

By: Zerwas

H.B. No. 2330

A BILL TO BE ENTITLED

AN ACT

relating to the right of a dentist to contract for certain services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 251, Occupations Code, is amended by adding Section 251.0041 to read as follows:

Sec. 251.0041. IMPROPER INFLUENCE ON PROFESSIONAL JUDGMENT. (a) In this section, the term "dentist" includes:

(1) a dentist licensed by the board;

(2) a professional corporation wholly owned by one or more dentists licensed by the board; and

(3) a professional entity that provides dental services and is owned solely by one or more dentists licensed by the board.

(b) A dentist who enters into any contract or other agreement that allows a person other than a dentist one or more of the following rights or authorities is presumed to have allowed the other person to control, influence, or otherwise interfere with the exercise of the dentist's independent professional judgment regarding the diagnosis or treatment of a dental disease, disorder, or physical condition:

(1) controlling, owning, or setting any conditions for access to or the specific contents of dental records of patients of a dentist;

(2) setting a maximum or other standardized time for

- 1 the performance of specific dental procedures;  
2 (3) placing any limitation or requirement on  
3 treatments, referrals, or consultations except those based on the  
4 professional judgment of the dentist;  
5 (4) limiting or imposing requirements concerning the  
6 type or scope of dental treatment, procedures, or services that may  
7 be recommended, prescribed, directed, or performed, except that a  
8 dentist may limit the dentist's practice, or the practice of a  
9 dentist employed by or contracting with the dentist, to certain  
10 procedures or the treatment of certain dental diseases;  
11 (5) limiting or imposing requirements concerning the  
12 supplies, instruments, or equipment deemed reasonably necessary by  
13 a dentist to provide diagnoses and treatment of the patients of the  
14 dentist, including a restriction on the use of a dentist's money for  
15 the purchase of supplies, instruments, or equipment;  
16 (6) limiting or imposing requirements for the  
17 professional training deemed necessary by the dentist to properly  
18 serve the patients of the dentist;  
19 (7) directing or influencing the selection of specific  
20 diagnostic examinations and treatments or practices regarding  
21 patients without due regard to the recommended diagnostic  
22 examinations and treatment agreed upon by the dentist and the  
23 patient, except that a dentist having the responsibility for  
24 training or supervising another dentist may reasonably limit  
25 treatments or practices as a part of the training or supervision of  
26 a dentist based upon the training and competency of a dentist to  
27 perform certain treatments or practices;

1           (8) limiting or determining the duties of  
2 professional, clinical, or other personnel employed to assist a  
3 dentist in the practice of dentistry;

4           (9) establishing professional standards, protocols,  
5 or practice guidelines which, in the professional judgment of the  
6 dentist providing dental service to the dentist's patient, conflict  
7 with generally accepted standards within the dental profession;

8           (10) encouraging impermissible referrals from  
9 unlicensed persons in consideration of a fee;

10           (11) placing limitations or conditions upon  
11 communications that are clinical in nature with the dentist's  
12 patients;

13           (12) precluding or restricting a dentist's ability to  
14 exercise independent professional judgment over all qualitative  
15 and quantitative aspects of the delivery of dental care;

16           (13) scheduling patients of the dentist in a manner  
17 that may have the effect of discouraging new patients from coming  
18 into the dentist's practice or postponing future appointments or  
19 giving scheduling preference to an individual, class, or group;

20           (14) penalizing a dentist for reporting violations of  
21 a law regulating the practice of dentistry;

22           (15) conditioning the payment of fees to a dentist or  
23 the amount of management fees a dentist must pay on the referral of  
24 patients to other health care providers specified by a non-dentist;  
25 or

26           (16) interfering with a dentist's decision regarding  
27 the refund of any payment made by a patient for dental services.

1        (c) If a person who is not a dentist enters into any contract  
2 or other agreement with a dentist that allows the person one or more  
3 of the following rights or authorities, the person is presumed not  
4 to have engaged in the practice of dentistry as defined by Section  
5 251.003 without a license or to have been allowed to control,  
6 influence, or otherwise interfere with the exercise of the  
7 dentist's independent professional judgment regarding the  
8 diagnosis or treatment of any dental disease, disorder, or physical  
9 condition:

10            (1) leases, mortgages, ownership agreements, or other  
11 arrangements regarding use of space for dental offices based on a  
12 fee or amount that is reasonably related to the fair market value of  
13 the office space at the time the lease or other arrangement is  
14 entered into;

15            (2) the purchase, sale, financing, or lease of dental  
16 equipment, instruments, and supplies as long as the dentist  
17 maintains the complete care, custody, and control of the dental  
18 equipment, instruments, and supplies and the lease does not provide  
19 for a payment or fee based upon a percentage of the revenue received  
20 by the dentist or the dental practice;

21            (3) accounting, bookkeeping, banking, investment, or  
22 similar financial services, including services related to the  
23 payment of invoices, obligations, and debts of a dentist;

24            (4) the financing, lease, use, or ownership of  
25 non-dentist business equipment such as telephones, computers,  
26 software, and general office equipment at reasonable,  
27 market-related fees;

1           (5) services regarding the pledge, collection, or sale  
2 of accounts receivable from patients;

3           (6) billing and collection services;

4           (7) advertising and marketing services as long as the  
5 dentist remains solely responsible for the content of any  
6 advertising or marketing services and for ensuring that the  
7 advertising and marketing services conform to all applicable legal  
8 requirements;

9           (8) consulting and advising regarding professional  
10 development, business practices, and third party payor  
11 arrangements, and the provision of business and other nonclinical  
12 services for the day-to-day operation of a dental office which do  
13 not limit the dentist's ability to use the dentist's independent  
14 professional judgment regarding the diagnosis or treatment of any  
15 dental disease, disorder, or physical condition;

16           (9) employing or retaining the services of personnel  
17 working in a dental office, other than the dentist; or

18           (10) providing loans, capital, or funding to a  
19 dentist, including under a secured arrangement.

20           (d)(1) The presumption established by Subsection (b) may be  
21 rebutted by evidence that the contract or agreement did not result  
22 in a person who is not a dentist controlling, influencing, or  
23 otherwise interfering with the exercise of the dentist's  
24 independent professional judgment regarding the diagnosis or  
25 treatment of any dental disease, disorder, or physical condition.

26           (2) The presumption established by Subsection (c) may  
27 be rebutted by evidence that the contract or agreement actually

1 resulted in a person who is not a dentist controlling, influencing,  
2 or otherwise interfering with the dentist's independent  
3 professional judgment regarding the diagnosis or treatment of any  
4 dental disease, disorder, or physical condition. Evidence is not  
5 admissible to rebut the presumption established by Subsection (c)  
6 if the evidence relates to:

7 (A) the length of the contract or agreement;

8 (B) whether an unlicensed person provides all,  
9 substantially all, or is the exclusive provider of such  
10 undertakings to a dentist or dental office; or

11 (C) subject to the limitations of Subsection  
12 (b)(5), whether the dentist has authorized an unlicensed person to  
13 have signature authority over the dentist's accounts.

14 (e) This rule does not apply to a person or circumstance  
15 described by Section 251.004, 260.001, 260.002, 260.003, or  
16 260.004.

17 SECTION 2. Section 254.0011, Occupations Code, is amended  
18 to read as follows:

19 Sec. 254.0011. RULES RELATING TO CONTROL OF DENTAL  
20 PRACTICE. [~~(a)~~] The board may not adopt rules [~~relating to the~~  
21 ~~practice of dentistry as described by Section 251.003(a)(9)] to~~  
22 prohibit or otherwise restrict [~~a dentist from engaging in~~  
23 ~~contracts that allow a person who is not a dentist to influence or~~  
24 ~~interfere with the exercise of the dentist's independent~~  
25 ~~professional judgment.~~

26 [~~(b) Rules adopted by the board under this subtitle may not~~  
27 ~~preclude~~] a dentist's right to contract with:

1           (1) a management service organization; or  
2           (2) a person for the provision of management services.  
3 ~~[Rules affecting contracts for provision of management services~~  
4 ~~apply the same to dentists contracting with management service~~  
5 ~~organizations and to dentists otherwise contracting for management~~  
6 ~~services.]~~

7           SECTION 3. This Act takes effect September 1, 2015.