

FIRST REGULAR SESSION

HOUSE BILL NO. 702

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE REDMON.

1556H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 332.011 and 332.321, RSMo, and to enact in lieu thereof two new sections relating to dental franchisors.

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Section A. Sections 332.011 and 332.321, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 332.011 and 332.321, to read as follows:

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

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

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

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

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

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

(6) **"Dental franchisor", any person or entity, under a valid franchise agreement, who provides a licensed dentist any dental practice management services, which may include billing services, marketing or advertising services, trademark licensing, signage or branding consulting, or places in possession of a licensed dentist such dental material or equipment as may be necessary for the management of a dental office on the basis of a lease**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **or any other agreement for compensation. A person or entity is not a dental franchisor if**
19 **the agreement with the dentist:**

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

23 **(b) Contains terms that would constitute a violation of the dental practices act,**
24 **rules and regulations adopted by the board, any orders and directives issued by the board,**
25 **or any other applicable law;**

26 **(7) "Expanded-functions dental assistant", any dental assistant who has passed a basic**
27 **dental assisting skills mastery examination or a certified dental assistant, either of whom has**
28 **successfully completed a board-approved expanded-functions course, passed a competency**
29 **examination, and has obtained a permit authorizing them to perform expanded-functions duties**
30 **from the Missouri dental board;**

31 **[~~(7)~~] (8) "Expanded-functions duties", reversible acts that would be considered the**
32 **practice of dentistry as defined in section 332.071 that the board specifies by rule may be**
33 **delegated to a dental assistant or dental hygienist who possesses an expanded-functions permit.**

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

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

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

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

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

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

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

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

31 (c) Reporting charges for services not rendered;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

67 (c) Any misleading or deceptive claims of patient cure, relief or improved condition;
68 superiority in service, treatment or materials; new or improved service, treatment or material; or
69 reduced costs or greater savings.

70 Nothing herein shall be construed to make it unlawful to use any such claim if it is readily
71 verifiable by existing documentation, data or other substantial evidence. Any claim that exceeds
72 or exaggerates the scope of its supporting documentation, data or evidence is misleading or
73 deceptive;

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

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

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

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

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

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

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

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

100 (a) **Make payment of fees or royalties for services to a dental franchisor, as defined**
101 **under section 332.011; or**

102 (b) **Practice** in a partnership or as a corporation organized pursuant to the provisions of
103 chapter 356 to distribute profits in accordance with his or her stated agreement;

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

107 (20) Being unable to practice as a dentist, specialist or hygienist with reasonable skill
108 and safety to patients by reasons of professional incompetency, or because of illness,
109 drunkenness, excessive use of drugs, narcotics, chemicals, or as a result of any mental or physical
110 condition. In enforcing this subdivision the board shall, after a hearing before the board, upon
111 a finding of probable cause, require the dentist or specialist or hygienist to submit to a
112 reexamination for the purpose of establishing his or her competency to practice as a dentist,
113 specialist or hygienist, which reexamination shall be conducted in accordance with rules adopted
114 for this purpose by the board, including rules to allow the examination of the dentist's, specialist's
115 or hygienist's professional competence by at least three dentists or fellow specialists, or to submit
116 to a mental or physical examination or combination thereof by at least three physicians. One
117 examiner shall be selected by the dentist, specialist or hygienist compelled to take examination,
118 one selected by the board, and one shall be selected by the two examiners so selected. Notice
119 of the physical or mental examination shall be given by personal service or registered mail.
120 Failure of the dentist, specialist or hygienist to submit to the examination when directed shall
121 constitute an admission of the allegations against him or her, unless the failure was due to
122 circumstances beyond his or her control. A dentist, specialist or hygienist whose right to practice
123 has been affected pursuant to this subdivision shall, at reasonable intervals, be afforded an
124 opportunity to demonstrate that he or she can resume competent practice with reasonable skill
125 and safety to patients.

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

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

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

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

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

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

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

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

4. If the board concludes that a dentist or dental hygienist has committed an act or is engaging in a course of conduct that would be grounds for disciplinary action and constitutes a clear and present danger to the public health and safety, the board may file a complaint before

162 the administrative hearing commission requesting an expedited hearing and specifying the
163 conduct that gives rise to the danger and the nature of the proposed restriction or suspension of
164 the dentist's or dental hygienist's license. Within fifteen days after service of the complaint on
165 the dentist or dental hygienist, the administrative hearing commission shall conduct a preliminary
166 hearing to determine whether the alleged conduct of the dentist or dental hygienist appears to
167 constitute a clear and present danger to the public health and safety that justifies that the dentist's
168 or dental hygienist's license be immediately restricted or suspended. The burden of proving that
169 a dentist or dental hygienist is a clear and present danger to the public health and safety shall be
170 upon the Missouri dental board. The administrative hearing commission shall issue its decision
171 immediately after the hearing and shall either grant to the board the authority to suspend or
172 restrict the license or dismiss the action.

173 5. If the administrative hearing commission grants temporary authority to the board to
174 restrict or suspend a dentist's or dental hygienist's license, the dentist or dental hygienist named
175 in the complaint may request a full hearing before the administrative hearing commission. A
176 request for a full hearing shall be made within thirty days after the administrative hearing
177 commission issues a decision. The administrative hearing commission shall, if requested by a
178 dentist or dental hygienist named in the complaint, set a date to hold a full hearing under chapter
179 621 regarding the activities alleged in the initial complaint filed by the board. The administrative
180 hearing commission shall set the date for full hearing within ninety days from the date its
181 decision was issued. Either party may request continuances, which shall be granted by the
182 administrative hearing commission upon a showing of good cause by either party or consent of
183 both parties. If a request for a full hearing is not made within thirty days, the authority to impose
184 discipline becomes final and the board shall set the matter for hearing in accordance with section
185 621.110.

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

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

195 8. At all proceedings for the enforcement of these or any other provisions of this chapter
196 the board shall, as it deems necessary, select, in its discretion, either the attorney general or one

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

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

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