

REFERENCE TITLE: dental board; business entities; records

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1226

Introduced by
Senator Shope

AN ACT

AMENDING SECTIONS 32-1203, 32-1213, 32-1263 AND 32-1264, ARIZONA REVISED STATUTES; RELATING TO THE STATE BOARD OF DENTAL EXAMINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1203, Arizona Revised Statutes, is amended to
3 read:

4 32-1203. State board of dental examiners; qualifications of
5 members; terms

6 A. The state board of dental examiners is established consisting of
7 six licensed dentists, two licensed dental hygienists, two public members
8 and one business entity member appointed by the governor for a term of
9 four years, to begin and end on January 1.

10 B. Before appointment by the governor, a prospective member of the
11 board shall submit a full set of fingerprints to the governor for the
12 purpose of obtaining a state and federal criminal records check pursuant
13 to section 41-1750 and Public Law 92-544. The department of public safety
14 may exchange this fingerprint data with the federal bureau of
15 investigation.

16 C. The business entity member and the public members may
17 participate in all board proceedings and determinations, except in ~~the~~
18 preparing, giving or grading ~~of~~ examinations for licensure. Dental
19 hygienist board members may participate in all board proceedings and
20 determinations, except in ~~the~~ preparing, giving and grading ~~of~~
21 examinations that do not relate to dental hygiene procedures.

22 D. A board member shall not serve more than two consecutive terms.

23 E. For the purposes of this section, ~~THE~~ business entity member
24 ~~MUST BE AN EMPLOYEE OR OWNER OF A REGISTERED BUSINESS ENTITY PURSUANT TO~~
25 ~~SECTION 32-1213 AND~~ ~~does~~ ~~MAY~~ not include a person who is licensed pursuant
26 to this chapter.

27 Sec. 2. Section 32-1213, Arizona Revised Statutes, is amended to
28 read:

29 32-1213. Business entities; registration; renewal; civil
30 penalty; exceptions

31 A. A business entity may not offer dental services pursuant to this
32 chapter unless:

33 1. The ~~BUSINESS~~ entity is registered with the board pursuant to
34 this section.

35 2. The services are conducted by a licensee pursuant to this
36 chapter.

37 B. The business entity must file a registration application on a
38 form provided by the board. The application must include:

39 1. A description of the ~~BUSINESS~~ entity's services offered to the
40 public.

41 2. The name of any dentist who is authorized to provide and who is
42 responsible for providing the dental services offered at each office.

43 3. The names and addresses of the officers and directors of the
44 business entity.

45 4. ~~THE NAME OF THE BUSINESS ENTITY'S CUSTODIAN OF RECORDS.~~

- 1 ~~4.~~ 5. A registration fee prescribed by the board in rule.
- 2 C. A business entity must file a separate registration application
- 3 and pay a fee for each branch office in this state.
- 4 D. A registration expires three years after the date the board
- 5 issues the registration. A business entity that wishes to renew a
- 6 registration must submit an application for renewal as prescribed by the
- 7 board on a triennial basis on a form provided by the board before the
- 8 expiration date. ~~Am~~ A BUSINESS entity that fails to renew the
- 9 registration before the expiration date is subject to a late fee as
- 10 prescribed by the board by rule. The board may stagger the dates for
- 11 renewal applications.
- 12 E. The business entity must notify the board in writing within
- 13 thirty days after any change:
- 14 1. In the BUSINESS entity's name, address or telephone number.
- 15 2. In the officers or directors of the business entity.
- 16 3. In the name of any dentist who is authorized to provide and who
- 17 is responsible for providing the dental services in any facility.
- 18 4. THE NAME OF THE BUSINESS ENTITY'S CUSTODIAN OF RECORDS WHO WILL
- 19 ACCEPT SUBPOENAS AND RESPOND TO PATIENT RECORDS REQUESTS.
- 20 F. The business entity shall establish a written protocol for the
- 21 secure storage, transfer and access of the dental records of the business
- 22 entity's patients. This protocol must include, at a minimum, procedures
- 23 for:
- 24 1. Notifying patients of the future locations of their records if
- 25 the business entity terminates or sells the practice.
- 26 2. Disposing of unclaimed dental records.
- 27 3. The timely response to requests by patients for copies of their
- 28 records.
- 29 G. The business entity must notify the board within thirty days
- 30 after the dissolution of any registered business entity or the closing or
- 31 relocation of any facility and must disclose to the board the BUSINESS
- 32 entity's procedure by which its patients may obtain their records.
- 33 H. The board may do any of the following pursuant to its
- 34 disciplinary procedures if ~~am~~ A BUSINESS entity violates the board's
- 35 statutes or rules:
- 36 1. Refuse to issue a registration.
- 37 2. Suspend or revoke a registration.
- 38 3. Impose a civil penalty of not more than \$2,000 for each
- 39 violation.
- 40 4. Enter a decree of censure.
- 41 5. Issue an order prescribing a period and terms of probation that
- 42 are best adapted to protect the public welfare and that may include a
- 43 requirement for restitution to a patient for a violation of this chapter
- 44 or rules adopted pursuant to this chapter.

- 1 6. Issue a letter of concern if a business entity's actions may
2 cause the board to take disciplinary action.
- 3 I. The board shall deposit, pursuant to sections 35-146 and 35-147,
4 civil penalties collected pursuant to this section in the state general
5 fund.
- 6 J. This section does not apply to:
- 7 1. A sole proprietorship or partnership that consists exclusively
8 of dentists who are licensed pursuant to this chapter.
- 9 2. Any of the following entities licensed under title 20:
- 10 (a) A service corporation.
- 11 (b) An insurer authorized to transact disability insurance.
- 12 (c) A prepaid dental plan organization that does not provide
13 directly for prepaid dental services.
- 14 (d) A health care services organization that does not provide
15 directly for dental services.
- 16 3. A professional corporation or professional limited liability
17 company, the shares of which are exclusively owned by dentists who are
18 licensed pursuant to this chapter and that is formed to engage in the
19 practice of dentistry pursuant to title 10, chapter 20 or title 29
20 relating to professional limited liability companies.
- 21 4. A facility regulated by the federal government or a state,
22 district or territory of the United States.
- 23 5. An administrator or executor of the estate of a deceased dentist
24 or a person who is legally authorized to act for a dentist who has been
25 adjudicated to be mentally incompetent for not more than one year after
26 the date the board receives notice of the dentist's death or
27 incapacitation pursuant to section 32-1270.
- 28 K. A facility that offers dental services to the public by persons
29 licensed under this chapter shall be registered by the board unless the
30 facility is any of the following:
- 31 1. Owned by a dentist who is licensed pursuant to this chapter.
- 32 2. Regulated by the federal government or a state, district or
33 territory of the United States.
- 34 L. Except for issues relating to insurance coding and billing that
35 require the name, signature and license number of the dentist providing
36 treatment, this section does not:
- 37 1. Authorize a licensee in the course of providing dental services
38 for ~~an~~ A BUSINESS entity registered pursuant to this section to disregard
39 or interfere with a policy or practice established by the BUSINESS entity
40 for the operation and management of the business.
- 41 2. Authorize ~~an~~ A BUSINESS entity registered pursuant to this
42 section to establish or enforce a business policy or practice that may
43 interfere with the clinical judgment of the licensee in providing dental
44 services for the BUSINESS entity or may compromise a licensee's ability to
45 comply with this chapter.

1 M. The board shall adopt rules that provide a method for the board
2 to receive the assistance and advice of business entities licensed
3 pursuant to this chapter in all matters relating to the regulation of
4 business entities.

5 N. An individual currently holding a surrendered or revoked license
6 to practice dentistry or dental hygiene in any state or jurisdiction in
7 the United States may not have a majority ownership interest in the
8 business entity registered pursuant to this section. Revocation and
9 surrender of licensure shall be limited to disciplinary actions resulting
10 in loss of license or surrender of license instead of disciplinary
11 action. Dentists or dental hygienists affected by this subsection shall
12 have one year after the surrender or revocation to divest themselves of
13 their ownership interest. This subsection does not apply to publicly held
14 companies. For the purposes of this subsection, "majority ownership
15 interest" means an ownership interest greater than fifty percent.

16 Sec. 3. Section 32-1263, Arizona Revised Statutes, is amended to
17 read:

18 32-1263. Grounds for disciplinary action; definition

19 A. The board may invoke disciplinary action against any person who
20 is licensed under this chapter for any of the following reasons:

21 1. Unprofessional conduct as defined in section 32-1201.01.

22 2. Conviction of a felony or of a misdemeanor involving moral
23 turpitude, in which case the record of conviction or a certified copy is
24 conclusive evidence.

25 3. Physical or mental incompetence to practice pursuant to this
26 chapter.

27 4. Committing or aiding, directly or indirectly, a violation of or
28 noncompliance with any provision of this chapter or of any rules adopted
29 by the board pursuant to this chapter.

30 5. Dental incompetence as defined in section 32-1201.

31 B. This section does not establish a cause of action against a
32 licensee or a registered business entity that makes a report of
33 unprofessional conduct or unethical conduct in good faith.

34 C. The board may take disciplinary action against a business entity
35 that is registered pursuant to this chapter for unethical conduct.

36 D. For the purposes of this section, "unethical conduct" means the
37 following acts occurring in this state or elsewhere:

38 1. Failing to report in writing to the board any evidence that a
39 dentist, dental therapist, denturist or dental hygienist is or may be
40 professionally incompetent, is or may be guilty of unprofessional conduct,
41 is or may be impaired by drugs or alcohol or is or may be mentally or
42 physically unable to safely engage in the permissible activities of a
43 dentist, dental therapist, denturist or dental hygienist.

- 1 2. Falsely reporting to the board that a dentist, dental therapist,
2 dentist or dental hygienist is or may be guilty of unprofessional
3 conduct, is or may be impaired by drugs or alcohol or is or may be
4 mentally or physically unable to safely engage in the permissible
5 activities of a dentist, dental therapist, dentist or dental hygienist.
- 6 3. Obtaining or attempting to obtain a registration or registration
7 renewal by fraud or by misrepresentation.
- 8 4. Knowingly filing with the board any application, renewal or
9 other document that contains false information.
- 10 5. Failing to register or failing to submit a renewal registration
11 with the board pursuant to section 32-1213.
- 12 6. Failing to provide the following persons with access to any
13 place for which a registration has been issued or for which an application
14 for a registration has been submitted in order to conduct a site
15 investigation, inspection or audit:
 - 16 (a) The board or its employees or agents.
 - 17 (b) An authorized federal or state official.
- 18 7. Failing to notify the board of a change in officers and
19 directors, a change of address, ~~OR~~ a change in the dentists providing
20 services **OR A CHANGE IN THE CUSTODIAN OF RECORDS** pursuant to section
21 32-1213, subsection E.
- 22 8. Failing to **MAINTAIN OR** provide patient records pursuant to
23 section 32-1264.
- 24 9. Obtaining a fee by fraud or misrepresentation or wilfully or
25 intentionally filing a fraudulent claim with a third party for services
26 rendered or to be rendered to a patient.
- 27 10. Engaging in repeated irregularities in billing.
- 28 11. Engaging in the following advertising practices:
 - 29 (a) Publishing or circulating, directly or indirectly, any false or
30 fraudulent or misleading statements concerning the skill, methods or
31 practices of a registered business entity, a licensee or any other person.
 - 32 (b) Advertising in any manner that tends to deceive or defraud the
33 public.
- 34 12. Failing to comply with a board subpoena in a **COMPLETE OR** timely
35 manner.
- 36 13. Failing to comply with a final board order, including a decree
37 of censure, a period or term of probation, a consent agreement or a
38 stipulation.
- 39 14. Employing or aiding and abetting unlicensed persons to perform
40 work that must be done by a person licensed pursuant to this chapter.
- 41 15. Engaging in any conduct or practice that constitutes a danger
42 to the health, welfare or safety of the patient or the public.
- 43 16. Engaging in a policy or practice that interferes with the
44 clinical judgment of a licensee providing dental services for a business
45 entity or compromising a licensee's ability to comply with this chapter.

1 17. Engaging in a practice by which a dental hygienist, dental
2 therapist or dental assistant exceeds the scope of practice or
3 restrictions included in a written collaborative practice agreement.

4 18. FAILING TO PROVIDE MEDICAL RECORDS OR PAYMENT RECORDS TO A
5 THIRD PARTY, INCLUDING CURRENT OR FORMER ASSOCIATES, EMPLOYEES OR DENTISTS
6 OF THE PRACTICE, AS REQUIRED BY SECTIONS 12-2294 AND 12-2294.01.

7 Sec. 4. Section 32-1264, Arizona Revised Statutes, is amended to
8 read:

9 32-1264. Maintenance of records

10 A. A person who is licensed or certified pursuant to this chapter
11 shall make ~~and maintain~~ legible PERMANENT AND CONTEMPORANEOUS written OR
12 ELECTRONIC records concerning all diagnoses, evaluations and treatments of
13 each patient of record. ~~A licensee or certificate holder~~ THE OWNER OF A
14 DENTAL PRACTICE OR A REGISTERED BUSINESS ENTITY shall maintain ALL WRITTEN
15 AND ELECTRONIC records. ~~that are stored or produced electronically in~~
16 ELECTRONIC RECORDS MUST BE retrievable IN paper form. These records shall
17 include:

18 1. All treatment notes, including current health history and THE
19 RESULTS OF clinical examinations.

20 2. Prescription and dispensing information, including all drugs,
21 medicaments and dental materials used for patient care.

22 3. A diagnosis and treatment ~~planning~~ PLAN.

23 4. Dental and periodontal charting. ~~Specialist~~ Charting must
24 include EXISTING RESTORATIONS, areas of requested care and notation of
25 visual oral examination describing any areas of potential pathology or
26 radiographic irregularities.

27 5. DOCUMENTATION OF INFORMED CONSENT.

28 ~~5.~~ 6. All radiographs.

29 B. Records are available for review and for treatment purposes to
30 the dentist, dental therapist, dental hygienist or denturist providing
31 care.

32 C. On request, the licensee, REGISTERED BUSINESS ENTITY or
33 certificate holder shall allow properly authorized board personnel to have
34 access to the licensee's or certificate holder's place of practice to
35 conduct an inspection and must make the licensee's or certificate holder's
36 records, books and documents available to the board free of charge as part
37 of an investigation process.

38 D. Within fifteen business days after a patient's written request,
39 that patient's dentist, dental therapist, dental hygienist or denturist or
40 a registered business entity shall transfer legible and diagnostic quality
41 copies of that patient's records to another licensee or certificate holder
42 or that patient. The patient may be charged for the reasonable costs of
43 copying and forwarding these records. A dentist, dental therapist, dental
44 hygienist, denturist or registered business entity may require that
45 payment of reproduction costs be made in advance, unless the records are

1 necessary for continuity of care, in which case the records shall not be
2 withheld. Copies of records shall not be withheld because of an unpaid
3 balance for dental services.

4 E. Unless otherwise required by law, a person who is licensed or
5 certified pursuant to this chapter or a business entity that is registered
6 pursuant to this chapter must retain the original or a copy of a patient's
7 dental records as follows:

8 1. If the patient is an adult, for at least six years after the
9 last date the adult patient received dental services from that provider.

10 2. If the patient is a child, for at least three years after the
11 child's eighteenth birthday or for at least six years after the last date
12 the child received dental services from the provider, whichever occurs
13 later.

14 F. A PERSON WHO IS LICENSED OR CERTIFIED PURSUANT TO THIS CHAPTER
15 AND WHO IS AN ASSOCIATE OR EMPLOYEE OF A DENTAL PRACTICE IS NOT
16 RESPONSIBLE FOR STORING OR RETAINING MEDICAL RECORDS BUT SHALL COMPILE AND
17 RECORD THE RECORDS IN THE CUSTOMARY MANNER.

18 G. A LICENSEE OR BUSINESS ENTITY SHALL RELEASE TREATMENT RECORDS TO
19 THIRD PARTIES, INCLUDING CURRENT AND FORMER ASSOCIATES, EMPLOYEES OR
20 DENTISTS OF THE PRACTICE, AS REQUIRED BY SECTIONS 12-2294 AND 12-2294.01.

21 H. WHEN A DENTIST RETIRES OR SELLS A PRACTICE, OR WHEN A REGISTERED
22 BUSINESS ENTITY CLOSES OR SELLS A PRACTICE, THE DENTIST OR REGISTERED
23 BUSINESS ENTITY SHALL TAKE REASONABLE MEASURES TO ENSURE THAT THE PATIENT
24 RECORDS ARE RETAINED PURSUANT TO THIS SECTION.