

1973 Bill 40

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Second Session, 17th Legislature, 21 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 40**

**The Dental Association Amendment Act, 1973**

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THE MINISTER OF HEALTH AND SOCIAL DEVELOPMENT

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**First Reading** .....

**Second Reading** .....

**Third Reading** .....

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## BILL 40

1973

### THE DENTAL ASSOCIATION AMENDMENT ACT, 1973

(Assented to \_\_\_\_\_, 1973)

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. *The Dental Association Act is hereby amended.*

2. *Section 10 is struck out and the following section is substituted therefor:*

**10.** (1) The board shall elect from among its members a president and a vice-president and shall appoint one or more persons other than a member or members of the board as secretary, treasurer and registrar.

(2) The board may designate any person performing the functions of the secretary, treasurer and registrar or any of them as executive director or such other title as the board may direct.

(3) Where the board has designated a person as executive director and has not appointed a secretary, treasurer or registrar, the executive director is deemed for the purpose of this Act to be the secretary, treasurer or registrar, as the case may be.

(4) The board may appoint a person, who may not be a member of the board, to be assistant secretary, assistant treasurer or assistant registrar and may authorize him to exercise such functions of the secretary, treasurer or registrar, as the case may be, as the board considers desirable and all actions performed by such person within that authority shall be deemed to be the actions of the secretary, treasurer or registrar respectively.

(5) After an election, and before the date of commencement of the terms of office of the directors elected, the persons who will constitute the board of directors at that commencement date may make any elections or appointments under this section to be effective not earlier than that commencement date.

## **Explanatory Notes**

**1.** This Bill will amend chapter 90 of the Revised Statutes of Alberta 1970.

**2.** This amendment will make provisions for the appointment of an executive director. It will make clear that an assistant may be appointed to any one of the positions of the assistant secretary, assistant treasurer or assistant registrar. It will also confirm the authority of the assistant.

*3. The following sections are added after section 13:*

**13.1** The board may by by-law

- (a) prescribe training or educational requirements to be completed from time to time or during a period or periods of time by members or classes of members of the Association;
- (b) provide for the exemption of members or classes of members from training or educational requirement prescribed under clause (a) and prescribe the conditions upon which the exemption may be made;
- (c) prescribe the requirements to be met by members or classes of members from time to time during such period or periods in order to be in good standing for the purposes of section 26, subsection (3), clause (b);
- (d) prescribe the evidence to be submitted from time to time by members as to completion of required training or attainment of educational requirements and as to the satisfactory completion of any necessary requirements in order to obtain an annual certificate;
- (e) provide for the examination of individual members or classes of members by order of the board to determine whether the individual members or classes of members are professionally competent;
- (f) provide for programs of training and education through the Association or otherwise;
- (g) establish a tariff of fees to be paid for training or educational programs by members taking part in them or from funds of the Association.

**13.2** (1) The board may by resolution appoint, or provide for the appointment of, committees of the board and by such resolution may confer upon any committee power and authority to act for the board in relation to any matters the board directs.

(2) Nothing in this section extends any power or authority to any committee in relation to the making, amending or rescinding of by-laws, the election of officers, the fixing of fees, or the exercise of the powers of the board in matters of discipline.

*4. Section 18 is amended*

- (a) *as to subsection (1) by striking out the words "to study or", and*
- (b) *by adding after subsection (3) the following subsection:*

3. The proposed section 13.1 will make provisions for supervision by the Association of the continuing education of members of the dental profession. The proposed section 13.2 will permit the appointment of committees to deal with minor matters between board meetings and to administer any other matters delegated to them by the board.

4. The first amendment will result in a more accurate statement of the jurisdiction of the Universities Co-ordinating Council which does not in fact now deal with matters involving admission to study the profession of dentistry. Section 18, subsection (1) presently reads:

18. (1) The academic standing and examination of candidates for admission to study or to practise the profession of dentistry in the Province shall be under the control of the Universities Co-ordinating Council.

Subsection (3) presently reads:

(3) The subjects of all examinations under this Act shall be those prescribed by the Universities Co-ordinating Council.

(4) Subsection (3) does not apply to examinations which are required by the board upon reinstatement or the termination of a suspension arising from a disciplinary proceeding or to any examination required by the board pursuant to section 13.1.

*5. The following sections are added after section 25:*

**25.1** (1) The board may establish and maintain a register to be known as the "Associate Members' Register".

(2) The board may by resolution direct that a person be registered in the Associate Members' Register if the board is satisfied that the person

- (a) having been a member of the Association, now resides outside Alberta, or
- (b) having been lawfully engaged in the practice of dentistry in any province or territory of Canada and having retired therefrom, is not actively engaged in the practice of dentistry, or
- (c) carries on the practice of dentistry in Alberta solely as an employee or member of the Canadian Forces or as an employee of the Government of Canada and is a member of a dental association of a province or territory of Canada and fully licensed to carry on the practice of dentistry in that province or territory of Canada, or
- (d) holds a degree in dentistry or dental surgery and whose activities are confined to an area of the basic sciences or dental research at an institution approved by the board, but who does not actively practise dentistry.

(3) The board may at any time, for cause and upon notice to the person so registered, direct the registrar to strike the name of that person from the Associate Members' Register.

(4) The board may prescribe an annual fee upon payment of which the registrar shall issue an annual certificate to any person otherwise entitled to be registered stating that the person is registered as an associate member of the Association.

(5) A person registered in the Associate Members' Register is entitled to attend meetings of the Association but is not entitled to vote at any meeting or election of the board nor to hold elected office in the Association.

**25.2** (1) The board may establish and maintain a register to be known as the "Teaching and Research Register".

(2) The registrar may register in the Teaching and Research Register any person who

**5. Section 25.1 will permit persons not otherwise members of the Association to become Associate Members in appropriate cases.**

Section 25.2 will permit a person on the staff for the faculty of dentistry at a University of Alberta to carry out his duties without becoming a full member of the Association notwithstanding the fact that his duties may involve services which are included in the practice of dentistry.

- (a) pays the registration fee pursuant to section 17 together with the annual fee in an amount to be fixed by the board and paid each year upon such day or days as the board may determine from time to time,
- (b) is the holder of a degree in dentistry or dental surgery,
- (c) is a member of the full time teaching or research staff of a faculty of dentistry at a university in Alberta,
- (d) provides approval by the dean of the faculty of his application for registration, and
- (e) desires registration solely for the purpose of performing professional services in the course of his teaching or research duties at the faculty of the university.

(3) The registrar

- (a) shall, in registering a person in the Teaching and Research Register, show the purpose for which that person is registered and the period, which shall not exceed one year, of the registration,
- (b) may from time to time, upon receiving payment of the annual fee and on application approved by the dean of the faculty of which the applicant is a member, extend the period of that person's registration for a further period not exceeding one year and enter the extension in the Teaching and Research Register, and
- (c) shall terminate the registration of any person in the Teaching and Research Register when that person ceases to be on the full time teaching or research staff of the faculty.

(4) The board may from time to time by resolution give directions to the registrar as to the exercise of his discretion under this section.

*6. Section 26 is amended by striking out subsection (3) and by substituting therefor the following subsection:*

(3) A member of the Association

- (a) who is not under suspension,
- (b) who is in good standing as to training or education requirements prescribed by the by-laws, and
- (c) who has paid his annual fee,

is entitled to receive from the registrar an annual certificate signed by the registrar stating that the member is entitled to practise the profession of dentistry or dental surgery in Alberta.



**6.** This amendment will make compliance with the educational requirements a condition of obtaining the annual certificate to practise.

7. Section 29 is amended by striking out the words "totalling at least 50 years" and by substituting therefor the words "totalling a number of years to be fixed by the board in the by-laws".

8. Section 47, subsection (4) is amended

(a) as to clause (c) by adding at the end thereof the word "or", and

(b) by adding after clause (c) the following clauses:

(d) a person registered in the Associate Members' Register pursuant to section 25.1, subsection (2), clause (c) who carries on the practice of dentistry in Alberta solely as an employee or member of the Canadian Forces or as an employee of the Government of Canada, or

(e) a person registered in the Teaching and Research Register who performs dentistry during the period of his registration and in accordance with the purpose for which he is so registered.

9. Section 54 is amended by striking out subsection (2) and by substituting therefor the following subsection:

(2) A member who is suspended pursuant to this Act or the by-laws is not, during the period of the suspension, the holder of a subsisting annual certificate.

10. Section 55, subsection (2) is amended

(a) as to clause (c) by adding at the end thereof the word "or", and

(b) by adding after clause (c) the following clause:

(d) a member of a class of persons to whom the performance of duties of a dental nature is delegated by the by-laws.

11. Section 56 is amended by striking out subsection (2) and by substituting therefor the following subsection:

(2) In subsection (1), "dental hygienist" means

(a) a graduate in dental hygiene of the Faculty of Dentistry of the University of Alberta, or

(b) a person who is certified by the secretary of the Universities Co-ordinating Council,

(i) to be a graduate of a school of dental hygiene at which the standards required for graduation

**7.** This amendment will permit the board to fix the length of time necessary to receive a life membership in the Association.

**8.** This amendment will permit the limited practice of dentistry in Alberta by certain associate members and by persons registered in the Teaching and Research Register.

**9.** Section 54 presently reads:

54.(1) A person not holding a valid certificate of registration and a subsisting annual certificate who

- (a) practises the profession of dentistry within the Province either publicly or privately, or
- (b) voluntarily and falsely pretends to be entitled under this Act to practise the profession of dentistry, or
- (c) assumes a title, addition or description implying or calculated to lead people to infer or believe him to be entitled under this Act to practise the profession of dentistry,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$200 and not less than \$50 for the first offence, and to a fine not exceeding \$400 and not less than \$250 for a second offence and to imprisonment for a term of not less than two months and not more than six months for a third and every subsequent offence.

(2) A member who is suspended pursuant to section 32 or 39 is not, during the period of suspension, the holder of a subsisting annual certificate.

**10.** Section 13(4) permits delegation of dental duties and this amendment will tie in with that subsection to remove such person from the prohibition against employing non-members of the Association to do dental duties. Section 55(2) presently reads:

(2) Subsection (1) does not apply so as to prohibit a member of the Association from employing

- (a) a dental hygienist as defined in section 56, or
- (b) a dental auxiliary licensed under The Dental Auxiliaries Act, or
- (c) a dental technician registered under The Dental Technicians Act, to perform any duties that such person is qualified and permitted by law to perform.

**11.** This amendment removes Alberta graduates from the requirements of certification in as much as the Universities Coordinating Council does not in fact certify graduates in dental hygiene of the Faculty of Dentistry at the University of Alberta.

are at least equal to the standards required by the Faculty of Dentistry of the University of Alberta, or

- (ii) to be the holder of qualifications which, at the time they were obtained, were at least the equivalent of the standards required for certification as a dental hygienist under this Act at that time.

12. *The following sections are added after section 61:*

**Professional Liability Claims**

**62.** In this Part,

- (a) “deductible amount” means,
  - (i) with reference to the Fund, the amount, if any, prescribed by the by-laws as the amount to be deducted from any claim paid from the Fund, and
  - (ii) with reference to a group contract, the amount, if any, specified in the contract as the amount that the insurer is entitled to deduct from the amount of any claim for which the insurer is liable under the contract;
- (b) “Fund” means the Professional Liability Claims Fund;
- (c) “group contract” means a group insurance contract entered into pursuant to section 63, subsection (1);
- (d) “professional liability claim” means a claim against a member for an amount of money that the member is legally obligated to pay as damages arising out of the performance of professional services for another person in the member’s capacity as a dentist or dental surgeon and caused by the member or any other person for whose acts the member is legally liable.

**63.** (1) The board may by resolution create and maintain a fund to be known as the “Professional Liability Claims Fund”.

(2) The board may make by-laws

- (a) specifying the purposes mentioned in subsection (3) for which the Fund may be used;
- (b) respecting the administration of the Fund;
- (c) providing for the levying upon members of the Association an annual assessment of such amount as may be fixed by the board from time to time for

**12.** These additional sections would permit The Alberta Dental Association to make arrangements for the payment of professional liability claims against any of its members. The provisions will permit the Association either to become a self-insurer or to arrange for group professional liability insurance coverage or to enter into an arrangement whereby the Association would see the part of any professional liability claim against the member would be paid and arrange for group insurance to cover any other part of the claim. The provisions are similar to those found in The Legal Profession Act with the addition of a power to set separate assessments for any members of a group practising a specialty where there might be a variation in the risk.

the purpose of maintaining and augmenting the Fund;

- (d) providing for the exemption of members of the Association from the payment of annual assessments referred to in clause (c), and from entitlement to indemnification from the Fund or under a group contract, as the case may be, and the conditions on which the exemptions may be made;
  - (e) governing the payment and recovery of the whole or part of any deductible amounts pursuant to section 65.
- (3) Subject to and in accordance with the by-laws, the Fund may be used for any of the following purposes, whichever the by-laws specify:
- (a) the indemnification by the Association in whole or in part, in the discretion of the board, of members liable to pay assessments referred to in subsection (2), clause (c) in respect of professional liability claims made against them;
  - (b) the payment in whole or in part of deductible amounts pursuant to section 65, subsection (1);
  - (c) the payment of premiums payable by the Association under a group contract;
  - (d) the payment of premiums or other costs payable by the Association under a contract entered into pursuant to subsection (5);
  - (e) the payment of expenses incurred in connection with audits, investigations of claims against the Fund and hearings pertaining to such claims.
- (4) Where the by-laws specify that the Fund may be used for the purpose referred to in subsection (3), clause (a), the board may make by-laws
- (a) prescribing the deductible amount and the maximum amount that may be paid from the Fund in respect of any professional liability claim;
  - (b) prescribing the conditions to be met before any claim may be paid from the Fund;
  - (c) prescribing classes of professional liability claims in respect of which no payment or partial payment only shall be made from the Fund;
  - (d) providing for any matter or procedure in connection with the filing, settling, administration and payment of claims made against the Fund.
- (5) The Association may, in such manner and upon such terms and conditions as the board considers advisable, enter into contracts with insurers or other persons whereby the Fund may be protected in whole or in part against any claim or loss to the Fund.



(6) The Fund shall be kept separate and apart from any other funds of the Association and

- (a) may be invested as the board may from time to time determine, but in so doing the board is not subject to the provisions of *The Trustee Act* governing the investment of trust funds,
- (b) shall be administered by the board in such manner as they consider proper, and
- (c) is not subject to any trust.

**64.** (1) The board may by resolution authorize the Association to enter into a group insurance contract providing for the indemnification by the insurer thereunder in whole or in part of members liable to pay assessments referred to in section 63, subsection (2), clause (c) in respect of professional liability claims against them, on such terms and conditions as may be agreed upon.

(2) The Association may enter into a group contract with an insurer either alone or jointly with one or more dental associations or governing bodies of the dental profession in other provinces or territories in Canada that are incorporated for purposes comparable to those of the Association.

(3) The board may make by-laws

- (a) providing for any matter or procedure in connection with the filing, settling, administration and payment of claims made against the insurer under the group contract and which is not otherwise provided for in the group contract, and
- (b) respecting the notice required to be given by an active member of the Association of a claim or possible claim against him and for which the insurer may be liable for indemnification under the group contract.

**65.** (1) Where an amount is paid or is intended to be paid from the Fund or by the insurer under a group contract as indemnification in respect of a professional liability claim, or where the amount of a professional liability claim is equal to or less than the deductible amount, the Association may, upon a resolution of the board and in accordance with the by-laws,

- (a) pay the whole or part of the deductible amount to the claimant from the Fund in the event of the inability or failure of the member concerned or any other person to pay the whole or part of the deductible amount, or
- (b) pay the whole or part of the deductible amount to the claimant with the consent of and on behalf of





the member concerned, upon such terms as to repayment by the member to the Association as the board may prescribe.

(2) Where any payment is made by the Association pursuant to subsection (1), clause (a), the Association is subrogated to the rights, remedies and securities to which the claimant was entitled as against the member concerned or against the member's trustee, assign, estate or personal representative and those rights, remedies and securities may be enforced or realized, as the case may be, in the name of the Association.

**66.** (1) Where an active member of the Association has not paid his assessment to the Fund for any year on or before the 1st day of January of that year, the member is suspended from practice as of the 2nd day of January of that year.

(2) Where an active member of the Association is suspended from practice under this section, his suspension terminates upon the payment of the assessment to the Fund and a penalty in an amount prescribed in the by-laws but not exceeding \$100.

**67.** Notwithstanding anything contained in this Act to the contrary, the board may pass separate by-laws and impose separate conditions and fees for each group of members listed in the register under a specialty and, without limiting the generality of the foregoing, the board may impose a special assessment to the Fund in addition to, or in lieu of, the assessment paid by the members who are not certified specialists.

**68.** Notwithstanding anything contained in *The Alberta Insurance Act*, the Association shall not be deemed to be undertaking insurance or carrying on the business of insurance by reason of exercising its powers under this Act.

*13. This Act comes into force on the day upon which it is assented to.*