



**Alabama Dental Practice Act
Alabama State Code**

Published by

**BOARD OF DENTAL EXAMINERS OF
ALABAMA**

INTRODUCTION

Alabama Code (1975), § 34-9-43(11) requires the Board to publish annually the provisions of the Alabama Dental Practice Act and Board rules. The purpose and intent of this requirement is to ensure that all licensees are informed of the statutes and rules that govern their professional activities and licensing. The Board implores you to take the time to review and understand both the Act and rules and to call the Board office if you have any questions. Many problems can be avoided if you ask first rather than act first. Remember, you are charged with knowledge of these requirements, and ignorance of them is no excuse.

You are also encouraged to read carefully Board newsletters; the Board's website, <http://www.dentalboard.org/>; Alabama Dental Association News; and other publications to keep abreast of any changes or proposed changes to the Act or rules that might be made during the year. The Board has express statutory rulemaking authority and must follow the provisions of the Alabama Administrative Procedure Act whenever a rule is adopted, amended, or repealed. Before any of these actions can be taken, there must be publication of the Board's intended action in the Alabama Administrative Monthly, and a public hearing before the Board.

YOUR LICENSE IS VALUABLE. With the benefits of licensure come responsibilities and obligations. Those include compliance with the requirements of the Act and rules. Disciplinary actions can be avoided if you seek guidance before acting. Relying upon forgiveness rather than permission is an unwise course of action when it involves your license.

You are encouraged to contact the Board if you have questions about any requirement. Your questions will be answered promptly.

Please remember that annual renewal of licenses or any required permits must be timely, and there are disciplinary consequences for your failure to do so. Please also remember to renew in a timely manner your federal Drug Enforcement Administration (DEA) registration. The expiration date is on the permit. Please make sure individuals in your office who require licensure renew in a timely manner. Requesting to see a copy and posting of the current annual registration certificate is the fail-safe method of verification.

It is YOUR responsibility to notify the Board of any address change. The DEA also requires YOU to notify them of any address change.

Please remember to comply with the mandatory continuing education requirements and to retain documentation evidencing your attendance so that if you are randomly audited, there will be no adverse consequences.

Alabama Dental Professionals Wellness Committee

“It shall be the duty and obligation of the State Board of Dental Examiners and the State Board of Pharmacy to promote the early identification, intervention, treatment, and rehabilitation of individuals within the respective jurisdiction, licensed to practice in the State of Alabama, who may be impaired by reason of illness, inebriation, excessive use of drugs, narcotics, controlled substances, alcohol, chemicals, or other dependent forming substances, or as a result of any physical or mental condition rendering such person unable to meet the standards of his or her profession.” Alabama Code (1975), § 34-38-2. “Impaired” is defined in that statute as “the inability . . . to practice with reasonable skill and safety to patients” caused by the conditions described above.

To fulfill its statutory “duty and obligation,” the Board created what is now known as the Alabama Dental Professionals Wellness Committee (Committee). The Committee is led by a dedicated group of recovering professionals who discharge or assist in the important functions of identification, intervention, treatment, and rehabilitation of impaired professionals. The Board commends the Committee on its success due to the procedures, policies, and compliance monitoring it has adopted. The cooperation between the Committee and the Board has produced one of the lowest relapse rates in the nation, and excellent relationships with treatment facilities and providers have been established. The Committee currently is monitoring a number of individuals who have successfully returned to practice.

As a part of the mandate of the Committee, the Board has adopted a non-disciplinary procedure for licensees who SELF REPORT their abuse of, or addiction to, alcohol or drugs, and voluntarily participate in their rehabilitation. If the licensee on his or her own contacts the Committee and agrees to recommended treatment, completes treatment and is acknowledged by the treatment facility as able to resume practice with reasonable skill and safety to patients, a Deferral Agreement is offered. The essential terms of this agreement require compliance with a five-year chemical dependency monitoring contract, payment of costs, annual monitoring fee, and strict compliance with any recommendations imposed by the treatment facility or the Committee. The agreement also provides that if its terms are violated, the licensee agrees in advance to the entry of a Consent Order that sanctions the license, imposes penalties, and is reportable as discipline.

If a licensee qualifies for the above described Agreement, he or she is not required to appear before the Board. The Agreement will not be reported as discipline either in the Board newsletter or to any federal data bank as long as there is compliance throughout the term of the Agreement. More information on the history of the Committee, how the Committee functions, contact information, and links to treatment facilities can be found on the Board’s website, <http://www.dentalboard.org>.

THE ALABAMA BOARD OF DENTAL EXAMINERS--THE EARLY YEARS

Dr. Mike Mahan

According to Alabama Code (1975), § 34-9-2, the practice of dentistry is deemed to “affect the public health, safety, and welfare.” To protect this public interest, the Alabama Board of Dental Examiners was created by the Alabama Dental Association in 1881, the first such regulatory body for dentists in the nation.

The inaugural meeting of the Board of Examiners took place at Lotus Hall in Selma on July 19, 1881. Elected to the first Board were Drs. E.S. Chisholm (Chair), W.R. McWilliams, F.M. Allen (secretary), W.D. Dunlap, and J.G. McAuley. Also at the initial meeting, the Board chose the seal still used today--the coat of arms of Alabama, with “Board of Dental Examiners of Alabama, organized July the 19th, 1881” engraved on it. But more importantly, they began reviewing applications for license, approving some and rejecting others.

The 1882 meeting took place in Montgomery on April 9-11. Secretary Allen reported to the Board that his “labors [had] not been light” during the previous year and that he had worked with an insufficient budget. He made up some of the deficit out of his own pocket, but, at the year’s end, he was able to report a balance of fifty-two cents.

By the end of the second meeting of the Board of Dental Examiners, rules governing the Board had been adopted. New applicants for license had been approved, and those rejected were sent off to study more before receiving the imprimatur of the Board. In subsequent years during the nineteenth century, the Board met annually to approve licenses. It never acted as a rubber stamp, always turning down some of the applicants.

The year 1889 is a signal year for the board in that it adopted for the first time a standard for grading the examinations of applicants for license. The applicant had to score seventy-five points out of one hundred. In the following years, the Board found that the dental colleges were becoming better and better, and in 1896, eighty percent, rather than seventy-five, was required for successfully passing the exam. In his message to the Alabama Dental Association that year, Chairman W.D. Boyd, Jr., lamented, “We regret to state that we have parties coming before us who claim to have diplomas who are totally incapacitated to pass a theoretical examination.”

In 1897, 1898, and 1899, the work continued as usual, and the numbers of applicants examined were growing. In 1888, under the leadership of Chairman E.S. Chisholm and Secretary G.M. Rousseau, the organization seemed to take stock of itself and get new bearings. Dr. Chisolm reported to the Alabama Dental Association that “it affords the Board gratification to state that the gentlemen who have been examined by us stood a closer and more thorough examination that has ever been given by the board.” In addition, the board tightened the requirements for temporary licenses and issued a new directory of Alabama dentists.

As the century turned, The Alabama Board of Dental Examiners was well established, continuing to accomplish the task it was charged with when it was organized in 1881: to protect the public’s interest and insure quality dental care in Alabama.



CODE OF ALABAMA

The portion of the Alabama Code (1975) that deals specifically with the practice of dentistry and the licensing of dentists and dental hygienists is encoded at Title 34, Chapter 9—the Dental Practice Act. If you would like to view the entire Alabama Code please visit <http://alisondb.legislature.state.al.us/alison/CoA.aspx>. The Board provides Title 34, Chapter 9 for you to review should you have any questions about the practice of dentistry and the licensing of dentists and dental hygienists in Alabama. Should you have any questions after reviewing the Dental Practice Act, please contact the Board office.

Chapter 9

Dentists and Dental Hygienists

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ARTICLE 1.
GENERAL PROVISIONS.

§34-9-1. Definitions.

For the purposes of this chapter, the following terms shall have the respective meanings ascribed by this section:

(1) ANNUAL REGISTRATION. The documentary evidence that the board has renewed the authority of the licensee to practice dentistry or dental hygiene in this state.

(2) BOARD. The Board of Dental Examiners of Alabama.

(3) COMMERCIAL DENTAL LABORATORY. A technician or group of technicians available to any or all licensed dentists for construction or repair of dental appliances.

(4) GENERAL ANESTHESIA. A controlled state of unconsciousness, accompanied by a partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic method.

(5) INFILTRATION ANESTHESIA. A form of local anesthesia wherein the terminal or peripheral sensory portion of either the maxillary or mandibular branch of the trigeminal nerve endings are anesthetized by injecting a solution submucosally into an intra-oral circumscribed area for the relief or prevention of pain.

(6) LICENSE. The grant of authority by the board to a person to engage in the practice of dentistry or dental hygiene.

(7) LICENSE CERTIFICATE. The documentary evidence under seal of the board that the board has granted authority to the licensee to practice dentistry or dental hygiene in this state.

(8) LICENSED DENTIST. A dentist who holds a current license certificate from the board.

(9) LICENSED HYGIENIST. A hygienist who holds a current license certificate from the board.

(10) LOCAL ANESTHESIA. The elimination of sensations, especially pain in one part of the body by topical application or regional injection of a drug.

(11) PATIENT ABANDONMENT. The termination of dental treatment without giving the patient adequate notice of at least 15 days before the termination of dental treatment. Adequate notice includes informing the patient of the availability of emergency treatment and providing the patient with an opportunity to obtain the services of another dentist during the notice period. Abandonment may also occur if the dentist jeopardizes the health of the patient during the termination process.

(12) PRACTICE OF DENTISTRY ACROSS STATE LINES.

a. The practice of dentistry as defined in Section 34-9-6 as it applies to the following:

1. The rendering of a written or otherwise documented professional opinion concerning the diagnosis or treatment of a patient located within this state by a dentist located outside this state as a result of transmission of individual patient data by electronic or other means from within this state to the dentist or his or her agent.

2. The rendering of treatment to a patient located within this state by a dentist located outside this state as a result of transmission of individual patient data by electronic or other means from this state to the dentist or his or her agent.

3. The holding of himself or herself out as qualified to practice dentistry, or use any title, word, or abbreviation to indicate or induce others to believe that he or she is licensed to practice dentistry across state lines.

b. This definition is not intended to include an informal consultation between a licensed dentist located in this state and a dentist located outside this state provided that the consultation is conducted without compensation or the expectation of compensation to either dentist, and does not result in the formal

rendering of a written or otherwise documented professional opinion concerning the diagnosis or treatment of a patient by the dentist located outside the state.

(13) PRIVATE TECHNICIANS. A technician employed by a dentist or group of dentists for a specified salary.

(14) SEDATION. A depressed level of consciousness that 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 method.

§34-9-2. Legislative findings.

(a) The Legislature hereby declares that the practice of dentistry and the practice of dental hygiene affect the public health, safety, and welfare and should be subject to regulation. It is further declared to be a matter of public interest and concern that the dental profession merit and receive the confidence of the public and that only qualified dentists be permitted to practice dentistry and only qualified dental hygienists be permitted to practice dental hygiene in the State of Alabama. All provisions of this chapter relating to the practice of dentistry and dental hygiene shall be liberally construed to carry out these objects and purposes.

(b) The Legislature also finds and declares that, because of technological advances and changing practice patterns, the practice of dentistry and the practice of dental hygiene is occurring with increasing frequency across state lines and that the technological advances in the practice of dentistry and in the practice of dental hygiene are in the public interest.

(c) The Legislature further finds and declares that the practice of dentistry and the practice of dental hygiene are each a privilege. The licensure by this state of nonresident dentists who engage in dental practice and persons who engage in the practice of dental hygiene within this state are within the public interest. The ability to discipline the nonresident dentists and dental hygienists who engage in dental practice in this state is necessary for the protection of the citizens of this state and for the public interest, health, welfare, and safety.

§34-9-3. License or permit required to practice dentistry.

It shall be unlawful for any person to practice dentistry in the State of Alabama except the following:

- (1) Those who are now duly licensed or permitted dentists, pursuant to law.
- (2) Those who may be hereafter duly licensed or permitted and who are currently registered as dentists, pursuant to this chapter.
- (3) Those nonresident dentists who have been issued a special purpose license to practice dentistry across state lines in accordance with Section 34-9-10. This subdivision shall not apply to those dentists who hold a full, unrestricted, and current license or permit issued pursuant to Section 34-9-8 or Section 34-9-10.

§34-9-4. License required to practice dental hygiene.

It shall be unlawful for any person to practice dental hygiene in the State of Alabama, except:

- (1) Those who are now licensed dental hygienists pursuant to law; and
- (2) Those who may hereafter be duly licensed and who are currently registered as dental hygienists pursuant to this chapter.

§34-9-5. Penalties.

Any person who shall engage in the practice of dentistry across state lines or practice dentistry or dental hygiene in this state within the meaning of this chapter without having first obtained from the board a license and an annual registration certificate, when the certificate is required by this chapter, or who violates this chapter, or who willfully violates any published rule of the board, or who does any act described in this chapter as unlawful, the penalty for which is not herein specifically provided, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five thousand dollars (\$5,000) for each offense, to be fixed by the court trying the case, and in addition thereto may be, in the discretion of the court, sentenced to hard labor for the county for a period not to exceed 12 months.

§34-9-6. What constitutes practice of dentistry.

Any person shall be deemed to be practicing dentistry who does any of the following:

- (1) Performs, or attempts or professes to perform, any dental operation or dental service of any kind, gratuitously or for a salary, fee, money, or other remuneration paid, or to be paid, directly or indirectly, to himself or herself, or to any person in his or her behalf, or to any agency which is a proprietor of a place where dental operations or dental services are performed.
- (2) Directly or indirectly, by any means or method, makes impression of the human tooth, teeth, jaws, or adjacent tissue, or performs any phase of any operation incident to the replacement of a tooth or any part thereof.
- (3) Supplies artificial substitutes for the natural teeth, and who furnishes, supplies, constructs, reproduces, or repairs any prosthesis (fixed or removable), appliance, or any other structure to be worn in the human mouth.
- (4) Places such appliance or structure in the human mouth, or adjusts, attempts, or professes to adjust the same, or delivers the same to any person other than the dentist upon whose prescription the work was performed.
- (5) Professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthesis (fixed or removable), appliance, or other structure to be worn in the human mouth, or who diagnoses, or professes to diagnose, prescribe for, professes to prescribe for, treats or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure, or who extracts or attempts to extract human teeth, or removes tumors, abnormal growths, or other lesions from the human gums, jaws, and adjacent structures, or who operates for cleft lip or palate, or both; or who treats surgically or mechanically fractures of the human jaw; or who administers local or general anesthetics in the treatment of any dental lesion.
- (6) Repairs or fills cavities in the human teeth.
- (7) Uses a roentgen, radiograph, or digital imaging machine for the purpose of making dental roentgenograms, radiographs, or digital images, or who gives, or professes to give, interpretations or readings of dental roentgenograms, radiographs, or digital images, or radiographic or roentgen therapy.
- (8) Administers an anesthetic of any nature in connection with a dental procedure.
- (9) Uses the words “dentist,” “dental surgeon,” “oral surgeon,” or the letters “D.D.S.,” “D.M.D.” or any other words, letters, title, or descriptive matter which in any way represents him or her as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of the teeth or jaws, or adjacent structures.
- (10) States, or professes, or permits to be stated or professed by any means or method whatsoever that he or she can perform or will attempt to perform dental procedures, or render a diagnosis connected therewith.
- (11) Performs any clinical operation included in the curricula of recognized dental colleges; provided, that members of the faculty, teachers, instructors, fellows, interns, residents, dental students, and student dental hygienists who are employed by or who are taking courses or instructions at the University of Alabama School of Dentistry or such other dental colleges, hospitals, or institutions in Alabama, as may be approved by the board; and provided, that the work of fellows, interns, residents, dental students, and student dental hygienists is performed within the facilities of such dental colleges, hospitals, and institutions under the supervision of an instructor and as an adjunct to his or her course of study or training, shall not be required to take examination or obtain a license certificate and renewal license certificate when all of such work, dental procedures, and activities are confined to his or her work in the college, hospital, or other institution and the work is done without remuneration other than the regular salary or compensation paid by such colleges, hospitals, or other institutions.

(12) Professes to the public by any method to bleach human teeth, performs bleaching of the human teeth alone or within his or her business, or instructs the public within his or her business, or through any agent or employee of his or her business, in the use of any tooth bleaching product.

§34-9-6.1 Mobile dental facilities or portable dental operations.

(a) For purposes of this section, the following words have the following meanings:

(1) DENTAL HOME. The dental home is the ongoing relationship between the dentist and the patient, inclusive of all aspects of oral health care, delivered in a comprehensive, continuously accessible, coordinated, and family-centered way.

(2) MOBILE DENTAL FACILITY. Any self-contained facility in which dentistry or dental hygiene is practiced which may be moved, towed, or transported from one location to another.

(3) OPERATOR. A person licensed to practice dentistry in this state or an entity which is approved as tax exempt under Section 501(c)(3) of the Internal Revenue Code which employs dentists licensed in the state to operate a mobile dental facility or portable dental operation.

(4) PORTABLE DENTAL OPERATION. The use of portable dental delivery equipment which is set up on site to provide dental services outside of a mobile dental facility or a dental office and uses non-fixed dental equipment and independent plumbing.

(b) In order to operate a mobile dental facility or portable dental operation, an operator shall first obtain a certificate of registration issued by the board. The operator shall complete an application in the form and manner required by the board and shall meet all qualifications established by rules of the board.

(c) A mobile dental facility shall comply with all of the following requirements:

(1) The operator shall maintain an official business address which shall not be a post office box and which shall be within this state and be associated with an established dental facility which shall have an official business address on record with the board. The address shall be filed with the board as part of the application for a certificate of registration.

(2) The operator shall maintain an official telephone number of record which shall be accessible 24 hours a day and which shall be filed with the board as part of the application for a certificate of registration. The telephone number shall have 911 capability.

(3) The board shall be notified within 30 days of any change in address, location, or telephone number of record. The notification shall also include the method by which patients are notified of the change of address, location, or telephone number of record. For purposes of this subdivision, patient shall mean any individual who has received treatment or consultation of any kind within two years of the date of the proposed change of address, location, or telephone number of record.

(4) All written or printed documents available from or issued by the mobile dental facility shall contain the official business address and telephone number of record for the mobile dental facility.

(5) When not in transit, all dental and official records shall be maintained at the official business address.

(6) The operator shall maintain a written procedure for emergency follow-up care for patients treated in a mobile dental facility, which includes arrangements for treatment in a dental facility that is permanently established in the area within a 50-mile radius where services are provided subject to a qualified dentist being located in the area and subject to the dentist agreeing to provide follow-up care. An operator who either is unable to identify a qualified dentist in the area or is unable to arrange for emergency follow-up care for patients otherwise shall be obligated to provide the necessary follow-up care via the mobile dental facility or the operator may choose to provide the follow-up care at his or her established dental practice location in the state or at any other established dental practice in the state which agrees to accept the patient. An operator who fails to arrange or provide follow-up care as required herein shall be considered to have abandoned the patient, and the operator and any dentist or dental hygienist, or both, who fail to provide the referenced follow-up care shall be subject to disciplinary action by the board.

(7) The mobile dental facility shall have communication abilities that enable the operator to contact necessary parties in the event of a medical or dental emergency. The communication abilities shall enable the patient or the parent or guardian of the patient treated to contact the operator for emergency care, follow-up care, or information about treatment received. The provider who renders follow-up care must also be able to contact the operator and receive treatment information, including radiographs.

(8) The mobile dental facility and the dental procedures performed therein shall comply with all applicable federal and state laws and all applicable rules of the board promulgated pursuant to Section 34-9-43.

(9) Any driver of a mobile dental facility shall possess a valid Alabama driver's license appropriate for the operation of the vehicle. A copy of the driver's license of each driver shall be submitted to the board at least 30 days prior to the individual operating a mobile dental facility.

(10) All mobile dental facilities authorized in this section which are a vehicle or which are to be towed or otherwise transported by another vehicle shall be registered in this state.

(11) The operator of a mobile dental facility shall not perform services on a minor without the signed consent from the parent or guardian which form shall be established by the board. The consent form shall inquire whether the prospective patient has received dental care from a licensed dentist within one year and if so, the consent form shall request the name, address, and phone number of the dental home. If the information provided to the operator does not identify a dental home for the prospective patient, the operator shall contact the Alabama Medicaid Agency for assistance in identifying a dental home for Medicaid eligible patients. If this information is provided to the operator, the operator shall contact the designated dental home by phone, facsimile, or electronic mail and notify the dental home of the prospective patient's interest in receiving dental care from the operator. If the dental home confirms that an appointment for the prospective patient is scheduled with the dentist, the operator shall encourage the prospective patient or his or her guardian to seek care from the dental home. The consent form shall document that the patient, or legal guardian, understands the prospective patient has an option to receive dental care from the mobile dental facility or his or her designated dental home if applicable. The consent form shall require the signature of a parent or legal guardian if the patient is a minor.

(12) Each operator of a mobile dental facility shall maintain a written or electronic record detailing for each location where services are performed all of the following information:

- a. The street address of the service location.
- b. The dates of each session.
- c. The number of patients served.
- d. The types of dental services provided and the quantity of each service provided.
- e. Any other information requested by rule of the board.

(13) The written or electronic record shall be made available to the board within 10 days of a request.

(14) Each mobile dental facility shall possess all applicable county and city licenses or permits to operate at each location.

(d) The mobile dental facility shall comply with the following physical requirements and inspection criteria:

- (1) Ready access in a ramp or lift.
- (2) A properly functioning sterilization system.
- (3) Ready access to an adequate supply of potable water, including hot water.
- (4) A covered galvanized, stainless steel, or other noncorrosive container for deposit of refuse and waste materials.
- (5) Ready access to toilet facilities which shall be located within the mobile dental facility. Operators applying for a certificate prior to July 1, 2008, are not required to meet this requirement. Any governmental

entity operating a mobile dental facility shall only be required to have ready access to toilet facilities.

(6) All licenses and permits as required by Section 34-9-13 on site.

(7) Ready access to an emergency kit.

(8) Sharps containers and red biohazard equipment available on site.

(e) A portable dental operation shall comply with all of the following requirements:

(1) The operator shall maintain an official business address which shall not be a post office box and which shall be within this state and be associated with an established dental facility which shall have an official business address on record with the board. The address shall be filed with the board as part of the application for a certificate of registration.

(2) The operator shall maintain an official telephone number of record which shall be accessible 24 hours a day and which shall be filed with the board as part of the application for a certificate of registration. The telephone number shall have E-911 capability.

(3) The board shall be notified within 30 days of any change in address, location, or telephone number of record. The notification shall also include the method by which patients are notified of the change of address, location, or telephone number of record. For purposes of this subdivision, patient shall mean any individual who has received treatment or consultation of any kind within two years of the date of the proposed change of address, location, or telephone number of record.

(4) All written or printed documents available from or issued by the portable dental operation shall contain the official business address and telephone number of record for the portable dental operation.

(5) When not in transit, all dental and official records shall be maintained at the official business address.

(6) The operator shall maintain a written procedure for emergency follow-up care for patients treated in a portable dental operation, which includes arrangements for treatment in a dental facility that is permanently established in the area within a 50-mile radius where services are provided subject to a qualified dentist being located in the area and subject to the dentist agreeing to provide follow-up care. An operator who either is unable to identify a qualified dentist in the area or is unable to arrange otherwise for emergency follow-up care for patients shall be obligated to provide the necessary follow-up care via the portable dental operation, or the operator may choose to provide the follow-up care at his or her established dental practice location in the state or at any other established dental practice in the state which agrees to accept the patient. An operator who fails to arrange or provide follow-up care as required herein shall be considered to have abandoned the patient, and the operator and any dentist or dental hygienist, or both, who fail to provide the referenced follow-up care shall be subject to disciplinary action by the board.

(7) The portable dental operation shall have communication abilities that enable the operator to contact necessary parties in the event of a medical or dental emergency. The communication abilities shall enable the patient or the parent or guardian of the patient treated to contact the operator for emergency care, follow-up care, or information about treatment received. The provider who renders follow-up care must also be able to contact the operator and receive treatment information, including radiographs.

(8) The portable dental operation and the dental procedures performed therein shall comply with all applicable federal and state laws and all applicable rules of the board promulgated pursuant to Section 34-9-43.

(9) The operator of a portable dental operation may not perform services on a minor without the signed consent from the parent or guardian on a form established by the board. The consent form shall request information as to whether the prospective patient has received dental care from a licensed dentist within one year and, if so, shall request the name, address, and phone number of the dental home. If the information provided to the operator does not identify a dental home for the prospective patient, the operator shall contact the Alabama Medicaid Agency for assistance in identifying a dental home for Medicaid eligible patients. If this information is provided to the operator, the operator shall contact the designated dental home by phone, facsimile, or electronic mail and notify the dental home of the prospective patient's interest in receiving dental care from the operator. If the dental home confirms that an appointment for the prospective patient is scheduled with the dentist, the operator shall encourage the prospective patient or his or her guardian to seek

care from the dental home. The consent form shall document that the patient, or legal guardian, understands the prospective patient has an option to receive dental care from either the portable dental operation or his or her designated dental home, if applicable. The consent form shall require the signature of a parent or legal guardian if the patient is a minor.

(10) Each operator of a portable dental operation shall maintain a written or electronic record detailing for each location where services are performed all of the following information:

- a. The street address of the service location.
- b. The dates of each session.
- c. The number of patients served.
- d. The types of dental services provided and the quantity of each service provided.
- e. Any other information requested by rule of the board.

(11) The written or electronic record shall be made available to the board within 10 days of a request.

(12) Each portable dental operation shall possess all applicable county and city licenses or permits to operate at each location.

(f) The portable dental operation shall comply with all physical requirements and inspection criteria established by rule of the board and shall comply with the license and permit requirements of Section 34-9-13.

(g) The mobile dental facility or a portable dental operation shall be inspected by the board or its representative prior to receiving a certificate of registration. Once registered, the mobile dental facility or a portable dental operation shall be subject to periodic unannounced audits and inspections by the board.

(h) The mobile dental facility or a portable dental operation shall comply with the current recommendations for infection control practices for dentistry as promulgated by the Centers for Disease Control and any rule of the board relating to infection control or reporting in a dental office.

(i) The initial application for a certificate of registration shall include the full name, address, and telephone number of the dentists and dental hygienists working at the facility or operation. The initial application for a certificate of registration shall also include proof of insurance from a licensed insurance carrier that the operator has in force at least one million dollars (\$1,000,000) of general liability insurance. The operator shall be required to maintain one million dollars (\$1,000,000) of general liability insurance at all times for which the mobile dental facility or portable dental operation is licensed by the board. Governmental entities which operate mobile dental facilities or portable dental operations shall not be required to have or maintain any amount of general liability insurance. The operator shall advise the board in writing within 15 days of any change in the employment of any dentist or dental hygienist working at the facility or operation.

(j) The operator shall notify the board in writing within 10 days of any change made relating to a dentist to whom patients are to be referred for follow-up care as provided in subdivision (6) of subsection (c).

(k) The operator shall notify the board in writing within 10 days of any change in the procedure for emergency follow-up care as provided in subdivision (6) of subsection (c).

(l) At the conclusion of each patient's visit to the mobile dental facility or a portable dental operation, the patient shall be provided with a patient information sheet which shall also be provided to any individual or entity to whom the patient has consented or authorized to receive or access the patient's records. The information sheet shall include, at a minimum, the following information:

- (1) The name of the dentist or dental hygienist, or both, who performed the services.
- (2) A description of the treatment rendered, including billing service codes and fees associated with treatment and tooth numbers when appropriate.
- (3) If applicable, the name, address, and telephone number of any dentist to whom the patient was referred for follow-up care and the reason for such referral.

(4) The name, address, and telephone number, if applicable, of a parent or guardian of the patient.

(m) In the event a mobile dental facility or a portable dental operation is to be sold, the current operator shall inform the board and the Alabama Medicaid Agency, if the operator is an Alabama Medicaid enrolled provider, at least 10 days prior to the sale being completed and shall be required to disclose the purchaser to the board and the Alabama Medicaid Agency, if the operator is an Alabama Medicaid enrolled provider, via certified mail within 10 days after the date the sale is finalized. The operator of a mobile dental facility or a portable dental operation shall notify the board and the Alabama Medicaid Agency, if the operator is an Alabama Medicaid enrolled provider, at least 30 days prior to cessation of operation. Such notification shall include the final day of operation and a copy of the notification shall be sent to all patients and shall include the manner and procedure by which patients may obtain their records or transfer those records to another dentist. It is the responsibility of the operator to take all necessary action to insure that the patient records are available to the patient, a duly authorized representative of the patient, or a subsequent treating dentist. For purposes of this subsection, a patient shall mean any individual who has received any treatment or consultation of any kind within two years of the last date of operation of the mobile dental facility or a portable dental operation.

(n) A mobile dental facility or a portable dental operation that accepts or treats a patient but does not refer patients for follow-up care when such follow-up care is clearly necessary, shall be considered to have abandoned the patient and will subject the operator and any dentist or dental hygienist, or both, who fails to provide the referenced follow-up care to disciplinary action by the board.

(o) In addition to the requirements of this section, any operator, dentist, or dental hygienist working or performing any services at a mobile dental facility or a portable dental operation shall be subject to the provisions of this chapter. Any violation of the provisions of this section shall subject the operator, dentist, or dental hygienist to the penalties provided in Section 34-9-18, and no order imposing penalties pursuant to Section 34-9-18 shall be made or entered except after notice and a hearing by the board with any such order being subject to judicial review.

(p) The board may promulgate rules to implement and enforce this section.

(q) A mobile dental facility or portable dental operation shall conform to all requirements of this chapter, rules promulgated by the board pursuant to this chapter, any rule or regulation promulgated by the Occupational Safety and Health Administration, the federal Centers for Disease Control and Prevention, and the Alabama Department of Public Health, and any applicable federal, state, or local law, regulation, guideline, or ordinance including, but not limited to, those relating to radiographic equipment, flammability, construction, sanitation, medical waste transportation, zoning, prevention of infection and disease, facility operation, and licenses or permits to operate.

(r) This section shall not apply to any mobile dental facility operated by the Alabama Department of Public Health or a local county health department.

(s) This section shall not apply to any mobile dental facility or portable dental operation which is operated during a state of emergency declared by the Governor as authorized in Section 31-9-8.

(t) It is the express intent of the Legislature that no state agency, including, but not limited to, the Alabama Medicaid Agency, shall restrict any mobile dental facility or portable dental operation which complies with the provisions outlined herein and all applicable state and federal rules from participation in its programs.

(u) Notwithstanding any other provision of law, any entity which is approved as tax exempt under Section 501(c)(3) of the Internal Revenue Code and employs dentists licensed in this state shall continue to be able to employ dentists licensed in this state and to provide dental services in the same manner and under the same conditions as licensed on June 7, 2008.

§34-9-7. Exemption of certain practices and operations.

(a) Nothing in this chapter shall apply to the following practices, acts, and operations:

(1) The practice of his or her profession by a physician or surgeon holding a certificate of qualification as a medical doctor and licensed as such under the laws of this state, provided he or she shall not practice dentistry as a specialty.

(2) The practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons

in the United States Army, Navy, Air Force, or other armed services, public health service including, but not limited to, a federally qualified health center authorized and operating under Section 330 of the Public Health Service Act (42 U.S.C. § 254B), provided, however, that such federally qualified health centers shall register pursuant to Section 34-9-7.2 (provided further however, dentists, dental hygienists, and other personnel employed by any public health service which performs dental health care for the general public under programs funded in whole or part by the state or federal government shall be subject to all of the provisions of this chapter and the rules and regulations duly promulgated by the board governing the practice of dentistry and dental hygiene in this state), Coast Guard, or Veteran's Administration.

(3) The practice of dentistry by a licensed dentist of other states or countries at meetings of the Alabama Dental Association or components thereof, or other like dental organizations approved by the board, while appearing as clinicians, or when appearing in emergency cases upon the specific call of dentists duly licensed under this chapter.

(4) The filling of prescriptions of a licensed and registered dentist, as hereinafter provided, by any person or persons, association, corporation, or other entity for the construction, reproduction, or repair of prostheses (fixed or removable) or appliances on a cast made by or from impressions made by a licensed and currently registered dentist, to be used or worn as a substitute for natural teeth; provided, that the person or persons, association, corporation, or other entity, shall not solicit or advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio, television, Internet, or otherwise, to the general public to construct, reproduce, or repair prostheses (fixed or removable) or other appliances to be used or worn as substitutes for natural teeth.

(5) The use of roentgen machines or other means for making radiographs, digital images, or similar records, of dental or oral tissues under the supervision of a licensed dentist or physician; provided, that the services shall not be advertised by any name whatever as an aid or inducement to secure dental patronage, and no person shall advertise that he or she has, leases, owns, or operates a roentgen or other machine for the purpose of making dental radiographs or images, of the human teeth or tissues or the oral cavity, or administering treatments thereto for any disease thereof.

(6) The giving of a general anesthetic by a nurse anesthetist who administers a general anesthetic under the direct supervision of a duly licensed dentist to a patient who is undergoing dental treatment rendered by the dentist.

(7) The use of a nurse in the practice of professional or practical nursing, as defined in Sections 34-21-1 through 34-21-26, by a dentist.

(8) A dentist who engages in the practice of dentistry across state lines in an emergency, as defined by the board.

(9) A dentist who engages in the practice of dentistry across state lines on an irregular or infrequent basis. The "irregular or infrequent" practice of dentistry across state lines is considered to occur if the practice occurs less than 10 days in a calendar year.

(b) A dentist or dental hygienist on active duty, or performing his or her duties as a reservist in the military, is not subject to any fee required for a special purpose license to practice dentistry across state lines. The dentist or dental hygienist shall notify the board in advance of his or her participation in military activities and shall forward a copy of his or her current dental license or permit, or both, to the board. The dentist or dental hygienist shall also provide proof of military status and any orders requiring him or her to perform dental treatment services in this state.

§ 34-9-7.1 Exemption of participation in continuing education course.

The practice of dentistry by a dentist licensed in another state as a part of participation in a continuing education course conducted, taught, or supervised by the University of Alabama School of Dentistry or any other continuing education provider in Alabama which is approved by the board is exempt from the licensing requirements of this chapter.

§ 34-9-7.2. Registration of a 501(c)(3) entity.

A 501(c)(3) entity, as defined under Section 501(c)(3) of the Internal Revenue Code, that operates a dental clinic that

provides dental services shall register with the board. The information provided to the board as a part of the registration process shall include the name of the corporation, the nonprofit status of the corporation, sites where dental services shall be provided by the corporation, and the names of all persons employed by, or contracting with, the corporation who are required to hold a license pursuant to this chapter. A copy of the entity's 501(c)(3) certification from the Internal Revenue Service shall be filed with the board. If the entity has multiple clinics, the entity shall register each clinic with the board and the entity shall have one licensed dentist serving as chief of dental services for all of the clinics. All dentists and hygienists at each clinic shall possess the applicable licenses or permits required by this chapter and shall be subject to this chapter.

§ 34-9-8. Dental faculty teaching permits; dental faculty special teaching permits.

(a) The board shall annually issue dental faculty teaching permits to persons who are bona fide members of the faculty of a dental college, if they hold a dental degree but are not licensed and registered to practice dentistry or dental hygiene in the state. The dean of any dental college located in the state shall annually certify to the board the bona fide members of the clinical faculty of the college who are not licensed and registered to practice dentistry or dental hygiene in the state. The board shall issue teaching permits to applicants upon the certification by the dean. The teaching permits shall be invalid if the holder ceases to be a member of the clinical faculty of the dental college. The dean of any dental college shall promptly notify the board regarding changes in the faculty which affect the eligibility of a faculty member to possess a teaching permit. The holder of a teaching permit shall be subject to this chapter and may perform all clinical operations which a person licensed to practice dentistry or dental hygiene in the state is entitled to perform. The operations may only be performed within the facilities of the dental college or any other facility approved by the board as an adjunct to his or her teaching functions in the college. An annual fee established pursuant to this chapter shall be paid to the board when the teaching permit is issued.

(b) The board shall annually issue dental faculty special teaching permits to persons who are bona fide members of the faculty of a dental college if they hold a dental degree but are not licensed and registered to practice dentistry or dental hygiene in the state. The dean of any dental college located in the state shall annually certify to the board the bona fide members of the clinical faculty of the college who are not licensed and registered to practice dentistry or dental hygiene in the state. The board shall issue special teaching permits to applicants upon certification by the dean. The special teaching permits shall be invalid if the holder ceases to be a member of the clinical faculty of the dental college. The dean of any dental college shall promptly notify the board regarding changes in the faculty which affect the eligibility of a faculty member to possess a special teaching permit. The holder of a special teaching permit shall be subject to this chapter and may perform all clinical operations on his or her private patients which a person licensed to practice dentistry or dental hygiene in the state is entitled to perform. The clinical operations may only be performed within the faculty private practice facilities of the dental college or any other facility approved by the board. An annual fee established pursuant to this chapter shall be paid to the board when the special teaching permit is issued.

§ 34-9-9. Exercise of independent professional judgment by dentist; prohibited business arrangements or relationships; penalties.

(a) No person other than a dentist licensed pursuant to this chapter or a 501(c)(3) entity registered under Section 34-9-7.2 may do any of the following:

- (1) Employ a dentist or dental hygienist in the operation of a dental office.
- (2) Place in the possession of a dentist, dental hygienist, or other agent such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation for the use of such material, equipment, or offices.
- (3) Retain the ownership or control of dental equipment, material, or office and make the same available in any manner for the use of a dentist, dental hygienist, or other agent.
- (4) The term "person," as used in this section, shall not in any way pertain to state, county, municipal, or city institutions but shall be deemed to include any individual, firm, partnership, corporation, or other entity not licensed to practice dentistry in the State of Alabama.
- (5) Nothing in this subsection shall apply to bona fide sales of dental equipment, material, or office secured by a chattel mortgage or retention title agreement, or to an agreement for the rental of the equipment or office by bona fide lease at a reasonable amount, and under which agreement the licensee under this chapter maintains complete care, custody, and control of the equipment and the practice. Further, nothing in this subsection shall prohibit or restrict persons, firms, or corporations from employing or retaining licensed

dentists to furnish dental treatment for their employees or dependents of their employees.

(b) A prohibited business arrangement or relationship as defined in subsection (a) shall not be considered a violation of that subsection if a prohibited arrangement or relationship results from the death of a licensed dentist and is cured within 12 months of the date of the death.

(c) The purpose of this section is to prevent a non-dentist from influencing or otherwise interfering with the exercise of a dentist's independent professional judgment. In addition to the acts specified in subsection (a), no person, other than a dentist licensed in accordance with this chapter, shall enter into a relationship with a person licensed under this chapter pursuant to which the unlicensed person exercises control over the selection of a course of treatment for a patient, the procedures or materials to be used as a part of such course of treatment, or the manner in which such course of treatment is carried out by the licensee.

(d) No person other than a dentist licensed pursuant to this chapter or a 501(c)(3) entity registered under Section 34-9-7.2 shall exercise control over any of the following:

- (1) The patient records of a dentist.
- (2) Policies and decisions relating to pricing, credit, refunds, warranties, and advertising.
- (3) Decisions relating to office personnel and hours of practice.

(e) Any licensed or permitted dentist or dental hygienist who enters into any of the arrangements or relationships in violation of subsection (a) or subsection (c) with an unlicensed person as defined above, may be subject to any of the penalties set forth in Section 34-9-18.

§ 34-9-10. Application; licensure by credentials; special purpose license.

(a) Every person who desires to practice dentistry within the State of Alabama shall file an application prescribed by the board. Notwithstanding the method of obtaining licensure or any particular requirement set forth herein, every person as a prerequisite to licensure shall be at least 19 years of age, of good moral character, a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government, and a graduate of a dental school or college accredited by the American Dental Association Commission on Dental Accreditation and approved by the board and shall satisfy any other requirement set forth in any rule adopted by the board.

(b) Licensure by examination shall be applicable to the following categories:

- (1) Those individuals who have never been licensed or taken an examination and whose application to take an examination administered or approved by the board is received by the board within 18 months of graduation from dental school or completion of an accredited or approved post-doctoral residency program.
- (2) Those individuals who have successfully passed an examination approved but not administered by the board so long as an application for licensure is received by the board within five years of the date of notification of passing such examination. All applicants shall pay a fee which shall accompany the application.

(c) Any individual who possesses a current license in any state, who has passed an examination approved by the board and who has, since graduation from dental or dental hygiene school, practiced or participated in a clinical residency or practiced dentistry or dental hygiene in the Armed Forces or with the public health service shall be eligible for licensure if an application is received by the board within five years of the completion of the subject residency or Armed Forces or public health service commitment. All the above applicants shall pay a fee which shall accompany the application.

(d) Licensure by credentials may be utilized to evaluate the theoretical knowledge and clinical skill of a dentist or dental hygienist when an applicant for licensure by credentials holds a dental or dental hygiene license in another state. The board may promulgate rules and regulations relating to licensure by credentials in addition to any requirements by law. An applicant for licensure by credentials shall satisfy all of the following:

- (1) The dentist or dental hygienist shall have been engaged in the active practice of clinical dentistry or clinical dental hygiene or in full-time dental or dental hygiene education for the five years or 5,000 hours

immediately preceding his or her application.

(2) The applicant shall hold a current, valid, unrevoked, and unexpired license in a state having examination standards regarded by the board as an equivalent to the Alabama standards.

(3) The board of examiners in the state of current practice shall verify or endorse that the applicant's license is in good standing without any restrictions.

(4) The dentist or dental hygienist shall not be the subject of a pending disciplinary action in any state in which the individual has been licensed which shall be verified by a query to the National Practitioner Data Bank, the Health Integrity Protection Data Bank, the American Association of Dental Boards Clearing House for Disciplinary Information, or any other pertinent bank currently existing or which may exist in the future.

(5) The applicant shall provide a written statement agreeing to be interviewed at the request of the board.

(6) The individual shall successfully pass a written jurisprudence examination.

(7) There shall be certification from the United States Drug Enforcement Administration and from the state board of any state in which the applicant is or has been licensed that the DEA registration is not the subject of any pending disciplinary action or enforcement proceeding of any kind.

(8) The dentist applicant shall submit affidavits from two licensed dentists practicing in the same geographical area where the applicant is then practicing or teaching attesting to the moral character, standing, and ability of the applicant. The dental hygiene applicant shall submit affidavits from two licensed dentists or two licensed dental hygienists, or any combination of two thereof, practicing in the same geographical area where the applicant is then practicing or teaching attesting to the moral character, standing, and ability of the applicant.

(9) The applicant shall provide the board with an official transcript with school seal from the school of dentistry or school of dental hygiene which issued the applicant's professional degree or execute a request and authorization allowing the board to obtain the transcript.

(10) The applicant shall be a graduate of a dental or dental hygiene school, college, or educational program approved by the board.

(11) The applicant shall not be the subject of any pending or final action from any hospital revoking, suspending, limiting, modifying, or interfering with any clinical or staff privileges.

(12) The applicant shall not have been convicted of a felony or misdemeanor involving moral turpitude or of any law dealing with the administering or dispensing of legend drugs, including controlled substances.

(13) The board may consider or require other criteria including, but not limited to, any of the following:

a. Questioning under oath.

b. Results of peer review reports from constituent dental societies or federal dental services.

c. Substance abuse testing or treatment.

d. Background checks for criminal or fraudulent activities.

e. Participation in continuing education.

f. A current certificate in cardiopulmonary resuscitation.

g. Recent case reports or oral defense of diagnosis and treatment plans.

h. Proof of no physical or psychological impairment that would adversely affect the ability to practice dentistry or dental hygiene with reasonable skill and safety.

- i. An agreement to initiate practice within the State of Alabama within a period of one year.
- j. Proof of professional liability coverage and that coverage has not been refused, declined, cancelled, nonrenewed, or modified.
- k. Whether the applicant has been subject to any final disciplinary action in any state in which the individual has been licensed which shall be verified by a query in the National Practitioner Data Bank, the Health Integrity Protection Data Bank, the American Association of Dental Boards Clearing House for Disciplinary Information, any state where the applicant has been licensed, or any other pertinent bank currently existing or which may exist in the future.
- L. Whether the applicant's DEA registration or any state controlled substances permit has ever been revoked, suspended, modified, restricted, or limited in any way. Provided, however, that any discipline that results only from a failure to timely renew a registration or permit shall not prevent an applicant from being eligible for this method of licensure.

(14) If all criteria and requirements are satisfied and the board determines, after notice and a hearing, that the individual committed fraud or in any way falsified any information in the application process, the license may be revoked by the board.

(15) In addition to the requirements for applicants seeking licensure by credentials, an applicant desiring to practice a specialty only shall satisfy the following requirements:

- a. The specialty shall be one in a branch of dentistry approved by the board.
- b. The applicant shall satisfy the existing educational requirements and standards set forth by the board for that approved specialty.
- c. An applicant who chooses to announce or practice a specialty shall limit his or her practice exclusively to the announced special area or areas of dental practice.
- d. If an applicant who is initially licensed by credentials for a specialty practice decides to renounce his or her specialty and practice general dentistry, and the license originally issued did not require a general dental license but rather a specialty license, or the applicant originally passed only a specialty examination, the applicant may not practice general dentistry until he or she successfully passes the board's regular general dentistry examination. However, if the applicant has passed a general dentistry examination or has a general dentistry license, was practicing a specialty, and decides not to continue that specialty and practice only general dentistry, the applicant is eligible for licensure by credentials as a general dentist.

(e) Notwithstanding the provisions of subsection (a), the board shall issue a special purpose license to practice dentistry across state lines to an applicant who has met the following requirements:

- (1) The applicant holds a full and unrestricted license to practice dentistry in any state of the United States or in territories, other than the State of Alabama, in which the individual is licensed.
- (2) The applicant has not had any disciplinary action or other action taken against him or her by any state or licensing jurisdiction. If there has been previous disciplinary or other action taken against the applicant, the board may issue a certificate of qualification if it finds that the previous disciplinary or other action indicates that the dentist is not a potential threat to the public.
- (3) The applicant submits an application for a certificate of qualification for a special purpose license to practice dentistry across state lines on a form provided by the board, remits an application fee in an amount established by the board, and pays a fee.

(f) A special purpose license issued by the board to practice dentistry across state lines limits the licensee solely to the practice of dentistry across state lines. The special purpose license shall be valid for a period of up to three years, shall expire on a renewal date determined by the board, and may be renewed upon receipt of a renewal fee as established by the board. Failure to renew a license according to the renewal schedule established by the board shall cause the special purpose license to be inactive. An applicant may reapply for a special purpose license to practice dentistry across state lines following placement of the license on inactive status. The applicant shall meet the qualifications of subsection (e) in order to be eligible for renewal of the license.

(g) Notwithstanding the provisions of this section, the board shall only issue a special purpose license to practice dentistry across state lines to an applicant whose principal practice location and license to practice are located in a state or territory of the United States whose laws permit or allow for the issuance of a special purpose license to practice dentistry across state lines or similar license to a dentist whose principal practice location and license are located in another state. It is the stated intent of this section that dentists who hold a full and current license in the State of Alabama be afforded the opportunity to obtain, on a reciprocal basis, a license to practice dentistry across state lines in any other state or territory of the United States as a precondition to the issuance of a special purpose license as authorized by this section to a dentist licensed in the other state or territory. The board shall determine which states or territories have reciprocal licensure requirements meeting the qualifications of this section.

(h) Any individual who does not qualify for licensure pursuant to any of the above subsections but who has passed an examination approved by the board and possesses a current license in another state is eligible to apply for licensure upon payment of a fee. The board shall have discretion whether to require an examination for any such individual, including the time, place, type, and content of any such examination.

(i) A current license shall mean one in good standing authorizing the individual to practice in the state of issuance.

§ 34-9-11. Examination of applicants; issuance of licenses.

When application and accompanying proof as are required herein are found satisfactory, the board shall notify the applicant to appear for examination at a time and place to be fixed by the board, and each applicant shall be examined and graded by number in lieu of name. All examinations provided for in this chapter shall be approved by the board and shall be of such type and character as to test the qualifications of the applicant to practice dentistry. It is provided, however, that the board may recognize any written parts of an examination given by the Joint Commission on National Dental Examinations in lieu of such examinations or subject to such examinations as the board may approve. Those found qualified by the board shall be granted a license and a license certificate which shall bear a serial number, the full name of the licensee, the date of issuance, and the seal of the board, and shall be signed by each member of the board.

§ 34-9-12. Recording, reporting requirements.

(a) Every person granted a license to practice dentistry or dental hygiene in this state by the board, as herein provided, shall cause his or her license certificate to be recorded in the office of the judge of probate of the county in which he or she desires to practice before beginning the practice of dentistry or dental hygiene in the county. Any person receiving a license from the board, whether or not intending to immediately engage in the practice of dentistry or dental hygiene in this state, shall cause his or her license certificate to be recorded in the office of the judge of probate in one of the counties of this state within 60 days of the issuance of the license certificate.

(b) Every person issued a special purpose license to practice dentistry across state lines shall be subject to the jurisdiction of the board, and all rules and regulations of the board, including all matters relating to discipline. It shall be the affirmative duty of every special purpose licensee to report to the board in writing within 15 days of the initiation of any disciplinary action against the licensee to practice dentistry by any state or territory in which the licensee is licensed. In addition, the licensee agrees, by acceptance of the license, to produce any patient records or materials as requested by the board or to appear before the board or any of its committees following receipt of a written notice issued by the board. The notice may be issued by the board. The failure of a special purpose licensee to report, produce records, or appear as set forth above shall subject the licensee to the disciplinary penalties as set forth in Section 34-9-5.

(c) Every person issued a special purpose license to practice dentistry across state lines shall comply with all laws, rules, and regulations governing the maintenance of patient records, including patient confidentiality requirements, regardless of the state where the records of any patient within this state are maintained.

§ 34-9-13. License and registration certificates to be kept in office of practitioner.

Every practitioner of dentistry and dental hygiene within the meaning of this chapter shall have in his or her possession and posted in a visible location a license certificate and an annual registration certificate in the office wherein he or she practices. A licensed practitioner who practices in more than one location may reproduce the annual registration certificate as needed; however, the practitioner may not reproduce the license certificate. Copies of the license certificate may be requested by the practitioner from the board as necessary.

§ 34-9-14. Change of address generally.

Every licensed dentist and dental hygienist upon changing his or her place of practice, whether from one building, city, street address, or county to another, shall within 30 days thereafter furnish the secretary-treasurer of the board with the new address. The secretary-treasurer shall acknowledge receipt of change of address within 30 days.

§ 34-9-15. Annual registration; continuing education.

(a) No person shall practice dentistry or dental hygiene in the State of Alabama unless licensed or permitted by the board and registered annually as required by this chapter. The secretary-treasurer of the board shall issue to each licensee an initial registration form which shall contain space for the insertion of name, address, date, and number of license certificate, and other information as the board shall deem necessary. The licensee shall sign and verify the accuracy of the registration before a notary public after which he or she shall forward the registration to the secretary-treasurer of the board together with a fee. Each subsequent registration shall be made in electronic format or by United States mail upon a form to be determined by the board. On or before October 1 of each year, every dentist and dental hygienist licensed or permitted to practice dentistry or dental hygiene in the state shall transmit either online or by United States mail to the secretary-treasurer of the board the completed form prescribed by the board, together with a fee established by the board pursuant to this chapter, and receive thereafter the current annual registration certificate authorizing him or her to continue the practice of dentistry or dental hygiene in the state for a period of one year. Any license or permit previously granted under the authority of this chapter or any prior dental practice act shall automatically be suspended if the holder thereof fails to secure the annual registration certificate before January 1, each year. Any dentist or dental hygienist whose license or permit is automatically suspended by reason of failure, neglect, or refusal to secure the annual registration certificate shall be reinstated by the board upon payment of the penalty fee plus all accrued annual registration fees up to a maximum of five years, accompanied with the prescribed form for annual registration of the license or permit. Upon failure of any licensee or permittee to file application for the annual registration certificate and pay the annual registration fee on or before November 30, each year, the board shall notify the licensee or permittee by mail addressed to the last address of record that the application and fee have not been received and that, unless the application and fee are received on or before the first day of January, the license or permit shall be automatically suspended. The board shall notify the licensee or permittee by mail addressed to the last address of record of the effective date of the automatic suspension and the provisions for registration of the license or permit. The board shall waive the annual payment of fees herein provided for and issue a current annual registration certificate to any licensee or permittee who, because of age or physical disability, has retired from the practice of dentistry or dental hygiene or who is suffering a malady of a lingering or permanent nature. The board by rule shall waive annual registration and the payment of fees while any licensee is on temporary active duty with any of the Armed Forces of the United States. The waiver of fees herein provided shall be effective so long as the retirement because of age or physical disability or temporary active duty continues.

(b) The board shall adopt and promulgate rules and regulations for the adoption of a program of continuing education for its licensees by October 1, 1991. After that date, the successful completion of continuing education program requirements shall be a requisite for renewal of licenses and permits issued pursuant to this chapter.

§ 34-9-15.1. Release of records.

(a) Upon the request of a patient or authorized agent of a patient, a dentist shall promptly release to the patient or his or her authorized agent legible and accurate copies of all records of the patient regardless of how they are generated or maintained. The reasonable costs of reproducing copies shall not be more than the amounts authorized by statute and in the absence of any statutory authority no more than the actual cost of the reproduction.

(b) The release of records under this section shall not be made contingent upon the payment of any fee or charge owed by the patient.

(c) The provisions of the section shall survive the closing of a dental office or practice for any reason, including, but not limited to, sale of practice, any disciplinary action, retirement, disability, or death.

§ 34-9-16. Fee schedule.

The board shall establish and collect reasonable fees provided for in this chapter within the ranges set forth below and without having to engage in the rulemaking process:

Description

Not More Than

Dental Examination Application Fee	\$750.00
Dental Examination Fee	\$2,500.00
Dental Examination Materials Fee	\$500.00
Dental Licensure by Credentials Application Fee	\$4,000.00
Dental Licensure by Regional Exam Application Fee	\$1,000.00
Special Purpose Licensure Fee	\$750.00
Special Purpose Licensure Renewal Fee	\$750.00
Dental Annual Registration Fee	\$500.00
Dental License Reinstatement Penalty	\$500.00
Dental Hygiene Program Application Fee	\$500.00
Alabama Dental Hygiene Training Permit Fee	\$450.00
Alabama Dental Hygiene Training Education Fee	\$600.00
Alabama Dental Hygiene Program Instructor Certification Course Fee	\$200.00
Alabama Dental Hygiene Program Instructional Materials Fee	\$950.00
Dental Hygiene By Regional Exam Application Fee	\$500.00
Dental Hygiene Examination Application Fee	\$500.00
Dental Hygiene Examination Fee	\$600.00
Dental Hygiene Examination Materials Fee	\$400.00
Dental Hygiene Licensure by Credentials Fee	\$2,000.00
Dental Hygiene Annual Registration Fee	\$75.00
Dental Hygiene License Reinstatement Penalty	\$200.00
Dental Hygiene Infiltration Anesthesia Permit Fee	\$250.00
Dental Hygiene Infiltration Anesthesia Renewal Fee	\$250.00
License Certificate Fee	\$500.00
Duplicate or Replacement License Fee	\$150.00
Dental Faculty Teaching Permit Fee	\$350.00
Dental Faculty Special Teaching Permit Fee	\$500.00
Alabama Controlled Substance Permit Fee	\$400.00
Alabama Controlled Substance Permit Renewal Fee	\$400.00
General Anesthesia Permit Fee	\$1,500.00
General Anesthesia Permit Renewal Fee	\$750.00
Parenteral Sedation Permit Fee	\$1,500.00
Parenteral Sedation Permit Renewal Fee	\$750.00
Oral Conscious Sedation Permit Fee	\$250.00
Oral Conscious Sedation Permit Renewal Fee	\$250.00
Mobile Dental Application/Inspection Fee	\$1,500.00
Mobile Dental Renewal Fee	\$1,500.00
Mobile Dental Facility/Portable Dental Operation Application for Certificate of Registration Fee	\$750.00
Mobile Dental Facility/Portable Dental Operation Renewal of Certificate of Registration Fee	\$500.00
Alabama Impaired Dental Professionals Committee Annual Monitoring Fee	\$2,000.00

§ 34-9-17. Use of names.

(a) Any person or persons may practice or offer to practice dentistry in connection with any dental office or offices by or under the use of a name other than their own provided their name or names as they appear on their license certificate granted to him or them as a dentist pursuant to this chapter appear in a reasonably dignified manner either following or beneath any name selected and further provided that such person or persons are personally present in their office or offices operating as a dentist or personally overseeing such operations as they are performed in their office or each of their offices. When an associate in practice is on temporary active duty with the armed forces, his or her name may continue to appear in connection with the practice of dentistry at any office or offices. Nothing herein shall allow or permit any person or persons to select a name that suggests or implies a nonprofit or charitable activity. The violation of any of the provisions of this subsection by any dentist may subject such dentist to any of the penalties outlined in Section 34-9-18.

(b) It shall be unlawful for a licensee to permit his or her name to appear in any manner on, within, or in connection

with any office which he or she has sold to another licensee and from which he or she has severed active practice, provided the name of the dentist who sells his or her office to a licensed dentist, or in the event of the death of a licensee, the name of the deceased dentist, may remain in the office for a period not to exceed 12 months and it shall also be unlawful for the buyer to permit the former owner's name or the deceased's license to appear in any manner on, within, or in connection with the office, except as herein provided. The violation of any of the provisions of this subsection by any dentist may subject such dentist to the penalties outlined in subsection (b) of Section 34-9-18.

(c) Nothing in this section shall be so construed as to prevent two or more licensed dentists from associating together for the practice of dentistry.

§ 34-9-18. Grounds for disciplinary action.

(a) The board may invoke disciplinary action as outlined in subsection (b) whenever it shall be established to the satisfaction of the board, after a hearing as hereinafter provided, that any dentist or dental hygienist has been guilty of the following:

(1) Fraud, deceit, or misrepresentation in obtaining any license, license certificate, annual registration certificate, money, or other thing of value.

(2) Gross immorality.

(3) Is a menace to the public health or to patients or others by reason of a disease.

(4) Is an habitual user of intoxicants or drugs rendering him or her unfit for the practice of dentistry or dental hygiene.

(5) Has been convicted for violation of federal or state narcotics or barbiturate laws.

(6) Is guilty of negligence or gross negligence.

a. For the purposes of this subdivision, negligence is defined as the failure to do what a reasonably prudent dentist or dental hygienist would have done under the same or similar circumstances or the doing of that which a reasonably prudent practitioner would not have done under the same or similar circumstances.

b. For the purposes of this subdivision, gross negligence is defined as willful or wanton conduct with reckless, malicious, or conscious disregard for the rights or safety of others, or conduct that is so deliberate, outrageous, and callous as to display total indifference to the health or safety of a patient, that could result in serious bodily injury or death.

(7) Is guilty of employing, allowing, or permitting any unlicensed person or persons to perform any work in his or her office which, under this chapter, can only be legally done by a person or persons holding a license to practice dentistry or dental hygiene.

(8) Willfully or negligently violates the rules of the State Department of Health or of the board regarding sanitation.

(9) Is guilty of division of fees, or agreeing to split or divide the fee received for dental service with any person for bringing or referring a patient without the knowledge of the patient or his or her legal representative, except the division of fees between dentists practicing in a partnership and sharing professional fees, or in case of one licensed dentist employing another.

(10) Is guilty of professional connection or association with or lending his or her name to anyone who is engaged in the illegal practice of dentistry or dental hygiene.

(11) Conviction in any court of competent jurisdiction of a felony or a misdemeanor involving moral turpitude.

(12) a. A dental hygienist using or attempting to use in any manner whatsoever any prophylactic list, call list, records, reprints, or copies of same, or information gathered therefrom, of the names of patients whom the dental hygienist served in the office of a prior employer, unless the names appear upon

the bona fide call or prophylactic list of his or her present employer and were caused to appear through the legitimate practice of dentistry or dental hygiene as provided for in this chapter.

b. A licensed dentist who aids or abets or encourages a dental hygienist employed by him or her to make use of a prophylactic list or the calling by telephone or by the use of letters transmitted through the mails to solicit patronage from patients formerly served in the office of any dentist employing the hygienist.

(13) Pertaining to licensed dentists only, the prescribing, administering or dispensing of any controlled substances enumerated in Schedules I through V contained in the Alabama Uniform Controlled Substances Act, Chapter 2 of Title 20, or any amendment or successor thereto, or any drug not prescribed for any dentally or facially related condition, and/or for any necessary medication during the course of treatment rendered directly by the dentist, for any person not under his or her treatment in the regular practice of his or her profession.

(14) Irregularities in billing an insurance company or other third party payer for services rendered to a patient. For the purposes of this section irregularities in billing shall include: Reporting charges for the purpose of obtaining a total payment in excess of that usually received by the dentist for the services rendered; falsely reporting treatment dates for the purpose of obtaining payment; falsely reporting charges for services not rendered; falsely reporting services rendered for the purpose of obtaining payment; or failing to advise any third party payer that the copayment provisions of a contract have been abrogated by accepting the payment received from the third party payer as full payment.

(15) Pertaining to licensed dentists only, patient abandonment.

(16) Violating any rule adopted by the board.

(17) Has had his or her license or permit to practice dentistry or dental hygiene from another state suspended or revoked based upon acts similar to those described in this section. A certified copy of the record of suspension or revocation of the state making the suspension or revocation shall be conclusive evidence thereof.

(18) Violating any provision of this chapter.

(b) When the board finds any dentist or dental hygienist guilty of any of the grounds set forth in subsection (a), it may enter an order imposing one or more of the following penalties:

(1) Refuse to issue the dentist or dental hygienist any license or permit provided for in this chapter.

(2) With the exception of negligence as defined in paragraph (a)(6)a. revoke the license or permit of any dentist or dental hygienist.

(3) Suspend the license or permit of any dentist or dental hygienist.

(4) Enter a censure.

(5) Issue an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the dentist or dental hygienist.

(6) Impose an administrative fine not to exceed five thousand dollars (\$5,000) for each count or separate offense.

(7) Impose restrictions on the scope of practice.

(8) Impose peer review or professional education requirements.

(9) Assess the costs of the disciplinary proceedings.

(c) Failure to comply with any order of the board, including, but not limited to, an order of censure or probation, is cause for suspension or revocation of a license.

(d) (1) No disciplinary action as outlined in subsection (b) or (c) shall be invoked or entered except after a hearing by the board as provided in this chapter, and such order is subject to judicial review as provided by this chapter.

(2) No order of suspension or revocation provided in this section shall be made or entered except after a hearing by the board as provided in this chapter, and the order shall be subject to judicial review as provided by this chapter.

(e) (1) The board may temporarily suspend a special purpose license to practice dentistry across state lines without a hearing on either of the following grounds:

a. The failure of the licensee to appear or produce records or materials as requested by the board.

b. The initiation of a disciplinary action against the licensee by any state or territorial licensing jurisdiction in which the licensee holds a license to practice dentistry.

(2) Notwithstanding any other provision of law, including the Alabama Administrative Procedure Act, the temporary suspension provided herein shall remain in effect until either the licensee has complied with the request of the board or the disciplinary action pending against the licensee has been terminated in favor of the licensee and the temporary suspension has been terminated by a written order of the board. A special purpose license to practice dentistry across state lines is subject to each of the grounds for disciplinary action provided in this section in accordance with the procedures of Section 34-9-24 and the Alabama Administrative Procedure Act.

(f) Members of the board, any agent, employee, consultant, or attorney for the board, and the members of any committee of dentists or dental hygienists impaneled by the board, shall be immune from suits for any conduct in the course of their official duties with respect to investigations or hearings; provided, that the persons act without malice and in good faith that such investigations or hearings are warranted by the facts, known to them after diligent effort to obtain the facts of the matter relative to the investigations or hearings.

(g) Nothing in this chapter shall be interpreted to limit or restrict the authority of the board to discipline any dentist licensed to practice in this state who violates this chapter while engaging in the practice of dentistry within this or any other state.

(h) The board shall have the authority to adopt rules imposing a non-disciplinary administrative penalty for designated violations of this chapter.

§ 34-9-19. Advertising -- Dentist; specialty requirements; practice emphasis; purpose of section; rules and regulations.

(a) For the purpose of this section, the following terms shall have the respective meanings:

(1) ADVERTISEMENT. An advertisement is information communicated in a manner designed to attract public attention to the practice of a dentist as heretofore defined.

(2) DENTIST. Any person licensed to practice dentistry in this state pursuant to this chapter or any entity authorized by law which is formed for the purpose of practicing dentistry.

(3) FALSE. A false statement or claim is one which:

a. Contains a material misrepresentation of fact or law.

b. Omits a material fact rendering the statement or claim when considered as a whole false.

(b) A dentist shall have ultimate responsibility for all advertisements which are approved by him or her or his or her agents or associates and the dentist shall be responsible for the following:

(1) Broadcast advertisements shall be recorded, approved by the dentist, and a recording of the actual transmission shall be retained by the dentist for one year following the final appearance or use of the advertisement. The dentist is responsible for making copies of the advertisement available to the board within 10 days following a request by the board.

(2) Written or printed advertisements shall be approved by the dentist and a copy of the publication in which the advertisement is displayed shall be retained by the dentist for one year following the final appearance or use of the advertisement. The dentist is responsible for making copies of the advertisement available to the board within 10 days following a request by the board.

(3) Other forms of advertisement shall be approved by the dentist and the contents and specifications, where applicable, shall be retained by the dentist for one year following the final appearance or use of the advertisement and the dentist is responsible for making copies of the advertisement available to the board within 10 days following a request by the board.

(c) A dentist may not hold himself or herself out as a specialist or advertise specialty status unless the specialty is approved by the board.

(d) Dentists who are not specialists in specialties approved by the board may nevertheless advertise that their practice is limited to a specific area of dentistry only if the dentist has obtained membership in or otherwise has been credentialed by an accrediting organization which is recognized by the board as a bona fide organization for such an area of practice.

(e) Notwithstanding any provision of this section to the contrary, a dentist licensed pursuant to this chapter may not hold himself or herself out as a specialist or advertise membership in a specialty recognized by an accrediting organization, unless the dentist has continuously held himself or herself out as a specialist since December 31, 1964, in a specialty recognized by the board or has completed a specialty education program approved by the board and the Commission on Dental Accreditation and meets either of the following qualifications:

(1) Is eligible for examination by a national specialty board recognized by the board.

(2) Is a diplomate of a national specialty board recognized by the board.

(f) A dentist licensed under this chapter may not represent to the public without appropriate disclosure that his or her practice is limited to a specific area of dentistry other than a specialty area of dentistry authorized under subsection (e) unless the dentist has attained membership in or has otherwise been credentialed by an accrediting organization which is recognized by the board as a bona fide organization for such an area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under subsection (c), the organization must condition membership or credentialing of its members upon all of the following:

(1) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university-based dental school that is beyond the dental degree, is at the graduate or postgraduate level, and is of at least 12 months in duration.

(2) Prior didactic training and clinical experience in the specific area of dentistry which is greater than that of other dentists.

(3) Successful completion of oral and written examinations based on psychometric principles.

(g) Notwithstanding the requirements of subsections (e) and (f), a dentist who lacks membership in or certification, diplomate status, or other similar credentials from an accrediting organization approved as bona fide by the board may announce a practice emphasis in any other area of dental practice if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement the following statement: “_____ (NAME OF ANNOUNCED AREA OF DENTAL PRACTICE) IS NOT RECOGNIZED AS A SPECIALTY AREA BY THE BOARD OF DENTAL EXAMINERS OF ALABAMA.” If such an area of dental practice is officially recognized by an organization which the dentist desires to acknowledge or otherwise reference in the dentist’s announcement, solicitation, or advertisement, the same announcement, solicitation, or advertisement shall also state prominently: “_____ (NAME OF REFERENCED ORGANIZATION) IS NOT RECOGNIZED AS A BONA FIDE SPECIALTY ACCREDITING ORGANIZATION BY THE BOARD OF DENTAL EXAMINERS OF ALABAMA.”

(h) The purpose of this section is to prevent a dentist from advertising without appropriate disclosure membership in an organization which may be perceived by the public as recognizing or accrediting specialization or other unique competencies in an area of dentistry that is not recognized or accredited by the board in accordance with this section. The purpose of this section is also to prohibit a dentist from advertising a specialty or other area of dental practice

without appropriate disclosure unless the special competencies held by the dentist satisfy the requirements of subsections (d) and (f). The Legislature finds that dental consumers can reasonably rely on these requirements as satisfactory evidence of a dentist's attainment of meaningful competencies in the specialty or other bona fide area of dental practice advertised. The Legislature also finds that this process for the recognition of dental specialties and other bona fide areas of dental practice is the least restrictive means available to ensure that consumers are not misled about a dentist's unique credentials.

(i) A dentist who lacks membership in or certification, diplomate status, or similar credentials from an accrediting organization approved as bona fide by the board may announce a practice emphasis in any other area of dental practice if the dentist incorporates the disclaimer set forth in subsection (g).

(j) The board shall promulgate rules and regulations delineating examples of advertising which would be considered false, fraudulent, misleading, or deceptive.

§ 34-9-19.1. Advertising -- Dental referral service; requirements; prohibitions; penalties.

(a) For purposes of this section, the following words shall have the following meanings:

(1) ADVERTISEMENT. Information communicated in a manner designed to attract public attention to a referral service, participating dentist, or a practice of dentistry.

(2) DENTAL REFERRAL SERVICE. A person, firm, partnership, association, corporation, agent, or employee of any of the foregoing that engages in any business or service for profit that in whole or in part includes the referral or recommendation of persons to a dentist for any form of dental care or treatment.

(3) DENTIST. Any person licensed to practice dentistry or any entity authorized by law which is formed for the purpose of practicing dentistry.

(4) FALSE, FRAUDULENT, MISLEADING, OR DECEPTIVE STATEMENT. A statement or claim having one or more of the following characteristics:

a. One that contains a misrepresentation of fact.

b. One that is likely to mislead or deceive because in context it makes only a partial disclosure of relevant facts.

c. One that is intended or is likely to create a false or unjustified expectation of favorable results.

d. One that implies unusual superior dental ability.

e. One that contains other representations or implications that in reasonable probability will cause an ordinary and prudent person to misunderstand or be deceived.

(5) PARTICIPATING DENTIST. A dentist who has paid a fee to the dental referral service in order to be included on its referral service.

(b) A dental referral service shall not participate in the advertising of or operate a dental referral service unless all of the following conditions are met:

(1) The patient referrals by the dental referral service result from patient-initiated responses to the service's advertising.

(2) The dental referral service discloses to any prospective patient who makes contact with the service that the participating dentists have paid a fee for participation in the service.

(3) The dental referral service does not impose a fee on the participating dentists dependent on the number of referrals or amount of professional fees paid by the patient to the dentist.

(4) Participating dentists charge no more than their usual and customary fees to any patient referred.

(5) The dental referral service registers with the Board of Dental Examiners of Alabama providing all the following information:

- a. Name.
- b. Street address.
- c. Mailing address.
- d. Telephone number.
- e. Name of registered agent or person responsible for the operation of the dental referral service.
- f. Listing of other states where the dental referral service is registered.
- g. A copy of the standard form contract that regulates its relationship with participating dentists.

(c) Participating dentists shall not enter into a contract or other form or agreement to accept for dental care or treatment a person referred or recommended for the care or treatment by a dental referral service unless the dental referral service meets all the requirements of this section.

(d) A dental referral service that advertises shall include in each advertisement in legible or audible language, or both, a disclaimer containing all the following statements or information that:

- (1) The participating dentist of the dental referral service is a dentist who has paid a fee to participate in the service.
- (2) The advertisement is paid for by participating dentists.
- (3) No representation is made about the quality of the dental services to be performed or the expertise of the participating dentists.
- (4) Participating dentists are not more or less qualified than dentists who are not participating in the service.

(e) Dental referral service advertisements shall not do any of the following:

- (1) Advertise or solicit patients in a manner that contains a false, fraudulent, misleading, or deceptive statement in any material respect.
- (2) Publish or circulate, directly or indirectly, any false, fraudulent, misleading, or deceptive statement as to the skill or methods of practice of any participating dentist.
- (3) Contain a statement or make a recommendation that the dental referral service provides referrals to the most qualified dentists or dental practices.
- (4) Contain a review process or a screening.
- (5) Contain qualifications or information verification that misleads the public into thinking a participating dentist has obtained special recognition or joined a selective group of licensed dentists by being a participating dentist in the dental referral service.

(f) A violation of Sections 34-9-15, 34-9-19, 34-9-28, or this section, including, but not limited to, advertising in any manner which is false, fraudulent, misleading, or deceptive, shall subject a participating dentist to possible administrative disciplinary actions outlined in Section 34-9-18, after notice and hearing by the Board of Dental Examiners of Alabama and the opportunity for judicial review as provided in this article.

§ 34-9-20. Unauthorized advertising, selling, or offering of dental services and appliances; injunctions.

Any person, which word when used in this section shall include all legal entities not licensed to practice dentistry in this state, who shall advertise in any manner to the general public that he or she can or will sell, supply, furnish, construct, reproduce, or repair prostheses (fixed or removable), or other appliances to be used or worn as substitutes for natural teeth, or for the regulation thereof, shall be guilty of a misdemeanor, and the circuit courts shall have jurisdiction to enjoin such person from so doing.

§ 34-9-21. Employing services of commercial dental laboratory or private technician.

(a) Every duly licensed and registered dentist who employs the services of a commercial dental laboratory or private technician for the purpose of constructing, altering, repairing, or duplicating any prostheses (fixed or removable), splint, or orthodontic appliance shall be required to furnish the commercial dental laboratory or private technician an impression or cast made by the dentist when necessary, together with a prescription setting forth the following:

- (1) The name and address of the commercial dental laboratory or private dental technician.
- (2) The patient's name or identification number, and if a number is used the patient's name shall be written upon the duplicate copy of the prescription retained by the dentist.
- (3) The date on which the prescription was written.
- (4) A description of the work to be done, with diagram if necessary.
- (5) A specification of the type and quality of materials to be used.
- (6) The signature of the dentist and his or her license number.

(b) Such prescription shall be made in duplicate form. The duplicate copy shall be retained in a permanent file for a period of two years by the dentist, and the original copy shall be retained on a permanent file for a period of two years by the commercial dental laboratory or private technician. Such permanent file of prescriptions to be kept by such dentists, commercial dental laboratory, or private technician shall be open to inspection at any reasonable time by the board or its duly constituted agent. Failure of the dentist, commercial dental laboratory, or private technician to keep such permanent records of prescriptions which are identifiable with each prostheses (fixed or removable), splint, or orthodontic appliance shall be prima facie evidence of a violation of this chapter and shall constitute and be punishable as a misdemeanor.

§ 34-9-22. Sale, offer to sell, procurement, or alteration of diploma or certificate; fraud or cheating.

Whoever sells or offers to sell a diploma conferring a dental or dental hygiene degree, or a license certificate or annual registration certificate granted pursuant to this chapter or prior dental act, or procures such diploma or license certificate or annual registration certificate with intent that it shall be used as evidence of the right to practice dentistry or dental hygiene as defined by law, by a person other than the one upon whom it was conferred or to whom such license certificate or annual registration certificate was granted, or with fraudulent intent alters such diploma or license certificate or annual registration certificate, or uses or attempts to use it when it is so altered shall be deemed guilty of a misdemeanor. The board may impose any of the penalties outlined in Section 34-9-18 against any person found guilty of making a false statement or cheating, or of fraud or deception either in applying for a license, a license certificate, or annual registration or in taking any of the examinations provided for herein.

§ 34-9-23. Title and letters signifying degree.

Any licensed dentist of this state being a graduate of a reputable dental school or college recognized by the board shall have the right to use the title "doctor" or abbreviation thereof before his or her name, or appended to his or her name the letters "D.D.S.," "D.M.D.," or equivalent letters signifying the dental degree conferred upon him or her.

§ 34-9-24. Statement of charges and notice of hearing before revocation or suspension of license.

No action to revoke or suspend a license or permit shall be taken until the licensee or permittee has been furnished a statement in writing of the charges against him or her, together with a notice of the time and place of the hearing. The statement of charges and notice shall be served upon the licensee or permittee at least 20 days before the date fixed for hearing, either personally or by registered or certified mail sent to his or her last known physical home or office address or post-office address, or any combination of them.

§ 34-9-25. Judicial review of orders of board.

From any order of the board imposing any of the penalties found in Section 34-9-18, any party affected thereby may bring an action in the circuit courts to set aside the order on the ground that same is unlawful or arbitrary.

§ 34-9-26. Examination, qualifications, licensing, etc., of dental hygienists.

No person shall practice as a dental hygienist in this state until such person has passed an examination given by the board or approved by the board, or both, under rules and regulations as the board may promulgate and the payment of a fee. The board shall issue licenses and license certificates as dental hygienists to those persons who have passed the examination and have been found qualified by the board. The license certificate and annual registration certificate shall be displayed in the office in which the dental hygienist is employed. No person shall be entitled to a license and license certificate unless the person is 19 years of age and of good moral character. Each applicant for examination and license as a dental hygienist shall be a graduate of a school of dental hygiene which has been approved by the board, or in lieu thereof, shall have served as a dental assistant for a period of time established by board rule and shall have served at least one year as a dental hygienist trainee under a training permit issued by the board to a qualified dentist practicing in this state in accordance with the dental hygienist training program established by the board. Any person practicing in violation of this section shall be guilty of a misdemeanor, and the board may impose the penalties outlined in Section 34-9-18 for such violation.

§ 34-9-27. Employment, supervision, and practice of dental hygienists.

Dental hygienists shall work only under the direct supervision of a duly licensed dentist practicing in this state. Dental hygienists may perform any duties allowed by rule or regulation of the board and assist a licensed or permitted dentist in his or her practice. Any dental hygienist licensed by the board under this section who has completed the curriculum for dental hygienists at a dental school approved by the board shall have the right to use the title Registered Dental Hygienist or the abbreviation thereof, "R.D.H." appended to his or her name signifying the license conferred. The board may impose any of the penalties outlined in Section 34-9-18 against any dentist who shall permit any dental hygienist working under his or her supervision to perform any operation other than those permitted under this section, and may impose the penalties outlined in Section 34-9-18 against any dental hygienist who shall perform any operation other than those permitted under this section.

§ 34-9-28. Notification of change of address or employer; annual registration requirements.

It shall be the duty of all licensed dental hygienists to notify the board, in writing, of any change of address or employer and have issued to them an annual registration certificate by the board. Any dental hygienist whose license shall be automatically suspended by reason of failure, neglect, or refusal to secure the annual registration certificate may be reinstated by the board upon payment of the penalty fee plus the current year's registration fee. The form and method provided for in Section 34-9-15 shall apply to the annual registration of dental hygienists.

§ 34-9-29. Injunctions against violations of chapter.

When it appears to the board that any person is violating any of the provisions of this chapter, the board may in its own name bring an action in the circuit court for an injunction, and said court of this state may enjoin any person from violating this chapter regardless of whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted. For purposes of this section, person shall be deemed to include any individual, firm, partnership, corporation, professional association, professional corporation or other entity.

**ARTICLE 2
BOARD OF DENTAL EXAMINERS**

§ 34-9-40. Creation; composition.

(a) In order to accomplish the purposes and to provide for the enforcement of this chapter, there is hereby created the board. The board is hereby vested with the authority to carry out the purposes and enforce the provisions of this chapter. On June 24, 1959, the members of the present board now in existence shall hold office for the remainder of their respective terms for which they have been elected and thereafter until their successors are elected and qualified and shall constitute the board under this chapter. The board shall consist of six dentists who shall be selected in the method set forth herein all of whom having been actively engaged in the practice of dentistry in the State of Alabama for at least five years next preceding the date of their election and one dental hygienist elected at-large as provided in subsection (b). Each member of the board shall be a citizen of this state. No member of the board shall be a member of the faculty of any dental school, dental college, dental hygiene school, or dental hygiene college or receive any financial benefits for teaching in any dental school, dental college, dental hygiene school, or dental hygiene college or have a financial interest in a commercial dental laboratory or a dental supply business. One member, who is

qualified as provided herein, shall be selected by the Alabama Dental Society every five years. As for all elections of members, any group of 10 or more licensed dentists, residing and practicing dentistry in the state, may nominate a candidate for the position of board member by submitting a petition bearing their signatures to the secretary of the board to be postmarked no later than the first day of July in the year of the election. The board shall cause the election ballots to be mailed or published digitally not later than September 1 in the year of the election to all the licensed dentists residing and practicing in the state and currently registered as prescribed by law. The ballot shall be postmarked, or otherwise submitted electronically, no later than October 1 to the secretary of the board. Three members of the board shall be present at the time the ballots, digital or physical, are tallied. Any candidate receiving a majority of the votes shall be declared elected to the board and will take the oath of office on or before October 15 in the year of his or her election. In the event no candidate receives a majority of the votes cast, the board shall conduct a run-off election between the two candidates receiving the largest number of votes. The board shall cause the ballots pertaining to the run-off election to be mailed or digitally published on or before October 31 of the election year to all the licensed dentists who have renewed their licenses for the succeeding year as of October 1 of the current year, are residing and practicing in the state, and currently are registered as prescribed by law, and the ballots pertaining to the run-off election shall be postmarked or digitally published no later than the fourteenth day of November in the year of the run-off election and received, if mailed, by the secretary of the board no later than the first board workday following the fourteenth day of November. All mailed ballots received after this date shall be nullified. In the event of a run-off election, the candidate receiving the largest number of votes in the run-off election shall be declared elected to the board and shall take the oath of office and begin his or her term of office no later than the next scheduled board meeting. Every member elected shall hold office for a period of five years, which terms shall begin immediately upon taking an oath to properly and faithfully discharge the duties of his or her office and until his or her successor is elected and qualified, and the member so elected or appointed shall not at the expiration of the term be eligible to succeed himself or herself. The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. Except for the board member position selected by the Alabama Dental Society, vacancies on the board shall be filled by the board by the appointment of the immediate past member of the board, and if for any reason the immediate past member of the board is unable to accept the appointment, then the board shall fill the vacancy by appointment of the most recent past board member who is willing to accept the appointment. If no past board member accepts the appointment, then the board may, by majority vote, appoint any licensed dentist qualified under the provisions of this chapter. In the event of a vacancy in the position selected by the Alabama Dental Society, the Alabama Dental Society shall select a dentist who is qualified as provided herein to fill the vacancy. Members of the board shall be removed by a two-thirds vote of the registered dentists in the state for neglect of duty or any just cause, by petition to the secretary of the board by 10 percent of the licensed dentists in the state. On or before July 1, 1962, the board shall send a copy of this section to all licensed dentists in the state.

(b) (1) One member of the board shall be a licensed dental hygienist. The dental hygienist member shall be of good moral and ethical character and shall have been actively engaged in the practice of dental hygiene in the State of Alabama for at least five years preceding the date of election. No dental hygienist member shall be a member of the faculty of any dental school, dental college, dental hygiene school, or dental hygiene college or receive any financial benefits for teaching in any dental school, dental college, dental hygiene school, or dental hygiene college or have a financial interest in a commercial dental laboratory or dental supply business while serving on the board.

(2) The dental hygienist member shall be elected as follows:

a. Any group of 10 or more licensed dental hygienists, residing and practicing dental hygiene in the State of Alabama, may nominate a candidate for the dental hygienist position by submitting a petition bearing their signatures to the secretary of the board no later than the first day of July in the year of an election. The board shall cause election ballots to be mailed or published digitally no later than September 1 in the year of an election to all the licensed dental hygienists residing and practicing in the state and currently registered as prescribed by law. The ballot shall be postmarked or otherwise submitted electronically no later than October 1 to the secretary of the board.

b. Three members of the board shall be present at the time the ballots, digital or physical, are tallied. Any candidate receiving a majority of the votes shall be declared elected to the board and shall take the oath of office on or before October 15 in the year of his or her election. In the event no candidate receives a majority of the votes cast, the board shall conduct a run-off election between the two candidates receiving the largest number of votes. The board shall cause the ballots pertaining to any run-off election to be mailed or digitally published on or before October 31 of the election year to all licensed dental hygienists who have renewed their licenses for the succeeding year as of October 1 of the current year, are residing and practicing in the state, and are

currently registered as prescribed by law, and the ballots pertaining to the run-off election shall be postmarked or digitally submitted no later than the fourteenth day of November in the year of the run-off election and received, if mailed, by the secretary of the board no later than the first board workday following November 14. All mailed ballots received after November 14 shall be nullified. In the event of a run-off election, the dental hygienist candidate receiving the largest number of votes in the run-off election shall be declared elected to the board and shall take the oath of office and begin his or her term of office no later than the next scheduled board meeting.

c. All elections as described above shall be conducted by the board.

(3) The dental hygienist member shall be removed by a two-thirds vote of the registered dental hygienists in the state for neglect of duty or any just cause by petition to the secretary of the board by 10 percent of the licensed dental hygienists in the state.

(4) The dental hygienist member shall hold that position for a period of five years, which term shall begin immediately upon taking an oath to properly and faithfully discharge the duties of his or her office and continue until his or her successor is elected and qualified, and the member so elected or appointed shall not at the expiration of the term be eligible to succeed himself or herself. If a vacancy occurs in the position of dental hygienist, the unexpired term shall be filled by the board by the appointment of the immediate past dental hygienist member. If for any reason the immediate past dental hygienist member is unable to accept the appointment, then the board shall fill the vacancy by a majority vote of the other board members by the appointment of some other past dental hygienist member. If a vacancy occurs and there is not an immediate past dental hygienist member or other past dental hygienist member, the vacancy shall be filled by a unanimous vote of the board by the appointment of some otherwise qualified dental hygienist.

(5) The dental hygienist member shall advise the board on matters relating to dental hygiene and shall only be permitted to vote on matters relating to dental hygiene. The board shall provide the dental hygienist member with timely notice of all board meetings and the dental hygienist member shall be allowed to attend all meetings unless prohibited by law from attendance at any disciplinary hearings. The board shall not adopt any rule relating to the practice of dental hygiene unless the proposed rule has been submitted to the dental hygienist member for review and comment at least 30 days prior to its adoption. The dental hygienist member shall be entitled to the same compensation and expenses paid to dentist members of the board pursuant to Section 34-9-41.

(c) Any dentist or dental hygienist who has been found guilty of violating this chapter or any provision of a dental practice act of any other state and as a result his or her license was revoked, suspended, or placed on probation or who has been convicted of a felony, shall not be eligible for election or membership on the board for a period of five years from the termination of any such revocation, suspension, or probation.

§ 34-9-41. Officers of board; seal; meetings; compensation; disposition of funds.

The board shall annually elect from its membership a president, vice-president, and secretary-treasurer and may employ staff members who are not members of the board. The board shall have a common seal. The board shall hold an annual meeting for the purpose of transacting its business and examinations, and additional meetings at such times and places as the board may designate. A majority of the board shall constitute a quorum for the transaction of business at any meeting except that in conducting hearings involving any of the penalties outlined in Section 34-9-18, no less than five members of the board shall be present. In conducting hearings involving any of the penalties outlined in Section 34-9-18, a majority of the board may appoint any former member of the board who for such purposes shall have all the powers and privileges of such office as a regular board member possesses. In conducting or participating in exams, a majority of the board may appoint any former member of the board or such other licensed practicing dentists from a jurisdiction recognized by the board who for such purposes shall have all the powers and privileges of such office as a regular board member possesses. Out of the funds of the board the members thereof shall receive as compensation a sum to be fixed by the board for each day actively engaged in the duties of their office, and in addition board members shall receive the same per diem and travel allowance as is paid by law to state employees for each day actively engaged in the duties of their office. The secretary-treasurer shall receive such compensation as may be fixed by the board, which shall be in addition to his or her per diem and expenses, provided no per diem or expenses shall be allowed unless his or her duties require his or her absence from his or her office. The secretary shall receive such compensation as may be fixed by the board. The secretary-treasurer shall be custodian of all property, money, records and the official seal of the board. All money received by the board under this chapter shall be paid to and received by the secretary-treasurer of the board. The secretary-treasurer shall deposit to the credit of the board all funds paid to the board in a bank selected by its members. The board is authorized to expend such funds as shall be

necessary to enforce the provisions of this chapter; to pay salaries, expenses and other costs herein provided; to promote the arts and science of dentistry; and for such other purposes as the board shall consider to be in the best interest of dentistry in this state. All the costs herein provided for shall be paid by checks drawn by the secretary-treasurer and countersigned by the president of the board; except the board may authorize the administrative secretary or the executive director to sign checks for costs that do not exceed a monetary limit to be set by the board in its rules. Should the property be other than money, the secretary-treasurer shall provide for the safekeeping thereof for the use of the board. All money, including license fees, annual renewal license certificate fees, examination fees and any and all other fees and receipts under the provisions of this chapter, are hereby appropriated to the board to be used as herein provided.

§ 34-9-42. Bond of secretary-treasurer of board; annual report and audit; national affiliation.

The secretary-treasurer of the board shall give bond in such sum as may be prescribed by the board, conditioned to faithfully and honestly discharge the duties of the office according to law, which bond shall be made payable to the Board of Dental Examiners of Alabama and held in the custody of the president of the board. The secretary-treasurer of the board shall compile an annual report which shall contain an itemized statement of all money received and disbursed and a summary of the official acts of the board during the preceding year, and the report shall have attached thereto a certified report and audit made by a certified public accountant of the State of Alabama. A copy of the report and audit shall be filed of record in the office of the Department of Finance of the State of Alabama, and a copy shall be retained by the secretary-treasurer to be rendered upon request, to the dentists at large in the State of Alabama. The board may affiliate with the American Association of Dental Boards, may pay dues to the association, and may send all members of the board to the meetings of the association. Such delegates may receive the per diem herein provided for attending such meetings and reimbursement for necessary expenses audited and allowed by the board.

§ 34-9-43. Powers and duties generally.

(a) The board shall exercise, subject to this chapter, the following powers and duties:

- (1) Adopt rules for its government as deemed necessary and proper.
- (2) Prescribe rules for qualification and licensing of dentists and dental hygienists.
- (3) Conduct or participate in examinations to ascertain the qualification and fitness of applicants for licenses as dentists and dental hygienists.
- (4) Make rules and regulations regarding sanitation.
- (5) Formulate rules and regulations by which dental schools and colleges are approved, and formulate rules and regulations by which training, educational, technical, vocational, or any other institution which provides instruction for dental assistants, dental laboratory technicians, or any other paradental personnel are approved.
- (6) Grant licenses, issue license certificates, teaching permits, and annual registration certificates in conformity with this chapter to such qualified dentists and dental hygienists.
- (7) Conduct hearings or proceedings to impose the penalties specified in Section 34-9-18.
- (8)
 - a. Employ necessary persons to assist in performing its duties in the administration and enforcement of this chapter, and to provide offices, furniture, fixtures, supplies, printing, or secretarial service to these persons and expend necessary funds.
 - b. Employ an attorney or attorneys, subject to the approval of the Attorney General, to advise and assist in the carrying out and enforcing of the provisions of this chapter. Provided, however, if the board contracts with an outside attorney to be general counsel to the board, that attorney or any member of a law firm with which he or she is associated shall not function as the board's prosecutor at disciplinary hearings.
- (9)
 - a. Investigate alleged violations of this chapter and institute or have instituted before the board or the proper court appropriate proceedings regarding the violation.
 - b. Authorize and employ investigators who comply with the Peace Officers' Minimum Standards

and Training Act to exercise the powers of a peace officer in investigating alleged violations of the drug or controlled substances laws by persons licensed pursuant to this chapter, including the powers of arrest and inspection of documents.

(10) Adopt rules and regulations to implement this chapter.

(11) Publish, on a quarterly basis, all minutes, except minutes of executive sessions, financial reports, schedules of meetings, including anticipated executive sessions, and other pertinent information on the board's website no later than 90 days following the date of occurrence. In addition, publish or post annually the rules and regulations promulgated by the board, a copy of the Dental Practice Act, and a list of all persons licensed to practice under this chapter.

(12) Attend meetings, seminars, workshops, or events that may improve the function and efficiency of the board or improve the ability of the board to enforce and administer this chapter.

(b) The board, in exercising its powers and duties, shall adhere to guidelines and proceedings of the State Ethics Commission as provided in Chapter 25 of Title 36. The board may adopt rules for the purpose of establishing additional ethical guidelines.

§ 34-9-43.1. Administration and enforcement of duties; consultants.

(a) The board may employ investigators, attorneys, agents, and any other employees and assistants to aid in the administration and enforcement of the duties of the board. The board may request assistance from the Attorney General, district attorneys, or other prosecuting attorneys of this state in the various circuits and counties. All prosecuting attorneys throughout the state shall assist the board, upon request of either, in any action for injunction or any prosecution without charge or additional compensation.

(b) The board may employ consultants to render professional services such as, but not limited to, reviewing records and providing expert testimony in contested cases to aid the board in carrying out its lawful responsibilities. Consultants shall be compensated for professional services at rates established by the board by rule. In addition, consultants shall be reimbursed for actual reasonable expenses for travel, lodging, meals, long distance telephone expense, and other expenses reasonably incurred in the performance of the consultant's professional services.

§ 34-9-43.2. Legislative findings; rulemaking authority; liability; scope.

(a) The Legislature finds and declares all of the following:

(1) The power to make rules regulating the practice of dentistry and dental hygiene includes the power to prohibit unlicensed persons from practicing dentistry and dental hygiene and the power to regulate how licensed persons practice the same.

(2) A primary goal of the provision of health care is to prioritize patient health, safety, and welfare.

(3) The board is in the best position to determine the dental practices that affect and prioritize the health, safety, and welfare of the public.

(4) It is the intent of the Legislature in enacting this section to immunize the board, its members, employees, and agents from liability under state and federal anti-trust laws for the adoption of a rule that prioritizes patient health, safety, and welfare but appears to have elements that appear anti-competitive or have an anti-competitive effect when the effect on public health, safety, and welfare is clearly demonstrated and documented by the board.

(b) Subject to subsection (c), rules adopted under this section or Sections 34-9-18 and 34-9-43 may define and regulate the practice of dentistry and dental hygiene in a manner that prioritizes patient health, safety, and welfare, even if the rule has elements that appear anti-competitive or have an anti-competitive effect when the effect on public health, safety, and welfare is clearly demonstrated and documented by the board.

(c) A rule adopted under this section or Sections 34-9-18 and 34-9-43 may supplement or clarify any statutory definition but shall not conflict with any statute which defines the practice of dentistry and dental hygiene.

(d) Nothing in this section shall be construed to constrict or expand the current rights and privileges of any individual

governed by the board beyond that which existed prior to the ruling in the United States Supreme Court decision *N.C. State Bd. of Dental Examiners v. FTC*, 135 S.Ct. 1101 (2015).

(e) Nothing in this section shall be construed to constrict or expand the current duties or responsibilities of the members of the board in any context outside of federal or state anti-trust immunity beyond that which existed prior to the ruling in the United States Supreme Court decision *N.C. State Bd. of Dental Examiners v. FTC*, 135 S.Ct. 1101 (2015).

§ 34-9-44. Records to be kept by secretary-treasurer; copies and certificates as evidence.

The secretary-treasurer of the board shall keep a registry in which shall be entered the names of all persons to whom license certificates have been granted under this chapter, the numbers of such license certificates, the dates of granting the same and other matters of records, and he or she shall keep a true and correct copy of the minutes of all board meetings, and the book so provided and kept shall be the official book of records. A copy of the records or a copy of the records certified by the secretary-treasurer and under the seal of the board shall be admitted in any of the courts of this state as prima facie evidence of the facts contained in the records and in lieu of the original thereof. A certificate under the hand of the secretary-treasurer and the seal of the board that there is not entered in such record books the name and number of and date of granting such license certificate to a person charged with a violation of any of the provisions of this chapter shall be prima facie evidence of the facts contained therein. Such certificates shall be admitted in any of the courts of this state in lieu of the records of the board. The original books, records, and papers of the board shall be kept at the office of the secretary-treasurer of the board, which office shall be at such place as may be designated by the board.

§ 34-9-45. Board to assist prosecuting officers.

The board and its members and officers shall assist prosecuting officers in the enforcement of this chapter, and it shall be the duty of the board, its members and officers to furnish the proper prosecuting officers with such evidence as it or they may ascertain to assist them in the prosecution of any violation of this chapter, and the board is authorized for such purposes to make such reasonable expenditures from the funds of the board as it may deem necessary to ascertain and furnish such evidence.

§ 34-9-46. Subpoenas and testimony.

In all matters pending before it, the board shall have the power to issue subpoenas and compel the attendance of witnesses and the production of all necessary papers, books, and records, documentary evidence and materials or other evidence. Any person failing or refusing to appear or testify regarding any matter about which he or she may be lawfully questioned or to produce any papers, books, records, documentary evidence, or materials or other evidence in the matter to be heard, after having been required by order of the board or by a subpoena of the board to do so, may, upon application by the board to any circuit judge of the State of Alabama, be ordered to comply therewith; and, upon failure to comply with the order of the circuit judge, the court may compel obedience by attachment as for contempt as in case of disobedience of a similar order or subpoena issued by the court. The president, in writing filed with the board, may designate and authorize any member of the board to issue subpoenas, and any board member shall have authority to administer oaths to witnesses, or to take their affirmation. A subpoena or other process of paper may be served upon any person named therein, anywhere within the State of Alabama with the same fees and mileage by any officer authorized to serve subpoenas or such other process or paper in civil actions, in the same manner as is prescribed by law for subpoenas issued out of the circuit courts of this state, the fees and mileage and other costs to be paid as the board directs.

§ 34-9-47. Taking of depositions.

Depositions may be taken within or without the State of Alabama in the manner provided for by the laws of Alabama and the Alabama Rules of Civil Procedure for the taking of depositions in matters pending in the circuit courts of this state. The depositions shall be returnable to the board office, and the depositions may be opened or used by the parties to the proceedings the same as is provided for in matters pending before the circuit courts.

**ARTICLE 3.
USE OF ANESTHESIA BY DENTISTS.**

§ 34-9-60. Use of local anesthesia; permit to use general anesthesia.

Any person licensed or permitted to practice dentistry in the State of Alabama shall be authorized to use anesthesia

in accordance with the provisions of this section.

(1) All dentists are authorized to use local anesthesia.

(2) Twelve months after May 29, 1985, no dentist shall use general anesthesia on an outpatient basis for dental patients, unless such dentist possesses a permit of authorization issued by the Board of Dental Examiners.

a. In order to receive such permit, the dentist must apply on a prescribed application form to the Board of Dental Examiners, submit an application fee, and produce evidence showing that he or she:

1. Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level in a training program as described in Part II of the guidelines for teaching the comprehensive control of pain and anxiety in dentistry; or

2. Is a diplomate of the American Board of Oral and Maxillofacial Surgery, or is eligible for examination by the American Board of Oral and Maxillofacial Surgery, or is a member of the American Association of Oral and Maxillofacial Surgeons; or

3. Employs or works in conjunction with a qualified medical doctor who is a member of the anesthesiology staff in an accredited hospital, provided that such anesthesiologist must remain on the premises of the dental facility until any patient given a general anesthetic regains consciousness and is discharged; and

4. Has a properly equipped facility for the administration of general anesthesia staffed with a supervised team of auxiliary personnel capable of reasonably assisting the dentist with procedures, problems, and emergencies incident thereto. Adequacy of the facility and competence of the anesthesia team shall be determined by the Board of Dental Examiners as outlined below.

5. Possesses current training in Advanced Cardiac Life Support (ACLS) and basic life support certification.

b. Prior to the issuance of such permit, the Board of Dental Examiners, at its discretion, may require an on-site inspection of the facility, equipment, and personnel to determine if, in fact, the aforementioned requirements have been met. This evaluation shall be carried out in a manner prescribed by the board. The evaluation shall be conducted by a team of three examiners appointed by the Board of Dental Examiners. These examiners shall be dentists who are authorized to administer general anesthesia. If the results of the initial evaluation are deemed unsatisfactory, the applicant may reapply for a permit subject to the correction of the deficiencies outlined in the original evaluation.

(3) Each dentist who is licensed to practice dentistry in the state on May 29, 1985, who desires to continue to use general anesthesia shall make application on the prescribed form to the Board of Dental Examiners within 12 months of May 29, 1985. If he or she meets the requirements of this section, he or she shall be issued such a permit. If the applicant does not meet the requirements of paragraph a. of subdivision (2) of this section, he or she may be entitled to a "general anesthesia permit" provided said applicant passes to the satisfaction of the board an on-site inspection as provided for in paragraph b. of subdivision (2) of this section.

(4) Each dentist who has not been using general anesthesia prior to May 29, 1985, may be granted by the board a temporary provisional permit based on the applicant's producing evidence that he or she has complied with paragraph a. of subdivision (2) of this section above pending complete processing of the application and thorough investigation of an on-site evaluation as described in paragraph b. of subdivision (2) of this section.

§ 34-9-60.1. Administration of infiltration anesthesia by dental hygienists; permit requirements.

(a) The board may permit licensed dental hygienists to administer infiltration anesthesia under the direct supervision

of a licensed dentist. The board may promulgate rules further limiting the administration of infiltration anesthesia by dental hygienists. In order to administer infiltration anesthesia, a dental hygienist shall possess a dental hygiene infiltration anesthesia permit issued by the board. To receive a dental hygiene infiltration anesthesia permit from the board, a dental hygienist shall apply on an application form approved by the board, submit the appropriate application fee, and have been engaged in the active practice of dental hygiene for the 12 months immediately preceding initial application. A dental hygienist applying for a dental hygiene infiltration anesthesia permit shall submit proof to the board that he or she has fulfilled at least one of the following qualifications:

- (1) Has completed a minimum of 32 hours training in the administration of infiltration anesthesia in a course approved by the board.
- (2) Has certification of training in the administration of infiltration anesthesia by any entity or organization approved by the board.

(b) A dental hygiene infiltration anesthesia permit shall be renewed annually upon payment of a renewal fee and proof of completion of any continuing education requirements established by rule of the board.

§ 34-9-61. Review and renewal of permit; reevaluation of credentials and facility.

(a) Any dentist holding a permit of authorization issued by the Board of Dental Examiners shall be subject to review and such permit must be renewed annually.

(b) The board shall, upon payment of a renewal fee, renew the general anesthesia permit annually unless the holder is informed in writing that a reevaluation of his or her credentials and facility is to be required. In determining whether such reevaluation is necessary, the board shall consider such factors as it deems pertinent including, but not limited to, patient complaints and reports of adverse occurrences. Such reevaluation shall be carried out in the manner described in paragraph b. of subdivision (2) of Section 34-9-60.

§ 34-9-62. Certification in cardiopulmonary resuscitation.

Any dentist using general anesthesia, and his or her auxiliary personnel shall be currently certified in cardiopulmonary resuscitation.

§ 34-9-63. Permit to use parenteral sedation.

The issuance of a permit for general anesthesia shall include the privilege of administering parenteral sedation in accordance with this section. The issuance of a permit for parenteral sedation shall include the privilege of administering intravenous sedation. All current intravenous sedation permit holders are entitled to a parenteral sedation permit subject to the renewal and regulatory provisions afforded to the Board of Dental Examiners by this chapter. The term parenteral sedation shall not include the use or regulation of nitrous oxide.

(1) No dentist shall use parenteral sedation on an outpatient basis for dental patients unless the dentist possesses a permit of authorization issued by the board. The dentist applying for or holding the permit shall be subject to on-site inspections as provided in paragraph b. of subdivision (2) of Section 34-9-60.

a. In order to receive the permit, the dentist shall:

1. Apply on a prescribed application form to the board.
2. Submit a fee.
3. Produce evidence showing that he or she has satisfied each of the following requirements:
 - (i) Received formal training in the use of parenteral sedation from a board approved training program, is competent to handle all emergencies relating to parenteral sedation, and is currently certified in cardiopulmonary resuscitation. The certification of the formal training shall specify the total number of hours, the number of didactic hours, and the number of patient contact hours. The required number of didactic hours and patient contact hours shall be determined by the board.

(ii) Equipped a proper facility for the administration of parenteral sedation, staffed with a supervised team of auxiliary personnel capable of reasonably assisting the dentist with procedures, problems, and emergencies incident to the sedation procedure.

b. Adequacy of the facility and the competency of the sedation team shall be determined by the board.

c. Prior to the issuance of a permit, the board may require an on-site inspection of the facility, equipment, and personnel to determine if the requirements of this section have been met. This evaluation shall be performed as provided in subdivision (2) of this section.

(2) Each dentist who is licensed to practice dentistry in the state who desires to continue to use parenteral sedation shall make application on the prescribed form to the board. If he or she meets the requirements of this section, or currently holds a valid intravenous sedation permit, he or she shall be issued such a permit subject to all renewal and regulatory requirements of Section 34-9-64. If the applicant does not meet the requirements of paragraph a. of subdivision (1) of this section, or does not currently hold a valid intravenous sedation permit, he or she may be entitled to a "parenteral sedation permit" if the applicant passes, to the satisfaction of the board, an on-site inspection. The inspection shall ascertain that the dentist has a properly equipped facility for the administration of parenteral sedation, staffed with a supervised team of auxiliary personnel capable of reasonably assisting the dentist with incidental procedures, problems, and emergencies.

The board, in conducting the on-site inspection and evaluations required in this section, shall appoint a team of up to three examiners who shall be dentists certified to administer parenteral sedation in accordance with this article.

(3) A dentist utilizing parenteral sedation and the auxiliary personnel of the dentist shall be currently certified in cardiopulmonary resuscitation and the dentist shall be trained in advanced cardiac life support.

(4) Each dentist who has not been using parenteral sedation, pending complete processing of an application and a thorough on-site evaluation, may be granted one temporary provisional permit by the board at a time, if the applicant produces evidence that he or she has complied with this section.

§ 34-9-64. Annual renewal of parenteral sedation permit; reevaluation of credentials and facility.

The board shall renew the parenteral sedation permit annually, upon payment of a renewal fee, unless the holder is informed in writing that a reevaluation of his or her credentials and facility is necessary. In determining whether the reevaluation is necessary, the board shall consider any factors as it deems pertinent including, but not limited to, patient complaints and reports of adverse occurrences. The reevaluation shall be performed as provided in paragraph b. of subdivision (2) of Section 34-9-60.

§ 34-9-65. Reports of mortalities and other incidents resulting from general anesthesia or sedation.

(a) All licensees engaged in the practice of dentistry in the state must submit a complete report within a period of 30 days to the Board of Dental Examiners of any mortality or other incident occurring in the outpatient facilities of such dentist which results in permanent physical or mental injury of the patient as a direct result of general anesthesia or sedation techniques.

(b) The Board of Dental Examiners shall have authority to adopt rules and regulations implementing and enforcing the provisions of this section.

(c) Violation of any provision of this section shall subject the dentist to the penalties outlined in Section 34-9-18 and no order imposing those penalties shall be made or entered except after notice and hearing by the board as provided in Chapter 9, Title 34. Such order shall be subject to judicial review as provided by such chapter.

**ARTICLE 4
ORAL CONSCIOUS SEDATION**

§ 34-9-80. Definitions.

As used in this article, the following terms shall have the following meanings:

- (1) ANALGESIA. The diminution or elimination of pain in the conscious patient.
- (2) ANXIOLYSIS. A pharmacological induced state, oral or inhalation, where a patient experiences a diminution of anxiety.
- (3) BOARD. The Alabama Board of Dental Examiners.
- (4) ENTERAL. Any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (i.e., oral, rectal, sub lingual).
- (5) INHALATION. A technique of administration in which a gaseous or volatile agent is introduced into the pulmonary tree and the primary effect is due to absorption through the pulmonary bed.
- (6) LOCALIZED ANESTHESIA. The elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.
- (7) ORAL CONSCIOUS SEDATION. A depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and to respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or a combination thereof. Oral conscious sedation does not include the administration of a medication given only for the purpose of diminution of anxiety. An oral conscious sedation permit is not required for the use of inhalation nitrous oxide following the administration of a medication given only for the purpose of diminution of anxiety.

§ 34-9-81. Permits required.

In order to administer oral conscious sedation, a dentist must possess a general anesthesia permit, a parenteral sedation permit, or an oral conscious sedation permit from the board. In order to receive an oral conscious sedation permit, the dentist must apply on a prescribed application form to the board and submit an application fee. The dentist applying for the permit must show evidence that he or she has done at least one of the following:

- (1) Has completed an American Dental Association accredited postgraduate general dentistry or specialty residency program which included specific training in oral conscious sedation.
- (2) Has completed a minimum of 16 hours' training in oral conscious sedation in a course approved by the board.
- (3) Has certification of training in oral conscious sedation by any entity or organization approved by the board.

§ 34-9-82. Requirements for treatment.

(a) A dentist using oral conscious sedation must comply with all of the following requirements:

- (1) Patients to be treated under oral conscious sedation must be suitably evaluated prior to the start of any sedation procedure. Using the American Society of Anesthesiologists Patient Physical Status classifications the dentist should determine that the patient is an appropriate candidate for oral conscious sedation.
- (2) The patient or guardian must be advised regarding the procedure associated with the delivery of any sedative agents and the appropriate written informed consent should be obtained.
- (3) Inhalation equipment used in conjunction with oral conscious sedation must be evaluated prior to use on each patient. Determination of adequate oxygen supply must be completed prior to use with each patient.
- (4) Appropriate verbal or written preoperative and postoperative instructions must be given to the patient or guardian.
- (5) Baseline vital signs should be obtained unless the patient's behavior prohibits such determination.
- (6) Pretreatment physical evaluation should be performed as deemed appropriate.

(7) All medications and dosages used during an oral conscious sedation procedure must be recorded in the patient's record of treatment.

(8) An emergency cart or kit must be readily accessible and must be available for immediate use during any sedation procedure.

(9) The only classification of drugs for sedation to be administered enterally by a responsible adult procedurally outside the treatment facility is minor tranquilizers. Minor tranquilizers (i.e., hydroxyzine or diazepam) do not include chloral hydrate or narcotics.

(10) Direct clinical observation and monitoring of the patient by a staff member must be continuous during the recovery period. The dentist shall assess the patient's responsiveness and must determine that the patient has met discharge criteria prior to leaving the office and the patient must be discharged into the care of a responsible person.

(b) It shall be incumbent upon the operating dentist to insure that the patient is appropriately monitored. A sedated patient must be continuously kept under direct clinical observation by a trained individual. The sedated patient's oxygen saturation must be monitored by pulse oximetry. Chest excursions must be observed and the color of mucosa and skin continually evaluated. Back-up emergency services should be identified and a protocol outlining necessary procedures for their immediate employment should be developed and operational for each facility.

(c) Any dentist utilizing oral conscious sedation procedures must have a properly equipped facility staffed with a supervised team of allied dental personnel who will be appropriately trained and capable of reasonably assisting the dentist with procedures, problems, and emergencies incident thereto. When inhalation equipment is used, in combination with orally administered sedatives, it must have a failsafe system that is appropriately checked and calibrated. The inhalation equipment must have the capacity for delivering 100 percent oxygen, and never less than 25 percent oxygen. A system for delivering oxygen must be available and must have adequate full-face mask and appropriate connectors, and be capable of delivering oxygen under positive pressure to the patient. Inhalation equipment must have a scavenging system. Suction equipment must be available that allows aspiration of the oral and pharyngeal cavities. A stethoscope and a sphygmomanometer with cuffs of appropriate size shall be immediately available.

§ 34-9-83. Requirements for assistants.

Allied dental personnel who assist dentists during oral conscious sedation procedures must be currently certified in cardiopulmonary resuscitation. During a sedation procedure, at least one additional person must be present in addition to the dentist. This may be a chair side dental assistant.

§ 34-9-84. Report of adverse consequences.

Any adverse consequence occurring with oral conscious sedation shall be reported to the board as required with general anesthesia and parenteral sedation.

§ 34-9-85. Limits on advertisements.

The availability of oral conscious sedation, if advertised, shall be done without reference to sleep, snooze, or any other expression indicating a total or partial loss of consciousness.

§ 34-9-86. On-site inspection.

The board, prior to issuance of a permit for oral conscious sedation, may require an on-site inspection of the personnel, the facility, and the equipment to determine if the requirements of this article have been met. The inspection team shall be determined by the board and shall reflect the principles of peer review.

§ 34-9-87. Permit limitations.

A dentist who holds only an oral conscious sedation permit may not use or administer general anesthesia or parenteral sedation, or both, as those terms are used in this chapter.

§ 34-9-88. Renewal of permit.

An oral conscious sedation permit must be renewed annually upon payment of a renewal fee and proof of completion of any continuing education requirements established by rule of the board.

§ 34-9-89. Treatment of patients under 12 years of age.

When oral conscious sedation is used on any patient under 12 years of age, the following provisions shall apply:

- (1) The drugs, dosages, and techniques used should carry a margin of safety which is unlikely to render the patient noninteractive and nonarousable.
- (2) Appropriately sized emergency equipment must be available.

§ 34-9-90. Violations and penalties.

Violation of any provision of this article shall subject the dentist to the penalties in Section 34-9-18, and no order imposing those penalties shall be made or entered except after notice and hearing by the board as provided by that section. Such order shall be subject to judicial review.

IMPAIRED PROFESSIONALS COMMITTEE

§34-38-1. Definitions.

For the purpose of this chapter, the following terms shall have the meaning respectively ascribed to them by this section, unless the context clearly provides for another:

- (1) DENTIST. Any person who is a dentist or dental practitioner pursuant to the definition of section 6-5-481, as amended.
- (2) PHARMACIST. Any person who is a pharmacist as defined in section 34-23-1, as amended, and pharmacy externs and interns registered by the Board of Pharmacy under Rule 680-X-2.16 of the Alabama Administrative Code.
- (3) BOARDS. Individually and/or jointly: The Board of Dental Examiners and The Board of Pharmacy.
- (4) COMMITTEE. The Alabama Impaired Professional's Committee.
- (5) HYGIENIST. Any person who is a hygienist pursuant to the provisions of sections 34-9-26 and 34-9-27.

§ 34-38-2. Promotion of early treatment, etc., of individuals impaired by illness, inebriation, etc.; Alabama Impaired Professionals' Committee; expenses; competitive bidding not required.

It shall be the duty and obligation of the State Board of Dental Examiners and the State Board of Pharmacy to promote the early identification, intervention, treatment, and rehabilitation of individuals within the respective jurisdiction, licensed to practice in the State of Alabama, who may be impaired by reason of illness, inebriation, excessive use of drugs, narcotics, controlled substances, alcohol, chemicals, or other dependent forming substances, or as a result of any physical or mental condition rendering such person unable to meet the standards of his or her profession. For the purposes of this chapter, the term "impaired" shall mean the inability of a dentist, hygienist, or pharmacist to practice with reasonable skill and safety to patients by reason of illness, inebriation, excessive use of drugs, narcotics, controlled substances, alcohol, chemicals, or other dependent forming substances, or as a result of any physical or mental condition rendering such person unable to meet the standards of his or her profession. In order to carry out this obligation, each board, individually or jointly, is hereby empowered to contract with any nonprofit corporation, health provider, or professional association for the purpose of creating, supporting, and maintaining a committee of professionals to be designated the Alabama Impaired Professionals' Committee. The committee shall consist of not less than three nor more than 15 professionals licensed to practice dentistry or pharmacy in the State of Alabama, and selected in a manner prescribed by the board or boards. The authority of the Alabama Impaired Professionals' Committee shall not supersede the authority of the board or boards to take disciplinary action against individuals subject to this chapter. Nothing in this chapter shall limit the power and authority of the board or boards to discipline an impaired individual subject to its jurisdiction; provided that where an individual is impaired and currently in need

of intervention, treatment, or rehabilitation and such individual is currently participating in programs or rehabilitation recommended by the committee, then in its discretion, the board or boards may refrain from taking or continuing disciplinary action against such individual; and further provided that where the board or boards, upon reasonable cause to believe an individual subject to its jurisdiction is impaired, has referred such individual to the committee for evaluation, then in its discretion, the board or boards may refrain from taking or continuing disciplinary action against such individual. The board, or boards, may collect or expend such funds as are available to it as deemed necessary to adequately provide for the operational expenses of the Alabama Impaired Professionals' Committee, including, but not limited to, the actual cost of travel, office overhead and personnel expense, and compensation for the members of the committee and its staff; provided that operational expenses of the Alabama Impaired Professionals' Committee shall not include the cost of treatment or rehabilitation programs recommended by the committee to individuals subject to this chapter. The funds provided by the board or boards, under this section for the purposes stated herein shall not be subject to any provision of law requiring competitive bidding.

§34-38-3. Authority of board or boards to contract for Impaired Professionals' Committee to undertake certain functions.

The board or boards shall have the authority to enter into an agreement with a nonprofit corporation, health provider or professional association for the Alabama Impaired Professionals Committee to undertake those functions and responsibilities specified in the agreement. Such functions and responsibilities may include any or all of the following:

- (1) contracting with providers of treatment programs;
- (2) receiving and evaluating reports of suspected impairment from any source;
- (3) intervening in cases of verified impairment;
- (4) referring impaired professional to treatment programs;
- (5) monitoring the treatment and rehabilitation of impaired professional;
- (6) providing post-treatment monitoring and support of rehabilitated impaired professional; and
- (7) performing such other activities as agreed upon by the respective Board or Boards and the Alabama Impaired Professionals Committee.

§34-38-4. Procedures for reporting impaired professional program activity and disclosure and joint review of information.

The Alabama Impaired Professionals Committee shall develop procedures in consultation with such board or boards for:

- (1) periodic reporting of statistical information regarding Alabama Impaired Professionals Committee activity;
- (2) periodic disclosure and joint review of such information as the board or boards may deem appropriate regarding reports received, contracts or investigations made and the disposition of each report, provided, however, that the committee shall not disclose any personally identifiable information except as provided in section 34-38-7.

§34-38-5. Nonliability of Impaired Professionals' Committee personnel, etc., for actions within scope of function.

Any dentist licensed to practice in the state of Alabama, or pharmacist, who shall be duly appointed to serve as a member of the Alabama Impaired Professionals Committee and any auxiliary personnel, consultants, attorneys, or other employees of the committee shall not be liable to any person for any claim for damages as a result of any decision, opinion, investigation or action taken by the committee or any individual member of the committee made by him within the scope of his function as a member of the committee if such decision, opinion, investigation or action was taken without malice and on a reasonable belief that such action or recommendation was warranted by the facts that were then available. No nonprofit corporation, professional association, health provider or state or county

association that contracts with, or received funds from board or boards for the creation, support and operation of the Alabama Impaired Professionals Committee shall be liable to any person for any claim for damages for any action taken or recommendation made by the Alabama Impaired Professionals' Committee, or any member thereof, or any auxiliary personnel, consultant, attorney, or employee of such committee.

§34-38-6. Confidentiality of information, records, and proceedings.

All information, interviews, reports, statements, memorandums, or other documents furnished to or produced by the Alabama Impaired Professionals Committee and any findings, conclusions, recommendations or reports resulting from the investigations, interventions, treatment or rehabilitation, or other related proceedings of such committee are declared to be privileged and confidential. All records and proceedings of such committee shall be confidential and shall be used by such committee, the members thereof and the boards, only in the exercise of the proper functions of the committee and the boards, and shall not be public records nor available for court subpoena or for discovery proceedings. Nothing contained herein shall apply to records made in the regular course of business of an individual; documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented or considered during the proceedings of the Alabama Impaired Professionals Committee.

§34-38-7. Annual report.

It shall be the duty of the Alabama Impaired Professionals Committee to render an annual report to each board or boards, concerning the operations and proceedings of the committee for the preceding year. In addition, the committee shall promptly report to the respective boards any individual within their jurisdiction who, in the opinion of the committee is unable to practice the standards of his or her profession with reasonable skill and safety to patients, by reason of illness, inebriation, excessive use of drugs, controlled substances, narcotics, alcohol, chemicals or other dependent forming substances, or as a result of any physical or mental condition rendering such person unable to meet the standards of his or her profession and appears that such individual is currently in need of intervention, treatment or rehabilitation. A report to the Alabama Impaired Professionals Committee shall be deemed to be a report to the board or boards for the purpose of any mandated reporting of professional impairment otherwise provided for by the statutes of this state.

§34-38-8. Evaluations of professional who is believed to be impaired; report of findings.

If the board or boards has reasonable cause to believe that a professional is impaired, such board may cause an evaluation of such professional to be conducted by the Alabama Impaired Professionals Committee, for the purpose of determining if there is an impairment. The Alabama Impaired Professionals Committee shall report the findings of its evaluation to the respective board or boards.