

1 AN ACT concerning regulation.

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

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8 (Section scheduled to be repealed on January 1, 2016)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
25 material by the person;

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

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

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

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

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

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

10 This Section does not apply to an executor, administrator,
11 guardian, or authorized representative contracting with
12 another dentist or dentists to continue the operations of a
13 deceased or incapacitated dentist's practice under Section
14 38.2 of this Act.

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

16 (225 ILCS 25/38.1)

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

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

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

29 (1) is employed by any person other than a dentist to
30 provide dental services, except as set forth in Section
31 38.2 of this Act; or

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

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

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

17 (225 ILCS 25/38.2 new)

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

19 Sec. 38.2. Death or incapacitation of dentist.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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