

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/SCS/House Bill No. 1719, Page 95, Section 332.131, Line 1,

of said page, by inserting after all of said line the following:

"332.321. 1. The board may refuse to issue or renew a permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section or the board may, as a condition to issuing or renewing any such permit or license, require a person to submit himself or herself for identification, intervention, treatment or rehabilitation by the well-being committee as provided in section 332.327. 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.

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

(1) Use of any controlled substance, as defined in chapter 195, or alcoholic beverage to an extent that such use impairs a

1 person's ability to perform the work of any profession licensed
2 or regulated by this chapter;

3 (2) The person has been finally adjudicated and found
4 guilty, or entered a plea of guilty or nolo contendere, in a
5 criminal prosecution pursuant to the laws of any state or of the
6 United States, for any offense reasonably related to the
7 qualifications, functions or duties of any profession licensed or
8 regulated pursuant to this chapter, for any offense an essential
9 element of which is fraud, dishonesty or an act of violence, or
10 any offense involving moral turpitude, whether or not sentence is
11 imposed;

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

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

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

26 (b) Reporting incorrect treatment dates for the purpose of
27 obtaining payment;

28 (c) Reporting charges for services not rendered;

29 (d) Incorrectly reporting services rendered for the purpose

1 of obtaining payment that is greater than that to which the
2 person is entitled;

3 (e) Abrogating the co-payment or deductible provisions of a
4 third-party payment contract. Provided, however, that this
5 paragraph shall not prohibit a discount, credit or reduction of
6 charges provided under an agreement between the licensee and an
7 insurance company, health service corporation or health
8 maintenance organization licensed pursuant to the laws of this
9 state; or governmental third-party payment program; or
10 self-insurance program organized, managed or funded by a business
11 entity for its own employees or labor organization for its
12 members;

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

17 (6) Violation of, or assisting or enabling any person to
18 violate, any provision of this chapter, or any lawful rule or
19 regulation adopted pursuant to this chapter;

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

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

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

1 (10) Assisting or enabling any person to practice or offer
2 to practice, by lack of supervision or in any other manner, any
3 profession licensed or regulated by this chapter who is not
4 registered and currently eligible to practice pursuant to this
5 chapter;

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

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

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

12 (14) Use of any advertisement or solicitation that is
13 false, misleading or deceptive to the general public or persons
14 to whom the advertisement or solicitation is primarily directed.
15 For purposes of this section, the term "advertisement" shall mean
16 any announcement as described in subdivision (9) of section
17 332.071. False, misleading or deceptive advertisements or
18 solicitations shall include, but not be limited to:

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

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

26 (c) Any misleading or deceptive claims of patient cure,
27 relief or improved health condition; superiority in service,
28 treatment or materials; new or improved service, treatment or
29 material; or reduced costs or greater savings. Nothing herein

1 shall be construed to make it unlawful to use any such claim if
2 it is readily verifiable by existing documentation, data or other
3 substantial evidence. Any claim that exceeds or exaggerates the
4 scope of its supporting documentation, data or evidence is
5 misleading or deceptive;

6 (d) Any announced fee for a specified service where that
7 fee does not include the charges for necessary related or
8 incidental services, or where the actual fee charged for that
9 specified service may exceed the announced fee, but it shall not
10 be unlawful to announce only the maximum fee that can be charged
11 for the specified service, including all related or incidental
12 services, modified by the term "up to" if desired;

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

19 (f) Any announcement containing any of the terms denoting
20 recognized specialties, or other descriptive terms carrying the
21 same meaning, unless the announcement clearly designates by list
22 each dentist not licensed as a specialist in Missouri who is
23 sponsoring or named in the announcement, or employed by the
24 entity sponsoring the announcement, after the following clearly
25 legible or audible statement: "Notice: the following dentist(s)
26 in this practice is (are) not licensed in Missouri as specialists
27 in the advertised dental specialty(s) of _____". For purposes
28 of this paragraph, a statement that is "clearly legible" shall
29 have print that is equal or larger in size than the announcement

1 of services, and a statement that is "clearly audible" shall have
2 speech volume and pace equal to the announcement of services;

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

6 (h) Any advertisement that does not contain the name of one
7 or more of the duly registered and currently licensed dentists
8 regularly employed in and responsible for the management,
9 supervision, and operation of each office location listed in the
10 advertisement; or

11 (i) Any advertisement denoting the use of sedation services
12 permitted by the board in accordance with section 332.362 using
13 any term other than deep sedation, general anesthesia, or
14 moderate sedation. Such terms shall only be used in the
15 announcement or advertisement of sedation services with the
16 possession of a deep sedation, general anesthesia, or moderate
17 sedation permit or license;

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

20 (16) Failure or refusal to properly guard against
21 contagious, infectious or communicable diseases or the spread
22 thereof;

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

26 (18) Accepting, tendering or paying "rebates" to or
27 "splitting fees" with any other person; provided, however, that
28 nothing herein shall be so construed as to make it unlawful for a
29 dentist practicing in a partnership or as a corporation organized

1 pursuant to the provisions of chapter 356 to distribute profits
2 in accordance with his or her stated agreement;

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

7 (20) Being unable to practice as a dentist, specialist or
8 hygienist with reasonable skill and safety to patients by reasons
9 of professional incompetency, or because of illness, drunkenness,
10 excessive use of drugs, narcotics, chemicals, or as a result of
11 any mental or physical condition. In enforcing this subdivision
12 the board shall, after a hearing before the board, upon a finding
13 of probable cause, require the dentist or specialist or hygienist
14 to submit to a reexamination for the purpose of establishing his
15 or her competency to practice as a dentist, specialist or
16 hygienist, which reexamination shall be conducted in accordance
17 with rules adopted for this purpose by the board, including rules
18 to allow the examination of the dentist's, specialist's or
19 hygienist's professional competence by at least three dentists or
20 fellow specialists, or to submit to a mental or physical
21 examination or combination thereof by at least three physicians.
22 One examiner shall be selected by the dentist, specialist or
23 hygienist compelled to take examination, one selected by the
24 board, and one shall be selected by the two examiners so
25 selected. Notice of the physical or mental examination shall be
26 given by personal service or registered mail. Failure of the
27 dentist, specialist or hygienist to submit to the examination
28 when directed shall constitute an admission of the allegations
29 against him or her, unless the failure was due to circumstances

1 beyond his or her control. A dentist, specialist or hygienist
2 whose right to practice has been affected pursuant to this
3 subdivision shall, at reasonable intervals, be afforded an
4 opportunity to demonstrate that he or she can resume competent
5 practice with reasonable skill and safety to patients.

6 (a) In any proceeding pursuant to this subdivision, neither
7 the record of proceedings nor the orders entered by the board
8 shall be used against a dentist, specialist or hygienist in any
9 other proceeding. Proceedings pursuant to this subdivision shall
10 be conducted by the board without the filing of a complaint with
11 the administrative hearing commission;

12 (b) When the board finds any person unqualified because of
13 any of the grounds set forth in this subdivision, it may enter an
14 order imposing one or more of the following: denying his or her
15 application for a license; permanently withholding issuance of a
16 license; administering a public or private reprimand; placing on
17 probation, suspending or limiting or restricting his or her
18 license to practice as a dentist, specialist or hygienist for a
19 period of not more than five years; revoking his or her license
20 to practice as a dentist, specialist or hygienist; requiring him
21 or her to submit to the care, counseling or treatment of
22 physicians designated by the dentist, specialist or hygienist
23 compelled to be treated; or requiring such person to submit to
24 identification, intervention, treatment or rehabilitation by the
25 well-being committee as provided in section 332.327. For the
26 purpose of this subdivision, "license" includes the certificate
27 of registration, or license, or both, issued by the board.

28 3. After the filing of such complaint, the proceedings
29 shall be conducted in accordance with the provisions of chapter

1 621. Upon a finding by the administrative hearing commission
2 that the grounds, provided in subsection 2, for disciplinary
3 action are met, the board may, singly or in combination:

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

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

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

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

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

24 4. If the board concludes that a dentist or dental
25 hygienist has committed an act or is engaging in a course of
26 conduct that would be grounds for disciplinary action and
27 constitutes a clear and present danger to the public health and
28 safety, the board may file a complaint before the administrative
29 hearing commission requesting an expedited hearing and specifying

1 the conduct that gives rise to the danger and the nature of the
2 proposed restriction or suspension of the dentist's or dental
3 hygienist's license. Within fifteen days after service of the
4 complaint on the dentist or dental hygienist, the administrative
5 hearing commission shall conduct a preliminary hearing to
6 determine whether the alleged conduct of the dentist or dental
7 hygienist appears to constitute a clear and present danger to the
8 public health and safety that justifies that the dentist's or
9 dental hygienist's license be immediately restricted or
10 suspended. The burden of proving that a dentist or dental
11 hygienist is a clear and present danger to the public health and
12 safety shall be upon the Missouri dental board. The
13 administrative hearing commission shall issue its decision
14 immediately after the hearing and shall either grant to the board
15 the authority to suspend or restrict the license or dismiss the
16 action.

17 5. If the administrative hearing commission grants
18 temporary authority to the board to restrict or suspend a
19 dentist's or dental hygienist's license, the dentist or dental
20 hygienist named in the complaint may request a full hearing
21 before the administrative hearing commission. A request for a
22 full hearing shall be made within thirty days after the
23 administrative hearing commission issues a decision. The
24 administrative hearing commission shall, if requested by a
25 dentist or dental hygienist named in the complaint, set a date to
26 hold a full hearing under chapter 621 regarding the activities
27 alleged in the initial complaint filed by the board. The
28 administrative hearing commission shall set the date for full
29 hearing within ninety days from the date its decision was issued.

1 Either party may request continuances, which shall be granted by
2 the administrative hearing commission upon a showing of good
3 cause by either party or consent of both parties. If a request
4 for a full hearing is not made within thirty days, the authority
5 to impose discipline becomes final and the board shall set the
6 matter for hearing in accordance with section 621.110.

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

14 7. Notwithstanding any other provisions of section 332.071
15 or of this section, a currently licensed dentist in Missouri may
16 enter into an agreement with individuals and organizations to
17 provide dental health care, provided such agreement does not
18 permit or compel practices that violate any provision of this
19 chapter.

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

27 9. If at any time when any discipline has been imposed
28 pursuant to this section or pursuant to any provision of this
29 chapter, the licensee removes himself or herself from the state

1 of Missouri, ceases to be currently licensed pursuant to the
2 provisions of this chapter, or fails to keep the Missouri dental
3 board advised of his or her current place of business and
4 residence, the time of his or her absence, or unlicensed status,
5 or unknown whereabouts shall not be deemed or taken as any part
6 of the time of discipline so imposed."; and

7 Further amend the title and enacting clause accordingly.