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SB BILL NO. 192

INTRODUCED BY Leutering

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING, FOR A PERIOD OF 12 MONTHS FOR THE PURPOSE OF SELLING THE DENTAL PRACTICE, THE PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED DENTIST OR THE PERSONAL REPRESENTATIVE OF A DISABLED DENTIST TO MANAGE, OWN, OPERATE, OR OTHERWISE CONDUCT AN ESTABLISHMENT WHERE DENTAL SERVICES ARE PROVIDED; PROHIBITING THE PERSONAL REPRESENTATIVE FROM GOVERNING OR INTERFERING WITH THE CLINICAL ASPECTS OF DENTAL PRACTICE; AMENDING SECTIONS 37-4-101, 37-4-102, 37-4-103, AND 37-4-327, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 37-4-101, MCA, is amended to read:

"37-4-101. Definitions -- practice of dentistry. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of dentistry provided for in 2-15-1842.

(b) "Conscious sedation" means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(d) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and

1 (ii) light general anesthesia, which means a level of consciousness in which the patient breathes
2 normally without assistance and retains protective reflexes throughout most of the procedure.

3 (e) "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer,
4 or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia. The term
5 ~~general anesthetic~~ does not include a nitrous oxide/oxygen mixture or any other anesthetic administered
6 to produce conscious sedation.

7 (2) A Except for the provisions of [section 5], a person is "practicing dentistry" under this chapter
8 if he the person:

9 (a) performs, attempts, advertises to perform, causes to be performed by the patient or any other
10 person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind
11 gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to
12 ~~himself~~ the person, any other person, or any agency;

13 (b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral
14 surgery, or dental services are performed, unless the person is the personal representative of the estate of
15 a deceased dentist or the personal representative of a disabled dentist, as provided in [section 5];

16 (c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or
17 repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

18 (d) places the appliance or structure in the human mouth or attempts to adjust it;

19 (e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a
20 prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

21 (f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes
22 to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent
23 structures;

24 (g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct
25 malpositions of teeth or of the jaw;

26 (h) gives or professes to give interpretations or readings of dental roentgenograms;

27 (i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in
28 connection with a dental operation;

29 (j) uses the words "dentist", "dental surgeon", or "oral surgeon", the letters "D.D.S.", "D.M.D.",
30 or any other words, letters, title, or descriptive matter ~~which~~ that in any way represents ~~him~~ the person as

1 being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or
 2 physical condition of human teeth, jaws, or adjacent structures;

3 (k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill,
 4 newspaper, radio, or otherwise, that ~~he~~ the person can perform or will attempt to perform dental operations
 5 or render a diagnosis in connection ~~therewith~~ with dental operations; or

6 (l) engages in any of the practices included in the curricula of recognized dental colleges."
 7

8 **Section 2.** Section 37-4-102, MCA, is amended to read:

9 **"37-4-102. Designations constituting prima facie evidence of practicing dentistry.** Except for the
 10 provisions in [section 5], Whenever any person shall append ~~Whenever any person shall append~~ appending the word "dentist" or the letters
 11 "D.D.S.", "D.M.D.", or ~~like similar~~ like similar letters to ~~his or her~~ a person's name ~~in any way for advertising or upon~~
 12 ~~any door or sign or upon or in any writing or print, publish, or use the same in any way or cause either of~~
 13 ~~the same to be done, the same shall be prima facie evidence that such~~ on a door or a sign, in a printed or
 14 published form, or in any other type of advertisement is prima facie evidence that the person is engaged
 15 in the practice of dentistry and is subject to the regulations, convictions, and penalties of this chapter."
 16

17 **Section 3.** Section 37-4-103, MCA, is amended to read:

18 **"37-4-103. Exemptions.** (1) A dental laboratory or dental technician is not practicing dentistry
 19 under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns,
 20 dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models,
 21 or impressions on which the work is constructed have been made by a regularly licensed and practicing
 22 dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic
 23 appliances are returned to the dentist on whose order the work was constructed.

24 (2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or
 25 surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau
 26 or to a legal practitioner of another state making a clinical demonstration before a dental society,
 27 convention, or association of dentists or to a licensed dental hygienist performing an act authorized under
 28 37-4-401 or 37-4-405.

29 (3) ~~Nothing in this chapter prevents~~ This chapter does not prevent a bona fide faculty member of
 30 a school, college, or department of a university recognized and approved by the board from performing

1 dental procedures necessary to ~~his~~ the faculty member's teaching functions. ~~Nothing in this chapter~~
 2 ~~prevents~~ This chapter does not prevent students from performing dental procedures under the supervision
 3 of a bona fide instructor of a school, college, or department of a university recognized and approved by the
 4 board ~~provided such~~ if the dental procedures are a part of the assigned teaching curriculum.

5 (4) This chapter does not prohibit or require a license with respect to the practice of dentistry
 6 under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in
 7 this chapter apply to a person engaged in the lawful practice of dentistry.

8 (5) This chapter does not require the licensure of or prohibit the personal representative of the
 9 estate of a deceased dentist or the personal representative of a disabled dentist from managing, owning,
 10 operating, or otherwise conducting an establishment where dental operations, oral surgery, or dental
 11 services are provided if the personal representative in either case complies with the provisions of [section
 12 5]."

13
 14 **Section 4.** Section 37-4-327, MCA, is amended to read:

15 **"37-4-327. Practicing dentistry without certificate -- penalty.** (1) ~~A~~ Except as provided in
 16 37-4-101 through 37-4-103, [section 5], and this section, a person who, as principal, agent, employer,
 17 employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a
 18 certificate to practice dentistry from the department entitling ~~him~~ the person to practice in this state is guilty
 19 of a misdemeanor and on conviction in a district court may be fined an amount not less than \$500 or more
 20 than \$1,000 or be confined for a period not exceeding 6 months in the county jail.

21 (2) Fines imposed and collected under this chapter, except those paid to a justice's court, ~~shall~~
 22 must be paid into the treasury of the county in which the suits, actions, or proceedings are commenced.
 23 Money paid into the treasury ~~over and above~~ in excess of the amount necessary to reimburse the county
 24 for expense incurred by the county in a suit, action, or proceeding brought under this chapter ~~shall~~ must
 25 be deposited before January 1 of each year in the state special revenue fund for the use of the board,
 26 subject to 37-1-101(6)."

27
 28 **NEW SECTION. Section 5. Twelve-month period for disposition of deceased or disabled dentist's**
 29 **practice by personal representative -- restrictions.** (1) For the purpose of selling or otherwise disposing of
 30 a deceased or a disabled licensee's dental practice and for a period not to exceed 12 months, a person who

1 is not licensed to practice dentistry but who is the personal representative of the estate of a deceased
2 dentist or the personal representative of a disabled dentist may manage, own, operate, or otherwise
3 conduct an establishment where dental operations, oral surgery, or dental services are provided.

4 (2) A personal representative may not:

5 (a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product,
6 process, or activity as it relates to the delivery of dental care;

7 (b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment
8 over all qualitative and quantitative aspects of the delivery of dental care;

9 (c) allow any person other than a dentist to supervise and control the selection, compensation,
10 terms, conditions, obligations, or privileges of employment or retention of clinical personnel in the dental
11 practice;

12 (d) determine or limit a fee charged by the dentist or limit the methods of payment accepted by a
13 dentist or the dentist's practice; or

14 (e) limit or define the scope of services offered by the dentist.

15 (3) For the purposes of this section:

16 (a) "clinical" means having a significant relationship, whether real or potential, direct or indirect,
17 to the actual rendering or outcome of dental care, the practice of dentistry, or the quality of dental care
18 being rendered to a patient;

19 (b) "disabled" has the same meaning as provided for the term in 15-30-111; and

20 (c) "personal representative" has the same meaning as provided for the term in 72-1-103.

21 (4) The 12-month period provided for in subsection (1) begins when:

22 (a) the personal representative of the estate of a deceased dentist files a verified copy of the death
23 certificate of the deceased with the department; or

24 (b) the personal representative of the disabled dentist files a verified copy of a document signed by
25 a licensed physician that attests to the dentist's disability.

26
27 **NEW SECTION. Section 6. Codification instruction.** [Section 5] is intended to be codified as an
28 integral part of Title 37, chapter 4, part 1, and the provisions of Title 37, chapter 4, part 1, apply to
29 [section 5].
30

1 SENATE BILL NO. 192

2 INTRODUCED BY KEATING

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING, FOR A PERIOD OF 12 MONTHS FOR THE PURPOSE
5 OF SELLING THE DENTAL PRACTICE, THE PERSONAL REPRESENTATIVE OF THE ESTATE OF A
6 DECEASED DENTIST OR THE PERSONAL REPRESENTATIVE OF A DISABLED DENTIST TO MANAGE, OWN,
7 OPERATE, OR OTHERWISE CONDUCT AN ESTABLISHMENT WHERE DENTAL SERVICES ARE PROVIDED;
8 PROHIBITING THE PERSONAL REPRESENTATIVE FROM GOVERNING OR INTERFERING WITH THE
9 CLINICAL ASPECTS OF DENTAL PRACTICE; AMENDING SECTIONS 37-4-101, 37-4-102, 37-4-103, AND
10 37-4-327, MCA; AND PROVIDING AN APPLICABILITY DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 37-4-101, MCA, is amended to read:

15 **"37-4-101. Definitions -- practice of dentistry.** (1) Unless the context requires otherwise, in this
16 chapter, the following definitions apply:

17 (a) "Board" means the board of dentistry provided for in 2-15-1842.

18 (b) "Conscious sedation" means a minimally depressed level of consciousness in which the patient
19 breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or
20 verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form
21 of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring
22 conscious sedation within the scope of general anesthesia.

23 (c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

24 (d) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic
25 agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular
26 relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly,
27 or via the gastrointestinal tract. General anesthesia is divided into:

28 (i) full general anesthesia, which means a level of consciousness in which the patient is without
29 intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query
30 or command; and

1 (ii) light general anesthesia, which means a level of consciousness in which the patient breathes
2 normally without assistance and retains protective reflexes throughout most of the procedure.

3 (e) "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer,
4 or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia. The term
5 ~~general anesthetic~~ does not include a nitrous oxide/oxygen mixture or any other anesthetic administered
6 to produce conscious sedation.

7 (2) ~~A~~ Except for the provisions of [section 5], a person is "practicing dentistry" under this chapter
8 if ~~he~~ the person:

9 (a) performs, attempts, advertises to perform, causes to be performed by the patient or any other
10 person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind
11 gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to
12 ~~himself~~ the person, any other person, or any agency;

13 (b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral
14 surgery, or dental services are performed, unless the person is the personal representative of the estate of
15 a deceased dentist or the personal representative of a disabled dentist, as provided in [section 5];

16 (c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or
17 repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

18 (d) places the appliance or structure in the human mouth or attempts to adjust it;

19 (e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a
20 prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

21 (f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes
22 to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent
23 structures;

24 (g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct
25 malpositions of teeth or of the jaw;

26 (h) gives or professes to give interpretations or readings of dental roentgenograms;

27 (i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in
28 connection with a dental operation;

29 (j) uses the words "dentist", "dental surgeon", or "oral surgeon", the letters "D.D.S.", "D.M.D.",
30 or any other words, letters, title, or descriptive matter ~~which~~ that in any way represents ~~him~~ the person as

1 being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or
 2 physical condition of human teeth, jaws, or adjacent structures;

3 (k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill,
 4 newspaper, radio, or otherwise, that ~~he~~ the person can perform or will attempt to perform dental operations
 5 or render a diagnosis in connection ~~therewith~~ with dental operations; or

6 (l) engages in any of the practices included in the curricula of recognized dental colleges."
 7

8 **Section 2.** Section 37-4-102, MCA, is amended to read:

9 **"37-4-102. Designations constituting prima facie evidence of practicing dentistry.** Except for the
 10 provisions in [section 5], ~~Whenever any person shall append~~ appending the word "dentist" or the letters
 11 "D.D.S.", "D.M.D.", or ~~like~~ similar letters to ~~his or her~~ a person's name ~~in any way for advertising or upon~~
 12 ~~any door or sign or upon or in any writing or print, publish, or use the same in any way or cause either of~~
 13 ~~the same to be done, the same shall be prima facie evidence that such~~ on a door or a sign, in a printed or
 14 published form, or in any other type of advertisement is prima facie evidence that the person is engaged
 15 in the practice of dentistry and is subject to the regulations, convictions, and penalties of this chapter."
 16

17 **Section 3.** Section 37-4-103, MCA, is amended to read:

18 **"37-4-103. Exemptions.** (1) A dental laboratory or dental technician is not practicing dentistry
 19 under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns,
 20 dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models,
 21 or impressions on which the work is constructed have been made by a regularly licensed and practicing
 22 dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic
 23 appliances are returned to the dentist on whose order the work was constructed.

24 (2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or
 25 surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau
 26 or to a legal practitioner of another state making a clinical demonstration before a dental society,
 27 convention, or association of dentists or to a licensed dental hygienist performing an act authorized under
 28 37-4-401 or 37-4-405.

29 (3) ~~Nothing in this chapter prevents~~ This chapter does not prevent a bona fide faculty member of
 30 a school, college, or department of a university recognized and approved by the board from performing

1 dental procedures necessary to ~~his~~ the faculty member's teaching functions. ~~Nothing in this chapter~~
 2 ~~prevents~~ This chapter does not prevent students from performing dental procedures under the supervision
 3 of a bona fide instructor of a school, college, or department of a university recognized and approved by the
 4 board ~~provided such~~ if the dental procedures are a part of the assigned teaching curriculum.

5 (4) This chapter does not prohibit or require a license with respect to the practice of dentistry
 6 under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in
 7 this chapter apply to a person engaged in the lawful practice of dentistry.

8 (5) This chapter does not require the licensure of or prohibit the personal representative of the
 9 estate of a deceased dentist or the personal representative of a disabled dentist from managing, owning,
 10 operating, or otherwise conducting an establishment where dental operations, oral surgery, or dental
 11 services are provided if the personal representative in either case complies with the provisions of [section
 12 5]."

13
 14 **Section 4.** Section 37-4-327, MCA, is amended to read:

15 "**37-4-327. Practicing dentistry without certificate -- penalty.** (1) A Except as provided in
 16 37-4-101 through 37-4-103, [section 5], and this section, a person who, as principal, agent, employer,
 17 employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a
 18 certificate to practice dentistry from the department entitling ~~him~~ the person to practice in this state is guilty
 19 of a misdemeanor and on conviction in a district court may be fined an amount not less than \$500 or more
 20 than \$1,000 or be confined for a period not exceeding 6 months in the county jail.

21 (2) Fines imposed and collected under this chapter, except those paid to a justice's court, ~~shall~~
 22 must be paid into the treasury of the county in which the suits, actions, or proceedings are commenced.
 23 Money paid into the treasury ~~over and above~~ in excess of the amount necessary to reimburse the county
 24 for expense incurred by the county in a suit, action, or proceeding brought under this chapter ~~shall~~ must
 25 be deposited before January 1 of each year in the state special revenue fund for the use of the board,
 26 subject to 37-1-101(6)."

27
 28 **NEW SECTION. Section 5. Twelve-month period for disposition of deceased or disabled dentist's**
 29 **practice by personal representative -- restrictions.** (1) For the purpose of selling or otherwise disposing of
 30 a deceased or a disabled licensee's dental practice and for a period not to exceed 12 months, a person who

1 is not licensed to practice dentistry but who is the personal representative of the estate of a deceased
2 dentist or the personal representative of a disabled dentist may manage, own, operate, or otherwise
3 conduct an establishment where dental operations, oral surgery, or dental services are provided.

4 (2) A personal representative may not:

5 (a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product,
6 process, or activity as it relates to the delivery of dental care;

7 (b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment
8 over all qualitative and quantitative aspects of the delivery of dental care;

9 (c) allow any person other than a dentist to supervise and control the selection, compensation,
10 terms, conditions, obligations, or privileges of employment or retention of clinical personnel in the dental
11 practice;

12 (d) determine or limit a fee charged by the dentist or limit the methods of payment accepted by a
13 dentist or the dentist's practice; or

14 (e) limit or define the scope of services offered by the dentist.

15 (3) For the purposes of this section:

16 (a) "clinical" means having a significant relationship, whether real or potential, direct or indirect,
17 to the actual rendering or outcome of dental care, the practice of dentistry, or the quality of dental care
18 being rendered to a patient;

19 (b) "disabled" has the same meaning as provided for the term "PERMANENTLY AND TOTALLY
20 DISABLED" in 15-30-111; and

21 (c) "personal representative" OF THE ESTATE OF A DECEASED DENTIST has the same meaning
22 as provided for the term in 72-1-103.

23 (4) The 12-month period provided for in subsection (1) begins when:

24 (a) the personal representative of the estate of a deceased dentist files a verified copy of the death
25 certificate of the deceased with the department; or

26 (b) the personal representative of the disabled dentist files a verified copy of a document signed by
27 a licensed physician that attests to the dentist's disability.

28
29 NEW SECTION. Section 6. Codification instruction. [Section 5] is intended to be codified as an
30 integral part of Title 37, chapter 4, part 1, and the provisions of Title 37, chapter 4, part 1, apply to

1 [section 5].

2

3 NEW SECTION. **Section 7. Applicability.** [Section 5] applies to the sale or disposal of a dental
4 practice managed, owned, operated, or otherwise conducted by the personal representative of a dentist
5 whose death or disability occurs on or after [the effective date of this act].

6 -END-

1 SENATE BILL NO. 192

2 INTRODUCED BY KEATING

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING, FOR A PERIOD OF 12 MONTHS FOR THE PURPOSE
5 OF SELLING THE DENTAL PRACTICE, THE PERSONAL REPRESENTATIVE OF THE ESTATE OF A
6 DECEASED DENTIST OR THE PERSONAL REPRESENTATIVE OF A DISABLED DENTIST TO MANAGE, OWN,
7 OPERATE, OR OTHERWISE CONDUCT AN ESTABLISHMENT WHERE DENTAL SERVICES ARE PROVIDED;
8 PROHIBITING THE PERSONAL REPRESENTATIVE FROM GOVERNING OR INTERFERING WITH THE
9 CLINICAL ASPECTS OF DENTAL PRACTICE; AMENDING SECTIONS 37-4-101, 37-4-102, 37-4-103, AND
10 37-4-327, MCA; AND PROVIDING AN APPLICABILITY DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

SENATE BILL NO. 192

INTRODUCED BY KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING, FOR A PERIOD OF 12 MONTHS FOR THE PURPOSE OF SELLING THE DENTAL PRACTICE, THE PERSONAL REPRESENTATIVE OF THE ESTATE OF A DECEASED DENTIST OR THE PERSONAL REPRESENTATIVE OF A DISABLED DENTIST TO ~~MANAGE, OWN, OPERATE, OR OTHERWISE CONDUCT~~ CONTRACT WITH A DENTIST TO MANAGE AN ESTABLISHMENT WHERE DENTAL SERVICES ARE PROVIDED; PROHIBITING THE PERSONAL REPRESENTATIVE FROM GOVERNING OR INTERFERING WITH THE CLINICAL ASPECTS OF DENTAL PRACTICE; AMENDING SECTIONS 37-4-101, 37-4-102, 37-4-103, AND 37-4-327, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 37-4-101, MCA, is amended to read:

"37-4-101. Definitions -- practice of dentistry. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of dentistry provided for in 2-15-1842.

(b) "Conscious sedation" means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(d) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query

1 or command; and

2 (ii) light general anesthesia, which means a level of consciousness in which the patient breathes
3 normally without assistance and retains protective reflexes throughout most of the procedure.

4 (e) "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer,
5 or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia. The term
6 ~~general anesthetic~~ does not include a nitrous oxide/oxygen mixture or any other anesthetic administered
7 to produce conscious sedation.

8 (2) A Except for the provisions of [section 5], a person is "practicing dentistry" under this chapter
9 if ~~he~~ the person:

10 (a) performs, attempts, advertises to perform, causes to be performed by the patient or any other
11 person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind
12 gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to
13 ~~himself~~ the person, any other person, or any agency;

14 (b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral
15 surgery, or dental services are performed, unless the person is the personal representative of the estate of
16 a deceased dentist or the personal representative of a disabled dentist, as provided in [section 5];

17 (c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or
18 repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

19 (d) places the appliance or structure in the human mouth or attempts to adjust it;

20 (e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a
21 prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

22 (f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes
23 to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent
24 structures;

25 (g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct
26 malpositions of teeth or of the jaw;

27 (h) gives or professes to give interpretations or readings of dental roentgenograms;

28 (i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in
29 connection with a dental operation;

30 (j) uses the words "dentist", "dental surgeon", or "oral surgeon", the letters "D.D.S.", "D.M.D.",

1 or any other words, letters, title, or descriptive matter ~~which~~ that in any way represents ~~him~~ the person as
 2 being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or
 3 physical condition of human teeth, jaws, or adjacent structures;

4 (k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill,
 5 newspaper, radio, or otherwise, that ~~he~~ the person can perform or will attempt to perform dental operations
 6 or render a diagnosis in connection ~~therewith~~ with dental operations; or

7 (l) engages in any of the practices included in the curricula of recognized dental colleges."
 8

9 **Section 2.** Section 37-4-102, MCA, is amended to read:

10 **"37-4-102. Designations constituting prima facie evidence of practicing dentistry.** Except for the
 11 provisions in [section 5], ~~Whenever any person shall append~~ appending the word "dentist" or the letters
 12 "D.D.S.", "D.M.D.", or like similar letters to ~~his or her~~ a person's name ~~in any way for advertising or upon~~
 13 ~~any door or sign or upon or in any writing or print, publish, or use the same in any way or cause either of~~
 14 ~~the same to be done, the same shall be prima facie evidence that such~~ on a door or a sign, in a printed or
 15 published form, or in any other type of advertisement is prima facie evidence that the person is engaged
 16 in the practice of dentistry and is subject to the regulations, convictions, and penalties of this chapter."
 17

18 **Section 3.** Section 37-4-103, MCA, is amended to read:

19 **"37-4-103. Exemptions.** (1) A dental laboratory or dental technician is not practicing dentistry
 20 under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns,
 21 dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models,
 22 or impressions on which the work is constructed have been made by a regularly licensed and practicing
 23 dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic
 24 appliances are returned to the dentist on whose order the work was constructed.

25 (2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or
 26 surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau
 27 or to a legal practitioner of another state making a clinical demonstration before a dental society,
 28 convention, or association of dentists or to a licensed dental hygienist performing an act authorized under
 29 37-4-401 or 37-4-405.

30 (3) ~~Nothing in this chapter prevents~~ This chapter does not prevent a bona fide faculty member of

1 a school, college, or department of a university recognized and approved by the board from performing
 2 dental procedures necessary to ~~his~~ the faculty member's teaching functions. ~~Nothing in this chapter~~
 3 ~~prevents~~ This chapter does not prevent students from performing dental procedures under the supervision
 4 of a bona fide instructor of a school, college, or department of a university recognized and approved by the
 5 board ~~provided such~~ if the dental procedures are a part of the assigned teaching curriculum.

6 (4) This chapter does not prohibit or require a license with respect to the practice of dentistry
 7 under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in
 8 this chapter apply to a person engaged in the lawful practice of dentistry.

9 (5) This chapter does not require the licensure of or prohibit the personal representative of the
 10 estate of a deceased dentist or the personal representative of a disabled dentist from managing, owning,
 11 operating, or otherwise conducting CONTRACTING WITH A DENTIST TO MANAGE THE DENTAL PRACTICE
 12 AT an establishment where dental operations, oral surgery, or dental services are provided if the personal
 13 representative in either case complies with the provisions of [section 5]."

14
 15 **Section 4.** Section 37-4-327, MCA, is amended to read:

16 "**37-4-327. Practicing dentistry without certificate -- penalty.** (1) A Except as provided in
 17 37-4-101 through 37-4-103, [section 5], and this section, a person who, as principal, agent, employer,
 18 employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a
 19 certificate to practice dentistry from the department entitling ~~him~~ the person to practice in this state is guilty
 20 of a misdemeanor and on conviction in a district court may be fined an amount not less than \$500 or more
 21 than \$1,000 or be confined for a period not exceeding 6 months in the county jail.

22 (2) Fines imposed and collected under this chapter, except those paid to a justice's court, ~~shall~~
 23 must be paid into the treasury of the county in which the suits, actions, or proceedings are commenced.
 24 Money paid into the treasury ~~over and above~~ in excess of the amount necessary to reimburse the county
 25 for expense incurred by the county in a suit, action, or proceeding brought under this chapter ~~shall~~ must
 26 be deposited before January 1 of each year in the state special revenue fund for the use of the board,
 27 subject to 37-1-101(6)."

28
 29 **NEW SECTION. Section 5. Twelve-month period for disposition of deceased or disabled dentist's**
 30 **practice by personal representative -- restrictions.** (1) For the purpose of selling or otherwise disposing of

1 a deceased or a disabled licensee's dental practice and for a period not to exceed 12 months, a person who
 2 is not licensed to practice dentistry but who is the personal representative of the estate of a deceased
 3 dentist or the personal representative of a disabled dentist may ~~manage, own, operate, or otherwise~~
 4 ~~conduct~~ CONTRACT WITH A DENTIST TO MANAGE THE DENTAL PRACTICE AT an establishment where
 5 dental operations, oral surgery, or dental services are provided.

6 (2) A personal representative may not:

7 (a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product,
 8 process, or activity as it relates to the delivery of dental care;

9 (b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment
 10 over all qualitative and quantitative aspects of the delivery of dental care;

11 (c) allow any person other than a dentist to supervise and control the selection, compensation,
 12 terms, conditions, obligations, or privileges of employment or retention of clinical personnel in the dental
 13 practice;

14 (d) determine or limit a fee charged by the dentist or limit the methods of payment accepted by a
 15 dentist or the dentist's practice; or

16 (e) limit or define the scope of services offered by the dentist.

17 (3) For the purposes of this section:

18 (a) "clinical" means having a significant relationship, whether real or potential, direct or indirect,
 19 to the actual rendering or outcome of dental care, the practice of dentistry, or the quality of dental care
 20 being rendered to a patient;

21 (b) "disabled" has the same meaning as provided for the term "PERMANENTLY AND TOTALLY
 22 DISABLED" in 15-30-111; and

23 (c) "personal representative" OF THE ESTATE OF A DECEASED DENTIST has the same meaning
 24 as provided for the term in 72-1-103.

25 (4) The 12-month period provided for in subsection (1) begins when:

26 (a) the personal representative of the estate of a deceased dentist files a verified copy of the death
 27 certificate of the deceased with the department; or

28 (b) the personal representative of the disabled dentist files a verified copy of a document signed by
 29 a licensed physician that attests to the dentist's disability.

30

1 **NEW SECTION.** **Section 6. Codification instruction.** [Section 5] is intended to be codified as an
2 integral part of Title 37, chapter 4, part 1, and the provisions of Title 37, chapter 4, part 1, apply to
3 [section 5].

4

5 **NEW SECTION.** **Section 7. Applicability.** [Section 5] applies to the sale or disposal of a dental
6 practice managed, owned, operated, or otherwise conducted by the personal representative of a dentist
7 whose death or disability occurs on or after [the effective date of this act].

8

-END-

SENATE BILL NO. 192

INTRODUCED BY KEATING

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING, FOR A PERIOD OF 12 MONTHS FOR THE PURPOSE
5 OF SELLING THE DENTAL PRACTICE, THE PERSONAL REPRESENTATIVE OF THE ESTATE OF A
6 DECEASED DENTIST OR THE PERSONAL REPRESENTATIVE OF A DISABLED DENTIST TO ~~MANAGE, OWN,
7 OPERATE, OR OTHERWISE CONDUCT~~ CONTRACT WITH A DENTIST TO MANAGE AN ESTABLISHMENT
8 WHERE DENTAL SERVICES ARE PROVIDED; PROHIBITING THE PERSONAL REPRESENTATIVE FROM
9 GOVERNING OR INTERFERING WITH THE CLINICAL ASPECTS OF DENTAL PRACTICE; AMENDING
10 SECTIONS 37-4-101, 37-4-102, 37-4-103, AND 37-4-327, MCA; AND PROVIDING AN APPLICABILITY
11 DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 37-4-101, MCA, is amended to read:

16 **"37-4-101. Definitions -- practice of dentistry.** (1) Unless the context requires otherwise, in this
17 chapter, the following definitions apply:

18 (a) "Board" means the board of dentistry provided for in 2-15-1842.

19 (b) "Conscious sedation" means a minimally depressed level of consciousness in which the patient
20 breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or
21 verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form
22 of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring
23 conscious sedation within the scope of general anesthesia.

24 (c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

25 (d) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic
26 agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular
27 relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly,
28 or via the gastrointestinal tract. General anesthesia is divided into:

29 (i) full general anesthesia, which means a level of consciousness in which the patient is without
30 intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query

1 or command; and

2 (ii) light general anesthesia, which means a level of consciousness in which the patient breathes
3 normally without assistance and retains protective reflexes throughout most of the procedure.

4 (e) "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer,
5 or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia. The term
6 ~~general anesthetic~~ does not include a nitrous oxide/oxygen mixture or any other anesthetic administered
7 to produce conscious sedation.

8 (2) ~~A~~ Except for the provisions of [section 5], a person is "practicing dentistry" under this chapter
9 if ~~he~~ the person:

10 (a) performs, attempts, advertises to perform, causes to be performed by the patient or any other
11 person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind
12 gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to
13 ~~himself~~ the person, any other person, or any agency;

14 (b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral
15 surgery, or dental services are performed, unless the person is the personal representative of the estate of
16 a deceased dentist or the personal representative of a disabled dentist, as provided in [section 5];

17 (c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or
18 repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

19 (d) places the appliance or structure in the human mouth or attempts to adjust it;

20 (e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a
21 prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

22 (f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes
23 to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent
24 structures;

25 (g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct
26 malpositions of teeth or of the jaw;

27 (h) gives or professes to give interpretations or readings of dental roentgenograms;

28 (i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in
29 connection with a dental operation;

30 (j) uses the words "dentist", "dental surgeon", or "oral surgeon", the letters "D.D.S.", "D.M.D.",

1 or any other words, letters, title, or descriptive matter ~~which that~~ in any way represents ~~him~~ the person as
 2 being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or
 3 physical condition of human teeth, jaws, or adjacent structures;

4 (k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill,
 5 newspaper, radio, or otherwise, that ~~he~~ the person can perform or will attempt to perform dental operations
 6 or render a diagnosis in connection ~~therewith~~ with dental operations; or

7 (l) engages in any of the practices included in the curricula of recognized dental colleges."
 8

9 **Section 2.** Section 37-4-102, MCA, is amended to read:

10 **"37-4-102. Designations constituting prima facie evidence of practicing dentistry.** Except for the
 11 provisions in [section 5], ~~Whenever any person shall append~~ appending the word "dentist" or the letters
 12 "D.D.S.", "D.M.D.", or like similar letters to ~~his or her~~ a person's name in any way for advertising or upon
 13 ~~any door or sign or upon or in any writing or print, publish, or use the same in any way or cause either of~~
 14 ~~the same to be done, the same shall be prima facie evidence that such~~ on a door or a sign, in a printed or
 15 published form, or in any other type of advertisement is prima facie evidence that the person is engaged
 16 in the practice of dentistry and is subject to the regulations, convictions, and penalties of this chapter."
 17

18 **Section 3.** Section 37-4-103, MCA, is amended to read:

19 **"37-4-103. Exemptions.** (1) A dental laboratory or dental technician is not practicing dentistry
 20 under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns,
 21 dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models,
 22 or impressions on which the work is constructed have been made by a regularly licensed and practicing
 23 dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic
 24 appliances are returned to the dentist on whose order the work was constructed.

25 (2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or
 26 surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau
 27 or to a legal practitioner of another state making a clinical demonstration before a dental society,
 28 convention, or association of dentists or to a licensed dental hygienist performing an act authorized under
 29 37-4-401 or 37-4-405.

30 (3) ~~Nothing in this chapter prevents~~ This chapter does not prevent a bona fide faculty member of

1 a school, college, or department of a university recognized and approved by the board from performing
 2 dental procedures necessary to ~~his~~ the faculty member's teaching functions. ~~Nothing in this chapter~~
 3 ~~prevents~~ This chapter does not prevent students from performing dental procedures under the supervision
 4 of a bona fide instructor of a school, college, or department of a university recognized and approved by the
 5 board ~~provided such~~ if the dental procedures are a part of the assigned teaching curriculum.

6 (4) This chapter does not prohibit or require a license with respect to the practice of dentistry
 7 under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in
 8 this chapter apply to a person engaged in the lawful practice of dentistry.

9 (5) This chapter does not require the licensure of or prohibit the personal representative of the
 10 estate of a deceased dentist or the personal representative of a disabled dentist from managing, owning,
 11 operating, or otherwise conducting **CONTRACTING WITH A DENTIST TO MANAGE THE DENTAL PRACTICE**
 12 **AT an establishment where dental operations, oral surgery, or dental services are provided if the personal**
 13 **representative in either case complies with the provisions of [section 5]."**

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 17 37-4-101 through 37-4-103, [section 5], and this section, a person who, as principal, agent, employer,
 18 employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a
 19 certificate to practice dentistry from the department entitling ~~him~~ the person to practice in this state is guilty
 20 of a misdemeanor and on conviction in a district court may be fined an amount not less than \$500 or more
 21 than \$1,000 or be confined for a period not exceeding 6 months in the county jail.

22 (2) Fines imposed and collected under this chapter, except those paid to a justice's court, ~~shall~~
 23 must be paid into the treasury of the county in which the suits, actions, or proceedings are commenced.
 24 Money paid into the treasury ~~over and above~~ in excess of the amount necessary to reimburse the county
 25 for expense incurred by the county in a suit, action, or proceeding brought under this chapter ~~shall~~ must
 26 be deposited before January 1 of each year in the state special revenue fund for the use of the board,
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 3 dentist or the personal representative of a disabled dentist may ~~manage, own, operate, or otherwise~~
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 5 dental operations, oral surgery, or dental services are provided.

6 (2) A personal representative may not:

7 (a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product,
 8 process, or activity as it relates to the delivery of dental care;

9 (b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment
 10 over all qualitative and quantitative aspects of the delivery of dental care;

11 (c) allow any person other than a dentist to supervise and control the selection, compensation,
 12 terms, conditions, obligations, or privileges of employment or retention of clinical personnel in the dental
 13 practice;

14 (d) determine or limit a fee charged by the dentist or limit the methods of payment accepted by a
 15 dentist or the dentist's practice; or

16 (e) limit or define the scope of services offered by the dentist.

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18 (a) "clinical" means having a significant relationship, whether real or potential, direct or indirect,
 19 to the actual rendering or outcome of dental care, the practice of dentistry, or the quality of dental care
 20 being rendered to a patient;

21 (b) "disabled" has the same meaning as provided for the term "PERMANENTLY AND TOTALLY
 22 DISABLED" in 15-30-111; and

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 24 as provided for the term in 72-1-103.

25 (4) The 12-month period provided for in subsection (1) begins when:

26 (a) the personal representative of the estate of a deceased dentist files a verified copy of the death
 27 certificate of the deceased with the department; or

28 (b) the personal representative of the disabled dentist files a verified copy of a document signed by
 29 a licensed physician that attests to the dentist's disability.

30

1 **NEW SECTION. Section 6. Codification instruction.** [Section 5] is intended to be codified as an
2 integral part of Title 37, chapter 4, part 1, and the provisions of Title 37, chapter 4, part 1, apply to
3 [section 5].

4

5 **NEW SECTION. Section 7. Applicability.** [Section 5] applies to the sale or disposal of a dental
6 practice managed, owned, operated, or otherwise conducted by the personal representative of a dentist
7 whose death or disability occurs on or after [the effective date of this act].

8

-END-