

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1122

92ND GENERAL ASSEMBLY

Reported from the Committee on Aging, Families, Mental and Public Health, February 24, 2004, with recommendation that the Senate Committee Substitute do pass.

4017S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 332.051, 332.071, 332.081, 332.111, and 332.121, RSMo, and to enact in lieu thereof six new sections relating to the practice of dentistry, with penalty provisions.

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

Section A. Sections 332.051, 332.071, 332.081, 332.111, and 332.121, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 332.032, 332.051, 332.071, 332.081, 332.111, and 332.121, to read as follows:

332.032. 1. Upon unanimous consent of the members of the board, the president or secretary of the board shall administer oaths, subpoena witnesses, issue subpoenas duces tecum, and require production of documents and records pertaining to the practice of dentistry. Subpoenas, including subpoenas duces tecum, shall be served by a person authorized to serve subpoenas of courts of record. In lieu of requiring attendance of a person to produce original documents in response to a subpoena duces tecum, the board may require sworn copies of such documents to be filed with it or delivered to its designated representative.

2. The board may enforce its subpoenas, including subpoena duces tecum, by applying to a circuit court of Cole County, the county of the investigation, hearing, or proceeding, or any county where the person resides or may be found, for an order upon any person who shall fail to obey a subpoena to show cause why such subpoena should not be enforced, which such order and a copy of the application therefore shall be served upon the person in the same manner as a summons in a civil action, and if the circuit court shall, after a hearing, determine that the subpoena should be sustained and enforced, such court shall proceed to

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

enforce the subpoena in the same manner as though the subpoena had been issued in a civil case in the circuit court.

332.051. 1. The board shall establish and maintain an office at Jefferson City, Missouri, where its records and files shall be kept.

2. Investigators employed by the board shall, among other duties, have the power in the name of the board to investigate alleged violations of this chapter including the right to inspect, on order of the board, [dental offices, including records, dental laboratories, dental equipment and instruments] **any person licensed to practice dentistry or entity permitted to provide dental services in this state, including all facilities and equipment related to the delivery of dental care or the fabrication or adjustment of dental prostheses and all clinical and administrative records related to the dental care of patients** with respect to violations of the provisions of this chapter.

332.071. A person or other entity "practices dentistry" within the meaning of this chapter who:

(1) Undertakes to do or perform dental work or dental services or dental operations or oral surgery, by any means or methods, including the use of lasers, gratuitously or for a salary or fee or other reward, paid directly or indirectly to the person or to any other person or entity;

(2) Diagnoses or professes to diagnose, prescribes for or professes to prescribe for, treats or professes to treat, any disease, pain, deformity, deficiency, injury or physical condition of human teeth or adjacent structures or treats or professes to treat any disease or disorder or lesions of the oral regions;

(3) Attempts to or does replace or restore a part or portion of a human tooth;

(4) Attempts to or does extract human teeth or attempts to or does correct malformations of human teeth or jaws;

(5) Attempts to or does adjust an appliance or appliances for use in or used in connection with malposed teeth in the human mouth;

(6) Interprets or professes to interpret or read dental radiographs;

(7) Administers an anesthetic in connection with dental services or dental operations or dental surgery;

(8) Undertakes to or does remove hard and soft deposits from or polishes natural and restored surfaces of teeth;

(9) Uses or permits to be used for the person's benefit or for the benefit of any other person or other entity the following titles or words in connection with the person's name: "Doctor", "Dentist", "Dr.", "D.D.S.", or "D.M.D.", or any other letters, titles, degrees or descriptive matter which directly or indirectly indicate or imply that the person is willing or able to perform any type of dental service for any person or persons, or uses or permits the use of for the person's benefit or for the benefit of any other person or other entity any card,

directory, poster, sign or any other means by which the person indicates or implies or represents that the person is willing or able to perform any type of dental services or operation for any person;

(10) Directly or indirectly owns, leases, operates, maintains, manages or conducts an office or establishment of any kind in which dental services or dental operations of any kind are performed for any purpose; but this section shall not be construed to prevent owners or lessees of real estate from lawfully leasing premises to those who are qualified to practice dentistry within the meaning of this chapter;

(11) Controls, influences, attempts to control or influence, or otherwise interferes with the dentist's independent professional judgment regarding the diagnosis or treatment of a dental disease, disorder, or physical condition;

(12) Constructs, supplies, reproduces or repairs any prosthetic denture, bridge, artificial restoration, appliance or other structure to be used or worn as a substitute for natural teeth, except when one, not a registered and licensed dentist, does so pursuant to a written uniform laboratory work order, in the form to be prescribed by the board and copies of which shall be retained by the nondentist for two years, of a dentist registered and currently licensed in Missouri and which the substitute in this subdivision described is constructed upon or by use of casts or models made from an impression furnished by a dentist registered and currently licensed in Missouri;

[(12)] **(13)** Attempts to or does place any substitute described in subdivision [(11)] **(12)** of this section in a human mouth or attempts to or professes to adjust any substitute or delivers any substitute to any person other than the dentist upon whose order the work in producing the substitute was performed;

[(13)] **(14)** Advertises, solicits, or offers to or does sell or deliver any substitute described in subdivision [(11)] **(12)** of this section or offers to or does sell the person's services in constructing, reproducing, supplying or repairing the substitute to any person other than a registered and licensed dentist in Missouri;

[(14)] **(15)** Undertakes to do or perform any physical evaluation of a patient in the person's office or in a hospital, clinic, or other medical or dental facility prior to or incident to the performance of any dental services, dental operations, or dental surgery;

(16) Reviews examination findings, x-rays, or other patient data to make judgments or decisions about the dental care of a patient in this state.

332.081. 1. No person **or other entity** shall practice dentistry in Missouri **or provide dental services** as defined in section 332.071 unless and until the board has issued to the person a certificate certifying that the person has been duly registered as a dentist in Missouri **or to an entity that has been duly registered to provide dental services by licensed dentists and dental hygienists** and unless and until the board has issued to the person a license, to be renewed each period, as provided in this chapter, to practice dentistry

or as a dental hygienist, or has issued to the person or entity a permit, to be renewed each period, to provide dental services in Missouri[; but]. Nothing in this chapter shall be so construed as to make it unlawful for: [a legally qualified and licensed physician or surgeon, who does not practice dentistry as a specialty, from extracting teeth, or to make it unlawful for a dentist licensed in a state other than Missouri from making a clinical demonstration before a meeting of dentists in Missouri, or to make it unlawful for dental students in any accredited dental school to practice dentistry under the personal direction of instructors, or to make it unlawful for any duly registered and licensed dental hygienist in Missouri to practice as a dental hygienist as defined in section 332.091, or to make it unlawful for dental assistants, certified dental assistants or expanded functions dental assistants to be delegated duties as defined in section 332.093, or to make it unlawful for persons to practice dentistry in the United States armed services or in or for the United States Public Health Service, or in or for the United States Veterans Bureau, or to make it unlawful to teach in an accredited dental school, or to make it unlawful for a duly qualified anesthesiologist or anesthetist to administer an anesthetic in connection with dental services or dental surgery.]

(1) A legally qualified physician or surgeon, who does not practice dentistry as a specialty, from extracting teeth;

(2) A dentist licensed in a state other than Missouri from making a clinical demonstration before a meeting of dentists in Missouri;

(3) Dental students in any accredited dental school to practice dentistry under the personal direction of instructors;

(4) Dental hygiene students in any accredited dental hygiene school to practice dental hygiene under the personal direction of instructors;

(5) A duly registered and licensed dental hygienist in Missouri to practice dental hygiene as defined in section 332.091;

(6) A dental assistant, certified dental assistant, or expanded functions dental assistant to be delegated duties as defined in section 332.093;

(7) A duly registered dentist or dental hygienist to teach in an accredited dental or dental hygiene school;

(8) A duly qualified anesthesiologist or anesthetist to administer an anesthetic in connection with dental services or dental surgery; or

(9) A person to practice dentistry in or for:

(a) The United States armed forces;

(b) The United States Public Health Service;

(c) Migrant, community, or health care for the homeless health centers provided in section 330 of the Public Health Service Act (42 U.S.C. 254b);

(d) Federally qualified health centers as defined in section 1905(1) (42 U.S.C.

1396d(1)) of the Social Security Act; or

(e) The United States Veterans Bureau.

2. No corporation shall practice dentistry as defined in section 332.071 unless that corporation is organized under the provisions of chapter 355 or 356, RSMo, provided that a corporation organized under the provisions of chapter 355, RSMo, and qualifying as an organization under 26 U.S.C. Section 501(c)(3), shall only employ dentists and dental hygienists licensed in this state to render dental services to medicaid recipients, low-income individuals who have available income below two hundred percent of the federal poverty level, and participants in the SCHIP program, unless such limitation is contrary to or inconsistent with federal or state law or regulation.

3. A dentist shall not enter into a contract that allows a person who is not a dentist to influence or interfere with the exercise of the dentist's independent professional judgment.

4. A not-for-profit corporation organized under the provisions of chapter 355, RSMo, and qualifying as an organization under 26 U.S.C. Section 501(c)(3), or any other person should not direct or interfere or attempt to direct or interfere with a licensed dentist's professional judgment and competent practice of dentistry. Nothing in this section shall be so construed as to make it unlawful for not-for-profit organizations to enforce employment contracts, corporate policy and procedure manuals, or quality improvement or assurance requirements.

5. A not-for-profit corporation organized under the provisions of chapter 355, RSMo, and qualifying as an organization under 26 U.S.C. Section 501 (c)(3) shall apply for a permit to employ dentists and dental hygienists licensed in this state to render dental services, and the corporation shall apply for the permit in writing on forms provided by the Missouri dental board. The board shall not charge a fee of any kind for the issuance or renewal of such permit.

6. Any person or entity that obtains a permit to render dental services in this state is subject to discipline pursuant to section 332.321. If the board concludes that the person or entity has committed an act or is engaging in a course of conduct that would be grounds for disciplinary action, the board may file a complaint before the administrative hearing commission. The board may refuse to issue or renew the permit of any entity for one or any combination of causes stated in subsection 2 of section 332.321. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

7. The board may promulgate rules and regulations to ensure not-for-profit

corporations are rendering care to the patient populations as set forth herein, including requirements for covered not-for-profit corporations to report patient census data to the board.

8. All not-for-profit corporations organized or operated pursuant to the provisions of chapter 355, RSMo, and qualifying as an organization under 26 U.S.C. Section 501(c)(3), or the requirements relating to migrant, community, or health care for the homeless health centers provided in Section 330 of the Public Health Service Act (42 U.S.C. 254b) and federally qualified health centers as defined in Section 1905(1) (42 U.S.C. 1396d(1)) of the Social Security Act, that employ persons who practice dentistry or dental hygiene in this state shall do so in accordance with the relevant laws of this state except to the extent that such laws are contrary to, or inconsistent with, federal statute or regulation.

332.111. Any person who practices dentistry as defined in section 332.071, **or as a dental hygienist as defined in section 332.091**, who is not [a] duly registered and currently licensed [dentist] in Missouri as hereinafter provided, [or any person who practices as a dental hygienist as defined in section 332.091 who is not a duly registered and currently licensed dental hygienist in Missouri as hereinafter provided] is guilty of a class A misdemeanor.

332.121. 1. Upon application by the board and the necessary burden having been met, a court of general jurisdiction may grant an injunction, restraining order, or other order as may be appropriate to enjoin a person [or], **corporation, firm, or other entity** from:

(1) Offering to engage or engaging in the performance of any acts or practices for which a certificate of registration or authority, permit or license is required by this chapter upon a showing that such acts or practices were performed or offered to be performed without a certificate of registration or authority, permit or license; or

(2) Engaging in any practice or business authorized by a certificate of registration or authority, permit or license issued pursuant to this chapter upon a showing that the holder presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or client or patient of the licensee; **or**

(3) **Directing, interfering with, or attempting to direct or interfere with a licensed dentist's professional judgment or competent practice of dentistry.**

Nothing in this subsection shall be so construed as to make it unlawful for not-for-profit organizations to enforce employment contracts, corporate policy and procedure manuals, or quality improvement or assurance requirements.

2. Any such action shall be commenced either in the county in which the defendant resides or in the county in which such conduct occurred.

3. Any action brought under this section shall be in addition to and not in lieu of any penalty provided by this chapter and may be brought concurrently with other actions to

enforce this chapter.

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