

1 SB214
2 125307-3
3 By Senators Beason and Marsh
4 RFD: Health
5 First Read: 10-MAR-11

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8 SYNOPSIS: Under existing law, the Board of Dental
9 Examiners of Alabama is the entity responsible for
10 licensing and regulating dentists and dental
11 hygienists in the state and the Alabama Impaired
12 Professionals' Committee is responsible for
13 assisting the board and the State Board of Pharmacy
14 in obtaining treatment and providing treatment for
15 licensees impaired by reason of illness,
16 inebriation, or the excessive use of drugs,
17 alcohol, or other dependency inducing substances.

18 This bill would substantially rewrite the
19 Dental Practice Act and the Alabama Impaired
20 Professionals' Committee as they relate to the
21 practice of dentistry by dentists and dental
22 hygienists.

23 Amendment 621 of the Constitution of Alabama
24 of 1901, now appearing as Section 111.05 of the
25 Official Recompilation of the Constitution of
26 Alabama of 1901, as amended, prohibits a general
27 law whose purpose or effect would be to require a

1 new or increased expenditure of local funds from
2 becoming effective with regard to a local
3 governmental entity without enactment by a 2/3 vote
4 unless: it comes within one of a number of
5 specified exceptions; it is approved by the
6 affected entity; or the Legislature appropriates
7 funds, or provides a local source of revenue, to
8 the entity for the purpose.

9 Amendment 621 of the Constitution of Alabama
10 of 1901, now appearing as Section 111.05 of the
11 Official Recompilation of the Constitution of
12 Alabama of 1901, as amended, prohibits a general
13 law whose purpose or effect would be to require a
14 new or increased expenditure of local funds from
15 becoming effective with regard to a local
16 governmental entity without enactment by a 2/3 vote
17 unless: it comes within one of a number of
18 specified exceptions; it is approved by the
19 affected entity; or the Legislature appropriates
20 funds, or provides a local source of revenue, to
21 the entity for the purpose.

22 The purpose or effect of this bill would be
23 to require a new or increased expenditure of local
24 funds within the meaning of the amendment. However,
25 the bill does not require approval of a local
26 governmental entity or enactment by a 2/3 vote to

1 become effective because it comes within one of the
2 specified exceptions contained in the amendment.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT

7
8 Relating to the practice of dentistry by dentists
9 and dental hygienists; to substantially amend Sections 34-9-1,
10 34-9-2, 34-9-6, 34-9-7, 34-9-7.1, 34-9-9, 34-9-10, 34-9-11,
11 34-9-12, 34-9-13, 34-9-14, 34-9-15, 34-9-15.1, 34-9-16,
12 34-9-17, 34-9-18, 34-9-19, 34-9-19.1, 34-9-20, 34-9-21,
13 34-9-24, 34-9-25, 34-9-26, 34-9-27, 34-9-29, 34-9-40, 34-9-42,
14 34-9-43, 34-9-43.1, 34-9-45, 34-9-46, 34-9-47, and 34-9-80,
15 Code of Alabama 1975, relating to the Alabama Dental Practice
16 Act; to amend Sections 34-38-2, 34-38-3, 34-38-5, 34-38-6,
17 34-38-7, and 34-38-8, Code of Alabama 1975, relating to the
18 Alabama Impaired Professionals' Committee and its application
19 to dentists and dental hygienists; to add Section 34-9-9.1 to
20 the Code of Alabama 1975, relating to the creation and
21 function of professional corporations, professional
22 associations, limited liability companies, and nonprofit
23 organizations by licensed dentists; and in connection
24 therewith to have as its purpose or effect the requirement of
25 a new or increased expenditure of local funds within the
26 meaning of Amendment 621 of the Constitution of Alabama of
27 1901, now appearing as Section 111.05 of the Official

1 Recompilation of the Constitution of Alabama of 1901, as
2 amended.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 34-9-1, 34-9-2, 34-9-6, 34-9-7,
5 34-9-7.1, 34-9-9, 34-9-10, 34-9-11, 34-9-12, 34-9-13, 34-9-14,
6 34-9-15, 34-9-15.1, 34-9-16, 34-9-17, 34-9-18, 34-9-19,
7 34-9-19.1, 34-9-20, 34-9-21, 34-9-24, 34-9-25, 34-9-26,
8 34-9-27, 34-9-29, 34-9-40, 34-9-42, 34-9-43, 34-9-43.1,
9 34-9-45, 34-9-46, 34-9-47, 34-9-80, 34-38-2, 34-38-3, 34-38-5,
10 34-38-6, 34-38-7, and 34-38-8 of the Code of Alabama 1975, are
11 amended to read as follows:

12 "§34-9-1.

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

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

19 "(2) ANXIOLYSIS. A depressed level of awareness of
20 surroundings not significantly affecting the ability of a
21 patient to independently and continuously maintain an airway
22 and respond appropriately to physical stimulation or verbal
23 commands produced by an oral pharmacologic method and which
24 does not result in an alteration of consciousness to the same
25 degree as sedation, but where the patient experiences a
26 diminution of anxiety.

1 "(3) ~~(2)~~ BOARD. The Board of Dental Examiners of
2 Alabama.

3 "(4) ~~(3)~~ COMMERCIAL DENTAL LABORATORY. A technician
4 or group of technicians available to any or all licensed
5 dentists for construction or repair of dental appliances.

6 "(5) ~~(4)~~ GENERAL ANESTHESIA. A controlled state of
7 unconsciousness, accompanied by a partial or complete loss of
8 protective reflexes, including inability to independently
9 maintain an airway and respond purposefully to physical
10 stimulation or verbal command, produced by a pharmacologic
11 method.

12 "(6) ~~(5)~~ LICENSE. The grant of authority by the
13 board to a person to engage in the practice of dentistry or
14 dental hygiene.

15 "(7) ~~(6)~~ LICENSE CERTIFICATE. The documentary
16 evidence under seal of the board that said board has granted
17 authority to the licensee to practice dentistry or dental
18 hygiene in this state.

19 "(8) ~~(7)~~ LICENSED DENTIST. A dentist who holds a
20 current license certificate from the board. An examiner
21 licensed in another state may be considered a licensed dentist
22 for the purpose of conducting a regional board examination
23 within this state.

24 "(9) ~~(8)~~ LICENSED HYGIENIST. A hygienist who holds a
25 current license certificate from the board.

26 "(10) ~~(9)~~ LOCAL ANESTHESIA. The ~~elimination~~
27 reduction of painful sensations, ~~especially pain~~ in one part

1 of the body by topical application or regional injection of a
2 drug.

3 "(11) ~~(10)~~ PRACTICE OF DENTISTRY ACROSS STATE LINES.

4 "a. The practice of dentistry as defined in Section
5 34-9-6 as it applies to any of the following:

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

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

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

21 "b. This definition is not intended to include an
22 informal consultation between a licensed dentist located in
23 this state and a dentist located outside this state provided
24 that the consultation is conducted without compensation or the
25 expectation of compensation to either dentist, and does not
26 result in the formal rendering of a written or otherwise
27 documented professional opinion concerning the diagnosis or

1 treatment of a patient by the dentist located outside the
2 state.

3 "(12) ~~(11)~~ PRIVATE TECHNICIANS. A technician
4 employed by a dentist or group of dentists for a specified
5 salary.

6 "(13) ~~(12)~~ SEDATION. A depressed level of
7 consciousness that retains the ~~patient's~~ ability of a patient
8 to independently and continuously maintain an airway and
9 respond appropriately to physical stimulation or verbal
10 command, produced by a pharmacologic method.

11 "§34-9-2.

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

22 "(b) The Legislature also finds and declares that,
23 because of technological advances and changing practice
24 patterns, the practice of dentistry is occurring with
25 increasing frequency across state lines and that the
26 technological advances in the practice of dentistry are in the
27 public interest.

1 "(c) The Legislature further finds and declares that
2 the practice of dentistry is a privilege in which the licensee
3 has a non-divisible, non-attachable, non-assignable,
4 non-equitably divisible sole property right. The licensure by
5 this state of nonresident dentists who engage in dental
6 practice within this state is within the public interest. The
7 ability to discipline the nonresident dentists who engage in
8 dental practice in this state is necessary for the protection
9 of the citizens of this state and for the public interest,
10 health, welfare, and safety.

11 "(d) The Legislature further finds and declares that
12 in the interest of public safety, no person, individual, or
13 entity may write prescriptions for medicines, drugs, dermal
14 fillers, prostheses, botulinum or similar compounds, or oral
15 appliances relating to the practice of dentistry other than a
16 dentist licensed pursuant to this chapter.

17 "§34-9-6.

18 "Any person shall be deemed to be practicing
19 dentistry who performs, or attempts or professes to perform,
20 any dental operation or dental service of any kind,
21 gratuitously or for a salary, fee, money or other remuneration
22 paid, or to be paid, directly or indirectly, to himself or
23 herself, or to any person in his or her behalf, or to any
24 agency which is a proprietor of a place where dental
25 operations procedures or dental services are performed; or any
26 of the following:

1 "(1) Who directly or indirectly, by any means or
2 method, makes impression of the human tooth, teeth, jaws or
3 adjacent tissue, or performs any phase of any operation
4 incident to the replacement of a tooth or any part thereof;
5 ~~or.~~

6 "(2) ~~Supplies~~ Who supplies artificial substitutes
7 for the natural teeth, and who furnishes, supplies,
8 constructs, reproduces, or repairs any prosthetic denture,
9 bridge, appliance, or any other structure to be worn in the
10 human mouth;~~or.~~

11 "(3) Who places such appliance or structure in the
12 human mouth, or adjusts or attempts or professes to adjust the
13 same, or delivers the same to any person other than the
14 dentist upon whose prescription the work was performed;~~or.~~

15 "(4) Who professes to the public by any method to
16 furnish, supply, construct, reproduce, or repair any
17 prosthetic denture, bridge, appliance, or other structure to
18 be worn in the human mouth, or who diagnoses, or professes to
19 diagnose, prescribe for, professes to prescribe for, treats or
20 professes to treat disease, pain, deformity, deficiency,
21 injury, or physical condition of the human teeth or jaws, or
22 adjacent ~~structure~~ structures, including the use of botulinum
23 or similar compounds, or dermal fillers, or who extracts or
24 attempts to extract human teeth, or remove tumors, abnormal
25 growths, or other lesions from the human gums, jaws, lips, and
26 adjacent structures, or who operates for harelip or cleft
27 palate; or who treats surgically or mechanically fractures of

1 the human jaw; or who provides suturing for closure of wounds
2 or lacerations wherever found on the body in an emergency,
3 prison, hospital, teaching or institutional setting or in
4 keeping with secondary or additional duties as a member of any
5 of the Armed Forces whether reserve or active component; or
6 who administers local or general anesthetics in the treatment
7 of any ~~dental lesion;~~ or patient.

8 "(5) Who repairs or fills cavities in the human
9 teeth;~~or.~~

10 "(6) Who uses a roentgen or X-ray machine for the
11 purpose of taking dental X-rays or roentgenograms, or who
12 gives, or professes to give, interpretations or readings of
13 dental X-rays or roentgenograms, or X-ray or roentgen therapy;~~or.~~
14 or.

15 "(7) Who administers an anesthetic of any nature in
16 connection with a dental operation;~~or.~~

17 "(8) Who uses the words "dentist," "dental surgeon,"
18 "oral surgeon," or the letters "D.D.S.," "D.M.D." or any other
19 words, letters, title, or descriptive matter which in any way
20 represents him or her as being able to diagnose, treat,
21 prescribe, or operate for any disease, pain, deformity,
22 deficiency, injury, or physical condition of the teeth, lips,
23 or jaws, or adjacent structures;~~or.~~

24 "(9) ~~Who~~ With the exception of any licensed dentist
25 employed by an entity which is exempt from federal income tax
26 under 26 U.S.C. Section 501(c)(3), who states, or professes,
27 or permits to be stated or professed by any means or method

1 whatsoever that he or she can perform or will attempt to
2 perform dental ~~operations~~ procedures, or render a diagnosis,
3 approval, or review of a treatment plan connected therewith,
4 or.

5 "(10) Who performs any clinical ~~operation~~ procedure
6 included in the curricula of recognized dental colleges;
7 provided, that members of the faculty, teachers, instructors,
8 fellows, interns, residents, dental students, and student
9 dental hygienists who are employed by or who are taking
10 courses or instructions at the University of Alabama School of
11 Dentistry or such other dental colleges, hospitals, or
12 institutions in Alabama, as may be approved by the board; and
13 provided, that the work of fellows, interns, residents, dental
14 students, and student dental hygienists is performed within
15 the facilities of such dental colleges, hospitals, prisons,
16 jails, and institutions under the supervision of an instructor
17 and as an adjunct to his or her course of study or training,
18 shall not be required to take examination or obtain a license
19 certificate and renewal license certificate when all of such
20 work, dental ~~operations~~ procedures, and activities are
21 confined to his or her work in the college, hospital, approved
22 off-site location, or other institution and the work is done
23 without remuneration other than the regular salary or
24 compensation paid by such colleges, hospitals, prisons, jails,
25 approved off-site locations, or other institutions. Only a
26 dentist licensed pursuant to this chapter may write
27 prescriptions for medicines, drugs, dermal fillers, botulinum

1 or similar compounds, prostheses, or oral or dental appliances
2 relating to the practice of dentistry in this state.

3 "(11) Who, excluding prepackaged films or plastic
4 strips, gels, toothpastes, rinses, or agents sold at retail or
5 discount stores with a bleaching or whitening agent that
6 requires no external or extra-oral activation by any means:

7 "a. Bleaches or whitens human teeth by the use or
8 application of a bleaching or whitening substance to the teeth
9 or activates such bleaching or whitening agent by any external
10 or extra-oral source or the use of externally or extra-orally
11 applied heat or light, whether ordinary or laser light, or by
12 any other means.

13 "b. Performs or offers to perform any bleaching or
14 whitening of teeth at any location other than a dental office,
15 dental clinic, dental school, or dental convention wherein a
16 licensed dentist practices or provides direct supervision of
17 demonstrations of intra-oral bleaching or whitening.

18 "c. States, advertises, or claims to perform or
19 provide bleaching or whitening of the human teeth, even with
20 prepackaged or over-the-counter bleaching or whitening agents
21 or pretreated strips, trays, gels, direct application, or any
22 other delivery means without the direct supervision of a
23 licensed dentist.

24 "§34-9-7.

25 "Nothing in this chapter shall apply to the
26 following practices, acts, and operations:

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

6 "(1) ~~(2)~~ The practice of dentistry in the discharge
7 of their official duties by graduate dentists or dental
8 surgeons on active duty in the United States Army, Navy, Air
9 Force, or other armed services, Indian Health Service, Coast
10 Guard, Veterans' Administration, bona fide 501(c)(3) tax
11 exempt nonprofit, or other public health service (provided
12 however, dentists, dental hygienists, and other personnel
13 employed by any public health service or bona fide 501(c)(3)
14 tax exempt nonprofit which performs dental health care for the
15 general public under programs funded in whole or part by the
16 state or federal government shall be subject to all of the
17 provisions of this chapter and the rules and regulations duly
18 promulgated by the Board of Dental Examiners governing the
19 practice of dentistry and dental hygiene in this state), ~~Coast~~
20 ~~Guard, or Veteran's Administration.~~

21 "(2) ~~(3)~~ The practice of dentistry by a licensed
22 dentist of other states or countries at meetings of the
23 Alabama Dental Association or components thereof, or other
24 like dental organizations ~~approved by the board~~, while
25 appearing as clinicians, or when appearing in emergency cases
26 upon the specific call of dentists duly licensed under this

1 chapter, or when appearing as qualified expert witnesses in
2 civil or criminal judicial or administrative proceedings.

3 "(3) ~~(4)~~ The filling or filing of prescriptions of a
4 licensed and registered dentist, as hereinafter provided, by
5 any person or persons, association, corporation, or other
6 entity for the construction, reproduction, or repair of
7 prosthetic dentures, bridges, plates, or appliances on a model
8 made by or from impressions taken by a licensed and currently
9 registered dentist, to be used or worn as a substitute for
10 natural teeth, or medicines or drugs; provided, that the
11 person or persons, association, corporation, or other entity,
12 shall not solicit or advertise, directly or indirectly, by
13 mail, card, newspaper, pamphlet, radio, television, or
14 otherwise, to the general public to construct, reproduce, or
15 repair prosthetic dentures, bridges, plates, or other
16 appliances to be used or worn as substitutes for natural
17 teeth.

18 "(4) ~~(5)~~ The use of roentgen machines or other rays
19 for making radiograms or similar records, of dental or oral
20 tissues under the supervision of a licensed dentist or
21 physician; provided, that the services shall not be advertised
22 by any name whatever as an aid or inducement to secure dental
23 patronage, and no person shall advertise that he or she has,
24 leases, owns, or operates a roentgen machine for the purpose
25 of making dental radiograms of the human teeth or tissues or
26 the oral cavity, or administering treatments thereto for any
27 disease thereof.

1 "(5) ~~(6)~~ The giving of a general anesthetic or
2 parenteral sedation by a nurse anesthetist who administers a
3 general anesthetic or parenteral sedation under the direct
4 supervision of a duly licensed dentist to a patient who is
5 undergoing dental treatment rendered by the dentist.

6 "(6) ~~(7)~~ The use of a nurse in the practice of
7 professional or practical nursing, as defined in Sections
8 34-21-1 through 34-21-26, by a dentist.

9 "(7) ~~(8)~~ A dentist who engages in the practice of
10 dentistry across state lines in an emergency, as defined by
11 the board.

12 "(8) ~~(9)~~ A dentist who engages in the practice of
13 dentistry across state lines on an irregular or infrequent
14 basis. The "irregular or infrequent" practice of dentistry
15 across state lines is considered to occur if the practice
16 occurs less than 10 times in a calendar year or involves fewer
17 than 10 patients in a calendar year, or the practice comprises
18 less than one percent of the diagnostic or therapeutic
19 practice of the dentist.

20 "(9) A dentist employed by or otherwise under
21 contract with a nonprofit corporation to provide dental
22 services to indigent persons. For the purposes of this
23 subdivision, a nonprofit corporation includes a corporation
24 that is exempt from federal income tax under 26 U.S.C. Section
25 501(c)(3), an indigent health care clinic, or a local health
26 department.

1 "a. A nonprofit corporation shall register with the
2 board on an annual basis. If a nonprofit corporation has
3 multiple clinics, each clinic shall register separately. Each
4 nonprofit corporation shall file a copy of its articles of
5 incorporation with the board at the time of initial
6 registration and shall operate according to those articles.
7 Each nonprofit corporation shall have a licensed dentist
8 servinq as Chief of Dental Services, or its equivalent, over
9 all clinics associated with the nonprofit corporation and each
10 clinic location shall have a licensed dentist servinq as Chief
11 of Clinical Operations, or its equivalent, over the daily
12 operations of a clinic. The Chief of Clinical Operations shall
13 be present at all times a clinic is open and operational.

14 "b. Each dental employee of a clinic who is required
15 to be licensed shall possess a valid license from the board
16 and any associated permit or permits.

17 "c. Contractual agreements to provide dental
18 services to any municipal, county, state, or federal agency,
19 or any entity representing one of these groups, shall be
20 allowed by the board. Dental employees that are subject to
21 board rule shall also be subject to this chapter.

22 "d. The board may adopt rules as necessary to
23 implement this section. No rule may alter or affect the intent
24 of this subdivision to allow nonprofit clinics to operate
25 based on their bylaws as submitted to the Internal Revenue
26 Service.

27 "§34-9-7.1.

1 "The practice of dentistry by a dentist licensed in
2 another state as a part of participation in a continuing
3 education course conducted, taught, or supervised by the
4 University of Alabama School of Dentistry or any other dental
5 college, hospital, dental society or association, or
6 institution in Alabama which is approved by the board is
7 exempt from the licensing requirements of this chapter.

8 "§34-9-9.

9 "(a) No person other than a dentist licensed
10 pursuant to this chapter may do any of the following:

11 "(1) Employ or contract for the services of a
12 dentist, dental hygienist, or ~~both~~ dental assistant in the
13 operation of a dental office~~7~~.

14 "(2) Place in the possession of a dentist, dental
15 hygienist, or other agent such dental material or equipment as
16 may be necessary for the management of a dental office or
17 clinic on the basis of a lease or any other agreement for
18 compensation for the use of such material, equipment, or
19 offices~~7~~ or clinics.

20 "(3) Retain the ownership or control of dental
21 equipment, material, or office and make the same available in
22 any manner for the use of a dentist, dental hygienist, or
23 other agent.

24 "(4) Write prescriptions for medicines or drugs,
25 prostheses, or oral or dental appliances relating to the
26 practice of dentistry, or use whitening or bleaching agents
27 that require external or extra-oral activation by any means.

1 "(b) (4) The term "person" as used in this section,
2 shall not in any way pertain to state, county, municipal, ~~or~~
3 city, bona fide 501(c)(3) tax exempt nonprofit, or other bona
4 fide nonprofit institutions but shall be deemed to include any
5 individual, firm, partnership, corporation, or other entity
6 not licensed to practice dentistry in the State of Alabama
7 including, but not limited to, any individual, firm,
8 partnership, limited liability company, corporation, community
9 health center, jail or prison, agency, or entity employed with
10 or contracted by a state, county, or municipal institution for
11 the provision of dental services, the Alabama National Guard,
12 or contractors of any state agency or department.

13 "(c) (5) Nothing in this subsection shall apply to
14 bona fide sales of dental equipment, material, or office
15 secured by a chattel mortgage or retention title agreement, or
16 to an agreement for the rental of the equipment or office by
17 bona fide lease at a reasonable amount, and under which
18 agreement the licensee under this chapter maintains complete
19 care, custody, and control of the equipment and the practice.
20 Further, nothing in this subsection shall prohibit or restrict
21 persons, firms, or corporations from employing, contracting
22 with, or retaining licensed dentists to furnish dental
23 treatment for their employees or dependents of their employees
24 provided the other provisions of this section are adhered to.

25 "(d) (b) A prohibited business arrangement or
26 relationship as defined in subsection (a) shall not be
27 considered a violation of that subsection if a prohibited

1 arrangement or relationship results from the death of a
2 licensed dentist and is cured within 12 months of the date of
3 the death.

4 "(e) ~~(c)~~ The purpose of this section is to prevent a
5 non-dentist, contractor, employer, corporation, or other
6 entity from influencing or otherwise interfering with the
7 exercise of a dentist's independent professional judgment in
8 the operation of a dental office or clinic, or procedures
9 performed or personnel employed in a dental office or clinic.

10 In addition to the acts specified in subsection (a), no
11 person, other than a dentist licensed in accordance with this
12 chapter, shall enter into a relationship with a person
13 licensed under this chapter pursuant to which the unlicensed
14 person exercises control over any of the following:

15 "(1) The selection of a course of treatment, and
16 sequence of treatment, type of treatment, and treatment plan
17 for a patient, the procedures or materials to be used as a
18 part of such course of treatment, and the manner or sequence
19 in which such course of treatment is carried out by the
20 licensee~~7~~.

21 "(2) The patient records of a dentist~~7~~.

22 "(3) Policies and decisions relating to pricing,
23 credit, refunds, warranties, and advertising~~7~~ and.

24 "(4) Decisions relating to office personnel and
25 hours of practice.

26 "(f) ~~(d)~~ Any licensed dentist or dental hygienist
27 who enters into any of the arrangements or relationships

1 described in subsection (a) or subsection ~~(c)~~ (e) with an
2 unlicensed person as defined above, may be subject to any of
3 the penalties set forth in Section 34-9-18.

4 "§34-9-10.

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

18 "(b) Licensure by examination shall be applicable to
19 ~~the following categories:~~

20 ~~"(1) Those individuals who have never been licensed
21 or taken an examination and whose application to take an
22 examination administered or approved by the board is received
23 by the board within 18 months of graduation from dental
24 school.~~

25 ~~"(2) Those~~ those individuals who have successfully
26 passed an examination approved but not administered by the
27 board so long as an application for licensure is received by

1 the board within 18 months of the date of notification of
2 passing such examination. All applicants shall pay a fee which
3 shall accompany the application.

4 "(c) Any individual who possesses a current license
5 in any state, who has passed an examination approved by the
6 board and who has, since graduation from dental school,
7 practiced or participated in a clinical residency or practiced
8 dentistry in the Armed Forces or with the public health
9 service shall be eligible for licensure if an application is
10 received by the board within 18 months of the completion of
11 the subject residency or Armed Forces or public health service
12 commitment. All the above applicants shall pay a fee which
13 shall accompany the application.

14 "(d) Licensure by credentials may be utilized to
15 evaluate the theoretical knowledge and clinical skill of a
16 dentist or dental hygienist when an applicant for licensure by
17 credentials holds a dental or dental hygiene license in
18 another state. The board may promulgate rules and regulations
19 relating to licensure by credentials in addition to any
20 requirements by law. An applicant for licensure by credentials
21 must meet all of the following:

22 "(1) The dentist or dental hygienist must have been
23 engaged in the active practice of clinical dentistry or
24 clinical dental hygiene or in full-time dental or dental
25 hygiene education for the five years or 5,000 hours
26 immediately preceding his or her application.

1 "(2) The applicant must hold a current, valid,
2 unrevoked, and unexpired license in a state having examination
3 standards regarded by the Board of Dental Examiners of Alabama
4 as an equivalent to the Alabama standards.

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

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

16 "(5) The applicant must provide a written statement
17 agreeing to be interviewed at the request of the board.

18 "(6) The individual must successfully pass a written
19 jurisprudence examination.

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

26 "(8) The applicant must submit affidavits from two
27 licensed dentists or two licensed dental hygienists practicing

1 in the same geographical area where the applicant currently is
2 practicing or teaching attesting to the applicant's moral
3 character, standing, and ability.

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

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

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

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

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

22 "a. Questioning under oath.

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

25 "c. Substance abuse testing or treatment.

26 "d. Background checks for criminal or fraudulent
27 activities.

1 "e. Participation in continuing education.

2 "f. A current certificate in cardiopulmonary
3 resuscitation.

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

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

9 "i. An agreement to initiate practice within the
10 State of Alabama within a period of one year.

11 "j. Proof of professional liability coverage and
12 that coverage has not been refused, declined, cancelled,
13 nonrenewed, or modified.

14 "k. Whether the applicant has been subject to any
15 final disciplinary action in any state in which the individual
16 has been licensed which shall be verified by a query in the
17 National Practitioner Data Bank, the Health Integrity
18 Protection Data Bank, the American Association of Dental
19 Boards Clearing House for Disciplinary Information, any state
20 where the applicant has been licensed, or any other pertinent
21 bank currently existing or which may exist in the future.

22 "l. Whether the applicant's DEA registration or any
23 state controlled substances permit has ever been revoked,
24 suspended, modified, restricted, or limited in any way.
25 Provided, however, that any discipline that results only from
26 a failure to timely renew a registration or permit shall not

1 prevent an applicant from being eligible for this method of
2 licensure.

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

8 "(15) In addition to the requirements for applicants
9 seeking licensure by credentials, an applicant desiring to
10 practice a specialty only must meet the following
11 requirements:

12 "a. The specialty must be one in a branch of
13 dentistry approved by the American Dental Association.

14 "b. The applicant must meet the existing educational
15 requirements and standards set forth by the American Dental
16 Association, or other nationally recognized medical or dental
17 board or association, for that approved specialty.

18 "c. An applicant who chooses to announce or practice
19 a specialty must limit his or her practice exclusively to the
20 announced special area or areas of dental practice.

21 "d. If an applicant who is initially licensed by
22 credentials for a specialty practice decides to renounce his
23 or her specialty and practice general dentistry, and the
24 license originally issued did not require a general dental
25 license but rather a specialty license, or the applicant
26 originally passed only a specialty examination, the applicant
27 may not practice general dentistry until he or she

1 successfully passes the board's regular general dentistry
2 examination. However, if the applicant has passed a general
3 dentistry examination or has a general dentistry license, was
4 practicing a specialty, and decides not to continue that
5 specialty and practice only general dentistry, the applicant
6 is eligible for licensure by credentials as a general dentist.

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

11 "(1) The applicant holds a full and unrestricted
12 license to practice dentistry in any state of the United
13 States or in territories, other than the State of Alabama, in
14 which the individual is licensed.

15 "(2) The applicant has not had any disciplinary
16 action or other action taken against him or her by any state
17 or licensing jurisdiction. If there has been previous
18 disciplinary or other action taken against the applicant, the
19 board may issue a certificate of qualification if it finds
20 that the previous disciplinary or other action indicates that
21 the dentist is not a potential threat to the public.

22 "(3) The applicant submits an application for a
23 certificate of qualification for a special purpose license to
24 practice dentistry across state lines on a form provided by
25 the board, remits an application fee in an amount established
26 by the board, and pays a fee.

1 "(f) A special purpose license issued by the board
2 to practice dentistry across state lines limits the licensee
3 solely to the practice of dentistry across state lines. The
4 special purpose license shall be valid for a period of three
5 years, shall expire on a renewal date established by the board
6 in the third calendar year after its issuance, and may be
7 renewed upon receipt of a renewal fee as established by the
8 board. Failure to renew a license according to the renewal
9 schedule established by the board shall result in the
10 automatic revocation of the special purpose license to
11 practice dentistry across state lines. An applicant may
12 reapply following automatic revocation for failure to renew.
13 The applicant shall meet the qualifications of subsection (e)
14 in order to be eligible for renewal of the license.

15 "(g) Notwithstanding the provisions of this section,
16 the board shall only issue a special purpose license to
17 practice dentistry across state lines to an applicant whose
18 principal practice location and license to practice are
19 located in a state or territory of the United States whose
20 laws permit or allow for the issuance of a special purpose
21 license to practice dentistry across state lines or similar
22 license to a dentist whose principal practice location and
23 license are located in another state. It is the stated intent
24 of this section that dentists who hold a full and current
25 license in the State of Alabama be afforded the opportunity to
26 obtain, on a reciprocal basis, a license to practice dentistry
27 across state lines in any other state or territory of the

1 United States as a precondition to the issuance of a special
2 purpose license as authorized by this section to a dentist
3 licensed in the other state or territory. The board shall
4 determine which states or territories have reciprocal
5 licensure requirements meeting the qualifications of this
6 section.

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

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

18 "§34-9-11.

19 "When application and accompanying proof as are
20 required herein are found satisfactory, the board shall notify
21 the applicant to appear for examination at a time and place to
22 be fixed by the board, and each applicant shall be examined
23 and graded by number in lieu of name. All examinations
24 provided for in this chapter shall be approved by the board
25 and shall be of such type and character as to test the
26 qualifications of the applicant to practice dentistry. It is
27 provided, however, that the board ~~may~~ shall recognize any

1 written parts of an examination given by the Joint Commission
2 on National Dental Examinations in lieu of such examinations
3 or subject to such examinations as the board may approve.
4 Those found qualified by the board shall be granted a license
5 and a license certificate which shall bear a serial number,
6 the full name of the licensee, the date of issuance, and the
7 seal of the board, and shall be signed by each member of the
8 board.

9 §34-9-12.

10 "(a) Every person granted a license to practice
11 dentistry or dental hygiene in this state by the Board of
12 Dental Examiners of Alabama, as herein provided, shall cause
13 his or her license certificate to be recorded in the office of
14 the judge of probate of the county in which he or she desires
15 to practice before beginning the practice of dentistry or
16 dental hygiene in the county. Recording the license
17 certificate in the county of the principal practice, office
18 location, or residence shall constitute sufficient statewide
19 notice for any dentist or dental hygienist who may have
20 multiple practice locations. Any person receiving a license
21 from the board, whether or not intending to immediately engage
22 in the practice of dentistry or dental hygiene in this state,
23 shall cause his or her license certificate to be recorded in
24 the office of the judge of probate in one of the counties of
25 this state within 60 days of the issuance of the license
26 certificate.

1 "(b) Every person issued a special purpose license
2 to practice dentistry across state lines shall be subject to
3 the jurisdiction of the board, and all rules and regulations
4 of the board, including all matters relating to discipline. It
5 shall be the affirmative duty of every special purpose
6 licensee to report to the board in writing within 15 days of
7 the initiation of any disciplinary action against the licensee
8 to practice dentistry by any state or territory in which the
9 licensee is licensed. In addition, the licensee agrees, by
10 acceptance of the license, to produce any patient records or
11 materials as requested by the board, if released by the
12 patient under Health Insurance Portability and Accountability
13 Act (HIPAA) guidelines, or to appear before the board or any
14 of its committees following receipt of a written notice issued
15 by the board. The notice may be issued by the board. The
16 failure of a special purpose licensee to report, produce
17 released records, or appear as set forth above shall subject
18 the licensee to the disciplinary penalties as set forth in
19 Section 34-9-5.

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

26 "§34-9-13.

1 "Every practitioner of dentistry and dental hygiene
2 within the meaning of this chapter shall have in his or her
3 possession a license certificate and an annual registration
4 certificate in the office wherein he or she practices.

5 "§34-9-14.

6 "Every licensed dentist and dental hygienist upon
7 changing his or her place of practice, whether from one
8 building, city, street address, or county to another, shall
9 within 30 days thereafter furnish the secretary-treasurer of
10 the board with the new address. The secretary-treasurer shall
11 acknowledge receipt of change of address within 30 days. If
12 the licensee is retired, incapacitated, or uses his or her
13 home as his or her principal practice address, then the board
14 shall accept the home address of the licensee as his or her
15 principal place of practice. Only in such case is the board
16 entitled to the home address of the licensee.

17 "§34-9-15.

18 "(a) No person shall practice dentistry or dental
19 hygiene in the State of Alabama unless licensed by the board
20 and registered annually as required by this chapter. The
21 secretary-treasurer of the board shall mail to each licensee
22 an initial registration form which shall contain space for the
23 insertion of name, address, date, and number of license
24 certificate, and other information as the board shall deem
25 relevant and necessary for licensure. The licensee shall sign
26 and verify the accuracy of the registration before a notary
27 public after which he or she shall forward the registration to

1 the secretary-treasurer of the board together with a fee. Each
2 subsequent registration shall be made upon the form as above
3 prescribed except that it need not be verified. On or before
4 October 1 of each year, every dentist or dental hygienist
5 licensed to practice dentistry in the state shall transmit to
6 the secretary-treasurer of the board the completed form
7 prescribed by the board concerning information on the licensed
8 individuals within the office or clinic only, together with a
9 fee established by the board pursuant to this chapter, and
10 receive therefor the current annual registration certificate
11 authorizing him or her to continue the practice of dentistry
12 or dental hygiene in the state for a period of one year. Any
13 license and license certificate previously granted under the
14 authority of this chapter or any prior dental practice act
15 shall automatically be suspended if the holder thereof fails
16 to secure the annual registration certificate before ~~January~~
17 ~~1~~, December 31 each year. Any dentist or dental hygienist
18 whose license is automatically suspended by reason of failure,
19 neglect, or refusal to secure the annual registration
20 certificate shall be reinstated by the board upon payment of
21 the penalty fee plus all accrued annual registration fees up
22 to a maximum of five years, accompanied with the prescribed
23 form for annual registration of the license. Activation,
24 call-up, or deployment of members of the Alabama National
25 Guard or reserve component of the Armed Forces for active
26 military service for the United States shall be a reason to
27 suspend enforcement of this section against a licensee. Under

1 such circumstances a licensee is exempt from penalties imposed
2 by this section for failure to secure an annual registration
3 certificate for the time period in which he or she is
4 activated or deployed in the military and shall also be exempt
5 from continuing education requirements for the same time
6 period. Upon failure of any licensee to file application for
7 the annual registration certificate and pay the annual
8 registration fee on or before November 30, each year, the
9 board shall notify the licensee by mail addressed to the last
10 address of record that the application and fee have not been
11 received and that, unless the application and fee are received
12 on or before the first day of January, the license and license
13 certificate shall be automatically suspended. The board shall
14 notify the licensee by mail addressed to the last address of
15 record of the effective date of the automatic suspension and
16 the provisions for registration of the license. The board
17 shall waive the annual payment of fees herein provided for and
18 issue a current annual registration certificate to any
19 licensee who, because of age or physical disability, has
20 retired from the practice of dentistry or who is suffering a
21 malady of a lingering or permanent nature. The board by rule
22 shall waive annual registration, continuing education
23 requirements, and the payment of fees while any licensee is on
24 temporary active duty with any of the Armed Forces of the
25 United States. The waiver of fees herein provided shall be
26 effective so long as the retirement because of age or physical
27 disability or temporary active duty continues.

1 "(b) The board shall adopt and promulgate rules and
2 regulations for the adoption of a program of continuing
3 education, not to exceed 20 hours per year for dentists and 12
4 hours per year for dental hygienists, for its licensees by
5 October 1, ~~1991~~ 2011. After that date, the successful
6 completion of continuing education program requirements shall
7 be a requisite for renewal of licenses issued pursuant to this
8 chapter, unless specifically exempted under subsection (a).

9 "§34-9-15.1.

10 "(a) Upon the request of a patient or authorized
11 agent of a patient, a dentist shall promptly release to the
12 new dentist or doctor of a patient ~~or his or her authorized~~
13 ~~agent~~ legible and accurate copies of ~~all records~~ the clinical
14 record of treatment and the health and payment history of the
15 patient ~~regardless of how they are generated or maintained~~.
16 The reasonable costs of reproducing copies shall not be more
17 than the amounts authorized by statute and in the absence of
18 any statutory authority no more than the actual cost of the
19 reproduction.

20 "(b) The release of records under this section shall
21 not be made contingent upon the payment of any fee or charge
22 ~~owed~~ by the patient other than the cost of reproducing the
23 records. Any outstanding account balance shall be paid in full
24 by a patient before his or her records may be released.

25 "~~(c) The provisions of the section shall survive the~~
26 ~~closing of a dental office or practice for any reason,~~

1 ~~including, but not limited to, any disciplinary action,~~
2 ~~retirement, disability, or death.~~

3 "§34-9-16.

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

7	Description	Not Less Than	Not More Than
8	Dental Examination Appli-		
9	cation Fee	\$200.00	\$750.00 <u>\$500.00</u>
10	Dental Examination Fee	\$100.00	\$2,500.00
11	Dental Examination Materi-		
12	als Fee	\$200.00	\$500.00
13	Dental Licensure by Cre-		
14	dentials Application Fee		
15	<u>(Refundable if not</u>		
16	<u>granted.)</u>	\$100.00	\$4,000.00 <u>\$2,000.00</u>
17	Dental Licensure by Re-		
18	gional Exam Application		
19	Fee	\$100	\$1,000.00
20	Special Purpose Licensure		
21	Fee	\$200.00	\$750.00
22	Dental Annual Registration		
23	Fee	\$130.00	\$500.00 <u>\$200.00</u>
24	Dental License Reinstat-	\$250.00 <u>\$100.00</u>	\$500.00 <u>\$200.00</u>

1	ment Penalty		
2	Dental Hygiene Program Ap-		
3	plication Fee	\$50.00	\$500.00
4	Alabama Dental Hygiene		
5	Training Permit Fee	\$0.00	\$450.00 <u>\$200.00</u>
6	Alabama Dental Hygiene		
7	Training Education Fee	\$175.00	\$600.00 <u>\$300.00</u>
8	Alabama Dental Hygiene		
9	Program Instructor Certif-		
10	ication Course Fee	\$75.00	\$200.00 <u>\$150.00</u>
11	Alabama Dental Hygiene		
12	Program Instructional Ma-		
13	terials Fee	\$500.00	\$950.00
14	Dental Hygiene By Regional		
15	Exam Application Fee	\$55.00	\$75.00
16	Dental Hygiene Examination		
17	Application Fee	\$50.00	\$500.00
18	Dental Hygiene Examination		
19	Fee	\$100.00	\$600.00
20	Dental Hygiene Examination		
21	Materials Fee	\$100.00	\$400.00
22	Dental Hygiene Licensure		
23	by Credentials Fee <u>(Re-</u>		
24	<u>fundable if not granted.)</u>	\$0.00	\$2,000.00

1	Dental Hygiene Annual Reg-		
2	istration Fee	\$55.00	\$75.00
3	Dental Hygiene License Re-		
4	instatement Penalty	\$100.00	\$200.00
5	License Certificate Fee	\$25.00	\$500.00
6	Duplicate License Fee	\$25.00	\$150.00
7	Dental Faculty Teaching		
8	Permit Fee	\$150.00	\$350.00
9	Alabama Controlled Sub-		
10	stance Permit Fee	\$125.00	\$400.00 <u>\$200.00</u>
11	Alabama Controlled Sub-		
12	stance Permit Renewal Fee	\$100.00	\$400.00 <u>\$200.00</u>
13	General Anesthesia Permit		
14	Fee	\$900.00	\$1,500.00
15	General Anesthesia Permit		
16	Renewal Fee	\$200.00	\$750.00
17	Parenteral Sedation Permit		
18	Fee	\$900.00	\$1,500.00
19	Parenteral Sedation Permit		
20	Renewal Fee	\$200.00	\$750.00 <u>\$500.00</u>
21	Oral Conscious Sedation		
22	Permit Fee	\$100.00	\$250.00
23	Oral Conscious Sedation		
24	Permit Renewal Fee	\$50.00	\$250.00 <u>\$125.00</u>

1	Mobile Dental Applica-			
2	tion/Inspection Fee	\$750.00	\$1,500.00	<u>\$2,500.00</u>
3	Mobile Dental Renewal Fee	\$250.00	\$1,500.00	

4 "§34-9-17.

5 "(a) Any person or persons may practice or offer to
6 practice dentistry in connection with any dental office or
7 offices by or under the use of a name other than their own
8 provided their name or names as they appear on their license
9 certificate granted to him or them as a dentist pursuant to
10 this chapter appear in a reasonably dignified manner either
11 following or beneath any name selected and further provided
12 that such person or persons are personally present in their
13 office or offices operating as a dentist or personally
14 overseeing such operations as they are performed in their
15 office or each of their offices. When an associate in practice
16 is on temporary active duty with the armed forces, his or her
17 name may continue to appear in connection with the practice of
18 dentistry at any office or offices. Nothing herein shall allow
19 or permit any person or persons to select a name that suggests
20 or implies a nonprofit or charitable activity unless the
21 office is a bona fide nonprofit or charitable organization and
22 qualified as such by the Internal Revenue Service. The
23 violation of any of the provisions of this subsection by any
24 dentist may subject such dentist to any of the penalties
25 outlined in Section 34-9-18.

1 "(b) It shall be unlawful for a licensee to permit
2 his or her name to appear in any manner on, within, or in
3 connection with any office which he or she has sold to another
4 licensee and from which he or she has severed active practice
5 and is no longer physically present or practicing in the
6 office, or both, provided the name of the dentist who sells
7 his or her office to a licensed dentist, or in the event of
8 the death of a licensee, the name of the deceased dentist, may
9 remain in the office for a period not to exceed 12 months ~~and~~
10 it. It shall also be unlawful for the buyer to permit the
11 former owner's name, unless the former owner is still
12 practicing in that practice, or the deceased's license to
13 appear in any manner on, within, or in connection with the
14 office, except as herein provided. The violation of any of the
15 provisions of this subsection by any dentist may subject such
16 dentist to the penalties outlined in subsection (b) of Section
17 34-9-18.

18 "(c) It shall be unlawful for any dentist or group
19 of dentists to offer or make as a condition of association or
20 employment with any other dentist or group of dentists a
21 noncompete agreement or contractual restriction on the time or
22 location of a practice or penalty clause for locating another
23 dental office or clinic within a certain geographic radius or
24 time period upon leaving association or employment of a dental
25 office in compliance with the law of this state. Any such
26 agreement or contractual clause that has the effect of
27 limiting the location or timing of opening of any dental

1 office in the proximity of an original employing or
2 contracting dental office is void as a matter of state law and
3 public policy.

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

7 "§34-9-18.

8 "(a) The jurisdiction and powers of the board shall
9 be construed as narrowly as possible and the board is
10 prohibited from any act not specifically authorized by this
11 chapter and within the scope of the practice of dentistry.
12 Upon receipt of a complaint against a licensee, and a majority
13 vote of the board to provide a letter of explanation, the
14 board shall create a disciplinary committee, consisting of two
15 board members, to review the complaint. The committee shall
16 review all evidence relating to the complaint and may
17 recommend to the board dismissal of the complaint without a
18 hearing, settlement of the complaint, or the holding of a
19 disciplinary hearing on the complaint after a formal review.
20 Any disciplinary hearing shall be conducted by a hearing
21 officer pursuant to the Alabama Rules of Civil Procedure and
22 utilizing the Alabama or Federal Rules of Evidence. The
23 hearing officer, at the direction of the board, shall be
24 selected from a pool of three or more hearing officers. The
25 in-house attorney of the board may not act as or communicate
26 with the attorney selected by the board to prosecute the
27 licensee or the hearing officer before or during a

1 disciplinary hearing. The board may invoke disciplinary action
2 as outlined in subsection (b) hereof whenever it shall be
3 established to the satisfaction of the board, by clear and
4 convincing evidence, after a due process hearing conducted
5 pursuant to the Alabama Rules of Civil Procedure and as
6 hereinafter provided, that any dentist or dental hygienist has
7 been guilty of the following, and only of any of the
8 following, as strictly construed:

9 "(1) Fraud, deceit, or misrepresentation, whether
10 knowingly or unknowingly, in obtaining any license, license
11 certificate, annual registration certificate, money, or other
12 thing of value.

13 "(2) Gross immorality.

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

16 "(4) Is an habitual user of intoxicants or drugs
17 rendering him or her unfit for the practice of dentistry or
18 dental hygiene. No disciplinary action, fine, or
19 administrative cost above that required to administer a
20 monitoring program shall be charged of any dentist or dental
21 hygienist who recognizes his or her problem and self-reports
22 the problem or voluntarily enters a rehabilitation or other
23 treatment program, or both, or seeks rehabilitative services
24 for the problem on his or her own initiative.

25 "(5) Has been convicted for violation of federal or
26 state ~~narcotics or barbiturate~~ controlled substance laws.

1 "(6) Is guilty of gross negligence, ~~as~~ defined as
2 willful or wanton conduct with reckless, malicious, or
3 conscious disregard for the rights or safety of others, or
4 conduct that is so deliberate, outrageous, and callous as to
5 display total indifference to the health or safety of a
6 patient, resulting in serious bodily injury or death as a
7 direct result of that conduct ~~by the board~~, in the practice of
8 dentistry or dental hygiene.

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

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

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

24 "(10) Is guilty of professional connection or
25 association with or lending his or her name to anyone who is
26 engaged in the illegal practice of dentistry or to an office

1 or professional practice association or organization where he
2 or she does not personally and actively practice dentistry.

3 "(11) Conviction in any court of competent
4 jurisdiction of a felony ~~or a misdemeanor~~ involving moral
5 turpitude.

6 "(12)a. A dentist or dental hygienist, or assistant
7 or other office personnel, using or attempting to use in any
8 manner whatsoever any prophylactic list, call list, records,
9 reprints, or copies of same, or information gathered
10 therefrom, of the names of patients whom the dentist, dental
11 hygienist, assistant, or other office personnel served in the
12 office of a prior employer, unless the names appear upon the
13 bona fide call or prophylactic list of his or her present
14 employer and were caused to appear through the legitimate
15 practice of dentistry as provided for in this chapter.

16 "b. A licensed dentist who aids or abets or
17 encourages a dentist, dental hygienist, assistant, or other
18 office personnel employed by him or her to make use of a
19 so-called prophylactic list or the calling by telephone or by
20 the use of letters transmitted through the mails to solicit
21 patronage from patients formerly served in the office of any
22 dentist employing the dentist, hygienist, assistant, other
23 office personnel, or nurse, or using or directing anyone else
24 to use such a list from the office of a prior employer.

25 "(13) Pertaining to licensed dentists only, the
26 prescribing, administering or dispensing of any controlled
27 substances enumerated in Schedules I through V contained in

1 the Alabama Uniform Controlled Substances Act, Chapter 2 of
2 Title 20, or any amendment or successor thereto, for any
3 person not under his or her treatment in the regular practice
4 of his or her profession, or veteran's administration.

5 "(14) Irregularities in billing an insurance company
6 or other third party payer for services rendered to a patient.

7 "For the purposes of this section irregularities in
8 billing shall include: Reporting charges for the purpose of
9 obtaining a total payment in excess of that usually received
10 by the dentist for the services rendered; falsely reporting
11 treatment dates for the purpose of obtaining payment; falsely
12 reporting charges for services not rendered; falsely reporting
13 services rendered for the purpose of obtaining payment; or
14 failing to advise any third party payer that the copayment
15 provisions of a contract have been abrogated by accepting the
16 payment received from the third party payer as full payment
17 excluding individual or occasional cases. For purposes of this
18 section, irregularities in billing do not include
19 unintentional, incidental, or accidental clerical errors or
20 any irregularity that has been detected and corrected by the
21 office or dentist making the unintentional, incidental, or
22 accidental clerical error.

23 "(15) Violating any rule or regulation adopted by
24 the Board of Dental Examiners.

25 "(16) Has had his or her license to practice
26 dentistry or dental hygiene from another state suspended or
27 revoked based upon acts similar to those described in this

1 section. A certified copy of the record of suspension or
2 revocation of the state making the suspension or revocation
3 shall be conclusive evidence thereof.

4 "(17) Violating any provision of this chapter.

5 "(b) ~~When~~ After a hearing conducted according to the
6 Alabama Rules of Civil Procedure and the Alabama or Federal
7 Rules of Evidence, if the board finds any dentist or dental
8 hygienist guilty of any of the grounds set forth in subsection
9 (a), it may enter an order imposing one or more of the
10 following penalties:

11 "(1) Refuse to issue the dentist or dental hygienist
12 license or license certificate provided for in this chapter.

13 "(2) Revoke the license of any dentist or dental
14 hygienist.

15 "(3) Suspend the license of any dentist or dental
16 hygienist. In no case shall the suspension period exceed that
17 of a comparable criminal offense.

18 "(4) Enter a censure.

19 "(5) Issue an order fixing a period and terms of
20 probation best adapted to protect the public health and safety
21 and to rehabilitate the dentist or dental hygienist, not to
22 exceed the term of probation for a comparable criminal
23 offense.

24 "(6) Imposition of an administrative fine not to
25 exceed one thousand ~~two hundred fifty~~ dollars ~~(\$1,250)~~
26 (\$1,000) for each count or separate offense.

1 "(7) Imposition of restrictions on the scope of
2 practice. The fine shall be equally applied to dentists and
3 dental hygienists according to the offense charged and shall
4 be equitably applied based on the severity of the offense. In
5 no case shall the total fine be greater than that of a
6 comparable criminal offense.

7 "(8) Imposition of peer review or professional
8 education requirements.

9 "(9) Assessment of the costs of the disciplinary
10 proceedings.

11 "(10) Assessment of a nonreportable, nondisciplinary
12 administrative fee, not to exceed one hundred dollars (\$100),
13 for failure to ensure concurrency of validity between state
14 and federal licenses, or controlled substances permits or
15 licenses, or other minor administrative, clerical, or
16 scrivener's errors.

17 "(11) Imposition of a nonreportable, nondisciplinary
18 site specific suspension of license of a licensee as a means
19 of enforcing the prevention of an entity from practicing or
20 contracting for the practice of dentistry by violation of
21 Section 34-9-9.

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

25 "(d) No disciplinary action as outlined in
26 subsection (b) or (c) hereof shall be invoked or entered
27 except after hearing by the board ~~as provided in this chapter~~

1 in accordance with the Alabama Rules of Civil Procedure and
2 the Alabama or Federal Rules of Evidence, and such order is
3 subject to judicial review as provided by this chapter de novo
4 in any circuit court in this state. In no case shall any
5 censure, probationary period, suspension, or fine exceed a
6 comparable criminal fine, probationary period, or term of
7 incarceration, nor shall any disciplinary action of any sort
8 taken by the board be reported to any entity five years after
9 the completion of the final resolution of the disciplinary
10 matter. Any disciplinary action taken against a licensee,
11 whether a final order, consent order, administrative action,
12 or other board action, may only be reported during the five
13 years immediately after the completion of the disciplinary
14 action. After that time, except for actions revoking a license
15 or license certificate, the record of any and all disciplinary
16 actions taken against a licensee shall be expunged and may not
17 be reported to any agency, person, entity, or databank.

18 "No order of suspension or revocation provided in
19 this section shall be made or entered except after hearing by
20 the board in accordance with the Alabama Rules of Civil
21 Procedure and the Alabama or Federal Rules of Evidence and as
22 provided in this chapter, and the order shall be subject to
23 judicial review de novo in any of the circuit courts of this
24 state as provided by this chapter. In no case shall the fine,
25 censure, suspension, or probationary period exceed the
26 punishment provided for a similar criminal matter or be
27 reported to any entity beyond a five-year time period after

1 the completion of the censure or probationary or restricted
2 period, and in no case shall any of the information be
3 transmitted by any means to any third party unless
4 specifically requested by that third party, and in no case for
5 more than a five-year time period beyond the date of the
6 disciplinary period specified. Requests by third parties for
7 the status of a license shall be reported as current or in
8 good standing unless a disciplinary action is in force or
9 within the specified five-year reportable window, and then
10 only if specifically requested by the third party.

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

14 "(1) The failure of the licensee to appear or
15 produce records or materials as requested by the board.

16 "(2) The initiation of a disciplinary action against
17 the licensee by any state or territorial licensing
18 jurisdiction in which the licensee holds a license to practice
19 dentistry.

20 ~~"Notwithstanding any other provision of law,~~
21 ~~including the Alabama Administrative Procedure Act, the~~
22 ~~temporary suspension provided herein shall remain in effect~~
23 ~~until either the licensee has complied with the request of the~~
24 ~~board or the disciplinary action pending against the licensee~~
25 ~~has been terminated in favor of the licensee and the temporary~~
26 ~~suspension has been terminated by a written order of the~~
27 ~~board.~~ A special purpose license to practice dentistry across

1 state lines is subject to each of the grounds for disciplinary
2 action provided in this section in accordance with the
3 procedures of Section 34-9-24 ~~and the Alabama Administrative~~
4 ~~Procedure Act.~~

5 "(f) Members of the Board of Dental Examiners, any
6 agent, employee, consultant, or attorney for the board, and
7 the members of any committee of dentists or dental hygienists
8 impaneled by the board, shall ~~be immune~~ have qualified
9 immunity from suits for any conduct in the course of their
10 official duties with respect to investigations or hearings;
11 provided, that the persons act without malice and in good
12 faith that such investigations or hearings are warranted by
13 the facts, known to them after diligent effort to obtain the
14 facts of the matter relative to the investigations or
15 hearings, have followed the Alabama Rules of Civil Procedure
16 and the Alabama or Federal Rules of Evidence in the conduct of
17 any hearings or investigative matters, and have not
18 self-initiated the investigation. Should qualified immunity be
19 lost, the member of the board, agent, employee, investigator,
20 consultant, attorney, dentist, dental hygienist, or member of
21 any committee impaneled by the board shall be subject to any
22 penalty the circuit court of any county of the state may
23 impose, disciplinary action by the board, or other applicable
24 professional regulatory entity for his or her misconduct, and
25 any civil action that may be brought by the wronged party. A
26 disciplinary hearing shall be conducted by a hearing officer
27 chosen from a pool of three or more qualified hearing

1 officers. Upon request of the board, prosecution assistance
2 shall be rendered by sources provided in Section 34-9-43.1, at
3 no additional cost to the board. In no action shall an
4 advising or assisting attorney of the board act in a
5 prosecutorial role for the board or assist or communicate with
6 the attorney providing prosecutorial assistance for the board.
7 There shall be complete and absolute separation of duties,
8 functions, and communication between any attorney employed by
9 the board for administrative or logistical assistance and any
10 attorney acting in a prosecutorial role on behalf of the
11 board. Any disciplinary action taken, resulting in a final
12 outcome of an order, consent order, administrative action, or
13 any other board action taken against a licensee, may be
14 reported only during the five-year period immediately
15 following the completion of the disciplinary action or
16 probationary period. After that time, except for actions of
17 revocation of a license or license certificate, the record of
18 any disciplinary action against a licensee shall be
19 automatically expunged and not further reported to any agency,
20 person, databank, or entity, and in no case may any report be
21 made to any third party unless specifically requested and
22 within the five-year reporting window.

23 " (g) Nothing in this chapter shall be interpreted to
24 limit or restrict the authority of the board to discipline any
25 dentist licensed to practice in this state who violates this
26 chapter while engaging in the practice of dentistry within
27 this or any other state so long as the disciplinary action is

1 in strict conformance with the specific and narrowly defined
2 duties and powers of the board as provided in this chapter. It
3 is specifically recognized that the board has no authority to
4 discipline, censure, or take any administrative or licensure
5 action against any licensee for acts performed or committed
6 outside of the scope of dental practice.

7 "(h) The board shall have the authority to adopt
8 rules imposing a non-disciplinary nonreportable administrative
9 penalty for designated violations of the Alabama Dental
10 Practice Act.

11 "§34-9-19.

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

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

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

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

22 "a. Contains a material misrepresentation of fact or
23 law.

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

26 "(b) A dentist shall have ultimate responsibility
27 for all advertisements which are approved by him or her or his

1 or her agents or associates and the dentist shall be
2 responsible for the following:

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

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

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

24 "(c) A dentist may not hold himself or herself out
25 as a specialist or advertise specialty status unless the
26 specialty is approved by the American Dental Association or

1 another nationally recognized medical or dental association,
2 academy, or specialty certifying organization.

3 "(d) Dentists who are not specialists in specialties
4 approved by the American Dental Association, or other similar
5 dental or medical organization, may nevertheless advertise
6 that their practice is limited to a specific area of dentistry
7 ~~only~~ if the dentist has obtained membership in or otherwise
8 has been ~~credentialized~~ credentialed by an accrediting
9 organization ~~which is recognized by the board as~~ that is a
10 bona fide organization for such an area of practice.

11 "(e) Notwithstanding any provision of this section
12 to the contrary, a dentist licensed pursuant to this chapter
13 may not hold himself or herself out as a specialist or
14 advertise membership in a specialty recognized by an
15 accrediting organization, unless the dentist has continuously
16 held himself or herself out as a specialist since December 31,
17 1964, in a specialty recognized by the American Dental
18 Association, or other nationally recognized certifying
19 organization, or has completed a specialty education program
20 approved by the American Dental Association and the Commission
21 on Dental Accreditation, or other recognized dental or medical
22 organization, and meets either of the following
23 qualifications:

24 "(1) Is eligible for examination by a national
25 specialty board ~~recognized by the American Dental Association.~~

26 "(2) Is a diplomate of a national specialty board
27 ~~recognized by the American Dental Association.~~

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

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

19 "(2) Prior didactic training ~~and~~ or clinical
20 experience, or both, in the specific area of dentistry which
21 is greater than that of other dentists.

22 "(3) Successful completion of oral ~~and~~ or written
23 examinations based on psychometric principles.

24 "(g) Notwithstanding the requirements of subsections
25 (e) and (f), a dentist who lacks membership in or
26 certification, diplomate status, or other similar credentials
27 from an accrediting organization approved as bona fide by

1 either the American Dental Association or the board may
2 announce a practice emphasis in any other area of dental
3 practice if the dentist incorporates in capital letters or
4 some other manner clearly distinguishable from the rest of the
5 announcement, solicitation, or advertisement the following
6 statement: " _____ (NAME OF ANNOUNCED AREA OF DENTAL
7 PRACTICE) IS NOT RECOGNIZED AS A SPECIALTY AREA BY THE
8 AMERICAN DENTAL ASSOCIATION OR THE BOARD OF DENTAL EXAMINERS
9 OF ALABAMA." If such an area of dental practice is officially
10 recognized by an organization which the dentist desires to
11 acknowledge or otherwise reference in the dentist's
12 announcement, solicitation, or advertisement, the same
13 announcement, solicitation, or advertisement shall also state
14 prominently: " _____ (NAME OF REFERENCED
15 ORGANIZATION) IS NOT RECOGNIZED AS A BONA FIDE SPECIALTY
16 ACCREDITING ORGANIZATION BY THE AMERICAN DENTAL ASSOCIATION OR
17 THE BOARD OF DENTAL EXAMINERS OF ALABAMA."

18 "(h) The purpose of this section is to prevent a
19 dentist from advertising without appropriate disclosure
20 membership in an organization which may be perceived by the
21 public as recognizing or accrediting specialization or other
22 unique competencies in an area of dentistry that is not
23 recognized or accredited by the American Dental Association or
24 the board in accordance with this section. The purpose of this
25 section is also to prohibit a dentist from advertising a
26 specialty or other area of dental practice without appropriate
27 disclosure unless the special competencies held by the dentist

1 satisfy the requirements of subsections (d) and (f). The
2 Legislature finds that dental consumers can reasonably rely on
3 these requirements as satisfactory evidence of a dentist's
4 attainment of meaningful competencies in the specialty or
5 other bona fide area of dental practice advertised. The
6 Legislature also finds that this process for the recognition
7 of dental specialties and other bona fide areas of dental
8 practice is the least restrictive means available to ensure
9 that consumers are not misled about a dentist's unique
10 credentials.

11 "(i) A dentist who lacks membership in or
12 certification, diplomate status, or similar credentials from
13 an accrediting organization approved as bona fide by either
14 the American Dental Association or the board may announce a
15 practice emphasis in any other area of dental practice if the
16 dentist incorporates the disclaimer set forth in subsection
17 (g).

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

21 "§34-9-19.1.

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

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

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

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

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

13 "a. One that contains a misrepresentation of fact.

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

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

19 "d. One that implies unusual superior dental
20 ability.

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

24 "(5) PARTICIPATING DENTIST. A dentist who has paid a
25 fee to the dental referral service in order to be included on
26 its referral service, or has signed or participates as a
27 participating dentist of a preferred provider agreement with

1 any organization, or has preferred provider status in any
2 organization that refers its members or insureds to preferred
3 providers.

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

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

10 "(2) The dental referral service discloses to any
11 prospective patient who makes contact with the service that
12 the participating dentists have paid a fee or signed an
13 agreement for participation in the service.

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

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

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

23 "a. Name.

24 "b. Street address.

25 "c. Mailing address.

26 "d. Telephone number.

1 "e. Name of registered agent or person responsible
2 for the operation of the dental referral service.

3 "f. Listing of other states where the dental
4 referral service is registered.

5 "g. A copy of the standard form contract that
6 regulates its relationship to the referral service with
7 participating dentists.

8 "(c) All terms and conditions of a dental referral
9 service or dental health care provider entity contract shall
10 be interpreted and enforced under Alabama law, terms of the
11 agreement or contract notwithstanding. Failure of a dental
12 referral service, HMO, PPO, insurance company, or other
13 similar organization or entity located within the state shall
14 register with the board or, if located outside of the state,
15 shall register with both the board and the Secretary of State
16 and obtain a certificate of qualification to do business
17 within the state. Failure to so register shall void all terms
18 of the agreement or contract. An individual or private right
19 to sue the organization or entity for infractions of Alabama
20 law shall be preserved for any licensee.

21 "(d) ~~(c)~~ Participating dentists shall not enter into
22 a contract or other form or agreement to accept for dental
23 care or treatment a person referred or recommended for the
24 care or treatment by a dental referral service unless the
25 dental referral service meets all the requirements of this
26 section. All terms and conditions of a dental referral
27 services contract or preferred provider agreement shall be

1 interpreted and enforced under Alabama law, terms of the
2 referral or preferred provider contract or agreement
3 notwithstanding. Failure of a dental referral service,
4 preferred provider organization, HMO, PPO, or other similar
5 insurance organization located in the state to register with
6 the board or, if located outside the state, to both register
7 with both and obtain a certificate of qualification to do
8 business in this state from the Secretary of State, shall void
9 all terms of a contract or agreement for dental referral
10 services or a preferred provider contract or agreement. An
11 individual or private right to sue a referral service or
12 preferred provider organization or similar entity for an
13 infraction of Alabama law shall be specifically preserved in
14 addition to any action taken by the Attorney General,
15 Insurance Commissioner, or any other governmental entity.

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

20 "(1) The participating dentist of the dental
21 referral service is a dentist who has paid a fee or signed an
22 agreement or contract to participate in the service or
23 preferred provider plan.

24 "(2) The advertisement is paid for by participating
25 dentists.

1 "(3) No representation is made about the quality of
2 the dental services to be performed or the expertise of the
3 participating dentists.

4 "(4) Participating dentists are not more or less
5 qualified than dentists who are not participating in the
6 service.

7 "(f) ~~(e)~~ Dental referral ~~service advertisements~~
8 services, preferred provider organizations, or any other
9 entity which refers their members or insureds to any dentist
10 or practice shall not do any of the following:

11 "(1) Advertise or solicit patients in a manner that
12 contains a false, fraudulent, misleading, or deceptive
13 statement in any material respect.

14 "(2) Publish or circulate, directly or indirectly,
15 any false, fraudulent, misleading, or deceptive statement as
16 to the skill or methods of practice of any participating
17 dentist.

18 "(3) ~~Contain a statement~~ State or ~~make a~~
19 ~~recommendation~~ recommend that the dental referral service
20 provides referrals to the most qualified dentists or dental
21 practices.

22 "(4) ~~Contain~~ Utilize a review process, credentialing
23 process, or a screening.

24 "(5) ~~Contain~~ Utilize qualifications, credentialing,
25 or information verification that misleads the public into
26 thinking a participating dentist has obtained special
27 recognition or joined a selective group of licensed dentists

1 by being a participating dentist in the dental referral
2 service.

3 "(6) Ask any question in a participating provider
4 contract or agreement, credentialing, or other similar
5 questionnaire or entity, or require any information from a
6 licensee that is not limited as to time or occurrence or other
7 credentialing, personal, or professional information, or is in
8 conformance with admissible questions in the Alabama or
9 Federal Rules of Evidence. Any question asked shall be
10 reasonably related to the subject matter of the contract or
11 agreement and shall be limited in scope and passage of time
12 since the occurrence inquired about. A hold harmless clause,
13 limitation of liability of the questioner, or agreement not to
14 sue the questioning entity within a contract or agreement
15 shall abrogate the need of the provider to answer any
16 credentialing, personal, or professional information asked and
17 the dental referral service, preferred provider organization,
18 or credentialing service may not prevent any provider who
19 refuses to answer personal or professional questions that are
20 not reasonably related to the contract or agreement, or are
21 not sufficiently limited in scope or time or conforming to the
22 Alabama or Federal Rules of Evidence, from participating or
23 non-credentialing.

24 "(g) ~~(f)~~ A violation of Sections 34-9-15, 34-9-19,
25 34-9-28, or this section, including, but not limited to,
26 advertising in any manner which is false, fraudulent,
27 misleading, or deceptive, shall subject a participating

1 dentist to possible administrative disciplinary actions
2 outlined in Section 34-9-18, after notice and hearing by the
3 Board of Dental Examiners of Alabama and the opportunity for
4 judicial review as provided in this article.

5 "(h) Notwithstanding any other provision of the
6 contract or agreement between a dental plan, health care
7 benefits provider, referral service, or credentialing entity
8 and a dentist providing services for such plan, provider, or
9 entity, the plan, provider, or entity may not require that a
10 dentist provide services to its referred, insured, or members
11 at a fee set out by the plan, provider, or entity unless the
12 services are covered services under the applicable subscriber
13 agreement. For the purposes of this subsection, the term
14 covered services are services reimbursable under the
15 applicable subscriber plan and subject to contractual
16 limitations on subscriber benefits as may apply including, but
17 not limited to, deductibles, waiting periods, or frequency
18 limitations. For the purposes of this subsection, the term
19 dental plan includes any policy of insurance or other
20 indemnity issued by a health care benefits provider for
21 coverage of dental treatment or services. No dental plan,
22 preferred provider organization, or other entity, even if
23 contracted by a state governmental agency or entity, shall
24 make direct appointments or referrals for covered members,
25 thereby abrogating the right of a patient to freely choose the
26 provider of his or her choice as provided elsewhere in this
27 code. Should a patient be covered by more than one indemnity

1 plan, the secondary plan shall be responsible for payment of
2 any expenses not covered by the primary plan up to the full
3 charges or fees of the provider.

4 "§34-9-20.

5 "Any person, which word when used in this section
6 shall include all legal entities not licensed to practice
7 dentistry in this state, who ~~shall advertise~~ advertises in any
8 manner to the general public that he or she can or will sell,
9 supply, furnish, construct, reproduce, or repair prosthetic
10 dentures, partial dentures, grills, bridges, plates or other
11 appliances to be used or worn as substitutes for natural
12 teeth, or for the regulation or movement thereof, or offer
13 bleaching or whitening of the human teeth, or attempt to exert
14 any control over the operation of a dental office or clinic as
15 noted in Section 34-9-9 and elsewhere, wherever located within
16 this state shall be guilty of a misdemeanor, and the circuit
17 courts of each county shall have jurisdiction to enjoin such
18 person from so doing. The board shall identify, find,
19 investigate, and prosecute any person or entity violating this
20 article and, in addition to seeking injunctive relief or civil
21 or criminal remedies against the violators, may nonpunitively
22 and without disciplinary repercussion to the licensee or
23 auxiliary for practice at another location, suspend the
24 license of a dentist or auxiliary for performing dental
25 services or treatment at any specific dental office, clinic,
26 or institution as an emergency measure to halt unauthorized
27 interference, improper influence, or tampering with the

1 operations of a dental office, clinic, licensee, or auxiliary
2 wherever located within this state until there is a final
3 determination of the alleged violation.

4 "§34-9-21.

5 "Every duly licensed and registered dentist who
6 employs the services of a commercial dental laboratory or
7 private technician for the purpose of constructing, altering,
8 repairing, or duplicating any denture, partial denture, plate,
9 crown, partial plate, bridge, splint, orthodontic, or
10 prosthetic appliance shall be required to furnish the
11 commercial dental laboratory or private technician an
12 impression or model taken by the dentist when necessary,
13 together with a prescription setting forth the following:

14 "(1) The name and address of the commercial dental
15 laboratory or private dental technician;

16 "(2) The patient's name or identification number,
17 and if a number is used the patient's name shall be written
18 upon the duplicate copy of the prescription retained by the
19 dentist;

20 "(3) The date on which the prescription was written;

21 "(4) A description of the work to be done, with
22 diagram if necessary;

23 "(5) A specification of the type and quality of
24 materials to be used; and

25 "(6) The signature of the dentist and his or her
26 license number.

1 "Such prescription shall be made in duplicate form.
2 The duplicate copy shall be retained in a permanent file for a
3 period of two years by the dentist, and the original copy
4 shall be retained on a permanent file or in the chart of the
5 patient for a period of two years by the commercial dental
6 laboratory or private technician. Such permanent file of
7 prescriptions to be kept by such dentists, commercial dental
8 laboratory, or private technician shall be open to inspection
9 at any reasonable time by the board or its duly constituted
10 agent upon sufficient prior notice to the dentist and proper
11 release from the patient. Failure of the dentist, commercial
12 dental laboratory, or private technician to keep such
13 permanent records of prescriptions which are identifiable with
14 each denture, plate, partial plate, bridge, splint,
15 orthodontic, or prosthetic appliance shall be prima facie
16 evidence of a violation of this chapter and shall constitute
17 and be punishable as a misdemeanor.

18 "§34-9-24.

19 "No action to revoke or suspend a license shall be
20 taken until the complaint and accompanying evidence have been
21 reviewed by the disciplinary committee and the licensee has
22 been furnished a statement in writing of the charges against
23 him or her, together with a notice of the time and place of
24 the hearing. The statement of charges and notice shall be
25 served upon the licensee at least 20 days before the date
26 fixed for hearing, excepting nondisciplinary suspension as
27 provided in Section 34-9-20 for a specific location or entity,

1 either personally or by registered or certified mail sent to
2 his or her last known post-office address. A licensee may be
3 represented by counsel at the hearing without prejudice to his
4 or her case or cause.

5 "§34-9-25.

6 "From any order of the board imposing any of the
7 penalties found in Section 34-9-18, any party affected thereby
8 may bring an action in the circuit courts to set aside the
9 order ~~on the ground that same is unlawful or arbitrary~~ in a
10 trial de novo before any of the circuit courts of this state.

11 "§34-9-26.

12 "No person shall practice as a dental hygienist in
13 this state until such person has passed an examination given
14 by the board under rules and regulations as the board may
15 promulgate and the payment of a fee. The board shall issue
16 licenses and license certificates as dental hygienists to
17 those persons who have passed the examination and have been
18 found qualified by the board. The license certificate and
19 annual registration certificate shall be kept or displayed in
20 the office in which the dental hygienist is employed. No
21 person shall be entitled to a license and license certificate
22 unless the person is 19 years of age and of good moral
23 character. Each applicant for examination and license as a
24 dental hygienist shall be a graduate of a school of dental
25 hygiene which has been approved by the board, or in lieu
26 thereof, shall have served as a dental assistant for a period
27 of time established by board rule and shall have served at

1 least one year as a dental hygienist trainee under a training
2 permit issued by the board to a qualified dentist practicing
3 in this state in accordance with the dental hygienist training
4 program established by the Board of Dental Examiners of
5 Alabama, or shall have completed at least the second year in a
6 dental school or college approved by the board. Any person
7 practicing in violation of this section shall be guilty of a
8 misdemeanor, and the board may impose the penalties outlined
9 in Section 34-9-18 for such violation.

10 "§34-9-27.

11 "A dental hygienist shall work only under the direct
12 supervision of a duly licensed dentist practicing in this
13 state. Dental hygienists may take, develop, and mount oral
14 X-rays; remove calcareous deposits, accretions, or stains from
15 the teeth, perform any intra-oral procedures allowed by rule
16 or regulation of the Board of Dental Examiners of Alabama and
17 assist a licensed dentist in his or her practice. Any person
18 licensed by the board under this section who has completed the
19 curriculum for dental hygienists at a dental school approved
20 by the board, or who is otherwise licensed as a dental
21 hygienist by the board, shall have the right to use the title
22 registered dental hygienist or the abbreviations thereof,
23 "R.D.H." appended to his or her name signifying the license
24 conferred. The board may impose any of the penalties outlined
25 in Section 34-9-18 against any dentist who shall knowingly
26 permit any dental hygienist working under his or her
27 supervision to perform any operation other than those

1 permitted under the provisions of this section, and may impose
2 the penalties outlined in Section 34-9-18 against any dental
3 hygienist who shall perform any operation other than those
4 permitted under this section.

5 "§34-9-29.

6 "When it appears to the board that any person is
7 violating any of the provisions of this chapter, the board may
8 in its own name bring an action in the circuit court for an
9 injunction, fine, imprisonment, or any other penalty the court
10 may impose, and ~~said~~ the court of this state may enjoin any
11 person from violating this chapter regardless of whether
12 proceedings have been or may be instituted before the board or
13 whether criminal proceedings have been or may be instituted.
14 If the violator holds another vocational or professional
15 license, the board shall file an official complaint with the
16 appropriate licensing entity in addition to any civil or
17 criminal charges that may be filed. For purposes of this
18 section, person shall be deemed to include any individual,
19 firm, partnership, corporation, professional association,
20 contractor, professional corporation, or other entity.

21 "§34-9-40.

22 "(a) In order to accomplish the purposes and to
23 provide for the enforcement of this chapter, there is hereby
24 created the Board of Dental Examiners of Alabama. The board is
25 hereby vested with the authority to carry out the purposes and
26 enforce the provisions of this chapter. On June 24, 1959, the
27 members of the present board now in existence shall hold

1 office for the remainder of their respective terms for which
2 they have been elected and thereafter until their successors
3 are elected and qualified and shall constitute the board under
4 this chapter. The board shall consist of six dentists who
5 shall be selected in the method set forth herein all of whom
6 having been actively engaged in the practice of dentistry in
7 the State of Alabama for at least five years next preceding
8 the date of their election and one dental hygienist elected
9 at-large as provided in subsection (b). Each member of the
10 board shall be a citizen of this state. No member of the board
11 shall be a member of the faculty of any dental school, dental
12 college, dental hygiene school, or dental hygiene college or
13 receive any financial benefits for teaching in any dental
14 school, dental college, dental hygiene school, or dental
15 hygiene college or have a financial interest in a commercial
16 dental laboratory or a dental supply business. Beginning in
17 October 2009, and every five years thereafter, one member, who
18 is qualified as provided herein, shall be selected by the
19 Alabama Dental Society no later than July 1, 2009, and every
20 five years thereafter. As for all elections of members, any
21 group of 10 or more licensed dentists, residing and practicing
22 dentistry in the state, may nominate a candidate for the
23 position of board member by submitting a petition bearing
24 their signatures to the secretary of the board to be
25 postmarked not later than the first day of July in the year of
26 the election. The board shall cause the election ballots to be
27 mailed not later than September 1 in the year of the election

1 to all the licensed dentists residing and practicing in the
2 state and currently registered as prescribed by law, along
3 with the annual registration form for the forthcoming fiscal
4 year. Both the annual registration form and fee must accompany
5 the separately sealed ballot that shall be postmarked no later
6 than October 1 and returned to the secretary of the board no
7 later than the first board workday following October 1 each
8 year, ballots being nullified unless accompanied by completed
9 annual registration form and annual registration fee. Three
10 members of the board shall be present at the canvassing of the
11 ballots. Any candidate receiving a majority of the votes shall
12 be declared elected to the board and will take the oath of
13 office on or before October 15 in the year of his or her
14 election. In the event no candidate receives a majority of the
15 votes cast, the board shall conduct a run-off election between
16 the two candidates receiving the largest number of votes. The
17 board shall cause the ballots pertaining to the run-off
18 election to be mailed on or before October 15 of the election
19 year to all the licensed dentists residing and practicing in
20 the state and currently registered as prescribed by law, and
21 the ballots pertaining to the run-off election shall be
22 postmarked no later than the first day of November in the year
23 of the run-off election and received by the secretary of the
24 board no later than the first board workday following the
25 first day of November. All ballots received after this date
26 shall be nullified. In the event of a run-off election, the
27 candidate receiving the largest number of votes in the run-off

1 election shall be declared elected to the board and shall
2 immediately take the oath of office and begin his or her term
3 of office. Every member elected shall hold office for a period
4 of five years, which terms shall begin immediately upon taking
5 an oath to properly and faithfully discharge the duties of his
6 or her office and until his or her successor is elected and
7 qualified, and the member so elected shall not at the
8 expiration of the term be eligible to succeed himself or
9 herself. The membership of the board shall be inclusive and
10 reflect the racial, gender, geographic, urban/rural, and
11 economic diversity of the state. Except for the board member
12 position selected by the Alabama Dental Society, vacancies on
13 the board shall be filled by the board by the appointment of
14 ~~the immediate past member of the board, and if for any reason~~
15 ~~the immediate past member of the board is unable to accept the~~
16 ~~appointment, then the board shall fill the vacancy by~~
17 ~~appointment of the most recent past board member who is~~
18 ~~willing to accept the appointment. If no past board member~~
19 ~~accepts the appointment, then the board may, by unanimous~~
20 ~~vote, appoint~~ any licensed dentist qualified under the
21 provisions of this chapter other than a past board member. In
22 the event of a vacancy in the position selected by the Alabama
23 Dental Society, the Alabama Dental Society shall select a
24 dentist who is qualified as provided herein to fill the
25 vacancy. Members of the board shall be removed by a two-thirds
26 vote of the registered dentists in the state for neglect of
27 duty or any just cause, by petition to the secretary of the

1 board by 10 percent of the licensed dentists in the state. On
2 or before July 1, 1962, the board shall send a copy of this
3 section to all licensed dentists in the state.

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

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

18 "a. Any group of 10 or more licensed dental
19 hygienists, residing and practicing dental hygiene in the
20 State of Alabama, may nominate a candidate for the dental
21 hygienist position by submitting a petition bearing their
22 signatures to the secretary of the board no later than the
23 first day of July in the year of an election. The board shall
24 cause election ballots to be mailed no later than September 1
25 in the year of an election to all the licensed dental
26 hygienists residing and practicing in the state and currently
27 registered as prescribed by law. Both the annual registration

1 form and the registration fee must accompany a separately
2 sealed ballot that shall be postmarked no later than October 1
3 and returned to the secretary of the board no later than the
4 first board workday following October 1 each year, and the
5 ballots will be nullified unless the voter has complied with
6 Section 34-9-28, concerning annual registration.

7 "b. ~~Three~~ Four members of the board shall be present
8 at the canvassing of the ballots. Any candidate receiving a
9 majority of the votes shall be the dental hygienist member and
10 shall take the oath of office on or before October 15 in the
11 year of his or her election. In the event no candidate
12 receives a majority of the votes cast, the board shall conduct
13 a run-off election between the two candidates receiving the
14 largest number of votes. The board shall cause the ballots
15 pertaining to any run-off election to be mailed on or before
16 October 15 of the election year to all licensed dental
17 hygienists residing and practicing in the state and currently
18 registered as prescribed by law, and the ballots pertaining to
19 the run-off election shall be postmarked no later than
20 November 1 in the year of the run-off election and received by
21 the secretary of the board no later than the first board
22 workday following November 1. Ballots received after November
23 1 shall be nullified. In the event of a run-off election, the
24 dental hygienist receiving the largest number of votes in the
25 run-off election shall be declared elected to the board and
26 shall immediately take the oath of office and begin his or her
27 term of office.

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

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

8 "(4) The dental hygienist member shall hold that
9 position for a period of five years, which term shall begin
10 immediately upon taking an oath to properly and faithfully
11 discharge the duties of his or her office and continue until
12 his or her successor is elected and qualified, and the member
13 so elected shall not at the expiration of the term be eligible
14 to succeed himself or herself. If a vacancy occurs in the
15 position of dental hygienist, the unexpired term shall be
16 filled by the board by the appointment of ~~the immediate past~~
17 ~~dental hygienist member. If for any reason the immediate past~~
18 ~~dental hygienist member is unable to accept the appointment,~~
19 ~~then the board shall fill the vacancy by a unanimous vote of~~
20 ~~the other board members by the appointment of some other past~~
21 ~~dental hygienist member. If a vacancy occurs and there is not~~
22 ~~an immediate past dental hygienist member or other past dental~~
23 ~~hygienist member, the vacancy shall be filled by a unanimous~~
24 ~~vote of the board by the appointment of some otherwise~~
25 ~~qualified~~ any dental hygienist other than a previous board
26 member.

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

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

22 "§34-9-42.

23 "The secretary-treasurer of the board shall give
24 bond in such sum as may be prescribed by the board,
25 conditioned to faithfully and honestly discharge the duties of
26 the office according to law, which bond shall be made payable
27 to the Board of Dental Examiners of Alabama and held in the

1 custody of the president of the board. The secretary-treasurer
2 of the board shall compile an annual report which shall
3 contain an itemized statement of all money received and
4 disbursed and a summary of the official acts of the board
5 during the preceding year, and the report shall have attached
6 thereto a certified report and audit made by a certified
7 public accountant of the State of Alabama. A copy of the
8 report and audit shall be filed of record in the office of the
9 Department of Finance of the State of Alabama, and a copy
10 shall be retained by the secretary-treasurer ~~to be rendered~~
11 ~~upon request, to the dentists at large in the State of Alabama~~
12 and distributed annually on or before the last day of January,
13 along with a copy of the Dental Practice Act and a directory,
14 to each licensee in the state. The board may affiliate with
15 the American Association of Dental Boards, may pay dues to the
16 ~~the~~ association and may send all members of the board to the
17 meetings of the association. Such delegates may receive the
18 per diem herein provided for attending such meetings and
19 reimbursement for necessary expenses audited and allowed by
20 the board.

21 "§34-9-43.

22 "The board shall exercise, subject to this chapter,
23 the following powers and duties:

24 "(1) Adopt rules for its government as deemed
25 necessary and proper.

26 "(2) Prescribe rules for qualification and licensing
27 of dentists and dental hygienists.

1 "(3) Conduct examinations to ascertain the
2 qualification and fitness of applicants for licenses as
3 dentists and dental hygienists.

4 "(4) Make rules and regulations regarding
5 sanitation.

6 "(5) Formulate rules and regulations by which dental
7 schools and colleges are approved, and formulate rules and
8 regulations by which training, educational, technical,
9 vocational, or any other institution which provides
10 instruction for dental assistants, dental laboratory
11 technicians, or any other paradental personnel are approved.

12 "(6) Grant licenses, issue license certificates,
13 teaching permits, and annual registration certificates in
14 conformity with this chapter to such qualified dentists and
15 dental hygienists.

16 "(7) Conduct hearings or proceedings to impose the
17 penalties specified in Section 34-9-18.

18 "(8)a. Employ necessary persons to assist in
19 performing its duties in the administration and enforcement of
20 this chapter, and to provide offices, furniture, fixtures,
21 supplies, printing, or secretarial service to these persons
22 and expend necessary funds.

23 "b. Employ an attorney or attorneys, for a period
24 not to exceed five years, subject to the approval of the
25 Attorney General and serving at his or her pleasure, to advise
26 and assist in the carrying out and enforcing of the provisions
27 of this chapter. Provided, however, if the board contracts

1 with an outside attorney to be general counsel to the board,
2 that attorney or any member of a law firm with which he or she
3 is associated shall not function as the board's prosecutor at
4 disciplinary hearings and shall strictly and absolutely not
5 communicate with any attorney employed by the board as a
6 prosecuting attorney for a disciplinary case.

7 "(9)a. Investigate alleged violations of this
8 chapter and institute or have instituted before the board or
9 the proper court appropriate proceedings regarding the
10 violation.

11 "b. Authorize and employ investigators who comply
12 with the Peace Officers' Minimum Standards and Training Act to
13 exercise, upon probable cause and following proper
14 constitutional procedures, the powers of a peace officer in
15 investigating alleged violations of the drug or controlled
16 substances laws by persons licensed pursuant to this chapter,
17 including the powers of arrest and inspection of documents.
18 These investigators shall not be paid a subsistence allowance
19 by the board.

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

22 "(11) Publish, on a quarterly basis, all minutes,
23 except minutes of executive sessions, financial reports,
24 schedules of meetings, including anticipated executive
25 sessions, and other pertinent information on the board's
26 website no later than 90 days following the date of
27 occurrence. In addition, publish annually the rules and

1 regulations promulgated by the board, a copy of the Dental
2 Practice Act, and a list of all persons licensed to practice
3 under this chapter.

4 "(12) Attend meetings, seminars, work shops, or
5 events that may improve the function and efficiency of the
6 board or improve the ability of the board to enforce and
7 administer this chapter.

8 "(13) Publish all minutes, financial information,
9 and meeting schedules on the board website on a quarterly
10 basis and notices of executive sessions and other activities
11 of the board not later than 60 days after the date of the
12 occurrence.

13 "(14) Exercise only those powers specifically
14 enumerated in this section and Section 34-9-18.

15 "§34-9-43.1.

16 "(a) The board may employ investigators, attorneys,
17 agents, and any other employees and assistants to aid in the
18 administration and enforcement of the duties of the board. The
19 board may request assistance from the Attorney General,
20 district attorneys, or other prosecuting attorneys of this
21 state in the various circuits and counties, provided that such
22 attorneys do not communicate or provide advice or assistance
23 to any attorney employed by the board to advise and assist the
24 board in other matters. Any violation of this subsection shall
25 be reported to the applicable state bar for disciplinary
26 action against the attorney. All prosecuting attorneys
27 throughout the state shall assist the board, upon request of

1 either, in any action for injunction or any prosecution, or
2 for other legal or equitable relief against an unlicensed
3 person or other entity, without charge or additional
4 compensation.

5 "(b) The board may employ consultants to render
6 professional services such as, but not limited to, reviewing
7 records and providing expert testimony in contested cases to
8 aid the board in carrying out its lawful responsibilities.
9 Consultants shall comply with the Alabama or Federal Rules of
10 Evidence and the Alabama Rules of Civil Procedure and shall be
11 compensated for professional services at rates established by
12 the board by rule. In addition, consultants shall be
13 reimbursed for actual reasonable expenses for travel, lodging,
14 meals, long distance telephone expense, and other expenses
15 reasonably incurred in the performance of the consultant's
16 professional services.

17 "§34-9-45.

18 "The board and its members and officers shall assist
19 prosecuting officers in the enforcement of this chapter, and
20 it shall be the duty of the board, its members and officers to
21 furnish the proper prosecuting officers with such evidence as
22 it or they may ascertain to assist them in the prosecution of
23 any violation of this chapter, and the board is authorized for
24 such purposes to make such reasonable expenditures from the
25 funds of the board as it may deem necessary to ascertain and
26 furnish such evidence. The board shall investigate and
27 prosecute any violation of this chapter by an unlicensed

1 person or entity and shall seek any penalty at law or equity
2 to cause the violator to cease and desist the violation
3 including, but not limited to, filing a formal complaint for
4 disciplinary action with another professional or vocational
5 regulatory or licensing entity having jurisdiction over the
6 violator.

7 "§34-9-46.

8 "In all matters pending before it, the board shall
9 have the power to issue subpoenas and compel the attendance of
10 witnesses and the production of all necessary papers, books,
11 and records, documentary evidence and materials or other
12 evidence. The board shall protect the constitutional rights of
13 the accused including, but not limited to, the right against
14 self-incrimination. Any person failing or refusing to appear
15 or testify regarding any matter about which he or she may be
16 lawfully questioned or to produce any papers, books, records,
17 documentary evidence, or materials or other evidence in the
18 matter to be heard, after having been required by order of the
19 board or by a subpoena of the board to do so, may, upon
20 application by the board to any circuit judge of the State of
21 Alabama, be ordered to comply therewith; and, upon failure to
22 comply with the order of the circuit judge, the court may
23 compel obedience by attachment as for contempt as in case of
24 disobedience of a similar order or subpoena issued by the
25 court. No federal or state constitutional right shall be
26 violated by application of this section and, should such
27 measure be taken by the board, the disciplinary hearing or

1 proceedings, or both, shall, on motion of the accused, be
2 transferred to the circuit court of his or her choosing for
3 hearing and disposition. The president and secretary-treasurer
4 of the board shall have authority to issue subpoenas, and any
5 board member shall have authority to administer oaths to
6 witnesses, or to take their affirmation. A subpoena or other
7 process of paper may be served upon any person named therein,
8 anywhere within the State of Alabama with the same fees and
9 mileage by any officer authorized to serve subpoenas or such
10 other process or paper in civil actions, in the same manner as
11 is prescribed by law for subpoenas issued out of the circuit
12 courts of this state, the fees and mileage and other costs to
13 be paid as the board directs.

14 "§34-9-47.

15 "Depositions may be taken within or without the
16 State of Alabama in the manner provided for by the laws of
17 Alabama and the Alabama Rules of Civil Procedure for the
18 taking of depositions in matters pending in the circuit courts
19 of this state. The depositions shall be returnable to the
20 clerk of the circuit court of the county wherein the hearing
21 before the board is pending, and the clerk shall deliver the
22 depositions to the board upon request, and the depositions may
23 be opened or used by the parties to the proceedings the same
24 as is provided for in matters pending before the circuit
25 courts. The circuit court shall, upon request of any
26 interested party in any proceedings before the state board,
27 issue commissions for the taking of depositions in the same

1 manner as is provided for the issuance of commissions for the
2 taking of depositions in matters pending before the circuit
3 courts of this state, provided that the matter of the hearing
4 before the board is transferred to the jurisdiction of and
5 disposal by the circuit court de novo.

6 "§34-9-80.

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

9 "(1) ANALGESIA. The diminution or elimination of
10 pain in the conscious patient.

11 "(2) ANXIOLYSIS. A pharmacological induced state,
12 oral or inhalation, where a patient experiences a diminution
13 of anxiety without significant alteration of consciousness as
14 produced by sedation.

15 "(3) BOARD. The Alabama Board of Dental Examiners.

16 "(4) ENTERAL. Any technique of administration in
17 which the agent is absorbed through the gastrointestinal (GI)
18 tract or oral mucosa (i.e., oral, rectal, sub lingual).

19 "(5) INHALATION. A technique of administration in
20 which a gaseous or volatile agent is introduced into the
21 pulmonary tree and the primary effect is due to absorption
22 through the pulmonary bed.

23 "(6) LOCALIZED ANESTHESIA. The elimination of
24 sensations, especially pain, in one part of the body by the
25 topical application or regional injection of a drug.

26 "(7) ORAL CONSCIOUS SEDATION. A depressed level of
27 consciousness that retains the patient's ability to

1 independently and continuously maintain an airway and to
2 respond appropriately to physical stimulation or verbal
3 command and that is produced by a pharmacological or
4 nonpharmacological method or a combination thereof. Oral
5 conscious sedation does not include the administration of a
6 medication given only for the purpose of diminution of
7 anxiety. An oral conscious sedation permit is not required for
8 the use of inhalation nitrous oxide following the
9 administration of a medication given only for the purpose of
10 diminution of anxiety.

11 "§34-38-2.

12 "It shall be the duty and obligation of the State
13 Board of Dental Examiners and the State Board of Pharmacy to
14 promote the early identification, intervention, treatment and
15 rehabilitation of individuals within the respective
16 jurisdiction, licensed to practice in the State of Alabama,
17 who may be impaired by reason of illness, inebriation,
18 excessive use of drugs, narcotics, controlled substances,
19 alcohol, chemicals or other dependent forming substances, or
20 as a result of any physical or mental condition rendering such
21 person unable to meet the standards of his or her profession.
22 For the purposes of this chapter, the term "impaired" shall
23 mean the inability of a dentist, hygienist or pharmacist to
24 practice with reasonable skill and safety to patients by
25 reason of illness, inebriation, excessive use of drugs,
26 narcotics, controlled substances, alcohol, chemicals or other
27 dependent forming substances, or as a result of any physical

1 or mental condition rendering such person unable to meet the
2 standards of his or her profession. In order to carry out this
3 obligation, each board, individually or jointly, is hereby
4 empowered to contract with any nonprofit corporation, health
5 provider or professional association for the purpose of
6 creating, supporting and maintaining a committee of
7 professionals to be designated the Alabama Impaired
8 Professionals' Committee. The committee shall consist of not
9 less than three nor more than 15 professionals licensed to
10 practice dentistry or pharmacy in the State of Alabama, and
11 selected in a manner prescribed by the board or boards. ~~The~~
12 ~~authority of the Alabama Impaired Professionals' Committee~~
13 ~~shall not supercede the authority of the board or boards to~~
14 ~~take disciplinary action against individuals subject to this~~
15 ~~chapter.~~ Nothing in this chapter shall limit the power and
16 authority of the board or boards to discipline an impaired
17 individual subject to its jurisdiction; provided that where an
18 individual is impaired and currently in need of intervention,
19 treatment or rehabilitation and such individual is currently
20 participating in programs or rehabilitation recommended by the
21 committee, then in its discretion, the board or boards may
22 refrain from taking or continuing disciplinary action against
23 such individual; and further provided that where the board or
24 boards, upon reasonable cause to believe an individual subject
25 to its jurisdiction is impaired, has referred such individual
26 to the committee for evaluation, then in its discretion, the
27 board or boards may refrain from taking or continuing

1 disciplinary action against such individual. The board, or
2 boards, is authorized to expend such funds as are available to
3 it as deemed necessary to adequately provide for the
4 operational expenses of the Alabama Impaired Professionals'
5 Committee, including, but not limited to, the actual cost of
6 travel, office overhead and personnel expense and compensation
7 for the members of the committee and its staff; provided that
8 operational expenses of the Alabama Impaired Professionals'
9 Committee shall not include the cost of treatment or
10 rehabilitation programs recommended by the committee to
11 individuals subject to this chapter. The funds provided by the
12 board or boards, under this section for the purposes stated
13 herein shall not be subject to any provision of law requiring
14 competitive bidding.

15 "§34-38-3.

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

22 "(1) Contracting with providers of treatment
23 programs;

24 "(2) Receiving and evaluating reports of suspected
25 impairment from any reputable source;

26 "(3) Intervening in cases of verified impairment;

1 "(4) Referring impaired professional to treatment
2 programs, but not mandating which programs to attend;

3 "(5) Monitoring the treatment and rehabilitation of
4 impaired professional, with the monitoring tests to be
5 obtained through any licensed clinical laboratory;

6 "(6) Providing post-treatment monitoring and support
7 of rehabilitated impaired professional, not to exceed a period
8 of five years with monitoring tests to be performed by any
9 licensed clinical laboratory; and

10 "(7) Performing such other activities as agreed upon
11 by the respective board or boards and the Alabama Impaired
12 Professionals' Committee.

13 "(b) Any impaired professional who self-reports or
14 seeks help on his or her own initiative may not be assessed
15 any punitive or administrative or disciplinary costs or fines
16 nor shall he or she incur any other penalty or sanction from
17 the board or boards.

18 "§34-38-5.

19 Any dentist licensed to practice in the State of
20 Alabama, or pharmacist, who shall be duly appointed to serve
21 as a member of the Alabama Impaired Professionals' Committee
22 and any auxiliary personnel, consultants, attorneys, or other
23 employees of the committee shall ~~not be liable to any person~~
24 ~~for~~ have qualified immunity from any claim for damages as a
25 result of any decision, professional opinion, investigation or
26 action taken by the committee or any individual member of the
27 committee made by him or her within the scope of his or her

1 function as a member of the committee if such decision,
2 opinion, investigation, or action was taken without malice and
3 on a reasonable belief that such action or recommendation was
4 warranted by the facts that were then available. No nonprofit
5 corporation, professional association, health provider or
6 state or county association that contracts with, or receives
7 funds from, board or boards for the creation, support and
8 operation of the Alabama Impaired Professionals' Committee
9 shall be liable to any person for any claim for damages for
10 any action taken or recommendation made by the Alabama
11 Impaired Professionals' Committee, or any member thereof, or
12 any auxiliary personnel, consultant, attorney, or employee of
13 such committee.

14 "§34-38-6.

15 All information, interviews, reports, statements,
16 memorandums, or other documents furnished to or produced by
17 the Alabama Impaired Professionals' Committee and any
18 findings, conclusions, identities of impaired professionals,
19 recommendations or reports resulting from the investigations,
20 interventions, treatment or rehabilitation, or other related
21 proceedings of such committee are declared to be privileged
22 and confidential. All records and proceedings of such
23 committee shall be confidential, not reportable, eligible for
24 disclosure, or discoverable by any other person, organization,
25 or entity for any reason, and shall be used by such committee,
26 the members thereof and the boards, only in the exercise of
27 the proper functions of the committee and the boards, and

1 shall not be public records nor available for court subpoena
2 or for discovery proceedings. Nothing contained herein shall
3 apply to records made in the regular course of business of an
4 individual; documents or records otherwise available from
5 original sources are not to be construed as immune from
6 discovery or use in any civil proceedings merely because they
7 were presented or considered during the proceedings of the
8 Alabama Impaired Professionals' Committee.

9 "§34-38-7.

10 It shall be the duty of the Alabama Impaired
11 Professionals' Committee to render an annual report to each
12 board or boards, concerning the operations and proceedings of
13 the committee for the preceding year. In addition, the
14 committee shall promptly report to the respective boards any
15 individual within their jurisdiction who, in the opinion of
16 the committee is unable to practice the standards of his or
17 her profession with reasonable skill and safety to patients,
18 by reason of illness, inebriation, excessive use of drugs,
19 controlled substances, narcotics, alcohol, chemicals or other
20 dependency forming substances, or as a result of any physical
21 or mental condition rendering such person unable to meet the
22 standards of his or her profession and appears that such
23 individual is currently in need of intervention, treatment or
24 rehabilitation. A report to the Alabama Impaired
25 Professionals' Committee shall be deemed to be a report to the
26 board or boards for the purposes of any mandated reporting of
27 professional impairment otherwise provided for by the statutes

1 of this state, but no report to any databank or other similar
2 entity shall be made.

3 "§34-38-8.

4 If the board or boards has reasonable cause to
5 believe that a professional is impaired, such board may cause
6 an evaluation of such professional to be conducted by the
7 Alabama Impaired Professionals' Committee, for the purpose of
8 determining if there is an impairment. The Alabama Impaired
9 Professionals' Committee shall report the findings of its
10 evaluation to the respective board or boards. If the committee
11 finds that no impairment exists, all records, notes, test
12 results, expert reports, laboratory findings, and all other
13 information relating to the investigation and evaluation shall
14 be destroyed, the records of the professional shall be
15 expunged of any information regarding the investigation,
16 accusation, or evaluation, and no report regarding the
17 investigation or evaluation shall issue to any court,
18 committee, board, clearinghouse, databank, or other entity."

19 Section 2. Section 34-9-9.1 is added to the Code of
20 Alabama 1975, to read as follows:

21 (a) This section shall pertain to professional
22 corporations, professional associations, limited liability
23 companies, and nonprofit organizations governed by the Alabama
24 Professional Corporation Law.

25 (1) Any licensed dentist or group of licensed
26 dentists in the state who desire to render dental professional
27 services as a corporation, professional association, limited

1 liability company, or nonprofit organization shall comply with
2 this chapter and applicable board rules.

3 (2) Name selection for a professional corporation,
4 professional association, limited liability company, or
5 nonprofit organization formed for the practice of dentistry
6 shall be governed by the Alabama Professional Corporation Law,
7 and practicing dentists who form a professional corporation,
8 professional association, limited liability company, or
9 nonprofit organization may practice under a name other than
10 the name or names of each participating dentist only if all of
11 the following requirements are met:

12 a. The name or names of each participating dentist
13 appears following or beneath the name selected.

14 b. The name chosen does not suggest a nonprofit or
15 charitable activity unless the organization is a bona fide
16 qualifying nonprofit or charitable organization and may not be
17 false, fraudulent, misleading, or deceptive. In the case of a
18 nonprofit or charitable organization, the name shall include
19 reference to the nonprofit or charitable status.

20 c. The name or names of each dentist and the words
21 Professional Corporation or the abbreviation P.C.,
22 Professional Association or the abbreviation P.A., Limited
23 Liability Company or the abbreviation L.L.C., or reference to
24 the nonprofit or charitable status of the organization shall
25 be displayed with similar prominence as the name selected.

26 (3) In the case of a bona fide nonprofit
27 organization, the organization shall keep a record of all

1 dentists on staff. An advertisement is not required to list
2 each dentist.

3 (b) Each professional corporation, professional
4 association, limited liability company, and nonprofit
5 organization shall file with the board all of the following:

6 (1) A certified copy of the articles of
7 incorporation, or similar organizational authorizing
8 documents, of the entity, and any amendments thereto.

9 (2) A copy of the certificate of authority for the
10 entity.

11 (3) A complete list of shareholders or members,
12 including names, addresses, and shares held, and any
13 amendments thereto.

14 (4) The address of each clinical location operated
15 by the entity, and any amendments thereto.

16 (5) Where applicable, a certified copy of any
17 articles of dissolution or articles of merger or consolidation
18 within 30 days after the dissolution, merger, or
19 consolidation.

20 (c) In addition to the requirements of Section
21 10A-4-3.01, no shares may be transferred upon the books of, or
22 issued by, the professional corporation or professional
23 association until there is presented to and filed with the
24 corporation or association a certificate by the board stating
25 that the person receiving the shares is a qualified person
26 under Section 10A-4-3.01.

1 (d) In addition to the requirements of Section
2 10A-4-3.06, no officer or member of the board of directors of
3 a professional corporation or professional association, or
4 member of a limited liability company, who is not licensed to
5 practice dentistry in this state, shall participate in any
6 decision constituting the practice of dentistry.

7 (e) A foreign professional corporation, professional
8 association, limited liability company, or nonprofit
9 organization rendering professional dental services in this
10 state, in addition to the requirements of Section 10A-4-5.02,
11 shall be subject to all of the following:

12 (1) All shareholders or members of a foreign
13 professional corporation, professional association, or limited
14 liability company who render professional dental services in
15 this state shall be dentists and dental hygienists licensed to
16 practice dentistry or dental hygiene in this state.

17 (2) A nonprofit entity organized to render
18 professional dental services, foreign or domestic, may render
19 professional dental services in this state only through
20 individuals licensed to practice dentistry or dental hygiene
21 in this state, subject to individual licensing requirements
22 and restrictions.

23 (f) The board may propound interrogatories to any
24 professional corporation or professional association under
25 Section 10A-4-5.05.

26 (g) The board may request that the Attorney General
27 initiate involuntary dissolution procedures against a

1 professional corporation or professional association under
2 Section 10A-4-5.01. In addition, the board may certify to the
3 Secretary of State the names of any foreign professional
4 corporation or association that has given cause for revocation
5 of its certificate of authority under Section 10A-4-5.03, and
6 shall initiate any legal and equitable measure available,
7 including any civil or criminal action in its own name in any
8 circuit court of the state, against any violating foreign or
9 domestic professional corporation, professional association,
10 or limited liability company for violation of this chapter.

11 (h) The board is not entitled to financial
12 information relating to any professional corporation,
13 professional association, limited liability company, or
14 nonprofit organization unless the board is conducting a formal
15 investigation into allegations of fraud or wrongdoing.

16 Section 3. Although this bill would have as its
17 purpose or effect the requirement of a new or increased
18 expenditure of local funds, the bill is excluded from further
19 requirements and application under Amendment 621, now
20 appearing as Section 111.05 of the Official Recompilation of
21 the Constitution of Alabama of 1901, as amended, because the
22 bill defines a new crime or amends the definition of an
23 existing crime.

24 Section 4. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.