

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

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

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

(Section scheduled to be repealed on January 1, 2016)

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

A person is considered to practice dentistry who:

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

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

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

(4) exercises direction or control, by written contract, license, or otherwise, over a dentist, dental hygienist, or other entity which can provide dental services under this Act in the selection of a course of treatment; limitation of patient referrals; content of

patient records; policies and decisions relating to refunds (if the refund payment would be reportable under federal law to the National Practitioner Data Bank) and warranties and the clinical content of advertising; and final decisions relating to employment of dental assistants and dental hygienists. Nothing in this Act shall, however, be construed as prohibiting the seeking or giving of advice or assistance with respect to these matters.

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

The Director, the Attorney General, the State's attorney of any county in the State, or any person may maintain an action in the name of the People of the State of Illinois, and may apply for injunctive relief in any circuit court to enjoin such person from engaging in such practice; and upon the filing of a verified petition in such court, the court if satisfied by affidavit, or otherwise, that such person has been engaged in such practice without a valid and current license so to do, may enter a temporary restraining order without notice or bond, enjoining the defendant from such further practice. Only the showing of non-licensure, by affidavit or otherwise, is necessary in order for a temporary injunction to issue. A copy of the verified complaint shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases except as modified by this Section. If it is established that the defendant has been, or is engaged in such unlawful practice, the court may enter an order or judgment perpetually enjoining the defendant from further such practice. In all proceedings hereunder the court, in its

discretion, may apportion the costs among the parties interested in the action, including cost of filing the complaint, service of process, witness fees and expenses, court reporter charges and reasonable attorneys' fees. In case of violation of any injunctive order entered under the provisions of this Section, the court may summarily try and punish the offender for contempt of court. Such injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided in this Act.

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

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

(225 ILCS 25/38.1)

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

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

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

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

(2) allows any person other than another dentist to direct, control, or interfere with the dentist's or dental hygienist's clinical judgment. Clinical judgment shall include but not be limited to such matters as the dentist's

or dental hygienist's selection of a course of treatment, limitation of patient referrals, content of patient records, policies and decisions relating to refunds (if the refund payment would be reportable under federal law to the National Practitioner Data Bank) and warranties and the clinical content of advertising, and final decisions relating to employment of dental assistants and dental hygienists. This paragraph shall not be construed to limit a patient's right of informed consent. An executor, administrator, guardian, or authorized representative contracting with another dentist or dentists to continue the operations of a deceased or incapacitated dentist's practice under Section 38.2 of this Act who violates this paragraph (2) is subject to the civil penalties set forth in Section 8.5 of this Act.

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

(225 ILCS 25/38.2 new)

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

Sec. 38.2. Death or incapacitation of dentist.

(a) The executor or administrator of a dentist's estate or the legal guardian or authorized representative of a dentist who has become incapacitated may contract with another dentist or dentists to continue the operations of the deceased or incapacitated dentist's practice (if the practice of the deceased or incapacitated dentist is a sole proprietorship, a corporation where the deceased or incapacitated dentist is the sole shareholder, or a limited liability company where the deceased or incapacitated dentist is the sole member) for a period of no more than one year from the time of death or incapacitation of the dentist or until the practice is sold, whichever occurs first, if all the following conditions are met:

(1) The executor, administrator, guardian, or authorized representative executes and files with the Department a notification of death or incapacitation on a

form provided by the Department, which notification shall include the following:

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

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

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

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

(E) an affirmation, under penalty of perjury, that the information provided is true and correct and that the executor, administrator, guardian, or authorized representative understands that any interference by the executor, administrator, guardian, or authorized representative or any agent or assignee of the executor, administrator, guardian, or authorized representative with the contracting dentist's or dentists' practice of dentistry or professional judgment or any other violation of this Section is grounds for an immediate termination of the operations of the dental practice.

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

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

(b) The Secretary may terminate the operations of a dental practice operating pursuant to this Section if the Department

has evidence of a violation of this Section or Section 23 or 24 of this Act. The Secretary must conduct a hearing before terminating the operations of a dental practice operating pursuant to this Section. At least 15 days before the hearing date, the Department (i) must notify, in writing, the executor, administrator, guardian, or authorized representative at the address provided, pursuant to item (C) of subdivision (1) of subsection (a) of this Section, and to the contracting dentist or dentists at the address of the dental practice provided pursuant to item (B) of subdivision (1) of subsection (a) of this Section, of any charges made and of the time and place of the hearing on the charges before the Secretary or hearing officer, as provided in Section 30 of this Act, (ii) direct the executor, administrator, guardian, or authorized representative to file his or her written answer to such charges with the Secretary under oath within 10 days after the service on the executor, administrator, guardian, or authorized representative of the notice, and (iii) inform the executor, administrator, guardian, or authorized representative that if he or she fails to file such answer, a default judgment will be entered against him or her and the operations of the dental practice shall be terminated.

(c) If the Secretary finds that evidence in his or her possession indicates that a violation of this Section or Section 23 or 24 of this Act constitutes an immediate threat to the public health, safety, or welfare, the Secretary may immediately terminate the operations of the dental practice without a hearing. Upon service by certified mail to the executor, administrator, guardian, or authorized representative, at the address provided pursuant to item (C) of subdivision (1) of subsection (a) of this Section, and the contracting dentist or dentists, at the address of the dental practice provided pursuant to item (B) of subdivision (1) of subsection (a) of this Section, of notice of an order immediately terminating the operations of the dental practice, the executor, administrator, guardian, or authorized

representative may petition the Department within 30 days for a hearing to take place within 30 days after the petition is filed.

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