

58-69-601 Mentally incompetent or incapacitated dentist or dental hygienist.

- (1) As used in this section:
 - (a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.
 - (b) "Mental illness" is as defined in Section 62A-15-602.
- (2) If a court of competent jurisdiction determines a dentist or dental hygienist is an incapacitated person or that the dentist or hygienist has a mental illness and is unable to safely engage in the practice of dentistry or dental hygiene, the director shall immediately suspend the license of the dentist or dental hygienist upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the dentist or dental hygienist, in writing, of the suspension.
- (3)
 - (a) If the division and a majority of the board find reasonable cause to believe a dentist or dental hygienist, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing dentistry or dental hygiene with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the dentist or dental hygienist with a notice of hearing on the sole issue of the capacity of the dentist or dental hygienist to competently and safely engage in the practice of dentistry or dental hygiene.
 - (b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).
- (4)
 - (a) Every dentist or dental hygienist who accepts the privilege of being licensed under this chapter gives consent to:
 - (i) submitting at the dentist or dental hygienist's own expense to an immediate mental or physical examination when directed in writing by the division and a majority of the board to do so; and
 - (ii) the admissibility of the reports of the examining practitioner's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.
 - (b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:
 - (i) the dentist or dental hygienist has a mental illness, is incapacitated, or otherwise unable to practice dentistry or dental hygiene with reasonable skill and safety; and
 - (ii) immediate action by the division and the board is necessary to prevent harm to the dentist's or dental hygienist's patients or the general public.
 - (c)
 - (i) Failure of a dentist or dental hygienist to submit to the examination ordered under this section is a ground for the division's immediate suspension of the dentist's or dental hygienist's license by written order of the director.
 - (ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the dentist or dental hygienist and was not related directly to the illness or incapacity of the dentist or dental hygienist.
- (5)
 - (a) A dentist or dental hygienist whose license is suspended under Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.

- (b) The hearing held under this subsection shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the dentist's or dental hygienist's patients or the general public.
- (6) A dentist or dental hygienist whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the dentist or dental hygienist, under procedures established by division rule, regarding any change in the dentist's or dental hygienist's condition, to determine whether:
 - (a) the dentist or dental hygienist is or is not able to safely and competently engage in the practice of dentistry or dental hygiene; and
 - (b) the dentist or dental hygienist is qualified to have the dentist or dental hygienist's licensure to practice under this chapter restored completely or in part.

Amended by Chapter 364, 2013 General Session