the agreement is contrary to law or the  
5 facts of the case. The peer review committee may oversee a resolution that the parties  
6 agree on, including refunds, payment of damages, release of claims, fines, disciplinary  
7 action, or other action that is just and equitable under the circumstances. The peer  
8 review committee proceedings and records are confidential and are not subject to the  
9 public records law under AS 40.25.100 - 40.25.220. The committee may request the  
10 assistance of counsel through the department and the Department of Law.

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

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

1 the disciplinary committee, the peer review committee, or the board. Each member of  
2 the disciplinary committee shall be present during the presentation of evidence in  
3 order to participate in the decision on a matter. The disciplinary committee may  
4 resolve a complaint through a stipulated agreement with the licensee in lieu of a  
5 hearing at any stage in the proceedings.

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

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

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

23 (l) A party may appeal a decision of the disciplinary committee to the full  
24 board by filing a written notice of appeal on a form provided by the board within 30  
25 days after receiving notice of a decision of the disciplinary committee. The board shall  
26 review the evidence and the conclusions and recommendations. The board shall issue  
27 a written decision within 90 days after receiving the notice of appeal and shall mail a  
28 copy of the decision to the licensee. A board decision under this section is a final  
29 administrative decision subject to appeal to the superior court. Documents pertaining  
30 to an administrative appeal are confidential to the extent provided in AS 08.01.087(d),  
31 and the heading shall be styled "in the matter of" followed by the licensee's initials.

1 (m) Evidence at any stage of a disciplinary proceeding shall be admitted under  
2 the standards set out in the Alaska Rules of Evidence except that rebuttal testimony of  
3 patients of the licensee may not be excluded. An expert shall be allowed to testify  
4 before the board only if the expert is a licensed dentist in good standing and is actively  
5 engaged in the clinical practice of dentistry. The conduct of the hearing shall adhere to  
6 the extent practicable to the Alaska Rules of Civil Procedure.

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

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

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

24 (q) Investigative, peer review, and disciplinary records shall be confidential,  
25 and related disciplinary and peer review proceedings shall be closed to the public,  
26 except that a summary of the results of a disciplinary proceeding may be released to  
27 the public and, if the licensee is disciplined by the board, information that does not  
28 contain identifying information of the patient or is not a personal medical record of the  
29 licensee may be released after the board has issued a final decision in a matter.  
30 Confidential information and records obtained through disciplinary investigations and  
31 peer review and disciplinary proceedings are not subject to disclosure under subpoena

1 or court order.

2 \* **Sec. 16.** AS 08.36.317 is amended to read:

3 **Sec. 08.36.317. Civil fine authority.** Notwithstanding AS 08.01.075(a), in a  
4 disciplinary action, the board may impose a civil fine not to exceed \$50,000 [\$25,000]  
5 for each complaint resulting in a finding of a violation or violations of this chapter  
6 or of a regulation adopted under this chapter.

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

8 (c) The board may summarily suspend the license of a licensee who refuses to  
9 submit to a physical or mental examination under AS 08.36.070(b)(1). A person  
10 whose license is suspended under this section is entitled to a hearing conducted by the  
11 board [OFFICE OF ADMINISTRATIVE HEARINGS (AS 44.64.010)] within seven  
12 days after the effective date of the order. After [IF, AFTER] a hearing, a party [, THE  
13 BOARD UPHOLDS THE SUSPENSION, THE LICENSEE] may appeal [THE  
14 SUSPENSION] to a court of competent jurisdiction.

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

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

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

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

31 **Sec. 08.36.330. Disciplinary action; board principles.** The board shall be

1 ultimately responsible for approving and imposing all disciplinary actions. The  
 2 governing principle of all disciplinary investigations and proceedings shall be direct,  
 3 confidential, and candid peer review, with a focus on solving and correcting  
 4 deficiencies, not on punishment or public humiliation. The board shall establish  
 5 standards in regulation for the imposition of consistent discipline linked to each action  
 6 giving rise to the discipline.

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

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

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

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

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

18 (5) "review organization" means

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

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

29 (ii) reducing morbidity or mortality;

30 (iii) obtaining and disseminating statistics and  
 31 information relative to the treatment and prevention of diseases, illness,

1 and injuries;

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

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

6 (vi) reviewing the quality or cost of health care services  
7 provided to enrollees of health maintenance organizations;

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

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

24 (ix) acting on the recommendation of a credential  
25 review committee or a grievance committee;

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

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

31 (D) the Joint Commission on Accreditation of Healthcare

1 Organizations (JCAHO);

2 **(E) the state Board of Dental Examiners established under**  
 3 **AS 08.36.010 and a disciplinary or peer review committee established by**  
 4 **the Board of Dental Examiners.**

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

6 (6) AS 08 (occupational licensing), other than AS 08.08, **AS 08.32,**  
 7 **AS 08.36,** and AS 08.62.046;

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

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

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

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

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

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