

FIRST REGULAR SESSION

# SENATE BILL NO. 353

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WALLINGFORD.

Read 1st time January 25, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1577S.01I

## AN ACT

To repeal sections 332.011 and 332.321, RSMo, and to enact in lieu thereof two new sections relating to grounds for disciplinary actions against dentists.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 332.011 and 332.321, RSMo, are repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 332.011 and 332.321, to  
3 read as follows:

332.011. As used in this chapter, the following words and terms mean:

2 (1) "Accredited dental hygiene school", any program which teaches a  
3 course in dental hygiene which is accredited by the Commission on Dental  
4 Accreditation of the American Dental Association and which shall have a  
5 minimum of two academic years of curriculum provided in a college or institution  
6 of higher education;

7 (2) "Accredited dental school", any college, university, school, or other  
8 institution which teaches dentistry which has been certified by the American  
9 Dental Association;

10 (3) "Board", the Missouri dental board;

11 (4) "Certified dental assistant", a dental assistant who is currently  
12 certified by the Dental Assisting National Board, Inc.;

13 (5) "Dental assistant", an employee of a duly registered and currently  
14 licensed dentist in Missouri, other than either a dental hygienist or a certified  
15 dental assistant;

16 (6) **"Dentist franchisor", any person or entity, pursuant to a valid**  
17 **franchise agreement, who provides a licensed dentist any dental**  
18 **practice management services, which may include billing services,**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 marketing or advertising services, providing a license of a valid  
20 trademark, signage or branding consulting, or places in possession of  
21 a licensed dentist, such dental material or equipment as may be  
22 necessary for the management of a dental office on the basis of a lease,  
23 or any other agreement for compensation. A person or entity is not a  
24 dental franchisor if the agreement with the dentist:

25 (a) Permits the person or entity to interfere with the  
26 professional judgment of the dentist, including, but not limited to, any  
27 production quotas, thresholds, or any other minimum requirements;

28 (b) Contains terms that would constitute a violation of this  
29 chapter, any rules and regulations promulgated by the board, any  
30 orders and directives issued by the board, or any other applicable law;

31 (7) "Expanded-functions dental assistant", any dental assistant who has  
32 passed a basic dental assisting skills mastery examination or a certified dental  
33 assistant, either of whom has successfully completed a board-approved  
34 expanded-functions course, passed a competency examination, and has obtained  
35 a permit authorizing them to perform expanded-functions duties from the  
36 Missouri dental board;

37 [(7)] (8) "Expanded-functions duties", reversible acts that would be  
38 considered the practice of dentistry as defined in section 332.071 that the board  
39 specifies by rule may be delegated to a dental assistant or dental hygienist who  
40 possesses an expanded-functions permit.

332.321. 1. The board may refuse to issue or renew a permit or license  
2 required pursuant to this chapter for one or any combination of causes stated in  
3 subsection 2 of this section or the board may, as a condition to issuing or  
4 renewing any such permit or license, require a person to submit himself or herself  
5 for identification, intervention, treatment or rehabilitation by the well-being  
6 committee as provided in section 332.327. The board shall notify the applicant  
7 in writing of the reasons for the refusal and shall advise the applicant of his or  
8 her right to file a complaint with the administrative hearing commission as  
9 provided by chapter 621.

10 2. The board may cause a complaint to be filed with the administrative  
11 hearing commission as provided by chapter 621 against any holder of any permit  
12 or license required by this chapter or any person who has failed to renew or has  
13 surrendered his or her permit or license for any one or any combination of the  
14 following causes:

15           (1) Use of any controlled substance, as defined in chapter 195, or alcoholic  
16 beverage to an extent that such use impairs a person's ability to perform the work  
17 of any profession licensed or regulated by this chapter;

18           (2) The person has been finally adjudicated and found guilty, or entered  
19 a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws  
20 of any state or of the United States, for any offense reasonably related to the  
21 qualifications, functions or duties of any profession licensed or regulated  
22 pursuant to this chapter, for any offense an essential element of which is fraud,  
23 dishonesty or an act of violence, or any offense involving moral turpitude,  
24 whether or not sentence is imposed;

25           (3) Use of fraud, deception, misrepresentation or bribery in securing any  
26 permit or license issued pursuant to this chapter or in obtaining permission to  
27 take any examination given or required pursuant to this chapter;

28           (4) Obtaining or attempting to obtain any fee, charge, tuition or other  
29 compensation by fraud, deception or misrepresentation; or increasing charges  
30 when a patient utilizes a third-party payment program; or for repeated  
31 irregularities in billing a third party for services rendered to a patient. For the  
32 purposes of this subdivision, irregularities in billing shall include:

33           (a) Reporting charges for the purpose of obtaining a total payment in  
34 excess of that usually received by the dentist for the services rendered;

35           (b) Reporting incorrect treatment dates for the purpose of obtaining  
36 payment;

37           (c) Reporting charges for services not rendered;

38           (d) Incorrectly reporting services rendered for the purpose of obtaining  
39 payment that is greater than that to which the person is entitled;

40           (e) Abrogating the co-payment or deductible provisions of a third-party  
41 payment contract. Provided, however, that this paragraph shall not prohibit a  
42 discount, credit or reduction of charges provided under an agreement between the  
43 licensee and an insurance company, health service corporation or health  
44 maintenance organization licensed pursuant to the laws of this state; or  
45 governmental third-party payment program; or self-insurance program organized,  
46 managed or funded by a business entity for its own employees or labor  
47 organization for its members;

48           (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation  
49 or dishonesty in the performance of, or relating to one's ability to perform, the  
50 functions or duties of any profession licensed or regulated by this chapter;

51 (6) Violation of, or assisting or enabling any person to violate, any  
52 provision of this chapter, or any lawful rule or regulation adopted pursuant to  
53 this chapter;

54 (7) Impersonation of any person holding a permit or license or allowing  
55 any person to use his or her permit, license or diploma from any school;

56 (8) Disciplinary action against the holder of a license or other right to  
57 practice any profession regulated by this chapter imposed by another state,  
58 province, territory, federal agency or country upon grounds for which discipline  
59 is authorized in this state;

60 (9) A person is finally adjudicated incapacitated or disabled by a court of  
61 competent jurisdiction;

62 (10) Assisting or enabling any person to practice or offer to practice, by  
63 lack of supervision or in any other manner, any profession licensed or regulated  
64 by this chapter who is not registered and currently eligible to practice pursuant  
65 to this chapter;

66 (11) Issuance of a permit or license based upon a material mistake of fact;

67 (12) Failure to display a valid certificate, permit or license if so required  
68 by this chapter or by any rule promulgated hereunder;

69 (13) Violation of any professional trust or confidence;

70 (14) Use of any advertisement or solicitation that is false, misleading or  
71 deceptive to the general public or persons to whom the advertisement or  
72 solicitation is primarily directed. False, misleading or deceptive advertisements  
73 or solicitations shall include, but not be limited to:

74 (a) Promises of cure, relief from pain or other physical or mental  
75 condition, or improved physical or mental health;

76 (b) Any misleading or deceptive statement offering or promising a free  
77 service. Nothing herein shall be construed to make it unlawful to offer a service  
78 for no charge if the offer is announced as part of a full disclosure of routine fees  
79 including consultation fees;

80 (c) Any misleading or deceptive claims of patient cure, relief or improved  
81 condition; superiority in service, treatment or materials; new or improved service,  
82 treatment or material; or reduced costs or greater savings. Nothing herein shall  
83 be construed to make it unlawful to use any such claim if it is readily verifiable  
84 by existing documentation, data or other substantial evidence. Any claim that  
85 exceeds or exaggerates the scope of its supporting documentation, data or  
86 evidence is misleading or deceptive;

87 (d) Any announced fee for a specified service where that fee does not  
88 include the charges for necessary related or incidental services, or where the  
89 actual fee charged for that specified service may exceed the announced fee, but  
90 it shall not be unlawful to announce only the maximum fee that can be charged  
91 for the specified service, including all related or incidental services, modified by  
92 the term "up to" if desired;

93 (e) Any announcement in any form including the term "specialist" or the  
94 phrase "limited to the specialty of" unless each person named in conjunction with  
95 the term or phrase, or responsible for the announcement, holds a valid Missouri  
96 certificate and license evidencing that the person is a specialist in that area;

97 (f) Any announcement containing any of the terms denoting recognized  
98 specialties, or other descriptive terms carrying the same meaning, unless the  
99 announcement clearly designates by list each dentist not licensed as a specialist  
100 in Missouri who is sponsoring or named in the announcement, or employed by the  
101 entity sponsoring the announcement, after the following clearly legible or audible  
102 statement: "Notice: the following dentist(s) in this practice is (are) not licensed  
103 in Missouri as specialists in the advertised dental specialty(s) of \_\_\_\_\_";

104 (g) Any announcement containing any terms denoting or implying  
105 specialty areas that are not recognized by the American Dental Association;

106 (15) Violation of the drug laws or rules and regulations of this state, any  
107 other state or the federal government;

108 (16) Failure or refusal to properly guard against contagious, infectious or  
109 communicable diseases or the spread thereof;

110 (17) Failing to maintain his or her office or offices, laboratory, equipment  
111 and instruments in a safe and sanitary condition;

112 (18) Accepting, tendering or paying "rebates" to or "splitting fees" with  
113 any other person; provided, however, that nothing herein shall be so construed  
114 as to make it unlawful for a dentist [practicing];

115 **(a) To make payment of fees or royalties, pursuant to a valid**  
116 **franchise agreement, which payment may be a percentage based on**  
117 **collections, for services to a dental franchisor, as defined in section**  
118 **332.011; or**

119 **(b) To practice** in a partnership or as a corporation organized pursuant  
120 to the provisions of chapter 356 to distribute profits in accordance with his or her  
121 stated agreement;

122 (19) Administering, or causing or permitting to be administered, nitrous

123 oxide gas in any amount to himself or herself, or to another unless as an  
124 adjunctive measure to patient management;

125       (20) Being unable to practice as a dentist, specialist or hygienist with  
126 reasonable skill and safety to patients by reasons of professional incompetency,  
127 or because of illness, drunkenness, excessive use of drugs, narcotics, chemicals,  
128 or as a result of any mental or physical condition. In enforcing this subdivision  
129 the board shall, after a hearing before the board, upon a finding of probable  
130 cause, require the dentist or specialist or hygienist to submit to a reexamination  
131 for the purpose of establishing his or her competency to practice as a dentist,  
132 specialist or hygienist, which reexamination shall be conducted in accordance  
133 with rules adopted for this purpose by the board, including rules to allow the  
134 examination of the dentist's, specialist's or hygienist's professional competence  
135 by at least three dentists or fellow specialists, or to submit to a mental or  
136 physical examination or combination thereof by at least three physicians. One  
137 examiner shall be selected by the dentist, specialist or hygienist compelled to take  
138 examination, one selected by the board, and one shall be selected by the two  
139 examiners so selected. Notice of the physical or mental examination shall be  
140 given by personal service or registered mail. Failure of the dentist, specialist or  
141 hygienist to submit to the examination when directed shall constitute an  
142 admission of the allegations against him or her, unless the failure was due to  
143 circumstances beyond his or her control. A dentist, specialist or hygienist whose  
144 right to practice has been affected pursuant to this subdivision shall, at  
145 reasonable intervals, be afforded an opportunity to demonstrate that he or she  
146 can resume competent practice with reasonable skill and safety to patients.

147       (a) In any proceeding pursuant to this subdivision, neither the record of  
148 proceedings nor the orders entered by the board shall be used against a dentist,  
149 specialist or hygienist in any other proceeding. Proceedings pursuant to this  
150 subdivision shall be conducted by the board without the filing of a complaint with  
151 the administrative hearing commission;

152       (b) When the board finds any person unqualified because of any of the  
153 grounds set forth in this subdivision, it may enter an order imposing one or more  
154 of the following: denying his or her application for a license; permanently  
155 withholding issuance of a license; administering a public or private reprimand;  
156 placing on probation, suspending or limiting or restricting his or her license to  
157 practice as a dentist, specialist or hygienist for a period of not more than five  
158 years; revoking his or her license to practice as a dentist, specialist or hygienist;

159 requiring him or her to submit to the care, counseling or treatment of physicians  
160 designated by the dentist, specialist or hygienist compelled to be treated; or  
161 requiring such person to submit to identification, intervention, treatment or  
162 rehabilitation by the well-being committee as provided in section 332.327. For  
163 the purpose of this subdivision, "license" includes the certificate of registration,  
164 or license, or both, issued by the board.

165         3. After the filing of such complaint, the proceedings shall be conducted  
166 in accordance with the provisions of chapter 621. Upon a finding by the  
167 administrative hearing commission that the grounds, provided in subsection 2,  
168 for disciplinary action are met, the board may, singly or in combination:

169             (1) Censure or place the person or firm named in the complaint on  
170 probation on such terms and conditions as the board deems appropriate for a  
171 period not to exceed five years; or

172             (2) Suspend the license, certificate or permit for a period not to exceed  
173 three years; or

174             (3) Revoke the license, certificate, or permit. In any order of revocation,  
175 the board may provide that the person shall not apply for licensure for a period  
176 of not less than one year following the date of the order of revocation; or

177             (4) Cause the person or firm named in the complaint to make restitution  
178 to any patient, or any insurer or third-party payer who shall have paid in whole  
179 or in part a claim or payment for which they should be reimbursed, where  
180 restitution would be an appropriate remedy, including the reasonable cost of  
181 follow-up care to correct or complete a procedure performed or one that was to be  
182 performed by the person or firm named in the complaint; or

183             (5) Request the attorney general to bring an action in the circuit court of  
184 competent jurisdiction to recover a civil penalty on behalf of the state in an  
185 amount to be assessed by the court.

186         4. If the board concludes that a dentist or dental hygienist has committed  
187 an act or is engaging in a course of conduct that would be grounds for disciplinary  
188 action and constitutes a clear and present danger to the public health and safety,  
189 the board may file a complaint before the administrative hearing commission  
190 requesting an expedited hearing and specifying the conduct that gives rise to the  
191 danger and the nature of the proposed restriction or suspension of the dentist's  
192 or dental hygienist's license. Within fifteen days after service of the complaint  
193 on the dentist or dental hygienist, the administrative hearing commission shall  
194 conduct a preliminary hearing to determine whether the alleged conduct of the

195 dentist or dental hygienist appears to constitute a clear and present danger to the  
196 public health and safety that justifies that the dentist's or dental hygienist's  
197 license be immediately restricted or suspended. The burden of proving that a  
198 dentist or dental hygienist is a clear and present danger to the public health and  
199 safety shall be upon the Missouri dental board. The administrative hearing  
200 commission shall issue its decision immediately after the hearing and shall either  
201 grant to the board the authority to suspend or restrict the license or dismiss the  
202 action.

203           5. If the administrative hearing commission grants temporary authority  
204 to the board to restrict or suspend a dentist's or dental hygienist's license, the  
205 dentist or dental hygienist named in the complaint may request a full hearing  
206 before the administrative hearing commission. A request for a full hearing shall  
207 be made within thirty days after the administrative hearing commission issues  
208 a decision. The administrative hearing commission shall, if requested by a  
209 dentist or dental hygienist named in the complaint, set a date to hold a full  
210 hearing under chapter 621 regarding the activities alleged in the initial complaint  
211 filed by the board. The administrative hearing commission shall set the date for  
212 full hearing within ninety days from the date its decision was issued. Either  
213 party may request continuances, which shall be granted by the administrative  
214 hearing commission upon a showing of good cause by either party or consent of  
215 both parties. If a request for a full hearing is not made within thirty days, the  
216 authority to impose discipline becomes final and the board shall set the matter  
217 for hearing in accordance with section 621.110.

218           6. If the administrative hearing commission dismisses without prejudice  
219 the complaint filed by the board under subsection 4 of this section or dismisses  
220 the action based on a finding that the board did not meet its burden of proof  
221 establishing a clear and present danger, such dismissal shall not bar the board  
222 from initiating a subsequent action on the same grounds in accordance with this  
223 chapter and chapters 536 and 621.

224           7. Notwithstanding any other provisions of section 332.071 or of this  
225 section, a currently licensed dentist in Missouri may enter into an agreement  
226 with individuals and organizations to provide dental health care, provided such  
227 agreement does not permit or compel practices that violate any provision of this  
228 chapter.

229           8. At all proceedings for the enforcement of these or any other provisions  
230 of this chapter the board shall, as it deems necessary, select, in its discretion,



231 either the attorney general or one of the attorney general's assistants designated  
232 by the attorney general or other legal counsel to appear and represent the board  
233 at each stage of such proceeding or trial until its conclusion.

234         9. If at any time when any discipline has been imposed pursuant to this  
235 section or pursuant to any provision of this chapter, the licensee removes himself  
236 or herself from the state of Missouri, ceases to be currently licensed pursuant to  
237 the provisions of this chapter, or fails to keep the Missouri dental board advised  
238 of his or her current place of business and residence, the time of his or her  
239 absence, or unlicensed status, or unknown whereabouts shall not be deemed or  
240 taken as any part of the time of discipline so imposed.

✓

Bill

Copy