

No. 1985-118

AN ACT

HB 1678

Amending the act of May 1, 1933 (P.L.216, No.76), entitled "An act relating to dentistry; defining and providing for the licensing and registration of dentists and dental hygienists, and for the revocation and suspension of such licenses and registrations, subject to appeal, and for their reinstatement; defining the powers and duties of the State Dental Council and Examining Board and the Department of Public Instruction; providing penalties; and repealing existing laws," reestablishing the State Dental Council and Examining Board; providing for its composition, powers and duties; and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2 of the act of May 1, 1933 (P.L.216, No.76), known as The Dental Law, is amended by adding definitions to read:

Section 2. Definitions.—* * *

"General Anesthesia" is a controlled state of unconsciousness, including deep sedation, accompanied by the partial or complete loss of protective reflexes which includes the patient's inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or combination thereof.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Conscious Sedation" means a minimally depressed level of consciousness which retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or combination thereof.

"Foreign dental schools" means the dental schools which have not been approved by the Commission on Accreditation of the American Dental Association and which are located in countries other than the United States or Canada.

Section 2. The act is amended by adding a section to read:

Section 2.1. State Board of Dentistry.—(a) The State Board of Dentistry shall consist of the Secretary of Health, or his designee, the Director of the Bureau of Consumer Protection in the Office of the Attorney General, or his designee, the Commissioner of Professional and Occupational Affairs and ten additional members, who shall be appointed by the Governor with the advice and consent of a majority of the members elected to the Senate. Two members shall represent the public at large. Seven members shall have been licensed and engaged in the actual practice of dentistry in this Commonwealth during a period of not less than ten years immediately preceding their appointment. One member shall be a dental hygienist licensed to practice

dental hygiene in this Commonwealth and shall have been engaged in the practice of dental hygiene for a period of at least three years immediately preceding appointment.

(b) *The term of office of each professional and public member shall be six years from his appointment or until his successor has been duly appointed and qualified according to law, but no longer than six months beyond the six-year period. No member may serve more than two consecutive terms. In the event that any member should die or resign or otherwise become disqualified during his term of office, his successor shall be appointed in the same way and with the same qualifications as set forth in subsection (a) and shall hold office for the unexpired term.*

(c) *A majority of the members of the board serving in accordance with law shall constitute a quorum for purposes of conducting the business of the board. Except for temporary and automatic suspensions under sections 4.1 and 5.1, a member may not be counted as part of a quorum or vote on any issue unless he or she is physically in attendance at the meeting.*

(d) *The board shall annually select, from among its members, a chairman and a secretary.*

(e) *Each member of the board, other than the Secretary of Health, or his designee, the Director of the Bureau of Consumer Protection, or his designee, and the Commissioner of Professional and Occupational Affairs, shall receive sixty dollars (\$60) per diem when actually attending to the work of the board. Members shall also receive the amount of reasonable traveling, hotel and other necessary expenses incurred in the performance of their duties in accordance with Commonwealth regulations.*

(f) *A member who fails to attend three consecutive meetings shall forfeit his seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of an immediate family member.*

(g) *The board is subject to evaluation, review and termination in the manner provided in the act of December 22, 1981 (P.L. 508, No. 142), known as the "Sunset Act."*

(h) *A public member who fails to attend two consecutive statutorily mandated training seminars in accordance with section 813(e) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," shall forfeit his or her seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the public member, finds that the public member should be excused from a meeting because of illness or the death of a family member.*

Section 3. Section 3 of the act, amended April 30, 1937 (P.L.554, No.136), December 15, 1959 (P.L.1753, No.656), November 26, 1982 (P.L.753, No.208) and May 2, 1985 (P.L.18, No.8), is amended to read:

Section 3. General Powers of the [State Dental Council and Examining Board.—The State Dental Council and Examining Board] *State Board of Dentistry.—The State Board of Dentistry* (hereinafter called the board) [, created, appointed, and organized in accordance with the provisions of the

Administrative Code, and its amendments, shall have power] shall have the following powers and duties:

(a) To establish and alter, from time to time, the standards of preliminary and professional education and the training required for licensure to practice dentistry and as dental hygienists.

(b) To investigate and determine the acceptability and to approve and disapprove institutions and colleges of this State and of other states and countries for the education of students desiring to be licensed to practice dentistry or as dental hygienists, and to revoke approvals where such institutions and colleges no longer are deemed proper.

(c) To provide for and to regulate the licensing, and to license to practice dentistry, after examination, any duly qualified applicant, at least twenty-one years of age, of good moral character, not addicted to the use of intoxicating liquor or narcotic drugs, who has obtained the required education, together with a diploma from an approved institution or college conferring upon him or her the degree of doctor of dental surgery or other established dental degree.], **unless he has been convicted of a felonious act prohibited by the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country. An applicant's statement on the application declaring the absence of a conviction shall be deemed satisfactory evidence of the absence of a conviction, unless the board has some evidence to the contrary.] The board shall not issue a license to an applicant who has been convicted of a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or of an offense under the laws of another jurisdiction which if committed in this Commonwealth would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act," unless: (1) at least ten (10) years have elapsed from the date of conviction, (2) the applicant satisfactorily demonstrates to the board that he has made significant progress in personal rehabilitation since the conviction such that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of his patients or the public or a substantial risk of further criminal violations, and (3) the applicant otherwise satisfies the qualifications contained in or authorized by this act. As used in this section the term "convicted" shall include a judgment, an admission of guilt or a plea of nolo contendere.**

(d) To provide for and to regulate the licensing, and to license as a dental hygienist, after examination, any duly qualified person, not less than eighteen years of age, of good moral character, not addicted to the use of intoxicating liquor or narcotic drugs, who has obtained the required education, together with a certificate or diploma from an approved institution or college for the training of dental hygienists[, or who in lieu of such education and certificate or diploma from an approved institution or college for the training of dental hygienists, has had fifteen (15) or more years experience in the practice of dental hygiene, and who complies with all other requirements of law and submits an application for a license to practice dental hygiene on or

before the thirty-first day of December, one thousand nine hundred forty-seven]. *The board shall, consistent with this act, adopt regulations providing for the general supervision and practice of dental hygienists under this act.*

(e) To prescribe the subjects, character, manner, time and place of examinations and the filing of applications for examinations, and to conduct and provide for the conduct of the examinations *in accordance with section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929"*; to make written reports of such examinations, which reports shall be preserved in the Department of **[Public Instruction]** *State* for a period of not less than five years; to collect such fees for such examinations as may be fixed according to **[law]** *regulation*; and to issue licenses to such applicants as successfully pass such examination.

(f) To accept and endorse, as valid in this Commonwealth, licenses to practice dentistry or as dental hygienists issued by **[other states and countries]** *another state or territory or by Canada*, and to accept as properly qualified any applicant who has been examined and certified by the National Dental Examining Board, upon the payment of such fees as prescribed according to law for applicants in this State: Provided, That the standards of such other state **[and country]**, *territory or of Canada* or of such national board are, in the opinion of the board, equal to the standards of this Commonwealth: And provided further, That such other state **[and country]**, *territory or Canada* shall recognize and endorse, as valid in such state **[or country]** *or territory or in Canada*, licenses issued by this Commonwealth.

(g) To prescribe the professional title or other designation which any person licensed under this act may use in connection with his or her name in the practice of dentistry or as a dental hygienist, to regulate the use of the same, and to prosecute those who illegally use the same.

(h) To investigate and conduct hearings, either before the membership of the board or committees thereof, and to discipline and prosecute those guilty of illegal practices.

(i) To suspend **[and revoke, by majority action of the entire board, the license or registration of any licensee who has been guilty of a crime or misdemeanor involving moral turpitude; or of a violation of any of the provisions of this act; or of fraudulent or unlawful practices, or fraudulent, misleading or deceptive representations; or of unprofessional conduct, detrimental or dangerous to the public health, safety, morals or welfare; or of wilful or gross malpractice or neglect; or of false, misleading or deceptive advertising as respects the skill of the operator, the quality of materials, drugs or medicines used, or methods practiced; or of employing or making use of solicitors or free public press agents, or of advertising by means of signs, posters, handbills, circulars, slides, motion pictures, radio, newspapers, magazines or other publications or advertising media—(1) professional superiority, (2) the performance of professional services in a superior manner, (3) the character or durability of his work, (4) to guarantee any dental service, (5) to perform any dental operation painlessly, (6) prices for professional services, (7) free dental work, or (8) free examinations, or (9) by display of a tooth, teeth, bridge work, or any portion of the human head, or**

(10) by means of large, glaring or conspicuous light or other signs: Provided, however, That the foregoing shall not prevent the use of signs containing the name of any licensee and the word dentist, or any abbreviation thereof; or of habitual intemperance, or who is addicted to the use of narcotic drugs, or is insane; and to reinstate licenses and registrations in any cases where a majority of the entire board shall determine the same to be just and proper., revoke or refuse to grant licenses as further provided for in section 4.1.

(j) To provide for, regulate, and require *biennial renewals* of all persons licensed in accordance with the provisions of this act **[to register biennially with the board]**; to prescribe the form of such **[registrations] license renewals**; to require, as a condition precedent to such biennial **[registration] renewal**, the payment of such biennial **[registration] renewal** fee as shall be fixed **[according to law] by regulation of the board**; to issue biennial **[registration certificates] renewals** to such persons; and to suspend or revoke the license **[or registration]** of such persons as fail, refuse or neglect to **[register] renew** biennially, or pay such fee. **[The Department of Public Instruction shall be required to publish biennially a list of the persons registered for that particular biennium.]**

(k) To keep a record**[, and it shall be the duty of the board so to do,]** of all licenses **[and registrations issued and all registrations made with the board] and biennial renewals**, and to prescribe the form of such record.

(l) To submit biennially to the Department of **[Public Instruction] State** an estimate of the financial requirements of the board for administrative, investigative, legal, and miscellaneous expenses.

(m) To administer and enforce the laws of the Commonwealth relating to the practice of dentistry and dental hygienists, and to instruct and require its agents to bring prosecutions for unauthorized and unlawful practices.

(n) To keep minutes and records of all its transactions and proceedings.

(o) To adopt, promulgate, and enforce such rules and regulations as may be deemed necessary by the board and proper to carry into effect the powers hereby conferred.

(p) To hold at least four meetings a year for the conduct of its business upon giving public notice of such meetings in the manner provided by law.

(q) To submit annually to the Appropriations Committees of the House of Representatives and the Senate, fifteen days after the Governor has submitted his budget to the General Assembly, a copy of the budget request for the upcoming fiscal year which the board previously submitted to the Department of State.

(r) To submit annually a report to the Professional Licensure Committee of the House of Representatives and to the Consumer Protection and Professional Licensure Committee of the Senate a description of the types of complaints received, status of cases, board action which has been taken and the length of time from the initial complaint to final board resolution.

(s) To provide for the licensing of graduates of foreign dental schools in accordance with section 6.2.

(t) To purchase and publish, other than in the legal section, in a newspaper of general circulation in the area where the disciplined dentist conducts

or recently conducted his or her practice, notice of all final disciplinary decisions which impose discipline amounting to more than a reprimand. The board shall not be required to comply with the provisions of this subsection in those cases in which the board places a dentist in a probationary program for drug or alcohol abuse or where, in the board's opinion, publication of the disciplinary decision would be detrimental to the licensee's rehabilitation and recovery.

Section 4. Section 4 of the act, amended December 15, 1959 (P.L.1753, No.656), is amended to read:

Section 4. Fees.—(a) The fee for an applicant for examination and licensure to practice dentistry or as a dental hygienist in this Commonwealth shall be fixed by the [Department of Public Instruction in accordance with existing law] *board by regulation*. It shall be the duty of all persons now qualified and engaged in the practice of dentistry and dental hygiene, or who shall hereafter be licensed by the board, to [register] *renew* biennially with said board, and pay for each such biennial [registration] *renewal* a fee which shall be [ten dollars (\$10) for persons engaged in the practice of dentistry and four dollars (\$4) for persons engaged in the practice of dental hygiene] *fixed by the board by regulation*.

(b) *All fees required pursuant to this act shall be fixed by the board by regulation and shall be subject to the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." If the revenues raised by fees, fines and civil penalties imposed pursuant to this act are not sufficient to meet expenditures over a two-year period, the board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures.*

(c) *If the Bureau of Professional and Occupational Affairs determines that the fees established by the board are inadequate to meet the minimum enforcement efforts required by this act, then the bureau, after consultation with the board and subject to the "Regulatory Review Act," shall increase the fees by regulation in an amount that adequate revenues are raised to meet the required enforcement effort.*

(d) *All fees, fines and penalties collected under the provisions of this act shall be paid into the Professional Licensure Augmentation Account established pursuant to and for use in accordance with the act of July 1, 1978 (P.L.700, No.124), known as the "Bureau of Professional and Occupational Affairs Fee Act."*

Section 5. The act is amended by adding a section to read:

Section 4.1. Reason for Refusal, Revocation or Suspension of License.—(a) The board shall have authority, by majority action, to refuse, revoke or suspend the license of any dentist or dental hygienist for any or all of the following reasons:

(1) *Failing to demonstrate the qualifications or standards for a license contained in this act or regulations of the board.*

(2) *Making misleading, deceptive, untrue or fraudulent representations.*

(3) *Practicing fraud or deceit in obtaining a license to practice dentistry or dental hygiene or making a false or deceptive biennial renewal with the board.*

(4) *Having been found guilty of a crime or misdemeanor involving moral turpitude or having been found guilty of a felony in violation of the laws of this Commonwealth or any other state, territory or country. For purposes of this clause (4), the phrase "having been found guilty" shall include a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere.*

(5) *Having a license to practice dentistry or dental hygiene revoked, suspended or having other disciplinary action imposed or consented to by the proper licensing authority of another state, territory or country or his application for license refused, revoked or suspended by the proper licensing authority of another state, territory or country.*

(6) *Violating any of the provisions of this act or of a lawful regulation promulgated by the board or violating a lawful order of the board previously entered by the board in a disciplinary proceeding.*

(7) *Knowingly maintaining a professional connection or association with any person who is in violation of this act or regulations of the board or knowingly aiding, assisting, procuring or advising any unlicensed person to practice dentistry or dental hygiene contrary to this act or regulations of the board.*

(8) *Engaging in unprofessional conduct. For purposes of this clause (8), unprofessional conduct shall include any departure from, or failure to conform to, the standards of acceptable and prevailing dental or dental hygiene practice in which proceeding actual injury to the patient need not be established.*

(9) *Committing an act of gross negligence, malpractice or incompetence or repeated acts of negligence, malpractice or incompetence.*

(10) *Engaging in false, misleading or deceptive advertising.*

(11) *Being unable to practice dentistry or as a dental hygienist with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of controlled substances, chemicals or any other type of material, or as the result of any mental or physical condition. In enforcing this clause (11), the board shall, upon probable cause, have authority to compel a dentist or dental hygienist to submit to a mental or physical examination by physicians designated by the board. Failure of a dentist or dental hygienist to submit to such examination when directed by the board, unless such failure is due to circumstances beyond his control, shall constitute an admission of the allegations against him, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A dentist or dental hygienist affected under this clause (11) shall, at reasonable intervals, be afforded an opportunity to demonstrate that he or she can resume a competent practice of dentistry or dental hygiene with reasonable skill and safety to patients.*

(b) *When the board finds that the license of any person may be refused, revoked or suspended under the terms of this section, the board may:*

(1) *Deny the application for license.*

(2) *Administer a public reprimand.*

(3) *Revoke, suspend, limit or otherwise restrict a license as determined by the board. Unless ordered to do so by a court, the board shall not rein-*

state the license of a person to practice dentistry, or as a dental hygienist, which has been revoked, and such person shall be required to apply for a license after a five-year period in accordance with section 3, if he or she desires to practice at any time after such revocation. Any person whose license has been suspended or revoked because of a felony conviction under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or similar law of another jurisdiction, may apply for reinstatement after a period of at least ten (10) years has elapsed from the date of conviction. The board may reinstate the license if the board is satisfied that the person has made significant progress in personal rehabilitation since the conviction such that his reinstatement should not be expected to create a substantial risk of harm to the health and safety of his patients or the public or a substantial risk of further criminal violations and if the person meets all other licensing qualifications of this act, including the examination requirement.

(4) Require a licensee to submit to the care, counseling or treatment of a physician or psychologist designated by the board.

(5) Require that a licensee successfully complete a course of educational training and testing as directed by the board.

(6) Restore or reissue, in its discretion, a license to practice dentistry or dental hygiene and impose any disciplinary or corrective measures which it might originally have imposed.

(7) Suspend enforcement of its findings thereof and place a licensee on probation with the right to vacate the probationary order for noncompliance.

(8) Order any person found to have violated any provision of this act or the regulations governing the practice of dentistry to restore to any patient aggrieved by an unlawful act or practice, any moneys or property, real or personal, acquired by means of such act or practice, provided the board shall not order restitution in a dollar amount greater than those moneys received by the licensee or his agent.

(c) All actions of the board shall be taken subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(d) The board shall temporarily suspend a license under circumstances as determined by the board to be an immediate and clear danger to the public health or safety. The board shall issue an order to that effect without a hearing, but upon due notice, to the licensee concerned at his last known address, which shall include a written statement of all allegations against the licensee. The provisions of subsection (c) shall not apply to temporary suspension. The board shall thereupon commence formal action to suspend, revoke or restrict the license of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within thirty days following the issuance of an order temporarily suspending a license, the board shall conduct, or cause to be conducted, a preliminary hearing to determine that there is a prima facie case supporting the suspen-

sion. The licensee whose license has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board, but in no event longer than one hundred eighty days.

(e) The board shall require a person whose license has been suspended or revoked to return the license in such manner as the board directs. Failure to do so shall be a misdemeanor of the third degree.

Section 6. Section 6 of the act is amended to read:

Section 6. Records to Be Public and Be Received in Evidence.—The records of the board shall be public and open to inspection during business hours. [Copies thereof, duly certified by the Superintendent of Public Instruction or any of his deputies, shall be received in evidence in all courts and elsewhere.] *In all actions or proceedings in any court, a transcript of any board record or any part thereof, which is certified to be a true copy by the board, shall be entitled to admission in evidence.*

Section 7. The act is amended by adding sections to read:

Section 6.1. Investigative Subpoenas.—The board shall have the authority to issue subpoenas, upon application of an attorney responsible for representing disciplinary matters before the board, for the purpose of investigating alleged violations of the disciplinary provisions administered by the board. Dental records may not be subpoenaed without consent of the patient or without order of a court of competent jurisdiction on a showing that the records are reasonably necessary for the conduct of the investigation. The court may impose such limitations on the scope of the subpoenas as are necessary to prevent unnecessary intrusion into patient confidential information. The board is authorized to apply to the Commonwealth Court to enforce its subpoenas.

Section 6.2. Licensing of Graduates of Foreign Dental Schools.—
(a) An Advisory Committee to serve one six-month term from the effective date of this section, appointed by the board, consisting of three faculty members from dental schools accredited in this Commonwealth, shall be charged with the responsibility of consulting with the aforesaid schools in order to develop programs and standards for graduates of foreign dental schools to qualify for licensure. The committee shall make recommendations and report to the board. The board shall report to the House Professional Licensure Committee and the Senate Committee on Consumer Protection and Professional Licensure, within six months of the effective date of this act, on the status and progress of this Advisory Committee. Thereafter, the board shall annually report to the House Professional Licensure Committee and the Senate Committee on Consumer Protection and Professional Licensure on programs and standards for graduates of foreign dental schools. The Advisory Committee members shall be compensated at the rate of sixty dollars (\$60) per diem when actually attending to the work of the board and shall also receive the amount of reasonable traveling, hotel and other neces-

sary expenses incurred in the performance of their duties in accordance with Commonwealth regulations.

(b) It is the intent of the General Assembly that the provisions of this section be construed liberally in order to ensure the establishment of viable and accessible programs through which graduates of foreign dental schools may obtain such further preclinical and clinical training as shall lead to the awarding of the D.M.D. or D.D.S. degree at accredited dental schools in this Commonwealth in order to qualify for licensure under the provisions of this act.

Section 8. Section 7 of the act is repealed.

Section 9. Sections 8 and 10 of the act, amended December 15, 1959 (P.L.1753, No.656), are amended to read:

Section 8. Status of Existing Practitioners Preserved.—Any person licensed or legally authorized to practice dentistry or as a dental hygienist in this Commonwealth at the time this act takes effect shall thereafter continue to possess the same rights and privileges with respect to the practice of dentistry or as a dental hygienist without being required to be licensed anew under the provisions of this act, subject, however, to the power of the board, as provided in this act, to suspend or revoke the license of any such person for any of the causes set forth in this act, and subject to the power of the board to require any such person to **[register]** *renew* biennially with the board, as provided in this act.

Section 10. Penalties.—*(a) It is unlawful for any person to practice dentistry or as a dental hygienist, or to hold himself or herself out as a practitioner of or entitled or authorized to practice dentistry or as a dental hygienist, or to assume any title of “dentist,” “dental surgeon,” “dental hygienist” or other letters or titles in connection with his or her name which in any way represent him or her as being engaged in the practice of dentistry or as a dental hygienist or authorized so to do, unless he or she has been duly licensed, [registered,] and authorized to engage in such practice under the provisions of this act. A person who violates this subsection commits a misdemeanor of the third degree and shall, upon conviction, for a first offense, be sentenced to a fine not to exceed one thousand dollars (\$1,000) or to imprisonment for not more than six months, or both. A second offense shall be subject to a fine not to exceed two thousand dollars (\$2,000) or imprisonment for a term of six months to one year, or both.*

(b) It is unlawful for any person to practice dentistry or as a dental hygienist under a name other than that on his or her license and biennial [registration] renewal, or to practice under the name on his or her license and biennial [registration] renewal with any addition thereto, except a purely technical appellation such as “Dentist,” “D.D.S.,” “Orthodontist” or other word or letters pertaining strictly to the practice of dentistry, or to induce any person to practice dentistry or as a dental hygienist in violation of this act.

(c) It is unlawful for any person to sell, offer to sell or barter or exchange any diploma or document conferring or purporting to confer any dental degree or any license [or registration certificate] issued according to law regu-

lating the licensing of dentists or dental hygienists, or to alter any such document with fraudulent intent, or to use it as a license **[or registration certificate]** to practice dentistry under an assumed name, or to make any false statement in an affidavit relating to or in an application for a license.

(d) It is unlawful for any person to practice dentistry or as a dental hygienist unless his or her license and biennial **[registration] renewal** certificate are displayed in the office in which he or she is practicing dentistry or as a dental hygienist.

(e) It is unlawful for a person practicing dentistry to employ a **[dental hygienist as his or her assistant] person as a dental hygienist** unless such **[assistant] person** is licensed **[and registered]** as a dental hygienist as required by this act and the rules and regulations of the board.

(f) It is unlawful for any dentist to permit any dental hygienist operating under his general supervision to perform any operation other than those included within practice as a "Dental Hygienist," as defined by section two of this act.

(g) It is unlawful for any dental hygienist to perform any of the operations included in practice as a "Dental Hygienist," as defined by section two of this act, except under the general supervision of a licensed **[and registered]** dentist.

(h) Any person violating any of the provisions of this section *other than subsection (a)*, or any other provisions of this act *except as provided in subsection (a)*, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding five hundred dollars, or to suffer imprisonment not exceeding six months, or both, in the discretion of the court.

Section 10. The act is amended by adding sections to read:

Section 10.1. Civil Penalties.—In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law, or by a vote of the majority of the duly qualified and confirmed membership or a minimum of six members, whichever is greater, may levy a civil penalty of up to one thousand dollars (\$1,000) on any current licensee who violates any provision of this act or on any person who practices dentistry or as a dental hygienist without being properly licensed to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 10.2. Disposition of Fines and Penalties.—All fines and civil penalties imposed in accordance with this act shall be paid into the Professional Licensure Augmentation Account.

Section 11. Section 11 of the act, amended November 21, 1967 (P.L.515, No.249), is amended to read:

Section 11. Right of Dentists to Practice as Dental Hygienists; Dental Supplies; Death Certifications.—Nothing contained in this act shall be construed as prohibiting a duly licensed and registered dentist from performing

the work of a dental hygienist. Nothing contained in this act or any other act shall be construed as prohibiting a duly licensed **[and registered]** dentist who is a staff member of an approved hospital from executing a medical certification in case of death if the dentist attended the deceased during the last illness, provided the death occurs in the hospital and the deceased had been admitted on the dental service and the circumstances are not such as to require a referral to the coroner under the provisions of any other act. Nothing contained in this act shall be construed to prevent any person, copartnership, association or corporation from manufacturing and furnishing to or repairing for, licensed **[and registered]** dentists artificial teeth, crowns, bridges, prosthetic work, and regulating appliances, but it shall be unlawful and constitute the practice of dentistry for any person to fit, or attempt to fit, or to furnish to or repair for any other person artificial teeth, crowns, bridges, prosthetic work, or appliances.

Section 12. The act is amended by adding sections to read:

Section 11.2. Anesthesia.—(a) *Prior to January 1, 1987, the board shall promulgate regulations which:*

(1) *Establish minimal training and education or certification for the issuance of permits to dentists to administer general anesthesia on an outpatient basis. Such regulations shall include a requirement of a minimum of one year in an approved program of advanced training in anesthesiology and related academic subjects, beyond the undergraduate dental school level.*

(2) *Establish further requirements relating to the use of general anesthesia, including, but not limited to, the collection of permit fees, the collection of biennial license and license renewal fees and the conducting of workplace inspections.*

(3) *Establish minimal training and education for the issuance of permits to dentists to administer conscious sedation on an outpatient basis. Such regulations shall include a minimum period of time of didactic instruction and clinical experience in an accredited educational institution or program.*

(4) *Establish further requirements relating to the use of conscious sedation, including, but not limited to, the collection of permit fees, the collection of biennial license and license renewal fees and the conduct of workplace inspections.*

(5) *Establish minimal training and education for the issuance of permits to dentists to administer analgesia on an outpatient basis. Such regulations shall include a minimum period of time of didactic instruction or clinical experience in an accredited educational institution or program.*

(6) *Establish further requirements relating to the use of analgesia, including, but not limited to, the collection of permit fees, the collection of biennial licenses and license renewal fees and the conduct of workplace inspections.*

(7) *Establish fees for temporary permits which permits may be issued by the board for one year to a person whose application indicates that he possesses the necessary qualifications pending a complete processing of the application.*

(b) The board may issue the appropriate permits in accordance with this section to a dentist who has been administering general anesthesia, conscious sedation agents or nitrous oxide or oxygen analgesia if the dentist submits evidence satisfactory to the board that he has been administering these agents for a period of at least five years prior to the effective date of this section and that the dentist has applied within one year of the effective date of the regulations.

Section 11.3. Reports of Adverse Occurrences.—All licensees engaged in the practice of dentistry in this Commonwealth shall within thirty days from the date of the occurrence submit a complete report to the board regarding any mortality or unusual incidents requiring medical care and resulting in physical or mental injury of patients as a direct result of the administration of anesthesia or drugs. Mortalities not related to drugs or anesthesia must also be reported to the board within a period of thirty days from the date of occurrence.

Section 11.4. Radiologic Procedures; Education and Training Required.—(a) On and after January 1, 1987, no auxiliary personnel shall perform radiologic procedures on the premises of the dentist unless such person is under the direct supervision of a dentist who is on the premises at the time the X-ray is taken and unless such person has passed an examination approved by the board and administered in accordance with section 812.1 of the act of April 9, 1929 (P.L.177, No.175) known as "The Administrative Code of 1929."

(b) The board shall, by regulation, provide for the exclusion of auxiliary personnel from performing radiologic procedures if the continued performance of radiologic procedures by the auxiliary personnel is determined by the board to pose a threat to the health, safety or welfare of the public.

(c) It shall be unlawful under this act to knowingly permit radiologic procedures to be performed in violation of this section or in violation of the regulations promulgated on orders issued in accordance with this section.

(d) No auxiliary personnel who has or obtains a license, certificate or registration issued by, or on behalf of, a board within the Bureau of Professional and Occupational Affairs shall be required to undergo any additional education or testing pursuant to this section if radiologic procedures were included in the education or the examination which he or she was required to complete successfully in order to be eligible for such license, certificate or registration.

Section 11.5. Reporting of Multiple Licensure.—Any licensed dentist or dental hygienist of this Commonwealth who is also licensed to practice dentistry or as a dental hygienist in any other state, territory or country shall report this information to the board on the biennial renewal application. Any disciplinary action taken in other states, territories or countries shall be reported to the board on the biennial renewal application or within ninety (90) days of disposition, whichever is sooner. Multiple licensure shall be noted by the board on the dentist's or dental hygienist's record, and such state, territory or country shall be notified by the board of any disciplinary actions taken against the dentist or dental hygienist in this Commonwealth.

Section 11.6. Impaired Professional.—(a) *The board, with the approval of the Commissioner of Professional and Occupational Affairs, shall appoint and fix the compensation of a professional consultant who is a licensee of the board, or such other professional as the board may determine, with education and experience in the identification, treatment program and rehabilitation of persons with physical or mental impairments. Such consultant shall be accountable to the board and shall act as a liaison between the board and treatment programs, such as alcohol and drug treatment programs licensed by the Department of Health, psychological counseling and impaired professional support groups which are approved by the board and which provide services to licensees under this act.*

(b) *The board may defer and ultimately dismiss any of the types of corrective action set forth in this act for an impaired professional so long as the professional is progressing satisfactorily in an approved treatment program, provided that the provisions of this subsection shall not apply to a professional convicted of a felonious act prohibited by the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or convicted of, pleaded guilty to or entered a plea of nolo contendere to a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country. An approved program provider shall, upon request, disclose to the consultant such information in its possession regarding an impaired professional in treatment which the program provider is not prohibited from disclosing by an act of this Commonwealth, another state or the United States. Such requirement of disclosure by an approved program provider shall apply in the case of impaired professionals who enter an agreement in accordance with this section, impaired professionals who are the subject of a board investigation or disciplinary proceeding and impaired professionals who voluntarily enter a treatment program other than under the provisions of this section but who fail to complete the program successfully or to adhere to an aftercare plan developed by the program provider.*

(c) *An impaired professional who enrolls in an approved treatment program shall enter into an agreement with the board under which the professional's license shall be suspended or revoked, but enforcement of that suspension or revocation may be stayed for the length of time the professional remains in the program and makes satisfactory progress, complies with the terms of the agreement and adheres to any limitations on his practice imposed by the board to protect the public. Failure to enter into such an agreement shall disqualify the professional from the impaired professional program and shall activate an immediate investigation and disciplinary proceeding by the board.*

(d) *If, in the opinion of the consultant after consultation with the provider, an impaired professional who is enrolled in an approved treatment program has not progressed satisfactorily, the consultant shall disclose to the board all the information in his possession regarding said professional, and the board shall institute proceedings to determine if the stay of the enforcement of the suspension or revocation of the impaired professional's license shall be vacated.*

(e) An approved program provider who makes a disclosure pursuant to this section shall not be subject to civil liability for such disclosure or its consequences.

(f) Any hospital or health care facility, peer or colleague who has substantial evidence that a professional has an active addictive disease for which the professional is not receiving treatment, is diverting a controlled substance or is mentally or physically incompetent to carry out the duties of his or her license shall make or cause to be made a report to the board: Provided, That any person or facility who acts in a treatment capacity to an impaired professional in an approved treatment program is exempt from the mandatory reporting requirements of this subsection. Any person or facility who reports pursuant to this section in good faith and without malice shall be immune from any civil or criminal liability arising from such report. Failure to provide such report within a reasonable time from receipt of knowledge of impairment shall subject the person or facility to a fine not to exceed one thousand dollars (\$1,000). The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 13. Each rule and regulation of the board in effect on the effective date of this act shall remain in effect after such date until amended by the board, provided that the board shall immediately initiate the repeal or amendment of any rule or regulation which is inconsistent with the provisions of this act. Each fee of the board in effect on the effective date of this act, and not inconsistent with this act, shall remain in effect after such date until repealed or amended in accordance with this act.

Section 14. Persons who are members of the State Dental Council and Examining Board, on the effective date of this act, shall serve on the State Board of Dentistry as provided for in this act until their present terms of office expire, provided that any present board member whose term has expired on or before the effective date of this act shall serve until a successor has been duly appointed and qualified, but no longer than six months after the effective date of this act.

Section 15. Any person who holds a valid license issued by the State Dental Council and Examining Board prior to the effective date of this amendatory act shall, on and after the effective date hereof, be deemed to be licensed by the State Board of Dentistry as provided for in this act.

Section 16. This act, with respect to the State Dental Council and Examining Board, shall constitute the legislation required to reestablish an agency pursuant to the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 17. (a) Section 414 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 18. This act shall take effect January 1, 1986, or immediately, whichever is later.

APPROVED—The 20th day of December, A. D. 1985.

DICK THORNBURGH