

CHAPTER NO. 493.

HOUSE BILL NO. 585

INTRODUCED BY GOULD, HARRINGTON, BENNETT

IN THE HOUSE

February 6, 1979	Introduced and referred to Committee on Human Services.
February 15, 1979	Intent statement attached. Committee recommend bill do pass as amended. Report adopted.
February 17, 1979	Printed and placed on members' desks.
February 20, 1979	Second reading, do pass.
February 21, 1979	Considered correctly engrossed. Third reading, passed. Transmitted to second house.

IN THE SENATE

February 22, 1979	Introduced and referred to Committee on Public Health, Welfare, and Safety.
March 9, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 12, 1979	Second reading, concurred in.
March 16, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 17, 1979	Returned from second house. Concurred in as amended.
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March 19, 1979

On motion, consideration
passed for the day.

March 20, 1979

On motion, consideration
passed until the 71st
Legislative Day.

March 29, 1979

Second reading, amendments
adopted.

March 30, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

1 ~~INTRODUCED BY~~ House BILL NO. 585
 2 ~~INTRODUCED BY~~ Harvey Bennett

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
 5 DISCIPLINARY POWERS OF THE BOARD OF DENTISTS; AMENDING
 6 LIMITATIONS ON DENTAL ADVERTISING AND ORAL HYGIENE;
 7 REQUIRING IDENTIFICATION OF DENTURES; AMENDING SECTIONS
 8 37-4-321 THROUGH 37-4-323, AND 37-4-405, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 37-4-321, MCA, is amended to read:
 12 "37-4-321. ~~Revocation or suspension of license~~

13 ~~unprofessional conduct grounds for disciplinary proceedings~~
 14 ~~range of sanctions. (1) A dentist may have his license~~
 15 ~~revoked or suspended by the board for any of the following~~
 16 ~~reasons:~~

17 ~~(a) conviction of a felony or misdemeanor involving~~
 18 ~~more turpitude in which case the record of conviction or a~~
 19 ~~copy certified by the clerk of the court or by the judge in~~
 20 ~~whose court the conviction is had is conclusive evidence;~~

21 ~~(b) renting, loaning, or attempting to rent or loan to~~
 22 ~~a person his license for the practice of dentistry or his~~
 23 ~~diploma of graduation from a dental college, school, or~~
 24 ~~course to be used as a license or diploma of the person;~~

25 ~~(c) permitting a dental hygienist under his personal~~

1 ~~supervision to do an act or perform an operation other than~~
 2 ~~those defined and authorized under 37-4-401 or 37-4-405;~~

3 ~~(d) permitting unlicensed auxiliary personnel to~~
 4 ~~perform duties or tasks other than those which may be~~
 5 ~~specifically authorized by the board;~~

6 ~~(e) unprofessional conduct, gross ignorance or~~
 7 ~~inefficiency in his profession, habitual intemperance, or~~
 8 ~~gross immorality;~~

9 ~~(2) Unprofessional conduct consists of:~~

10 ~~(a) employing what are known as "cappers" or~~
 11 ~~"steerers" to obtain business;~~

12 ~~(b) obtaining a fee by fraud or misrepresentation;~~

13 ~~(c) willfully betraying professional secrets;~~

14 ~~(d) employing directly or indirectly a student or a~~
 15 ~~suspended or unlicensed dentist to perform operations in the~~
 16 ~~practice of dentistry, treat lesions of the human teeth or~~
 17 ~~jaws, or correct maloccluded formations;~~

18 ~~(e) making use of advertising statements of a~~
 19 ~~character tending to deceive or mislead the public;~~

20 ~~(f) advertising prices;~~

21 ~~(g) advertising professional superiority or~~
 22 ~~performance of professional services in a superior manner;~~

23 ~~(h) advertising by means of a large display, glaring~~
 24 ~~light sign, or other sign or device containing the~~
 25 ~~representation of a tooth, teeth, bridgework, or a portion~~

1 ~~of the human head~~
 2 ~~(i) advertising over television or radio~~
 3 ~~(j) employing or making use of advertising solicitors~~
 4 ~~or publicity press agents~~
 5 ~~(k) advertising free dental work or free examination~~
 6 ~~(l) advertising to guarantee dental service or to~~
 7 ~~perform a dental operation painlessly~~
 8 ~~(m) advertising by sign or printed advertisements~~
 9 ~~under the name of a corporation, company, association, or~~
 10 ~~trade name. The board may censure, prescribe probation,~~
 11 ~~suspend, or revoke any license issued under this chapter for~~
 12 ~~any of the following causes:~~
 13 ~~(1) conviction of a felony or misdemeanor when the~~
 14 ~~sentence imposed is imprisonment in the state prison. A~~
 15 ~~certified copy of the conviction record from the district~~
 16 ~~court imposing the sentence is conclusive evidence;~~
 17 ~~(2) physical infirmity or mental incompetence;~~
 18 ~~(3) gross malpractice or repeated malpractice;~~
 19 ~~(4) unprofessional conduct, as defined by rule of the~~
 20 ~~board; or~~
 21 ~~(5) violation of any of the provisions of this chapter~~
 22 ~~or rules or orders of the board."~~

23 Section 2. Section 37-4-322, MCA, is amended to read:
 24 "37-4-322. When publishing professional cards not
 25 unprofessional conduct. (1) It shall not be considered

1 unprofessional for a dentist to place in any newspaper or
 2 publication, subject to the limitations stated hereafter, a
 3 card bearing his name only, together with his degree or the
 4 word "dentist" and giving office location, hours, and
 5 telephone numbers. If he limits his practice to a specialty
 6 he may so announce it or he may announce his absence from or
 7 his return to practice in the same manner. Such
 8 professional card or announcement shall not be run in any
 9 newspaper or publication in excess of five issues following
 10 the opening of his office by a newly licensed dentist or
 11 following the change of location of a dentist's office or
 12 after limiting his practice to a specialty or after the
 13 absention of a dentist from his practice or following his
 14 return to the practice of dentistry. Such card or
 15 announcement shall not be more than 2 columns in width or
 16 more than 3 inches in depth.

17 (2) The publishing of professional cards or
 18 announcements in violation of these limitations shall be
 19 considered unprofessional. A dentist may publish a list of
 20 his fees, but such listing must include full and complete
 21 information stating if the published fee is minimum,
 22 maximum, or usual and whether or not any additional charges
 23 may be made for the services published. All announcements or
 24 publications must be done in a professional manner that will
 25 in no way coerce or confuse the public."

1 Section 3. Section 37-4-323, MCA, is amended to read:

2 ~~"37-4-323. Revocation or suspension of license and~~
3 ~~procedure~~ Procedure for investigation -- sanctions. ~~(1)~~
4 ~~Proceedings under 37-4-321 may be taken by the board on its~~
5 ~~initial motion for matters in its knowledge or may be taken~~
6 ~~on the information of another. However, if the informant is~~
7 ~~a member of the board, the other members of the board~~
8 ~~constitute the board for the purpose of determining the~~
9 ~~truth of the charge or accusation. Accusations must be in~~
10 ~~writing, verified by some party familiar with the facts~~
11 ~~charged, and three copies must be filed with the department.~~
12 ~~On receiving the accusation the board shall, if it considers~~
13 ~~the accusation sufficient, make an order setting it for~~
14 ~~hearing and requiring the accused to appear and answer the~~
15 ~~charge or accusation at the hearing.~~

16 ~~(2) The accused must appear at the time appointed in~~
17 ~~the order and answer the charges and make his defense~~
18 ~~unless, for sufficient cause on the accused's application~~
19 ~~or the board's order, the board assigns another day for that~~
20 ~~purpose.~~

21 ~~(3) If the accused does not appear, the board may~~
22 ~~proceed and determine the accusation in his absence. If the~~
23 ~~accused confesses the accusation or refuses to answer the~~
24 ~~charge or if on hearing the board finds the charge or~~
25 ~~accusation true, it may make an order either revoking the~~

1 ~~license of the accused or suspending it for a fixed period.~~
2 ~~The board and the accused may have the benefit of counsel,~~
3 ~~and the board shall have the power to administer oaths, take~~
4 ~~depositions of witnesses in the manner provided by law in~~
5 ~~civil cases, and issue subpoenas for the attendance of~~
6 ~~witnesses and the production of papers, books, accounts,~~
7 ~~documents, and testimony in any inquiry, investigation,~~
8 ~~hearing, or proceeding in this state. The subpoena shall be~~
9 ~~issued over the signature of the secretary of the board and~~
10 ~~the seal and in the name of this state.~~

11 ~~(4) On revocation or suspension of a license, the fact~~
12 ~~shall be noted on the records of the department and the~~
13 ~~license shall be marked "canceled" (on the date of its~~
14 ~~revocation) or "suspended," as the case may be. The~~
15 ~~department shall, on order of suspension or revocation being~~
16 ~~entered, transmit to the county clerk and recorder of the~~
17 ~~county in which the license of the licensee affected by the~~
18 ~~judgment is registered and recorded a copy of the order,~~
19 ~~certified by the secretary of the board, for records and it~~
20 ~~shall be registered in the same manner and in the same book~~
21 ~~in which the registration of the certificate to practice~~
22 ~~dentistry is kept. (1) Upon receipt of a complaint or upon~~
23 ~~its own motion the board shall determine whether the matters~~
24 ~~alleged warrant investigation and may cause investigation to~~
25 ~~be made. If the board finds preliminary cause for imposing~~

1 the sanctions listed in 37-4-321, it may do so in accordance
 2 with the provisions of the Montana Administrative Procedure
 3 Act. If the board finds that the evidence obtained does not
 4 justify the imposition of sanctions, it must so notify the
 5 licensee concerned and the complaining party and take no
 6 further action.

7 (2) If the board finds that the evidence obtained does
 8 not warrant suspension or revocation of a license but does
 9 warrant other sanctions, it may either:

10 (a) issue a public or private decree of censure; or
 11 (b) impose a probation with terms and conditions
 12 appropriately adapted under the circumstances of the
 13 particular case.

14 (3) The licensee is entitled to an opportunity for a
 15 contested case hearing before a sanction of censure or
 16 probation becomes effective to the same extent an
 17 opportunity for hearing is afforded prior to suspension or
 18 revocation.

19 (4) In addition to its authority to impose sanctions,
 20 the board may deny an application for a license for any of
 21 the following reasons:

22 (a) failure to meet the relevant requirements of Title
 23 37, chapter 4;

24 (b) making any untrue or fraudulent statement in
 25 support of the application; or

1 (c) any of the grounds set forth in 37-4-321 for
 2 suspension or revocation of a license."

3 Section 4. Section 37-4-405, MCA, is amended to read:
 4 "37-4-405. Dental hygienist to practice under
 5 supervision of licensed dentist. (1) A licensed dental
 6 hygienist may practice in the office of a licensed and
 7 actively practicing dentist, in a public or private
 8 institution, under a board of health, or in a public clinic
 9 authorized by the board but may not practice except under
 10 the direct personal supervision of a licensed dentist;
 11 however, the dental hygienist may give instruction in dental
 12 oral hygiene without the supervision of a licensed dentist
 13 in a public or private institution or hospital or extended
 14 care facility or under a board of health or in a public
 15 clinic authorized by the board.

16 (2) The board may, in lieu of the direct supervision
 17 requirement set forth in subsection (1), permit a licensed
 18 dental hygienist to provide clinical dental hygiene services
 19 to a public or private institution, a hospital or extended
 20 care facility, or a school or public health program after a
 21 review by the board of a request for such service and a
 22 description of the type of supervision necessary is made by
 23 the board. For the purposes of this section "supervision" is
 24 defined as follows:

25 (a) "direct supervision" means the supervision of

1 those tasks and procedures that do not require the dentist
2 in the room where performed but require his presence on the
3 premises and availability for prompt consultation and
4 treatment; and

5 (b) "general supervision" means those tasks and
6 procedures that do not require the presence of a dentist on
7 the premises but shall remain under the dentist's directive
8 order, control, responsibility, and evaluation."

9 NEW SECTION. Section 5. Identification of dentures.
10 All nonmetal full dentures shall be permanently identified
11 with the first and last name of the owner at the time of
12 processing the dentures.

-End-

1 STATEMENT OF INTENT RE: HB 585

2
3
4 A statement of intent is required for this bill because
5 it grants rulemaking authority to the Board of Dentists for
6 the purpose of defining unprofessional conduct.

7 Section 1 of the bill deletes a fairly specific list of
8 types of unprofessional conduct by a dentist and allows the
9 Board of Dentists to adopt a rule defining unprofessional
10 conduct. It is the Legislature's intent that the Board's
11 rule would reinstate some of the statutory examples, but
12 would not adopt the present law's ban on advertising. The
13 board may prohibit only so much advertising as the courts
14 would let a state prohibit. This is intended to comply with
15 court orders issued at the behest of the FTC in Louisiana
16 and other states.

17 Sections 1 and 3 also set up a range of sanctions that
18 the Board may impose on any dentist or dental hygienist
19 whose conduct constitutes grounds for sanctions. This is
20 intended to expand the Board's powers on the less stringent
21 end of the scale, by adding censure and probation to the
22 revocation and suspension powers the Board now has. Often a
23 problem can be corrected with such milder sanctions when
24 efforts to suspend or revoke might be counterproductive.

25 First adopted by the HOUSE COMMITTEE ON HUMAN SERVICES.

Approved by Comm. On Human Services

HOUSE BILL NO. 585

INTRODUCED BY GOULD, HARRINGTON, BENNETT

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE DISCIPLINARY POWERS OF THE BOARD OF DENTISTS; AMENDING LIMITATIONS ON DENTAL ADVERTISING AND ORAL HYGIENE; REQUIRING IDENTIFICATION OF DENTURES; AMENDING SECTIONS 37-4-321 THROUGH 37-4-323, AND 37-4-405, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-4-321, MCA, is amended to read:

"37-4-321. Revocation--or--suspension--of--license---unprofessional--conduct Grounds for disciplinary proceedings --range of sanctions. (1)-A-dentist-may-have-his-license revoked-or-suspended-by-the-board-for-any-of--the--following reasons:

(a)--conviction--of--a--felony-or-misdemeanor-involving moral-turpitude-in-which-case-the-record-of-conviction-or-a copy-certified-by-the-clerk-of-the-court-or-by-the-judge--in whose-court-the-conviction-is-had-is-conclusive-evidence;

(b)--renting,-loaning,-or-attempting-to-rent-or-loan-to a--person--his--license-for-the-practice-of-dentistry-or-his diploma-of-graduation-from--a--dental--college--school--or course-to-be-used-as-a--license-or-diploma-of-the-person;

(c)--permitting--a--dental-hygienist-under-his-personal

supervision-to-do-an-act-or-perform-an-operation-other--than those-defined-and-authorized-under-37-4-401-or-37-4-405; (d)--permitting---unlicensed---auxiliary--personnel--to perform-duties-or--tasks--other--than--those--which--may--be specifically-authorized-by-the-board;

(e)--unprofessional--conduct,---gross---ignorance---or inefficiency-in-his-profession,--habitual--intemperance,--or gross-immorality;

(2)--Unprofessional-conduct-consists-of:

(a)--employing---what---are---known---as--"cappers"--or "steerers"--to-obtain-business;

(b)--obtaining-a-fee-by-fraud-or-misrepresentation;

(c)--willfully-betraying-professional-secrets;

(d)--employing,-directly-or-indirectly,-a-student-or--a suspended-or-unlicensed-dentist-to-perform-operations-in-the practice--of--dentistry,-treat-lesions-of-the-human-teeth-or jaws,-or-correct-mal-impacted-formations;

(e)--making--use--of--advertising---statements---of---a character-tending-to-deceive-or-mislead-the-public;

(f)--advertising-prices;

(g)--advertising---professional---superiority---or performance-of-professional-services-in-a--superior--manner;

(h)--advertising--by--means-of-a-large-display,-glaring light-sign,-or--other--sign--or--device--containing--the representation--of--a-tooth,-teeth,-bridgework,-or-a-portion

1 of-the-human-head†
 2 {i}--advertising-over-television-or-radio†
 3 {j}--employing-or-making-use-of-advertising-solicitors
 4 or-publicity-press-agents†
 5 {k}--advertising--free-dental-work-or-free-examination†
 6 {l}--advertising-to-guarantee-dental-service--or--to
 7 perform-a-dental-operation-painlessly†
 8 {m}--advertising--by--sign--or--printed--advertisements
 9 under-the-name-of-a-corporation,-company,-association,-or
 10 trade-name. The board may censure, prescribe probation,
 11 suspend, or revoke any license issued under this chapter for
 12 any of the following causes:
 13 (1) conviction of a felony or misdemeanor when the
 14 sentence imposed is imprisonment in the state prison. A
 15 certified copy of the conviction record from the district
 16 court imposing the sentence is conclusive evidence;
 17 (2) physical infirmity or mental incompetence;
 18 (3) gross malpractice or repeated malpractice;
 19 (4) unprofessional conduct, as defined by rule of the
 20 board; or
 21 (5) violation of any of the provisions of this chapter
 22 or rules or orders of the board."
 23 Section 2. Section 37-4-322, MCA, is amended to read:
 24 "37-4-322. When publishing professional cards not
 25 unprofessional conduct. (1) It shall not be considered

1 unprofessional for a dentist to place in any newspaper or
 2 publication, subject to the limitations stated hereafter, a
 3 card bearing his name only, together with his degree or the
 4 word "dentist" and giving office location, hours, and
 5 telephone numbers. If he limits his practice to a specialty
 6 he may so announce it or he may announce his absence from or
 7 his return to practice in the same manner. Such
 8 professional card or announcement shall not be run in any
 9 newspaper or publication in excess of five issues following
 10 the opening of his office by a newly licensed dentist or
 11 following the change of location of a dentist's office or
 12 after limiting his practice to a specialty or after the
 13 absenting of a dentist from his practice or following his
 14 return to the practice of dentistry. Such card or
 15 announcement shall not be more than 2 columns in width or
 16 more than 3 inches in depth.
 17 (2) The publishing of professional cards or
 18 announcements in violation of these limitations shall be
 19 considered unprofessional. A dentist may publish a list of
 20 his fees, but such listing must include full and complete
 21 information stating if the published fee is minimum,
 22 maximum, or usual and whether or not any additional charges
 23 may be made for the services published. All announcements or
 24 publications must be done in a professional manner that will
 25 in no way coerce or confuse the public."

1 Section 3. Section 37-4-323, MCA, is amended to read:
 2 "37-4-323. Revocation or suspension of license ---
 3 procedure Procedure for investigation -- sanctions. (1)
 4 Proceedings under 37-4-323 may be taken by the board on its
 5 initial motion for matters in its knowledge or may be taken
 6 on the information of another. However, if the informant is
 7 a member of the board, the other members of the board
 8 constitute the board for the purpose of determining the
 9 truth of the charge or accusation. Accusations must be in
 10 writing, verified by some party familiar with the facts
 11 charged, and three copies must be filed with the department.
 12 On receiving the accusation the board shall, if it considers
 13 the accusation sufficient, make an order setting it for
 14 hearing and requiring the accused to appear and answer the
 15 charge or accusation at the hearing.
 16 (2) The accused must appear at the time appointed in
 17 the order and answer the charges and make his defense
 18 unless, for sufficient cause, on the accused's application
 19 or the board's order, the board assigns another day for that
 20 purpose.
 21 (3) If the accused does not appear, the board may
 22 proceed and determine the accusation in his absence, if the
 23 accused confesses the accusation or refuses to answer the
 24 charge or if on hearing the board finds the charge or
 25 accusation true, it may make an order either revoking the

1 license of the accused or suspending it for a fixed period.
 2 The board and the accused may have the benefit of counsel,
 3 and the board shall have the power to administer oaths, take
 4 depositions of witnesses in the manner provided by law in
 5 civil cases, and issue subpoenas for the attendance of
 6 witnesses and the production of papers, books, accounts,
 7 documents, and testimony in any inquiry, investigation,
 8 hearing or proceeding in this state. The subpoena shall be
 9 issued over the signature of the secretary of the board and
 10 the seal and in the name of this state.
 11 (4) On revocation or suspension of a license, the fact
 12 shall be noted on the records of the department and the
 13 license shall be marked "canceled" (on the date of its
 14 revocation) or "suspended" as the case may be. The
 15 department shall, on order of suspension or revocation being
 16 entered, transmit to the county clerk and recorder of the
 17 county in which the license of the licensee affected by the
 18 judgment is registered and recorded a copy of the order,
 19 certified by the secretary of the board, for record, and it
 20 shall be registered in the same manner and in the same book
 21 in which the registration of the certificate to practice
 22 dentistry is kept. 11 Upon receipt of a complaint or upon
 23 its own motion the board shall determine whether the matters
 24 alleged warrant investigation and may cause investigation to
 25 be made. If the board finds preliminary cause for imposing

1 the sanctions listed in 37-4-321, it may do so in accordance
 2 with the provisions of the Montana Administrative Procedure
 3 Act. If the board finds that the evidence obtained does not
 4 justify the imposition of sanctions, it must so notify the
 5 licensee concerned and the complaining party and take no
 6 further action.

7 (2) If the board finds that the evidence obtained does
 8 not warrant suspension or revocation of a license but does
 9 warrant other sanctions, it may either:

10 (a) issue a public or private decree of censure; or

11 (b) impose a probation with terms and conditions
 12 appropriately adapted under the circumstances of the
 13 particular case.

14 (3) The licensee is entitled to an opportunity for a
 15 contested case hearing before a sanction of censure or
 16 probation becomes effective to the same extent an
 17 opportunity for hearing is afforded prior to suspension or
 18 revocation.

19 (4) In addition to its authority to impose sanctions,
 20 the board may deny an application for a license for any of
 21 the following reasons:

22 (a) failure to meet the relevant requirements of Title
 23 37, chapter 4;

24 (b) making any untrue or fraudulent statement in
 25 support of the application; or

1 (c) any of the grounds set forth in 37-4-321 for
 2 suspension or revocation of a license."

3 Section 4. Section 37-4-405, MCA, is amended to read:

4 "37-4-405. Dental hygienist to practice under
 5 supervision of licensed dentist. (1) A licensed dental
 6 hygienist may practice in the office of a licensed and
 7 actively practicing dentist, in a public or private
 8 institution, under a board of health, or in a public clinic
 9 authorized by the board but may not practice except under
 10 the direct personal supervision of a licensed dentist;
 11 however, the dental hygienist may give instruction in dental
 12 oral hygiene without the supervision of a licensed dentist
 13 in a public or private institution or hospital or extended
 14 care facility or under a board of health or in a public
 15 clinic authorized by the board.

16 (2) The board may, in lieu of the direct supervision
 17 requirement set forth in subsection (1), permit a licensed
 18 dental hygienist to provide clinical dental hygiene services
 19 to a public or private institution, a hospital or extended
 20 care facility, or a school or public health program after a
 21 review by the board of a request for such service and a
 22 description of the type of supervision necessary is made by
 23 the board. For the purposes of this section "supervision" is
 24 defined as follows:

25 (a) "direct supervision" means the supervision of

1 ~~those tasks and procedures that do not require the dentist~~
2 ~~in the room where performed but require his presence on the~~
3 ~~premises and availability for prompt consultation and~~
4 ~~treatment and~~

5 (b) ~~"general supervision" means those tasks and~~
6 ~~procedures that do not require the presence of a dentist on~~
7 ~~the premises but shall remain under the dentist's directive~~
8 ~~order, control, responsibility, and evaluation."~~

9 **NEW SECTION.** Section 5. Identification of dentures.

10 All nonmetal full dentures shall be permanently identified
11 with the first and last name of the owner at the time of
12 processing the dentures.

-End-

1 STATEMENT OF INTENT RE: HB 585

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4 A statement of intent is required for this bill because
5 it grants rulemaking authority to the Board of Dentists for
6 the purpose of defining unprofessional conduct.

7 Section 1 of the bill deletes a fairly specific list of
8 types of unprofessional conduct by a dentist and allows the
9 Board of Dentists to adopt a rule defining unprofessional
10 conduct. It is the Legislature's intent that the Board's
11 rule would reinstate some of the statutory examples, but
12 would not adopt the present law's ban on advertising. The
13 Board may prohibit only so much advertising as the courts
14 would let a state prohibit. This is intended to comply with
15 court orders issued at the behest of the FTC in Louisiana
16 and other states.

17 Sections 1 and 3 also set up a range of sanctions that
18 the Board may impose on any dentist or dental hygienist
19 whose conduct constitutes grounds for sanctions. This is
20 intended to expand the Board's powers on the less stringent
21 end of the scale, by adding censure and probation to the
22 revocation and suspension powers the Board now has. Often a
23 problem can be corrected with such milder sanctions when
24 efforts to suspend or revoke might be counterproductive.

25 First adopted by the HOUSE COMMITTEE ON HUMAN SERVICES,

HB 585

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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"37-4-321. Revocation--or--suspension--of--license---unprofessional--conduct Grounds for disciplinary proceedings -- range of sanctions. (1) A dentist may have his license revoked or suspended by the board for any of the following reasons:

(a) conviction of a felony or misdemeanor involving moral turpitude in which case the record of conviction or a copy certified by the clerk of the court or by the judge in whose court the conviction is had is conclusive evidence;

(b) renting, loaning, or attempting to rent or loan to a person his license for the practice of dentistry or his diploma of graduation from a dental college, school, or course to be used as a license or diploma of the person;

(c) permitting a dental hygienist under his personal

supervision to do an act or perform an operation other than those defined and authorized under 37-4-401 or 37-4-405;

(d) permitting unlicensed auxiliary personnel to perform duties or tasks other than those which may be specifically authorized by the board;

(e) unprofessional conduct, gross ignorance or inefficiency in his profession, habitual intemperance, or gross immorality;

(2) Unprofessional conduct consists of:

(a) employing what are known as "cappers" or "steerers" to obtain business;

(b) obtaining a fee by fraud or misrepresentation;

(c) willfully betraying professional secrets;

(d) employing, directly or indirectly, a student or a suspended or unlicensed dentist to perform operations in the practice of dentistry, treat lesions of the human teeth or jaws, or correct maloccluded formations;

(e) making use of advertising statements of a character tending to deceive or mislead the public;

(f) advertising prices;

(g) advertising professional superiority or performance of professional services in a superior manner;

(h) advertising by means of a large display, glaring light, sign, or other sign or device containing the representation of a tooth, teeth, bridgework, or a portion

1 of-the-human-head†
 2 {i}--advertising-over-television-or-radio†
 3 {j}--employing-or-making-use-of-advertising--solicitors
 4 or-publicity-press-agents†
 5 {k}--advertising--free-dental-work-or-free-examination†
 6 {l}--advertising-to-guarantee--dental--service--or--to
 7 perform-a-dental-operation-painlessly†
 8 {m}--advertising-by-sign--or--printed--advertisements
 9 under-the-name-of-a-corporation--company--association--or
 10 trade-name. The board may censure, prescribe probation,
 11 suspend, or revoke any license issued under this chapter for
 12 any of the following causes:
 13 (1) conviction of a felony or misdemeanor when the
 14 sentence imposed is imprisonment in the state prison. A
 15 certified copy of the conviction record from the district
 16 court imposing the sentence is conclusive evidence;
 17 (2) physical infirmity or mental incompetence;
 18 (3) gross malpractice or repeated malpractice;
 19 (4) unprofessional conduct, as defined by rule of the
 20 board; or
 21 (5) violation of any of the provisions of this chapter
 22 or rules or orders of the board."

23 Section 2. Section 37-4-322, MCA, is amended to read:
 24 "37-4-322. When publishing professional cards not
 25 unprofessional conduct. (1) It shall not be considered

1 unprofessional for a dentist to place in any newspaper or
 2 publication, subject to the limitations stated hereafter, a
 3 card bearing his name only, together with his degree or the
 4 word "dentist" and giving office location, hours, and
 5 telephone numbers. If he limits his practice to a specialty
 6 he may so announce it or he may announce his absence from or
 7 his return to practice in the same manner. Such
 8 professional card or announcement shall not be run in any
 9 newspaper or publication in excess of five issues following
 10 the opening of his office by a newly licensed dentist or
 11 following the change of location of a dentist's office or
 12 after limiting his practice to a specialty or after the
 13 absention of a dentist from his practice or following his
 14 return to the practice of dentistry. Such card or
 15 announcement shall not be more than 2 columns in width or
 16 more than 3 inches in depth.

17 (2) The publishing of professional cards or
 18 announcements in violation of these limitations shall be
 19 considered unprofessional. A dentist may publish a list of
 20 his fees, but such listing must include full and complete
 21 information stating if the published fee is minimum,
 22 maximum, or usual and whether or not any additional charges
 23 may be made for the services published. All announcements or
 24 publications must be done in a professional manner that will
 25 in no way coerce or confuse the public."

1 Section 3. Section 37-4-323, MCA, is amended to read:
 2 "37-4-323. Revocation--or--suspension--of--license---
 3 procedure Procedure for investigation -- sanctions. (1)
 4 Proceedings--under--37-4-321--may--be--taken--by--the--board--on--its
 5 initial--motion--for--matters--in--its--knowledge--or--may--be--taken
 6 on--the--information--of--another--. However, if the informant is
 7 a member of the--board,--the--other--members--of--the--board
 8 constitute--the--board--for--the--purpose--of--determining--the
 9 truth--of--the--charge--or--accusation. Accusations--must--be--in
 10 writing,--verified--by--some--party--familiar--with--the--facts
 11 charged,--and--three--copies--must--be--filed--with--the--department.
 12 On--receiving--the--accusation--the--board--shall,--if--it--considers
 13 the--accusation--sufficient,--make--an--order--setting--it--for
 14 hearing--and--requiring--the--accused--to--appear--and--answer--the
 15 charge--or--accusation--at--the--hearing.
 16 (2)--The--accused--must--appear--at--the--time--appointed--in
 17 the--order--and--answer--the--charges--and--make--his--defense
 18 unless,--for--sufficient--cause,--on--the--accused's--application
 19 or--the--board's--order,--the--board--assigns--another--day--for--that
 20 purpose.
 21 (3)--If--the--accused--does--not--appear,--the--board--may
 22 proceed--and--determine--the--accusation--in--his--absence,--if--the
 23 accused--confesses--the--accusation--or--refuses--to--answer--the
 24 charge--or--if--on--hearing--the--board--finds--the--charge--or
 25 accusation--true,--it--may--make--an--order--either--revoking--the

1 license--of--the--accused--or--suspending--it--for--a--fixed--period,
 2 the--board--and--the--accused--may--have--the--benefit--of--counsel,
 3 and--the--board--shall--have--the--power--to--administer--oaths,--take
 4 depositions--of--witnesses--in--the--manner--provided--by--law--in
 5 civil--cases,--and--issue--subpoenas--for--the--attendance--of
 6 witnesses--and--the--production--of--papers,--books,--accounts,
 7 documents,--and--testimony--in--any--inquiry,--investigation,
 8 hearing,--or--proceeding--in--this--state. The subpoena shall be
 9 issued--over--the--signature--of--the--secretary--of--the--board--and
 10 the--seal--and--in--the--name--of--this--state.
 11 (4)--On--revocation--or--suspension--of--a--license,--the--fact
 12 shall--be--noted--on--the--records--of--the--department--and--the
 13 license--shall--be--marked--"conceded"--(on--the--date--of--its
 14 revocation)--or--"suspended"--as--the--case--may--be. The
 15 department--shall,--on--order--of--suspension--or--revocation--being
 16 entered,--transmit--to--the--county--clerk--and--recorder--of--the
 17 county--in--which--the--license--of--the--licensee--effected--by--the
 18 judgment--is--registered--and--recorded--a--copy--of--the--order,
 19 certified--by--the--secretary--of--the--board,--for--record,--and--it
 20 shall--be--registered--in--the--same--manner--and--in--the--same--book
 21 in--which--the--registration--of--the--certificate--to--practice
 22 dentistry--is--kept. (1) Upon receipt of a complaint or upon
 23 its own motion the board shall determine whether the matters
 24 alleged warrant investigation and may cause investigation to
 25 be made. If the board finds preliminary cause for imposing

1 the sanctions listed in 37-4-321, it may do so in accordance
 2 with the provisions of the Montana Administrative Procedure
 3 Act. If the board finds that the evidence obtained does not
 4 justify the imposition of sanctions, it must so notify the
 5 licensee concerned and the complaining party and take no
 6 further action.

7 (2) If the board finds that the evidence obtained does
 8 not warrant suspension or revocation of a license but does
 9 warrant other sanctions, it may either:

10 (a) issue a public or private decree of censure; or
 11 (b) impose a probation with terms and conditions
 12 appropriately adapted under the circumstances of the
 13 particular case.

14 (3) The licensee is entitled to an opportunity for a
 15 contested case hearing before a sanction of censure or
 16 probation becomes effective to the same extent. An
 17 opportunity for hearing is afforded prior to suspension or
 18 revocation.

19 (4) In addition to its authority to impose sanctions,
 20 the board may deny an application for a license for any of
 21 the following reasons:

22 (a) failure to meet the relevant requirements of Title
 23 37, chapter 4;

24 (b) making any untrue or fraudulent statement in
 25 support of the application; or

1 (c) any of the grounds set forth in 37-4-321 for
 2 suspension or revocation of a license."

3 Section 4. Section 37-4-405, MCA, is amended to read:

4 "37-4-405. Dental hygienist to practice under
 5 supervision of licensed dentist. (1) A licensed dental
 6 hygienist may practice in the office of a licensed and
 7 actively practicing dentist, in a public or private
 8 institution, under a board of health, or in a public clinic
 9 authorized by the board but may not practice except under
 10 the direct personal supervision of a licensed dentist;
 11 however, the dental hygienist may give instruction in dental
 12 oral hygiene without the supervision of a licensed dentist
 13 in a public or private institution or hospital or extended
 14 care facility or under a board of health or in a public
 15 clinic authorized by the board.

16 (2) The board may, in lieu of the direct supervision
 17 requirement set forth in subsection (1), permit a licensed
 18 dental hygienist to provide clinical dental hygiene services
 19 to a public or private institution, a hospital or extended
 20 care facility, or a school or public health program after a
 21 review by the board of a request for such service and a
 22 description of the type of supervision necessary is made by
 23 the board. For the purposes of this section "supervision" is
 24 defined as follows:

25 (a) "direct supervision" means the supervision of

1 ~~those tasks and procedures that do not require the dentist~~
2 ~~in the room where performed but require his presence on the~~
3 ~~premises and availability for prompt consultation and~~
4 ~~treatment; and~~

5 ~~(b) "general supervision" means those tasks and~~
6 ~~procedures that do not require the presence of a dentist on~~
7 ~~the premises but shall remain under the dentist's directive~~
8 ~~order, control, responsibility, and evaluation."~~

9 **NEW SECTION.** Section 5. Identification of dentures.
10 All nonmetal full dentures shall be permanently identified
11 with the first and last name of the owner at the time of
12 processing the dentures.

-End-

1 on February 15, 1979.

1 STATEMENT OF INTENT RE: HB 585

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A statement of intent is required for this bill because it grants rulemaking authority to the Board of Dentists for the purpose of defining unprofessional conduct.

Section 1 of the bill deletes a fairly specific list of types of unprofessional conduct by a dentist and allows the Board of Dentists to adopt a rule defining unprofessional conduct. It is the Legislature's intent that the Board's rule would reinstate some of the statutory examples, but would not adopt the present law's ban on advertising. The Board may prohibit only so much advertising as the courts would let a state prohibit. This is intended to comply with court orders issued at the behest of the FTC in Louisiana and other states.

Sections 1 and 3 also set up a range of sanctions that the Board may impose on any dentist or dental hygienist whose conduct constitutes grounds for sanctions. This is intended to expand the Board's powers on the less stringent end of the scale, by adding censure and probation to the revocation and suspension powers the Board now has. Often a problem can be corrected with such milder sanctions when efforts to suspend or revoke might be counterproductive.

First adopted by the HOUSE COMMITTEE ON HUMAN SERVICES,

HB 585

HOUSE BILL NO. 585

INTRODUCED BY GOULD, HARRINGTON, BENNETT

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE DISCIPLINARY POWERS OF THE BOARD OF DENTISTS; AMENDING LIMITATIONS ON DENTAL ADVERTISING AND ORAL HYGIENE; REQUIRING IDENTIFICATION OF DENTURES; AMENDING SECTIONS 37-4-321 THROUGH 37-4-323, AND 37-4-405, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-4-321, MCA, is amended to read:

"37-4-321. Revocation--or--suspension--of--license---unprofessional-conduct Grounds for disciplinary proceedings --range of sanctions. (1)-A-dentist-may-have-his-license revoked-or-suspended-by-the-board-for-any-of-the-following reasons:

(a)--conviction--of--a--felony-or-misdemeanor-involving moral-turpitude-in-which-case-the-record-of-conviction-or-a copy-certified-by-the-clerk-of-the-court-or-by-the-judge--in whose-court-the-conviction-is-had-is-conclusive-evidence;

(b)--renting,-loaning,-or-attempting-to-rent-or-loan-to a--person--his--license-for-the-practice-of-dentistry-or-his diploma-of-graduation-from--a--dental--college--school--or course-to-be-used-as-a-license-or-diploma-of-the-person;

(c)--permitting--a--dental-hygienist-under-his-personal

supervision-to-do-an-act-or-perform-an-operation-other--than those-defined-and-authorized-under-37-4-401-or-37-4-405;

(d)--permitting---unlicensed---auxiliary--personnel--to perform-duties-or--tasks--other--than--those--which--may--be specifically-authorized-by-the-board;

(e)--unprofessional--conduct---gross---ignorance---or inefficiency-in-his-profession--habitual--intemperance--or gross-immorality;

(2)--Unprofessional-conduct-consists-of:

(a)--employing---what---are---known---as---"coppers"--or "steerers"--to-obtain-business;

(b)--obtaining-a-fee-by-fraud-or-misrepresentation;

(c)--willfully-betraying-professional-secrets;

(d)--employing,-directly-or-indirectly,-a-student-or--a suspended-or-unlicensed-dentist-to-perform-operations-in-the practice--of--dentistry,-treat-lesions-of-the-human-teeth-or jaws,-or-correct-malocclusion;

(e)--making--use--of--advertising--statements---of---a character-tending-to-deceive-or-mislead-the-public;

(f)--advertising-prices;

(g)--advertising---professional---superiority---or performance-of-professional-services-in-a-superior--manner;

(h)--advertising--by--means-of-a-large-display,-glaring light-sign,-or--other--sign--or--device--containing--the representation--of--a-tooth,-teeth,-bridgework,-or-a-portion

1 ~~of-the-human-head~~
 2 ~~{i}--advertising-over-television-or-radio~~
 3 ~~{j}--employing-or-making-use-of-advertising-solicitors~~
 4 ~~or-publicity-press-agents~~
 5 ~~{k}--advertising-free-dental-work-or-free-examination~~
 6 ~~{l}--advertising-to-guarantee-dental-service-or-to~~
 7 ~~perform-a-dental-operation-painlessly~~
 8 ~~{m}--advertising-by-sign-or-printed-advertisements~~
 9 ~~under-the-name-of-a-corporation,-company,-association,-or~~
 10 ~~trade-name. The board may censure, prescribe probation,~~
 11 ~~suspend, or revoke any license issued under this chapter for~~
 12 ~~any of the following causes:~~
 13 ~~(1) conviction of a felony or misdemeanor when the~~
 14 ~~sentence imposed is imprisonment in the state prison. A~~
 15 ~~certified copy of the conviction record from the district~~
 16 ~~court imposing the sentence is conclusive evidence;~~
 17 ~~(2) physical infirmity or mental incompetence;~~
 18 ~~(3) gross malpractice or repeated malpractice;~~
 19 ~~(4) unprofessional conduct, as defined by rule of the~~
 20 ~~board; or~~
 21 ~~(5) violation of any of the provisions of this chapter~~
 22 ~~or rules or orders of the board."~~
 23 Section 2. Section 37-4-322, MCA, is amended to read:
 24 "37-4-322. When publishing professional cards not
 25 unprofessional conduct. (1) It shall not be considered

1 unprofessional for a dentist to place in any newspaper or
 2 publication, subject to the limitations stated hereafter, a
 3 card bearing his name only, together with his degree or the
 4 word "dentist" and giving office location, hours, and
 5 telephone numbers. If he limits his practice to a specialty
 6 he may so announce it or he may announce his absence from or
 7 his return to practice in the same manner. Such
 8 professional card or announcement shall not be run in any
 9 newspaper or publication in excess of five issues following
 10 the opening of his office by a newly licensed dentist or
 11 following the change of location of a dentist's office or
 12 after limiting his practice to a specialty or after the
 13 absention of a dentist from his practice or following his
 14 return to the practice of dentistry. Such card or
 15 announcement shall not be more than 2 columns in width or
 16 more than 3 inches in depth.
 17 (2) The publishing of professional cards or
 18 announcements in violation of these limitations shall be
 19 considered unprofessional. A dentist may publish a list of
 20 his fees, but such listing must include full and complete
 21 information stating if the published fee is minimum,
 22 maximum, or usual and whether or not any additional charges
 23 may be made for the services published. All announcements or
 24 publications must be done in a professional manner that will
 25 in no way coerce or confuse the public."

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 2 "37-4-323. Revocation--or--suspension--of--license---
 3 procedure Procedure for investigation -- sanctions. (1)
 4 Proceedings--under-37-4-321--may-be-taken-by-the-board-on-its
 5 initial-motion-for-matters-in-its-knowledge-or-may-be--taken
 6 on--the-information-of-another--.However--if-the-informant-is
 7 a-member-of-the--board--the--other--members--of--the--board
 8 constitute--the--board--for--the--purpose-of-determining-the
 9 truth-of-the-charge-or-accusation--.Accusations--must--be--in
 10 writing--verified--by--some--party--familiar-with-the-facts
 11 charged--and-three-copies-must-be-filed-with-the-department--
 12 On-receiving-the-accusation-the-board-shall--if-it-considers
 13 the-accusation-sufficient--make--an--order--setting--it--for
 14 hearing--and--requiring-the-accused-to-appear-and-answer-the
 15 charge-or-accusation-at-the-hearing--
 16 (2)--The-accused-must-appear-at-the-time--appointed--in
 17 the--order--and--answer--the--charges--and--make-his-defense
 18 unless--for-sufficient-cause--on-the-accused's--application
 19 or-the-board's-order--the-board-assigns-another-day-for-that
 20 purpose--
 21 (3)--If--the--accused--does--not--appear--the-board-may
 22 proceed-and-determine-the-accusation-in-his-absence--if--the
 23 accused--confesses--the-accusation-or-refuses-to-answer-the
 24 charge-or-if-on-hearing--the--board--finds--the--charge--or
 25 accusation--true--it--may-make-an-order-either-revoking-the

1 license-of-the-accused-or-suspending-it-for-a-fixed--period--
 2 The--board--and-the-accused-may-have-the-benefit-of-counsel--
 3 and-the-board-shall-have-the-power-to-administer-oaths--take
 4 depositions-of-witnesses-in-the-manner-provided--by--law--in
 5 civil--cases--and--issue--subpoenas--for--the-attendance-of
 6 witnesses-and-the-production--of--papers--books--accounts--
 7 documents--and--testimony--in--any--inquiry--investigation--
 8 hearing--or-proceeding--in--this--state--The-subpoena-shall--be
 9 issued--over-the-signature-of-the-secretary-of-the-board-and
 10 the-seal--and--in-the-name-of-this-state--
 11 (4)--On-revocation-or-suspension-of-a-license--the-fact
 12 shall-be-noted-on-the-records--of--the--department--and--the
 13 license--shall--be--marked--"canceled"--(on--the-date-of-its
 14 revocation)--or--"suspended"--as--the--case--may--be--The
 15 department-shall--on-order-of-suspension-or-revocation-being
 16 entered--transmit--to--the-county-clerk-and-recorder-of-the
 17 county-in-which-the-license-of-the-licensee-affected-by--the
 18 judgment--is--registered--and--recorded--a-copy-of-the-order--
 19 certified-by-the-secretary-of-the-board--for-records--and--it
 20 shall--be-registered-in-the-same-manner-and-in-the-same-book
 21 in-which-the-registration-of--the--certificate--to--practice
 22 dentistry--is--kept--(1) Upon receipt of a complaint or upon
 23 its own motion the board shall determine whether the matters
 24 alleged warrant investigation and may cause investigation to
 25 be made. If the board finds preliminary cause for imposing

1 the sanctions listed in 37-4-321; it may do so in accordance
2 with the provisions of the Montana Administrative Procedure
3 Act. If the board finds that the evidence obtained does not
4 justify the imposition of sanctions, it must so notify the
5 licensee concerned and the complaining party and take no
6 further action.

7 (2) If the board finds that the evidence obtained does
8 not warrant suspension or revocation of a license but does
9 warrant other sanctions, it may either:

- 10 (a) issue a public or private decree of censure; or
- 11 (b) impose a probation with terms and conditions
12 appropriately adapted under the circumstances of the
13 particular case.

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15 contested case hearing before a sanction of censure or
16 probation becomes effective to the same extent an
17 opportunity for hearing is afforded prior to suspension or
18 revocation.

19 (4) In addition to its authority to impose sanctions,
20 the board may deny an application for a license for any of
21 the following reasons:

- 22 (a) failure to meet the relevant requirements of Title
23 37, chapter 4;
- 24 (b) making any untrue or fraudulent statement in
25 support of the application; or

1 (c) any of the grounds set forth in 37-4-321 for
2 suspension or revocation of a license."

3 Section 4. Section 37-4-405, MCA, is amended to read:

4 "37-4-405. Dental hygienist to practice under
5 supervision of licensed dentist. (1) A licensed dental
6 hygienist may practice in the office of a licensed and
7 actively practicing dentist, in a public or private
8 institution, under a board of health, or in a public clinic
9 authorized by the board but may not practice except under
10 the direct personal supervision of a licensed dentist;
11 however, the dental hygienist may give instruction in dental
12 oral hygiene without the supervision of a licensed dentist
13 in a public or private institution or hospital or extended
14 care facility or under a board of health or in a public
15 clinic authorized by the board.

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17 requirement set forth in subsection (1), permit a licensed
18 dental hygienist to provide clinical dental hygiene services
19 to a public or private institution, a hospital or extended
20 care facility, or a school or public health program after a
21 review by the board of a request for such service and a
22 description of the type of supervision necessary is made by
23 the board. For the purposes of this section "supervision" is
24 defined as follows:

- 25 (a) "direct supervision" means the supervision of

1 those tasks and procedures that do not require the dentist
2 in the room where performed but require his presence on the
3 premises and availability for prompt consultation and
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6 procedures that do not require the presence of a dentist on
7 the premises but shall remain under the dentist's directive
8 order, control, responsibility, and evaluation."

9 NEW SECTION. Section 5. Identification of dentures.
10 All nonmetal full dentures shall be permanently identified
11 with the first and last name of the owner at the time of
12 processing the dentures.

13 SECTION 6. SEVERABILITY. IF A PART OF THIS ACT IS
14 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
15 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
16 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
17 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
18 INVALID APPLICATIONS.

-End-

March 9, 1979

SENATE STANDING COMMITTEE REPORT
(Public Health, Welfare & Safety)

That House Bill No. 585 be amended as follows:

1. Page 9, line 13.

Following: line 12

Insert: "Section 6. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."