



Adopted in House Comm. on Apr 11, 2006

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LRB094 07052 RAS 58282 a

1 AMENDMENT TO SENATE BILL 279

2 AMENDMENT NO. _____. Amend Senate Bill 279 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Dental Practice Act is amended by
5 changing Sections 37 and 38.1 and by adding Section 38.2 as
6 follows:

7 (225 ILCS 25/37) (from Ch. 111, par. 2337)

8 (Section scheduled to be repealed on January 1, 2016)

9 Sec. 37. Unlicensed practice; injunctions. The practice of
10 dentistry by any person not holding a valid and current license
11 under this Act is declared to be inimical to the public
12 welfare, to constitute a public nuisance, and to cause
13 irreparable harm to the public welfare.

14 A person is considered to practice dentistry who:

15 (1) employs a dentist, dental hygienist, or other
16 entity which can provide dental services under this Act;

17 (2) directs or controls the use of any dental equipment
18 or material while such equipment or material is being used
19 for the provision of dental services, provided that this
20 provision shall not be construed to prohibit a person from
21 obtaining professional advice or assistance in obtaining
22 or from leasing the equipment or material, provided the
23 advice, assistance, or lease does not restrict or interfere
24 with the custody, control, or use of the equipment or

1 material by the person;

2 (3) directs, controls or interferes with a dentist's or
3 dental hygienist's clinical judgment; or

4 (4) exercises direction or control, by written
5 contract, license, or otherwise, over a dentist, dental
6 hygienist, or other entity which can provide dental
7 services under this Act in the selection of a course of
8 treatment; limitation of patient referrals; content of
9 patient records; policies and decisions relating to
10 refunds (if the refund payment would be reportable under
11 federal law to the National Practitioner Data Bank) and
12 warranties and the clinical content of advertising; and
13 final decisions relating to employment of dental
14 assistants and dental hygienists. Nothing in this Act
15 shall, however, be construed as prohibiting the seeking or
16 giving of advice or assistance with respect to these
17 matters.

18 The purpose of this Section is to prevent a non-dentist
19 from influencing or otherwise interfering with the exercise of
20 independent professional judgment by a dentist, dental
21 hygienist, or other entity which can provide dental services
22 under this Act. Nothing in this Section shall be construed to
23 prohibit insurers and managed care plans from operating
24 pursuant to the applicable provisions of the Illinois Insurance
25 Code under which the entities are licensed.

26 The Director, the Attorney General, the State's attorney of
27 any county in the State, or any person may maintain an action
28 in the name of the People of the State of Illinois, and may
29 apply for injunctive relief in any circuit court to enjoin such
30 person from engaging in such practice; and upon the filing of a
31 verified petition in such court, the court if satisfied by
32 affidavit, or otherwise, that such person has been engaged in
33 such practice without a valid and current license so to do, may
34 enter a temporary restraining order without notice or bond,

1 enjoining the defendant from such further practice. Only the
2 showing of non-licensure, by affidavit or otherwise, is
3 necessary in order for a temporary injunction to issue. A copy
4 of the verified complaint shall be served upon the defendant
5 and the proceedings shall thereafter be conducted as in other
6 civil cases except as modified by this Section. If it is
7 established that the defendant has been, or is engaged in such
8 unlawful practice, the court may enter an order or judgment
9 perpetually enjoining the defendant from further such
10 practice. In all proceedings hereunder the court, in its
11 discretion, may apportion the costs among the parties
12 interested in the action, including cost of filing the
13 complaint, service of process, witness fees and expenses, court
14 reporter charges and reasonable attorneys' fees. In case of
15 violation of any injunctive order entered under the provisions
16 of this Section, the court may summarily try and punish the
17 offender for contempt of court. Such injunction proceedings
18 shall be in addition to, and not in lieu of, all penalties and
19 other remedies provided in this Act.

20 This Section does not apply to an executor, administrator,
21 guardian, or authorized representative contracting with
22 another dentist or dentists to continue the operations of a
23 deceased or incapacitated dentist's practice under Section
24 38.2 of this Act.

25 (Source: P.A. 91-520, eff. 1-1-00.)

26 (225 ILCS 25/38.1)

27 (Section scheduled to be repealed on January 1, 2016)

28 Sec. 38.1. Prohibition against interference by
29 non-dentists. The purpose of this Section is to ensure that
30 each dentist or dental hygienist practicing in this State meets
31 minimum requirements for safe practice without clinical
32 interference by persons not licensed under this Act. It is the
33 legislative intent that dental services be provided only in

1 accordance with the provisions of this Act and not be delegated
2 to unlicensed persons.

3 Unless otherwise authorized by this Act, a dentist or
4 dental hygienist is prohibited from providing dental services
5 in this State, if the dentist or dental hygienist:

6 (1) is employed by any person other than a dentist to
7 provide dental services, except as set forth in Section
8 38.2 of this Act; or

9 (2) allows any person other than another dentist to
10 direct, control, or interfere with the dentist's or dental
11 hygienist's clinical judgment. Clinical judgment shall
12 include but not be limited to such matters as the dentist's
13 or dental hygienist's selection of a course of treatment,
14 limitation of patient referrals, content of patient
15 records, policies and decisions relating to refunds (if the
16 refund payment would be reportable under federal law to the
17 National Practitioner Data Bank) and warranties and the
18 clinical content of advertising, and final decisions
19 relating to employment of dental assistants and dental
20 hygienists. This paragraph shall not be construed to limit
21 a patient's right of informed consent. An executor,
22 administrator, guardian, or authorized representative
23 contracting with another dentist or dentists to continue
24 the operations of a deceased or incapacitated dentist's
25 practice under Section 38.2 of this Act who violates this
26 paragraph (2) is subject to the civil penalties set forth
27 in Section 8.5 of this Act.

28 (Source: P.A. 91-520, eff. 1-1-00.)

29 (225 ILCS 25/38.2 new)

30 (Section scheduled to be repealed on January 1, 2016)

31 Sec. 38.2. Death or incapacitation of dentist.

32 (a) The executor or administrator of a dentist's estate or
33 the legal guardian or authorized representative of a dentist

1 who has become incapacitated may contract with another dentist
2 or dentists to continue the operations of the deceased or
3 incapacitated dentist's practice (if the practice of the
4 deceased or incapacitated dentist is a sole proprietorship, a
5 corporation where the deceased or incapacitated dentist is the
6 sole shareholder, or a limited liability company where the
7 deceased or incapacitated dentist is the sole member) for a
8 period of no more than one year from the time of death or
9 incapacitation of the dentist or until the practice is sold,
10 whichever occurs first, if all the following conditions are
11 met:

12 (1) The executor, administrator, guardian, or
13 authorized representative executes and files with the
14 Department a notification of death or incapacitation on a
15 form provided by the Department, which notification shall
16 include the following:

17 (A) the name and license number of the deceased or
18 incapacitated dentist;

19 (B) the name and address of the dental practice;

20 (C) the name, address, and tax identification
21 number of the estate;

22 (D) the name and license number of each dentist who
23 will operate the dental practice; and

24 (E) an affirmation, under penalty of perjury, that
25 the information provided is true and correct and that
26 the executor, administrator, guardian, or authorized
27 representative understands that any interference by
28 the executor, administrator, guardian, or authorized
29 representative or any agent or assignee of the
30 executor, administrator, guardian, or authorized
31 representative with the contracting dentist's or
32 dentists' practice of dentistry or professional
33 judgment or any other violation of this Section is
34 grounds for an immediate termination of the operations

1 of the dental practice.

2 (2) Within 30 days after the death or incapacitation of
3 a dentist, the executor, administrator, guardian, or
4 authorized representative shall send notification of the
5 death or incapacitation by mail to the last known address
6 of each patient of record that has seen the deceased or
7 incapacitated dentist within the previous 12 months, with
8 an explanation of how copies of the practitioner's records
9 may be obtained. This notice may also contain any other
10 relevant information concerning the continuation of the
11 dental practice.

12 Continuation of the operations of the dental practice of a
13 deceased or incapacitated dentist shall not begin until the
14 provisions of this subsection (a) have been met.

15 (b) The Secretary may terminate the operations of a dental
16 practice operating pursuant to this Section if the Department
17 has evidence of a violation of this Section or Section 23 or 24
18 of this Act. The Secretary must conduct a hearing before
19 terminating the operations of a dental practice operating
20 pursuant to this Section. At least 15 days before the hearing
21 date, the Department (i) must notify, in writing, the executor,
22 administrator, guardian, or authorized representative at the
23 address provided, pursuant to item (C) of subdivision (1) of
24 subsection (a) of this Section, and to the contracting dentist
25 or dentists at the address of the dental practice provided
26 pursuant to item (B) of subdivision (1) of subsection (a) of
27 this Section, of any charges made and of the time and place of
28 the hearing on the charges before the Secretary or hearing
29 officer, as provided in Section 30 of this Act, (ii) direct the
30 executor, administrator, guardian, or authorized
31 representative to file his or her written answer to such
32 charges with the Secretary under oath within 10 days after the
33 service on the executor, administrator, guardian, or
34 authorized representative of the notice, and (iii) inform the

1 executor, administrator, guardian, or authorized
2 representative that if he or she fails to file such answer, a
3 default judgment will be entered against him or her and the
4 operations of the dental practice shall be terminated.

5 (c) If the Secretary finds that evidence in his or her
6 possession indicates that a violation of this Section or
7 Section 23 or 24 of this Act constitutes an immediate threat to
8 the public health, safety, or welfare, the Secretary may
9 immediately terminate the operations of the dental practice
10 without a hearing. Upon service by certified mail to the
11 executor, or guardian, at the address provided pursuant to item
12 (C) of subdivision (1) of subsection (a) of this Section, and
13 the contracting dentist or dentists, at the address of the
14 dental practice provided pursuant to item (B) of subdivision
15 (1) of subsection (a) of this Section, of notice of an order
16 immediately terminating the operations of the dental practice,
17 the executor or guardian may petition the Department within 30
18 days for a hearing to take place within 30 days after the
19 petition is filed.

20 (d) The Department may require, by rule, the submission to
21 the Department of any additional information necessary for the
22 administration of this Section."