

# SENATE BILL REPORT

## SB 5322

As of February 7, 2017

**Title:** An act relating to patient safeguards in agreements between dentists and third parties that provide support services to dentists.

**Brief Description:** Concerning agreements between dentists and third parties that provide supportive services to dentists.

**Sponsors:** Senators King, Frockt, Miloscia, Conway, Hobbs and Becker.

**Brief History:**

**Committee Activity:** Health Care: 1/30/17.

### Brief Summary of Bill

- Establishes requirements for management and personal service agreements between dentists and third parties.
- Prohibits anyone other than professional service corporations, unless previously licensed to practice dentistry in Washington, from owning, maintaining, or operating an office for the practice of dentistry without first obtaining a license.

### SENATE COMMITTEE ON HEALTH CARE

**Staff:** Evan Klein (786-7483)

**Background:** Practice of Dentistry. Dentists are licensed and regulated in Washington by the Dental Quality Assurance Commission (DQAC). The practice of dentistry is defined as:

- representing oneself as being able to diagnose, treat, or remove stains and concretions from teeth; or operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaw;
- offering or undertaking to diagnose, treat, or remove stains or concretions from teeth; operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same; or take impressions of the teeth or jaw;
- owning, maintaining, or operating an office for the practice of dentistry;
- engaging in any of the practices included in the curricula of recognized and approved dental schools or colleges; or

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- professing to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

Corporations are prohibited from practicing dentistry or soliciting dental patronage for dentists employed by a corporation. This restriction does not apply to corporations or associations that furnish information or clerical services to a licensed dentist, so long as the information or services can be furnished by unlicensed persons and the dentist assumes full responsibility for the information and services.

**Summary of Bill:** A dentist or group practice of dentists may enter into agreements with third parties to attain services in support of a dental practice office, so long as:

- there is an agreement set out in writing covering all of the services being offered by the third party;
- the agreement does not exceed a term that is reasonable and necessary, and lasts five years or less;
- the compensation paid to the third party over the term of the agreement be set in advance, be consistent with the fair market value of arm's-length transactions, and does not take into account the volume or value of any referrals between the parties;
- patients of the dentist or group of dentists are fully informed of the agreement; and
- the agreement does not interfere with patient care or the dentist's independent judgement, including any:
  - limitations on length of time spent with a patient;
  - limiting requirements on a dentist's chosen course of treatment;
  - limiting requirements on the use of dental equipment;
  - limitations on professional training;
  - limitations on a dentist's referrals to a specialist;
  - interference with a dentist's right to a patient's records;
  - interference with a dentist's decision to refund any payment;
  - limitation on acceptance of dental benefits;
  - limitation on advertising;
  - interference with the dentist's supervision of staff; or
  - limitation or interference on communications with patients.

A dentist may lease space or equipment from a third party so long as any management or personal service agreement is independent of the space or equipment lease.

DQAC may subpoena an agreement between a dentist or group practice of dentists and a third party if the agreement is probative to a potential violation of the agreement requirements.

Anyone who reports in good faith to any agency or branch of state or local government practices that may constitute the unlicensed practice of dentistry by a person who is party to a management or other personal service agreement is considered a whistleblower.

No person, other than professional service corporations, unless previously licensed to practice dentistry in Washington, shall own, maintain or operate an office for the practice of dentistry without first applying for and obtaining a license.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This bill does allow dentists to contract with DSOs, but includes necessary patient safeguards. It is the role of government to protect its citizens. This bill will prevent large DSO settlements that have entered into in many other states. This bill requires a DSO agreement to be set in two parts to protect the patients of Washington, by allowing dentists to leave a services agreement while maintaining the office space to see their patients. This bill is the least restrictive option brought forward while still protecting patient safety. The dental quality assurance commission has opposed the alternative DSO measure, but does not oppose this bill. This bill protects patients from overzealous practices. The DSO model hides from state authorities the fact that a dentist may be the owner in name only, with no control over the dental practice. A federal report in 2013 stated that profits were coming before patient care in the DSO model. This bill does not keep DSOs out of the state, but allows them to operate in Washington with patient safety in mind. This bill is a collaborative compromise to seek clarity in the dental statutes.

CON: This bill does not modernize the dental practice act. This bill will increase costs, impose inappropriate regulatory requirements, and hurt current models operating in Washington. Current law still requires a dentist and only a dentist to provide dental services and does not allow interference in a dentist's judgement. This bill stands for the notion that corporations can influence and overwhelm dentists. The DQAC currently has broad authority to hold dentists accountable under the dental practice act. This bill is not about patient protections, it is about controlling contractual relationships between business entities. The DSO agreements are no different from other contracts entered into by health care providers. Why does the bill cap agreements at five years? The prohibition of having a lease for equipment and service agreement with the same party effectively shuts down the DSO model. Patient safety should be foremost and there should be no influence over a dentist's clinical judgement through quotas or payment models. However, these concerns should be addressed across all practice settings and all practice models, not just with DSOs.

**Persons Testifying:** PRO: Senator Curtis King, Prime Sponsor; Trent House, Washington State Dental Association; Debra Enneking, dentist; Emily Studebaker, Hall Render; Brady McDonald, dentist.

CON: Melissa Johnson, Willamette Dental Group; Cliff Webster, Association of Dental Support Organizations; Lisa Thatcher, Association of Dental Support Organizations.

**Persons Signed In To Testify But Not Testifying:** No one.