

CS FOR HOUSE BILL NO. 93(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/12/06

Referred: Rules

Sponsor(s): REPRESENTATIVES ANDERSON, Elkins

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 a new subsection 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 * **Sec. 4.** AS 08.32.160 is amended to read:

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

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

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

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

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

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

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

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

6 (A) professional incompetence;

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

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

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

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

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

20 * **Sec. 5.** AS 08.32.171 is repealed and reenacted to read:

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

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

28 (a) There is created the Board of Dental Examiners consisting of nine
29 members **who physically reside in the state.** Six members shall be **currently**
30 licensed dentists **under this chapter** who have been engaged in the **clinical** practice
31 of dentistry in the state for **at least** five years immediately preceding appointment, two

1 members shall be dental hygienists currently licensed under AS 08.32 who have been
 2 engaged in the clinical practice of dental hygiene in the state for at least five years
 3 immediately preceding appointment, and one member shall be a public member.

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

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

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

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

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

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

19 **Sec. 08.36.030. Officers.** The board shall elect a president, vice-president, and
 20 secretary from among its members, each to serve a term of not more than two years. If
 21 the president is absent or incapable of performing the duties of president, the vice-
 22 president shall succeed to the presidency until the president is able to return to the
 23 duties of president. The president must be a licensed dentist unless the board elects a
 24 licensee from among the board members to assist the president in performing the
 25 president's duties. The president's duties include coordination, supervision, and
 26 direction of the functions of the board, with the assistance of the department or other
 27 staff and the concurrence of the board.

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

29 **Sec. 08.36.040. Meetings.** The board shall meet at the call of the president at
 30 least four times annually and at other times necessary to conduct its business. In the
 31 absence of a call of the president, a majority of the board may call a meeting. A

1 **meeting of the board may be conducted telephonically except for a meeting**
 2 **conducted for the purpose of holding a disciplinary hearing. A disciplinary**
 3 **hearing shall be conducted in person.**

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

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

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

8 (2) register licensed dentists and licensed dental hygienists who are in
 9 good standing;

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

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

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

17 (6) enforce the provisions of this chapter and AS 08.32 and adopt or
 18 amend the regulations necessary to make the provisions of this chapter and AS 08.32
 19 effective;

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

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

28 (9) at least annually cause to be published in a newspaper of general
 29 circulation in each major city in the state a summary of disciplinary actions the board
 30 has taken during the preceding calendar year **that identifies the name of the licensee,**
 31 **the type of discipline imposed, and a reference to the statute or regulation**

1 **violated by the licensee; a copy of the summary published under this paragraph**
 2 **shall be delivered to the named licensee; if possible, the delivery shall be by**
 3 **electronic mail or facsimile;**

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

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

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

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

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

28 (b) The board may

29 (1) order a licensed dentist or licensed dental hygienist to submit to a
 30 reasonable physical or mental examination if **there is reasonable evidence that** the
 31 dentist's or the dental hygienist's physical or mental capacity to practice safely **during**

1 the past 12 months is at issue and the examination is reasonably necessary to
 2 determine whether the licensee has violated AS 08.32 or this chapter; if an
 3 examination is designated by the board to be conducted in the state, then the
 4 examination must be conducted by a person who is licensed in the state and
 5 otherwise qualified to perform the examination, as determined by the board; a
 6 licensee may submit for the board's consideration another medical evaluation in
 7 addition to an examination ordered by the board; [AND]

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

11 (3) monitor informal and confidential chemical dependency
 12 intervention programs.

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

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

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

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

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

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

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

31 (2) engaged in deceit, fraud, or intentional misrepresentation in the

1 course of providing or billing for professional dental services or engaging in
2 professional activities;

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

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

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

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

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

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

16 (A) professional incompetence;

17 (B) failure to keep informed of or use current professional
18 theories or practices;

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

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

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

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

31 (11) failed to report to the board a death that occurred on the premises

1 used for the practice of dentistry within 48 hours.

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

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

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

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

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

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

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

30 (c) A person or the department may file a written complaint with the board on
31 a form provided by the board and signed by the complainant for actions involving a

1 person licensed under this chapter. The complaint must contain a clear statement of
2 the details of each act of alleged misconduct, including the approximate place and
3 time of the act.

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

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

23 (f) The peer review committee may recommend dismissal of a complaint,
24 subject to the approval of the board, mediate the complaint, refer the matter to the
25 disciplinary committee, or refer the matter to the board. The peer review committee
26 shall issue a written report to the board that includes its recommendations. Mediation
27 shall be informally conducted without regard to the rules of evidence. If mediation is
28 successful, the complaint shall be closed subject to the terms of the mediation and the
29 approval of the board. The board shall approve a mediated agreement under this
30 subsection unless good cause is shown that the agreement is contrary to law or the
31 facts of the case. The peer review committee may oversee a resolution that the parties

1 agree on, including refunds, payment of damages, release of claims, fines, disciplinary
2 action, or other action that is just and equitable under the circumstances. The peer
3 review committee proceedings and records are confidential and are not subject to the
4 public records law under AS 40.25.100 - 40.25.220. The committee may request the
5 assistance of counsel through the department and the Department of Law.

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

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

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

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

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

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

27 (m) Evidence at any stage of a disciplinary proceeding shall be admitted under
28 the standards set out in the Alaska Rules of Evidence except that rebuttal testimony of
29 patients of the licensee may not be excluded. An expert shall be allowed to testify
30 before the board only if the expert is a licensed dentist in good standing and is actively
31 engaged in the clinical practice of dentistry. The conduct of the hearing shall adhere to

1 the extent practicable to the Alaska Rules of Civil Procedure.

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

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

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

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

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

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

1 or of a regulation adopted under this chapter.

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

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

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

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

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

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

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

1 giving rise to the discipline.

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

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

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

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

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

13 (5) "review organization" means

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

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

24 (ii) reducing morbidity or mortality;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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