

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2479 Session of
1994

INTRODUCED BY TRICH, TANGRETTI, KUKOVICH, COY, SANTONI, TRELLO,
ROBINSON, JOSEPHS, STERN, LAUGHLIN, BELFANTI, DeLUCA, MERRY
AND BEBKO-JONES, JANUARY 25, 1994

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE,
JANUARY 25, 1994

AN ACT

1 Amending the act of May 1, 1933 (P.L.216, No.76), entitled "An
2 act relating to dentistry; defining and providing for the
3 licensing and registration of dentists and dental hygienists,
4 and for the revocation and suspension of such licenses and
5 registrations, subject to appeal, and for their
6 reinstatement; defining the powers and duties of the State
7 Dental Council and Examining Board and the Department of
8 Public Instruction; providing penalties; and repealing
9 existing laws," extending licensing and registration
10 provisions to dental assistants; and making editorial
11 changes.

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

14 Section 1. The title of the act of May 1, 1933 (P.L.216,
15 No.76), known as The Dental Law, is amended to read:

16 AN ACT

17 Relating to dentistry; defining and providing for the licensing
18 and registration of dentists [and], dental hygienists and
19 dental assistants, and for the revocation and suspension of
20 such licenses and registrations, subject to appeal, and for
21 their reinstatement; defining the powers and duties of the

1 State [Dental Council and Examining] Board of Dentistry and
2 the Department of [Public Instruction] Education; providing
3 penalties; and repealing existing laws.

4 Section 2. The definition of "board" in section 2 of the
5 act, amended February 9, 1984 (P.L.23, No.9), is amended and the
6 section is amended by adding a definition to read:

7 Section 2. Definitions.--* * *

8 The word "board," as used in this act, means the State
9 [Dental Council and Examining] Board of Dentistry.

10 * * *

11 "Dental Assistant" means an individual who provides
12 supportive services to a dentist in the performance of dental
13 services authorized under this act. As used in this definition,
14 the term "supportive services" shall include, but not be limited
15 to, providing patient education, taking preliminary medical
16 histories and vital signs to be reviewed by the dentist,
17 applying topical anesthetics, placing and removing rubber dams,
18 selecting and prefitting provisional crowns, selecting and
19 prefitting orthodontic bands, removing orthodontic arch wires
20 and ligature ties, condensing and placing restorative material,
21 placing and removing matrix bands, taking impressions for study
22 casts or diagnostic casts, removing periodontal dressings and
23 any other function within the definition of "Practice of
24 Dentistry" as may be delegated by a licensed dentist in
25 accordance with regulations promulgated by the board, if these
26 functions are performed under the general supervision of a
27 licensed dentist in the course of the performance of dental
28 services. The functions of a dental assistant may be conducted
29 in the office of any licensed dentist or in any appropriately
30 equipped school or public institution but must be done under the

1 general supervision of a licensed dentist.

2 Section 3. Sections 3, 4(a) and 4.1(a) and (b) of the act,
3 amended or added December 20, 1985 (P.L.513, No.118), are
4 amended to read:

5 Section 3. General Powers of the State Board of Dentistry.--
6 The State Board of Dentistry (hereinafter called the board)
7 shall have the following powers and duties:

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

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

18 (c) To provide for and to regulate the licensing, and to
19 license to practice dentistry, after examination, any duly
20 qualified applicant, at least twenty-one years of age, of good
21 moral character, not addicted to the use of intoxicating liquor
22 or narcotic drugs, who has obtained the required education,
23 together with a diploma from an approved institution or college
24 conferring upon him or her the degree of doctor of dental
25 surgery or other established dental degree. The board shall not
26 issue a license to an applicant who has been convicted of a
27 felony under the act of April 14, 1972 (P.L.233, No.64), known
28 as "The Controlled Substance, Drug, Device and Cosmetic Act," or
29 of an offense under the laws of another jurisdiction which if
30 committed in this Commonwealth would be a felony under "The

1 Controlled Substance, Drug, Device and Cosmetic Act," unless:
2 (1) at least ten (10) years have elapsed from the date of
3 conviction, (2) the applicant satisfactorily demonstrates to the
4 board that he has made significant progress in personal
5 rehabilitation since the conviction such that licensure of the
6 applicant should not be expected to create a substantial risk of
7 harm to the health and safety of his patients or the public or a
8 substantial risk of further criminal violations, and (3) the
9 applicant otherwise satisfies the qualifications contained in or
10 authorized by this act. As used in this section the term
11 "convicted" shall include a judgment, an admission of guilt or a
12 plea of nolo contendere.

13 (d) To provide for and to regulate the licensing, and to
14 license as a dental hygienist or dental assistant, after
15 examination, any duly qualified person, not less than eighteen
16 years of age, of good moral character, not addicted to the use
17 of intoxicating liquor or narcotic drugs, who has obtained the
18 required education, together with a certificate or diploma from
19 an approved institution or college for the training of dental
20 hygienists or dental assistants. The board shall, consistent
21 with this act, adopt regulations providing for the general
22 supervision and practice of dental hygienists and dental
23 assistants under this act.

24 (e) To prescribe the subjects, character, manner, time and
25 place of examinations and the filing of applications for
26 examinations, and to conduct and provide for the conduct of the
27 examinations in accordance with section 812.1 of the act of
28 April 9, 1929 (P.L.177, No.175), known as "The Administrative
29 Code of 1929"; to make written reports of such examinations,
30 which reports shall be preserved in the Department of State for

1 a period of not less than five years; to collect such fees for
2 such examinations as may be fixed according to regulation; and
3 to issue licenses to such applicants as successfully pass such
4 examination.

5 (f) To accept and endorse, as valid in this Commonwealth,
6 licenses to practice dentistry or as dental hygienists or dental
7 assistants issued by another state or territory or by Canada,
8 and to accept as properly qualified any applicant who has been
9 examined and certified by the National Dental Examining Board,
10 upon the payment of such fees as prescribed according to law for
11 applicants in this State: Provided, That the standards of such
12 other state, territory or of Canada or of such national board
13 are, in the opinion of the board, equal to the standards of this
14 Commonwealth: And provided further, That such other state,
15 territory or Canada shall recognize and endorse, as valid in
16 such state or territory or in Canada, licenses issued by this
17 Commonwealth.

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

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

26 (i) To suspend, revoke or refuse to grant licenses as
27 further provided for in section 4.1.

28 (j) To provide for, regulate, and require biennial renewals
29 of all persons licensed in accordance with the provisions of
30 this act; to prescribe the form of such license renewals; to

1 require, as a condition precedent to such biennial renewal, the
2 payment of such biennial renewal fee as shall be fixed by
3 regulation of the board; to issue biennial renewals to such
4 persons; and to suspend or revoke the license of such persons as
5 fail, refuse or neglect to renew biennially, or pay such fee.

6 (k) To keep a record of all licenses and biennial renewals,
7 and to prescribe the form of such record.

8 (l) To submit biennially to the Department of State an
9 estimate of the financial requirements of the board for
10 administrative, investigative, legal, and miscellaneous
11 expenses.

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

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

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

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

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

29 (r) To submit annually a report to the Professional
30 Licensure Committee of the House of Representatives and to the

1 Consumer Protection and Professional Licensure Committee of the
2 Senate a description of the types of complaints received, status
3 of cases, board action which has been taken and the length of
4 time from the initial complaint to final board resolution.

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

7 (t) To purchase and publish, other than in the legal
8 section, in a newspaper of general circulation in the area where
9 the disciplined dentist conducts or recently conducted his or
10 her practice, notice of all final disciplinary decisions which
11 impose discipline amounting to more than a reprimand. The board
12 shall not be required to comply with the provisions of this
13 subsection in those cases in which the board places a dentist in
14 a probationary program for drug or alcohol abuse or where, in
15 the board's opinion, publication of the disciplinary decision
16 would be detrimental to the licensee's rehabilitation and
17 recovery.

18 Section 4. Fees.--(a) The fee for an applicant for
19 examination and licensure to practice dentistry or as a dental
20 hygienist or dental assistant in this Commonwealth shall be
21 fixed by the board by regulation. It shall be the duty of all
22 persons now qualified and engaged in the practice of dentistry
23 [and], dental hygiene and dental assisting, or who shall
24 hereafter be licensed by the board, to renew biennially with
25 said board, and pay for each such biennial renewal a fee which
26 shall be fixed by the board by regulation.

27 * * *

28 Section 4.1. Reason for Refusal, Revocation or Suspension of
29 License.--(a) The board shall have authority, by majority
30 action, to refuse, revoke or suspend the license of any dentist

1 [or], dental hygienist or dental assistant for any or all of the
2 following reasons:

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

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

7 (3) Practicing fraud or deceit in obtaining a license to
8 practice dentistry [or], dental hygiene or dental assisting or
9 making a false or deceptive biennial renewal with the board.

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

17 (5) Having a license to practice dentistry [or], dental
18 hygiene or dental assisting revoked, suspended or having other
19 disciplinary action imposed or consented to by the proper
20 licensing authority of another state, territory or country or
21 his application for license refused, revoked or suspended by the
22 proper licensing authority of another state, territory or
23 country.

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

28 (7) Knowingly maintaining a professional connection or
29 association with any person who is in violation of this act or
30 regulations of the board or knowingly aiding, assisting,

1 procuring or advising any unlicensed person to practice
2 dentistry [or], dental hygiene or dental assisting contrary to
3 this act or regulations of the board.

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

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

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

14 (11) Being unable to practice dentistry or as a dental
15 hygienist or dental assistant with reasonable skill and safety
16 to patients by reason of illness, drunkenness, excessive use of
17 controlled substances, chemicals or any other type of material,
18 or as the result of any mental or physical condition. In
19 enforcing this clause (11), the board shall, upon probable
20 cause, have authority to compel a dentist [or], dental hygienist
21 or dental assistant to submit to a mental or physical
22 examination by physicians designated by the board. Failure of a
23 dentist [or], dental hygienist or dental assistant to submit to
24 such examination when directed by the board, unless such failure
25 is due to circumstances beyond his control, shall constitute an
26 admission of the allegations against him, consequent upon which
27 a default and final order may be entered without the taking of
28 testimony or presentation of evidence. A dentist [or], dental
29 hygienist or dental assistant affected under this clause (11)
30 shall, at reasonable intervals, be afforded an opportunity to

1 demonstrate that he or she can resume a competent practice of
2 dentistry [or], dental hygiene or dental assisting with
3 reasonable skill and safety to patients.

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

7 (1) Deny the application for license.

8 (2) Administer a public reprimand.

9 (3) Revoke, suspend, limit or otherwise restrict a license
10 as determined by the board. Unless ordered to do so by a court,
11 the board shall not reinstate the license of a person to
12 practice dentistry, or as a dental hygienist or dental
13 assistant, which has been revoked, and such person shall be
14 required to apply for a license after a five-year period in
15 accordance with section 3, if he or she desires to practice at
16 any time after such revocation. Any person whose license has
17 been suspended or revoked because of a felony conviction under
18 the act of April 14, 1972 (P.L.233, No.64), known as "The
19 Controlled Substance, Drug, Device and Cosmetic Act," or similar
20 law of another jurisdiction, may apply for reinstatement after a
21 period of at least ten (10) years has elapsed from the date of
22 conviction. The board may reinstate the license if the board is
23 satisfied that the person has made significant progress in
24 personal rehabilitation since the conviction such that his
25 reinstatement should not be expected to create a substantial
26 risk of harm to the health and safety of his patients or the
27 public or a substantial risk of further criminal violations and
28 if the person meets all other licensing qualifications of this
29 act, including the examination requirement.

30 (4) Require a licensee to submit to the care, counseling or

1 treatment of a physician or psychologist designated by the
2 board.

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

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

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

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

19 * * *

20 Section 4. The act is amended by adding a section to read:

21 Section 8.1. Status of Existing Dental Assistants
22 Preserved.--Any person practicing as a dental assistant in this
23 Commonwealth at the time this section takes effect shall
24 continue to possess the same rights and privileges with respect
25 to practice as a dental assistant without being required to be
26 licensed for a period of two years from the effective date of
27 this section. Thereafter, the penalty provisions of this act
28 shall be applicable to any such person. Further, the board shall
29 have the power, as provided in this act, to suspend or revoke
30 the license of any such person for any of the causes set forth

1 in this act, and the board shall have the power to require any
2 such person to renew biennially with the board, as provided in
3 this act. The board shall conduct a dental assistant licensure
4 examination within eighteen (18) months of the effective date of
5 this section.

6 Section 5. Sections 10, 10.1, 11 and 11.5 of the act,
7 amended or added December 20, 1985 (P.L.513, No.118), are
8 amended to read:

9 Section 10. Penalties.--(a) It is unlawful for any person
10 to practice dentistry or as a dental hygienist or dental
11 assistant, or to hold himself or herself out as a practitioner
12 of or entitled or authorized to practice dentistry or as a
13 dental hygienist, or to assume any title of "dentist," "dental
14 surgeon," "dental hygienist" or "dental assistant" or other
15 letters or titles in connection with his or her name which in
16 any way represent him or her as being engaged in the practice of
17 dentistry or as a dental hygienist or dental assistant or
18 authorized so to do, unless he or she has been duly licensed,
19 and authorized to engage in such practice under the provisions
20 of this act. A person who violates this subsection commits a
21 misdemeanor of the third degree and shall, upon conviction, for
22 a first offense, be sentenced to a fine not to exceed one
23 thousand dollars (\$1,000) or to imprisonment for not more than
24 six months, or both. A second offense shall be subject to a fine
25 not to exceed two thousand dollars (\$2,000) or imprisonment for
26 a term of six months to one year, or both.

27 (b) It is unlawful for any person to practice dentistry or
28 as a dental hygienist or dental assistant under a name other
29 than that on his or her license and biennial renewal, or to
30 practice under the name on his or her license and biennial

1 renewal with any addition thereto, except a purely technical
2 appellation such as "Dentist," "D.D.S.," "Orthodontist" or other
3 word or letters pertaining strictly to the practice of
4 dentistry, or to induce any person to practice dentistry or as a
5 dental hygienist or dental assistant in violation of this act.

6 (c) It is unlawful for any person to sell, offer to sell or
7 barter or exchange any diploma or document conferring or
8 purporting to confer any dental degree or any license issued
9 according to law regulating the licensing of dentists [or],
10 dental hygienists or dental assistants, or to alter any such
11 document with fraudulent intent, or to use it as a license to
12 practice dentistry under an assumed name, or to make any false
13 statement in an affidavit relating to or in an application for a
14 license.

15 (d) It is unlawful for any person to practice dentistry or
16 as a dental hygienist or dental assistant unless his or her
17 license and biennial renewal certificate are displayed in the
18 office in which he or she is practicing dentistry or as a dental
19 hygienist or dental assistant.

20 (e) It is unlawful for a person practicing dentistry to
21 employ a person as a dental hygienist or dental assistant unless
22 such person is licensed as a dental hygienist or dental
23 assistant as required by this act and the rules and regulations
24 of the board.

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

1 other than those included within practice as a "Dental
2 Assistant," as defined by section two of this act.

3 (g) It is unlawful for any dental hygienist to perform any
4 of the operations included in practice as a "Dental Hygienist,"
5 as defined by section two of this act, except under the general
6 supervision of a licensed dentist. It is unlawful for any dental
7 assistant to perform any of the operations included in practice
8 as a "Dental Assistant," as defined by section two of this act,
9 except under the general supervision of a licensed dentist.

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

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

1 Section 11. Right of Dentists to Practice as Dental
2 Hygienists and Dental Assistants; Dental Supplies; Death
3 Certifications.--Nothing contained in this act shall be
4 construed as prohibiting a duly licensed and registered dentist
5 from performing the work of a dental hygienist or dental
6 assistant. Nothing contained in this act or any other act shall
7 be construed as prohibiting a duly licensed dentist who is a
8 staff member of an approved hospital from executing a medical
9 certification in case of death if the dentist attended the
10 deceased during the last illness, provided the death occurs in
11 the hospital and the deceased had been admitted on the dental
12 service and the circumstances are not such as to require a
13 referral to the coroner under the provisions of any other act.
14 Nothing contained in this act shall be construed to prevent any
15 person, copartnership, association or corporation from
16 manufacturing and furnishing to or repairing for, licensed
17 dentists artificial teeth, crowns, bridges, prosthetic work, and
18 regulating appliances, but it shall be unlawful and constitute
19 the practice of dentistry for any person to fit, or attempt to
20 fit, or to furnish to or repair for any other person artificial
21 teeth, crowns, bridges, prosthetic work, or appliances.

22 Section 11.5. Reporting of Multiple Licensure.--Any licensed
23 dentist [or], dental hygienist or dental assistant of this
24 Commonwealth who is also licensed to practice dentistry or as a
25 dental hygienist or dental assistant in any other state,
26 territory or country shall report this information to the board
27 on the biennial renewal application. Any disciplinary action
28 taken in other states, territories or countries shall be
29 reported to the board on the biennial renewal application or
30 within ninety (90) days of disposition, whichever is sooner.

1 Multiple licensure shall be noted by the board on the dentist's
2 [or], dental hygienist's or dental assistant's record, and such
3 state, territory or country shall be notified by the board of
4 any disciplinary actions taken against the dentist [or], dental
5 hygienist or dental assistant in this Commonwealth.

6 Section 6. The act is amended by adding a section to read:

7 Section 11.7. Dental Assistant Regulations.--The board shall
8 promulgate regulations for dental assistants which shall be
9 consistent with good dental practice and the health and welfare
10 of patients. The board shall prescribe by regulation the
11 functions which may be performed by dental assistants and the
12 settings within which dental assistants may work. The
13 supervising licensed dentist shall be responsible for
14 determining the competency of the dental assistant to perform
15 allowable functions. At least once every six years, the board
16 shall review the list of functions performable by dental
17 assistants and shall update the regulations as needed to keep
18 them current with the state of the practice.

19 Section 7. This act shall take effect in 60 days.