

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for
2 Senate Bill No. 843, Page 46, Section 332.086, Line 37, by inserting immediately after said line the
3 following:
4

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

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

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

19 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or
20 nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States,
21 for any offense reasonably related to the qualifications, functions or duties of any profession
22 licensed or regulated 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, whether or not sentence
24 is imposed;

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

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

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

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

35 (c) Reporting charges for services not rendered;

36 (d) Incorrectly reporting services rendered for the purpose of obtaining payment that is

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greater than that to which the person is entitled;

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

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

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

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

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

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

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

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

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

(13) Violation of any professional trust or confidence;

(14) Use of any advertisement or solicitation that is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed. For the purposes of this section, "advertising" shall mean any communication specified in subdivision (9) of section 332.071. False, misleading or deceptive advertisements or solicitations shall include, but not be limited to:

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

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

(c) Any misleading or deceptive claims of patient cure, relief or improved health condition; superiority in service, treatment or materials; new or improved service, treatment or material; or reduced costs or greater savings. Nothing herein shall be construed to make it unlawful to use any such claim if it is readily verifiable by existing documentation, data or other substantial evidence. Any claim that exceeds or exaggerates the scope of its supporting documentation, data or evidence is misleading or deceptive;

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

(e) Any announcement in any form including the term "specialist" or the phrase "limited to

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

(f) Any announcement containing any of the terms denoting recognized specialties, or other descriptive terms carrying the same meaning, unless the announcement clearly designates by list each dentist not licensed as a specialist in Missouri who is sponsoring or named in the announcement, or employed by the entity sponsoring the announcement, after the following clearly legible, with print equal to or larger than the announcement of services, or audible, with speech volume and pace equal to the announcement of services, statement: "Notice: the following dentist(s) in this practice is (are) not licensed in Missouri as specialists in the advertised dental specialty(s) of _____";

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

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

(i) Any advertisement denoting the use of sedation services permitted by the board under section 332.362 using any term other than deep sedation, general anesthesia, or moderate sedation. Such terms may only be used in the announcement or advertisement of sedation services if the advertising dentist is duly permitted to use deep sedation, general anesthesia, or moderate sedation under section 332.362;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 4. If the board concludes that a dentist or dental hygienist has committed an act or is
36 engaging in a course of conduct that would be grounds for disciplinary action and constitutes a clear
37 and present danger to the public health and safety, the board may file a complaint before the
38 administrative hearing commission requesting an expedited hearing and specifying the conduct that
39 gives rise to the danger and the nature of the proposed restriction or suspension of the dentist's or
40 dental hygienist's license. Within fifteen days after service of the complaint on the dentist or dental
41 hygienist, the administrative hearing commission shall conduct a preliminary hearing to determine
42 whether the alleged conduct of the dentist or dental hygienist appears to constitute a clear and
43 present danger to the public health and safety that justifies that the dentist's or dental hygienist's
44 license be immediately restricted or suspended. The burden of proving that a dentist or dental
45 hygienist is a clear and present danger to the public health and safety shall be upon the Missouri
46 dental board. The administrative hearing commission shall issue its decision immediately after the
47 hearing and shall either grant to the board the authority to suspend or restrict the license or dismiss
48 the action.

1 5. If the administrative hearing commission grants temporary authority to the board to
2 restrict or suspend a dentist's or dental hygienist's license, the dentist or dental hygienist named in
3 the complaint may request a full hearing before the administrative hearing commission. A request
4 for a full hearing shall be made within thirty days after the administrative hearing commission
5 issues a decision. The administrative hearing commission shall, if requested by a dentist or dental
6 hygienist named in the complaint, set a date to hold a full hearing under chapter 621 regarding the
7 activities alleged in the initial complaint filed by the board. The administrative hearing commission
8 shall set the date for full hearing within ninety days from the date its decision was issued. Either
9 party may request continuances, which shall be granted by the administrative hearing commission
10 upon a showing of good cause by either party or consent of both parties. If a request for a full
11 hearing is not made within thirty days, the authority to impose discipline becomes final and the
12 board shall set the matter for hearing in accordance with section 621.110.

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

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

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

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

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33 Further amend said bill by amending the title, enacting clause, and intersectional references
34 accordingly.