

AMENDED IN SENATE AUGUST 16, 2004

AMENDED IN ASSEMBLY MAY 20, 2004

AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2056**

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**Introduced by Assembly Member Aghazarian**

February 17, 2004

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An act to amend Sections 1680 and 1701.1 of, and to add Section 1670.2 to, the Business and Professions Code, relating to dentistry, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2056, as amended, Aghazarian. Dentistry.

Existing law, the Dental Practice Act, regulates the practice of dentistry by the Dental Board of California in the Department of Consumer Affairs. Under the act, a licensee may be disciplined by the board, including having his or her license revoked or suspended, or being reprimanded or placed on probation by the board for specified reasons.

This bill would require the board to initiate a proceeding against a licensee for various violations of the act within specified time periods.

Existing law defines unprofessional conduct for purposes of the act to include committing acts of gross immorality substantially related to the practice of dentistry.

This bill would instead include committing acts of sexual abuse, relations with a patient, or misconduct substantially related to the

practice of dentistry, and would include the unlawful prescribing, dispensing, or furnishing of dangerous drugs or devices, as defined.

Existing law makes a person who willfully, under circumstances or conditions that cause or create risk of bodily harm, serious physical or mental illness, or death, practices or attempts to practice, or advertises or holds himself or herself out as practicing dentistry without being certified or authorized to do so, guilty of a crime punishable by imprisonment in county jail for up to one year.

This bill would instead make that crime also punishable by a fine not to exceed \$10,000, or by both the fine and imprisonment. The bill would also make a person who conspires with or aids and abets another to commit those acts guilty of a crime and subject to the above penalties.

*This bill would appropriate \$35,000 from the State Dentistry Fund to the Department of Consumer Affairs to fund a Dental Board of California investigator position in the 2004–05 fiscal year.*

Vote: ~~majority~~ <sup>2/3</sup>. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1670.2 is added to the Business and
- 2 Professions Code, to read:
- 3 1670.2. (a) Except as *otherwise* provided in ~~subdivisions (b),~~
- 4 ~~(c), and (e)~~ *this section*, any proceeding initiated by the board
- 5 against a licensee for *the* violation of any provision of this chapter
- 6 shall be filed within three years after the board discovers the act
- 7 or omission alleged as the ground for disciplinary action, or within
- 8 seven years after the act or omission alleged as the ground for
- 9 disciplinary action occurs, whichever occurs first.
- 10 (b) An accusation filed against a licensee pursuant to Section
- 11 11503 of the Government Code alleging fraud or willful
- 12 misrepresentation is not subject to the limitation in subdivision (a).
- 13 (c) An accusation filed against a licensee pursuant to Section
- 14 11503 of the Government Code alleging unprofessional conduct
- 15 based on incompetence, gross negligence, or repeated negligent
- 16 acts of the licensee is not subject to the limitation in subdivision
- 17 (a) upon proof that the licensee intentionally concealed from
- 18 discovery his or her incompetence, gross negligence, or repeated
- 19 negligent acts.



1 (d) If an alleged act or omission involves any conduct described  
2 in subdivision (e) of Section 1680 committed on a minor, the  
3 seven-year limitations period in subdivision (a) and the 10-year  
4 limitations period in subdivision (e) shall be tolled until the minor  
5 reaches the age of majority.

6 (e) An accusation filed against a licensee pursuant to Section  
7 11503 of the Government Code alleging conduct described in  
8 subdivision (e) of Section 1680 not committed on a minor shall be  
9 filed within three years after the board discovers the act or  
10 omission alleged as the ground for disciplinary action, or within  
11 10 years after the act or omission alleged as the ground for  
12 disciplinary action occurs, whichever occurs first. This  
13 subdivision shall apply to a complaint alleging conduct received  
14 by the board on and after January 1, 2005.

15 (f) ~~The~~ *In any allegation, accusation, or proceeding described*  
16 *in this section, the* limitations period in subdivision (a) shall be  
17 tolled ~~during any period if~~ *for the period during which* material  
18 evidence necessary for prosecuting or determining whether a  
19 disciplinary action would be appropriate is unavailable to the  
20 board due to an ongoing criminal investigation.

21 SEC. 2. Section 1680 of the Business and Professions Code  
22 is amended to read:

23 1680. Unprofessional conduct by a person licensed under this  
24 chapter is defined as, but is not limited to, ~~the violation of~~ any one  
25 of the following:

26 (a) The obtaining of any fee by fraud or misrepresentation.

27 (b) The employment directly or indirectly of any student or  
28 suspended or unlicensed dentist to practice dentistry as defined in  
29 this chapter.

30 (c) The aiding or abetting of any unlicensed person to practice  
31 dentistry.

32 (d) The aiding or abetting of a licensed person to practice  
33 dentistry unlawfully.

34 (e) The committing of any act or acts of sexual abuse,  
35 misconduct, or relations with a patient that are substantially related  
36 to the practice of dentistry.

37 (f) The use of any false, assumed, or fictitious name, either as  
38 an individual, firm, corporation, or otherwise, or any name other  
39 than the name under which he or she is licensed to practice, in  
40 advertising or in any other manner indicating that he or she is



1 practicing or will practice dentistry, except that name as is  
2 specified in a valid permit issued pursuant to Section 1701.5.

3 (g) The practice of accepting or receiving any commission or  
4 the rebating in any form or manner of fees for professional  
5 services, radiograms, prescriptions, or other services or articles  
6 supplied to patients.

7 (h) The making use by the licensee or any agent of the licensee  
8 of any advertising statements of a character tending to deceive or  
9 mislead the public.

10 (i) The advertising of either professional superiority or the  
11 advertising of performance of professional services in a superior  
12 manner. This subdivision shall not prohibit advertising permitted  
13 by subdivision (h) of Section 651.

14 (j) The employing or the making use of solicitors.

15 (k) The advertising in violation of Section 651.

16 (l) The advertising to guarantee any dental service, or to  
17 perform any dental operation painlessly. This subdivision shall not  
18 prohibit advertising permitted by Section 651.

19 (m) The violation of any of the provisions of law regulating the  
20 procurement, dispensing, or administration of dangerous drugs, as  
21 defined in Article 7 (commencing with Section 4211) of Chapter  
22 9, or controlled substances, as defined in Division 10  
23 (commencing with Section 11000) of the Health and Safety Code.

24 (n) The violation of any of the provisions of this division.

25 (o) The permitting of any person to operate dental radiographic  
26 equipment who has not met the requirements of Section 1656.

27 (p) The clearly excessive prescribing or administering of drugs  
28 or treatment, or the clearly excessive use of diagnostic procedures,  
29 or the clearly excessive use of diagnostic or treatment facilities, as  
30 determined by the customary practice and standards of the dental  
31 profession.

32 Any person who violates this subdivision is guilty of a  
33 misdemeanor and shall be punished by a fine of not less than one  
34 hundred dollars (\$100) or more than six hundred dollars (\$600),  
35 or by imprisonment for a term of not less than 60 days or more than  
36 180 days, or by both a fine and imprisonment.

37 (q) The use of threats or harassment against any patient or  
38 licensee for providing evidence in any possible or actual  
39 disciplinary action, or other legal action; or the discharge of an



1 employee primarily based on the employee's attempt to comply  
2 with the provisions of this chapter or to aid in the compliance.

3 (r) Suspension or revocation of a license issued, or discipline  
4 imposed, by another state or territory on grounds which would be  
5 the basis of discipline in this state.

6 (s) The alteration of a patient's record with intent to deceive.

7 (t) Unsanitary or unsafe office conditions, as determined by the  
8 customary practice and standards of the dental profession.

9 (u) The abandonment of the patient by the licensee, without  
10 written notice to the patient that treatment is to be discontinued and  
11 before the patient has ample opportunity to secure the services of  
12 another dentist and provided the health of the patient is not  
13 jeopardized.

14 (v) The willful misrepresentation of facts relating to a  
15 disciplinary action to the patients of a disciplined licensee.

16 (w) Use of fraud in the procurement of any license issued  
17 pursuant to this chapter.

18 (x) Any action or conduct which would have warranted the  
19 denial of the license.

20 (y) The aiding or abetting of a licensed dentist or dental  
21 auxiliary to practice dentistry in a negligent or incompetent  
22 manner.

23 (z) The failure to report to the board in writing within seven  
24 days any of the following: (1) the death of his or her patient during  
25 the performance of any dental procedure; (2) the discovery of the  
26 death of a patient whose death is related to a dental procedure  
27 performed by him or her; or (3) except for a scheduled  
28 hospitalization, the removal to a hospital or emergency center for  
29 medical treatment for a period exceeding 24 hours of any patient  
30 to whom oral conscious sedation, conscious sedation, or general  
31 anesthesia was administered, or any patient as a result of dental  
32 treatment. With the exception of patients to whom oral conscious  
33 sedation, conscious sedation, or general anesthesia was  
34 administered, removal to a hospital or emergency center that is the  
35 normal or expected treatment for the underlying dental condition  
36 is not required to be reported. Upon receipt of a report pursuant to  
37 this subdivision the board may conduct an inspection of the dental  
38 office if the board finds that it is necessary.

39 (aa) Participating in or operating any group advertising and  
40 referral services that are in violation of Section 650.2.



1 (bb) The failure to use a fail-safe machine with an appropriate  
2 exhaust system in the administration of nitrous oxide. The board  
3 shall, by regulation, define what constitutes a fail-safe machine.

4 (cc) Engaging in the practice of dentistry with an expired  
5 license.

6 (dd) Except for good cause, the knowing failure to protect  
7 patients by failing to follow infection control guidelines of the  
8 board, thereby risking transmission of blood-borne infectious  
9 diseases from dentist or dental auxiliary to patient, from patient to  
10 patient, and from patient to dentist or dental auxiliary. In  
11 administering this subdivision, the board shall consider  
12 referencing the standards, regulations, and guidelines of the State  
13 Department of Health Services developed pursuant to Section  
14 1250.11 of the Health and Safety Code and the standards,  
15 guidelines, and regulations pursuant to the California  
16 Occupational Safety and Health Act of 1973 (Part 1 (commencing  
17 with Section 6300), Division 5, Labor Code) for preventing the  
18 transmission of HIV, hepatitis B, and other blood-borne pathogens  
19 in health care settings. As necessary, the board shall consult with  
20 the Medical Board of California, the Board of Podiatric Medicine,  
21 the Board of Registered Nursing, and the Board of Vocational  
22 Nursing and Psychiatric Technicians, to encourage appropriate  
23 consistency in the implementation of this subdivision.

24 The board shall seek to ensure that licensees and others  
25 regulated by the board are informed of the responsibility of  
26 licensees and others to follow infection control guidelines, and of  
27 the most recent scientifically recognized safeguards for  
28 minimizing the risk of transmission of blood-borne infectious  
29 diseases.

30 (ee) The utilization by a licensed dentist of any person to  
31 perform the functions of a registered dental assistant, registered  
32 dental assistant in extended functions, registered dental hygienist,  
33 or registered dental hygienist in extended functions who, at the  
34 time of initial employment, does not possess a current, valid  
35 license to perform those functions.

36 (ff) The prescribing, dispensing, or furnishing of dangerous  
37 drugs or devices, as defined in Section 4022, in violation of  
38 Section 2242.1.

39 SEC. 3. Section 1701.1 of the Business and Professions Code  
40 is amended to read:



1 1701.1. A person who willfully, under circumstances or  
2 conditions that cause or create risk of bodily harm, serious physical  
3 or mental illness, or death, practices or attempts to practice, or  
4 advertises or holds himself or herself out as practicing dentistry  
5 without having at the time of so doing a valid, unrevoked, and  
6 unsuspended certificate as provided in this chapter, or without  
7 being authorized to perform that act pursuant to a certificate  
8 obtained in accordance with some other provision of law, is guilty  
9 of a crime, punishable by imprisonment in a county jail for up to  
10 one year, by a fine not exceeding ten thousand dollars (\$10,000),  
11 or by both the fine and imprisonment. A person who conspires  
12 with or aids and abets another to commit any act described in this  
13 section is guilty of a crime and subject to the punishment described  
14 in this section. The remedy provided in this section shall not  
15 preclude any other remedy provided by law.

16 *SEC. 4. The sum of thirty-five thousand dollars (\$35,000) is*  
17 *hereby appropriated from the State Dentistry Fund to the*  
18 *Department of Consumer Affairs for the purpose of funding one*  
19 *Dental Board of California investigator position for the purposes*  
20 *of Section 1670.2 in the 2004-05 fiscal year.*

