

FIRST REGULAR SESSION

SENATE BILL NO. 531

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Read 1st time February 26, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2096S.01I

AN ACT

To repeal section 332.321, RSMo, and to enact in lieu thereof one new section relating to dental advertising.

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

Section A. Section 332.321, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 332.321, to read as follows:

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, RSMo.

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

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

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

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, **nor shall it be unlawful to announce a range of**
93 **fees for a routine service;**

94 (e) Any announcement in any form including the term "specialist" or the

95 phrase "limited to the specialty of" unless each person named in conjunction with
96 the term or phrase, or responsible for the announcement, holds a valid Missouri
97 certificate and license evidencing that the person is a specialist in that area;

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

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

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

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

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

113 (18) Accepting, tendering or paying "rebates" to or "splitting fees" with
114 any other person; provided, however, that nothing herein shall be so construed
115 as to make it unlawful for a dentist practicing in a partnership or as a
116 corporation organized pursuant to the provisions of chapter 356, RSMo, to
117 distribute profits in accordance with his or her stated agreement;

118 (19) Administering, or causing or permitting to be administered, nitrous
119 oxide gas in any amount to himself or herself, or to another unless as an
120 adjunctive measure to patient management;

121 (20) Being unable to practice as a dentist, specialist or hygienist with
122 reasonable skill and safety to patients by reasons of professional incompetency,
123 or because of illness, drunkenness, excessive use of drugs, narcotics, chemicals,
124 or as a result of any mental or physical condition. In enforcing this subdivision
125 the board shall, after a hearing before the board, upon a finding of probable
126 cause, require the dentist or specialist or hygienist to submit to a reexamination
127 for the purpose of establishing his or her competency to practice as a dentist,
128 specialist or hygienist, which reexamination shall be conducted in accordance
129 with rules adopted for this purpose by the board, including rules to allow the
130 examination of the dentist's, specialist's or hygienist's professional competence
131 by at least three dentists or fellow specialists, or to submit to a mental or

132 physical examination or combination thereof by at least three physicians. One
133 examiner shall be selected by the dentist, specialist or hygienist compelled to take
134 examination, one selected by the board, and one shall be selected by the two
135 examiners so selected. Notice of the physical or mental examination shall be
136 given by personal service or registered mail. Failure of the dentist, specialist or
137 hygienist to submit to the examination when directed shall constitute an
138 admission of the allegations against him or her, unless the failure was due to
139 circumstances beyond his or her control. A dentist, specialist or hygienist whose
140 right to practice has been affected pursuant to this subdivision shall, at
141 reasonable intervals, be afforded an opportunity to demonstrate that he or she
142 can resume competent practice with reasonable skill and safety to patients.

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

148 (b) When the board finds any person unqualified because of any of the
149 grounds set forth in this subdivision, it may enter an order imposing one or more
150 of the following: denying his or her application for a license; permanently
151 withholding issuance of a license; administering a public or private reprimand;
152 placing on probation, suspending or limiting or restricting his or her license to
153 practice as a dentist, specialist or hygienist for a period of not more than five
154 years; revoking his or her license to practice as a dentist, specialist or hygienist;
155 requiring him or her to submit to the care, counseling or treatment of physicians
156 designated by the dentist, specialist or hygienist compelled to be treated; or
157 requiring such person to submit to identification, intervention, treatment or
158 rehabilitation by the well-being committee as provided in section 332.327. For
159 the purpose of this subdivision, "license" includes the certificate of registration,
160 or license, or both, issued by the board.

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

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

168 (2) Suspend the license, certificate or permit for a period not to exceed

169 three years; or

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

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

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

182 4. If the board concludes that a dentist or dental hygienist has committed
183 an act or is engaging in a course of conduct that would be grounds for disciplinary
184 action and constitutes a clear and present danger to the public health and safety,
185 the board may file a complaint before the administrative hearing commission
186 requesting an expedited hearing and specifying the conduct that gives rise to the
187 danger and the nature of the proposed restriction or suspension of the dentist's
188 or dental hygienist's license. Within fifteen days after service of the complaint
189 on the dentist or dental hygienist, the administrative hearing commission shall
190 conduct a preliminary hearing to determine whether the alleged conduct of the
191 dentist or dental hygienist appears to constitute a clear and present danger to the
192 public health and safety that justifies that the dentist's or dental hygienist's
193 license be immediately restricted or suspended. The burden of proving that a
194 dentist or dental hygienist is a clear and present danger to the public health and
195 safety shall be upon the Missouri dental board. The administrative hearing
196 commission shall issue its decision immediately after the hearing and shall either
197 grant to the board the authority to suspend or restrict the license or dismiss the
198 action.

199 5. If the administrative hearing commission grants temporary authority
200 to the board to restrict or suspend a dentist's or dental hygienist's license, the
201 dentist or dental hygienist named in the complaint may request a full hearing
202 before the administrative hearing commission. A request for a full hearing shall
203 be made within thirty days after the administrative hearing commission issues
204 a decision. The administrative hearing commission shall, if requested by a
205 dentist or dental hygienist named in the complaint, set a date to hold a full

206 hearing under chapter 621, RSMo, regarding the activities alleged in the initial
207 complaint filed by the board. The administrative hearing commission shall set
208 the date for full hearing within ninety days from the date its decision was
209 issued. Either party may request continuances, which shall be granted by the
210 administrative hearing commission upon a showing of good cause by either party
211 or consent of both parties. If a request for a full hearing is not made within
212 thirty days, the authority to impose discipline becomes final and the board shall
213 set the matter for hearing in accordance with section 621.110, RSMo.

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

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

225 8. At all proceedings for the enforcement of these or any other provisions
226 of this chapter the board shall, as it deems necessary, select, in its discretion,
227 either the attorney general or one of the attorney general's assistants designated
228 by the attorney general or other legal counsel to appear and represent the board
229 at each stage of such proceeding or trial until its conclusion.

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

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