

SECOND REGULAR SESSION

# HOUSE BILL NO. 1464

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES LAGER (Sponsor), WASSON, STEFANICK,  
RUESTMAN AND PAGE (Co-sponsors).

Read 1<sup>st</sup> time February 11, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4505L.011

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### 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.

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*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  
2 repealed and six new sections enacted in lieu thereof, to be known as sections 332.032, 332.051,  
3 332.071, 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  
2 or secretary of the board shall administer oaths, subpoena witnesses, issue subpoenas duces  
3 tecum, and require production of documents and records pertaining to the practice of  
4 dentistry. Subpoenas, including subpoenas duces tecum, shall be served by a person  
5 authorized to serve subpoenas of courts of record. In lieu of requiring attendance of a  
6 person to produce original documents in response to a subpoena duces tecum, the board  
7 may require sworn copies of such documents to be filed with it or delivered to its  
8 designated representative.**

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

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

16 **shall proceed to enforce the subpoena in the same manner as though the subpoena had**  
17 **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,  
2 where its records and files shall be kept.

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

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

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

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

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

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

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

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

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

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

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

25 the person's benefit or for the benefit of any other person or other entity any card, directory,  
26 poster, sign or any other means by which the person indicates or implies or represents that the  
27 person is willing or able to perform any type of dental services or operation for any person;

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

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

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

44 [(12)] (13) Attempts to or does place any substitute described in subdivision [(11)] (12)  
45 of this section in a human mouth or attempts to or professes to adjust any substitute or delivers  
46 any substitute to any person other than the dentist upon whose order the work in producing the  
47 substitute was performed;

48 [(13)] (14) Advertises, solicits, or offers to or does sell or deliver any substitute  
49 described in subdivision (11) of this section or offers to or does sell the person's services in  
50 constructing, reproducing, supplying or repairing the substitute to any person other than a  
51 registered and licensed dentist in Missouri;

52 [(14)] (15) Undertakes to do or perform any physical evaluation of a patient in the  
53 person's office or in a hospital, clinic, or other medical or dental facility prior to or incident to  
54 the performance of any dental services, dental operations, or dental surgery.

55 (16) **Reviews examination findings, x-rays, or other patient data to make judgments**  
56 **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**  
2 **dental services** as defined in section 332.071 unless and until the board has issued to the person  
3 a certificate certifying that the person has been duly registered as a dentist in Missouri **or to an**  
4 **entity that has been duly registered to provide dental services by licensed dentists and**

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

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

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

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

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

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

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

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

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

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

38 **(a) The United States armed forces;**

39 **(b) The United States Public Health Service;**

40 **(c) Migrant, community, or health care for the homeless health centers provided**

41 in section 330 of the Public Health Service Act (42 U.S.C. 254b), as amended;

42 (d) Federally qualified health centers as defined in section 1905(1) (42 U.S.C.  
43 1396d(1)) of the Social Security Act, as amended; or

44 (e) The United States Veterans Bureau.

45 2. No corporation shall practice dentistry as defined in section 332.071 unless that  
46 corporation is organized under the provisions of chapter 356[, RSMo] or 355, RSMo, provided  
47 that a corporation organized under the provisions of chapter 355, RSMo, and qualifying  
48 as an organization under 26 U.S.C. Section 501(c)(3), as amended, shall only employ  
49 dentists and dental hygienists licensed in this state to render dental services to medicaid  
50 recipients, low-income individuals who have available income below two hundred percent  
51 of the federal poverty level, and participants in the healthcare program under sections  
52 208.631 to 208.657, RSMo, unless such limitation is contrary to or inconsistent with federal  
53 or state law or regulation.

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

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

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

70 6. Any person or entity that obtains a permit to render dental services in this state  
71 is subject to discipline under section 332.321. If the board concludes that the person or  
72 entity has committed an act or is engaging in a course of conduct that would be grounds  
73 for disciplinary action, the board may file a complaint before the administrative hearing  
74 commission. The board may refuse to issue or renew the permit of any entity for one or  
75 any combination of causes stated in subsection 2 of section 332.321. The board shall notify  
76 the applicant in writing of the reasons for the refusal and shall advise the applicant of his

77 or her right to file a complaint with the administrative hearing commission as provided by  
78 chapter 621, RSMo.

79 7. The board may promulgate rules and regulations to ensure not-for-profit  
80 corporations are rendering care to the patient populations as set forth herein, including  
81 requirements for covered not-for-profit corporations to report patient census data to the  
82 board.

83 8. All not-for-profit corporations organized or operated under the provisions of  
84 chapter 355, RSMo, and qualifying as an organization under 26 U.S.C. Section 501(c), as  
85 amended, or the requirements relating to migrant, community, or health care for the  
86 homeless health centers provided in Section 330 of the Public Health Service Act (42 U.S.C.  
87 254b), as amended, and federally qualified health centers as defined in Section 1905(1) (42  
88 U.S.C. 1396d(1)) of the Social Security Act, as amended, that employ persons who practice  
89 dentistry or dental hygiene in this state shall do so in accordance with the relevant laws of  
90 this state except to the extent that such laws are contrary to, or inconsistent with, federal  
91 statute or regulation.

332.111. Any person who practices dentistry as defined in section 332.071, or as a  
2 dental hygienist as defined in section 332.091, who is not [a] duly registered and currently  
3 licensed [dentist] in Missouri as hereinafter provided, [or any person who practices as a dental  
4 hygienist as defined in section 332.091 who is not a duly registered and currently licensed dental  
5 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,  
2 a court of general jurisdiction may grant an injunction, restraining order, or other order as may  
3 be appropriate to enjoin a person [or], corporation, firm, or other entity from:

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

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

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

14

15 Nothing in this subsection shall be so construed as to make it unlawful for not-for-profit  
16 organizations to enforce employment contracts, corporate policy and procedure manuals,

17 **or quality improvement or assurance requirements.**

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

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