

HOUSE BILL 1468

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By: **Delegates Hayes and Mautz**

Introduced and read first time: February 12, 2016

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Dental Examiners – Ownership, Management, and Operation of a**
3 **Dental Practice**

4 FOR the purpose of requiring a dental practice to be owned, managed, or operated by a
5 licensed dentist, subject to certain exceptions; authorizing, under certain
6 circumstances, an heir of a licensed dentist who was the owner of a dental practice
7 to serve as an owner of the dental practice for a certain time period; authorizing the
8 State Board of Dental Examiners to extend a certain time period under certain
9 circumstances; requiring that all patient care be provided by certain individuals and
10 in accordance with certain scopes of practice during the temporary ownership of a
11 dental practice by an heir; prohibiting the temporary ownership of a dental practice
12 by an heir to affect the exercise of independent judgement by certain licensed
13 dentists; authorizing an unlicensed person to take certain actions; prohibiting a
14 licensed dentist from raising a certain defense in a certain action; repealing a certain
15 exemption from the requirements of the Maryland Dentistry Act; authorizing the
16 Board to take certain action against certain applicants and licenses for accepting or
17 tendering rebates or split fees; authorizing the Board to issue a cease and desist
18 order for certain violations; prohibiting certain persons from aiding or abetting the
19 unauthorized practice of dentistry; establishing certain penalties for aiding or
20 abetting the unauthorized practice of dentistry; altering certain penalties;
21 exempting certain persons from certain penalty provisions; repealing certain
22 references to certain places of imprisonment; establishing certain civil penalties;
23 requiring the Office of Oral Health in the Department of Health and Mental Hygiene
24 to include the exception provided for in a certain provision of this Act in a certain
25 report; providing for the effective dates of this Act; providing for the termination of
26 certain provisions of this Act; altering a certain definition; making stylistic changes;
27 and generally relating to the ownership, management, and operation of a dental
28 practice.

29 BY repealing and reenacting, with amendments,
30 Article – Health Occupations

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 4–101(l), 4–102, 4–315(a)(33) and (34), 4–601, and 4–606
2 Annotated Code of Maryland
3 (2014 Replacement Volume and 2015 Supplement)

4 BY adding to
5 Article – Health Occupations
6 Section 4–103, 4–315(a)(35), and 4–320.1
7 Annotated Code of Maryland
8 (2014 Replacement Volume and 2015 Supplement)

9 BY repealing and reenacting, without amendments,
10 Article – Health Occupations
11 Section 4–301 and 4–602
12 Annotated Code of Maryland
13 (2014 Replacement Volume and 2015 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – Health – General
16 Section 13–2504
17 Annotated Code of Maryland
18 (2015 Replacement Volume)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
20 That the Laws of Maryland read as follows:

21 **Article – Health Occupations**

22 4–101.

23 (l) (1) “Practice dentistry” means to:

24 [(1)] (I) Be [a manager, a proprietor, or a conductor of] **AN OWNER, A**
25 **MANAGER**, or an operator in any place in which a dental service or dental operation is
26 performed intraorally;

27 [(2)] (II) Perform or attempt to perform any intraoral dental service or
28 intraoral dental operation;

29 [(3)] (III) Diagnose, treat, or attempt to diagnose or treat any disease,
30 injury, malocclusion, or malposition of a tooth, gum, or jaw, or structures associated with a
31 tooth, gum, or jaw if the service, operation, or procedure is included in the curricula of an
32 accredited dental school or in an approved dental residency program of an accredited
33 hospital or teaching institution;

34 [(4)] (IV) Perform or offer to perform dental laboratory work;

1 ~~[(5)]~~ (V) Place or adjust a dental appliance in a human mouth; or

2 ~~[(6)]~~ (VI) Administer anesthesia for the purposes of dentistry and not as a
3 medical specialty.

4 (2) **“PRACTICE DENTISTRY” INCLUDES:**

5 (I) **PATIENT EVALUATION, DIAGNOSIS, AND DETERMINATION**
6 **OF TREATMENT PLANS;**

7 (II) **DETERMINATION OF OR INFLUENCE ON TREATMENT**
8 **OPTIONS, INCLUDING WHICH RESTORATIVE AND TREATMENT MATERIALS AND**
9 **DIAGNOSTIC EQUIPMENT SHOULD BE USED AND THE SOURCES FOR OBTAINING THE**
10 **MATERIALS AND EQUIPMENT;**

11 (III) **DETERMINATION AND ESTABLISHMENT OF PATIENT**
12 **PROTOCOLS, STANDARDS, AND PRACTICE GUIDELINES; AND**

13 (IV) **ANY OTHER DECISION THAT AFFECTS PATIENT CARE AND**
14 **TREATMENT.**

15 4–102.

16 (a) (1) Except as otherwise provided in this subsection, this title does not limit
17 the right of an individual to practice a health occupation that the individual is authorized
18 to practice under this article.

19 (2) The provisions of this title do not affect a physician while practicing
20 medicine, unless the physician practices dentistry as a specialty.

21 (b) This title does not prohibit an educational program broadcast on radio or
22 television by the Department or by the health department of a political subdivision of this
23 State.

24 [(c) This title does not apply to a clinic maintained by a public school, a State
25 institution, or charitable institution, or a business corporation, for its pupils, inmates, or
26 employees if:

27 (1) The school or institution, or corporation does not advertise concerning
28 dentistry; and

29 (2) Notwithstanding the provisions of this subsection:

1 (i) Each dental hygienist, dental assistant, dental technician, or
2 other dental auxiliary employed by the clinic shall be subject to the provisions of this title;
3 and

4 (ii) Each dentist employed by the clinic shall be licensed and shall be
5 subject to the provisions of Subtitle 3 of this title.]

6 **4-103.**

7 (A) (1) SUBJECT TO SUBSECTIONS (B) AND (C) OF THIS SECTION AND
8 EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, A DENTAL PRACTICE
9 SHALL BE OWNED, MANAGED, OR OPERATED ONLY BY A LICENSED DENTIST.

10 (2) THE OWNERSHIP, MANAGEMENT, AND OPERATION OF A DENTAL
11 PRACTICE INCLUDES:

12 (I) THE HIRING, SUPERVISION, OR TERMINATION OF
13 EMPLOYMENT OF A DENTIST, DENTAL HYGIENIST, OR DENTAL ASSISTANT WHO
14 ASSISTS IN THE CARE AND TREATMENT OF DENTAL PATIENTS;

15 (II) DIRECT SUPERVISION OVER THE TRAINING OF A DENTAL
16 HYGIENIST OR DENTAL ASSISTANT WHO ASSISTS IN THE CARE AND TREATMENT OF
17 DENTAL PATIENTS;

18 (III) THE PREPARATION, OWNERSHIP, OR CONTROL OF PATIENT
19 TREATMENT RECORDS; AND

20 (IV) THE ETHICAL SHARING OF INCOME, REVENUES, PROFITS,
21 OR FEES AMONG DENTISTS WITHIN THE SAME DENTAL PRACTICE.

22 (B) (1) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, IF A
23 LICENSED DENTIST WHO WAS THE OWNER OF A DENTAL PRACTICE DIES AND DID NOT
24 PROVIDE FOR THE DISPOSITION OF THE DENTAL PRACTICE, AN HEIR TO THE
25 LICENSED DENTIST MAY SERVE AS AN OWNER OF THE DENTAL PRACTICE,
26 REGARDLESS OF WHETHER THE HEIR IS LICENSED TO PRACTICE DENTISTRY, FOR
27 NO LONGER THAN 1 YEAR AFTER THE DEATH OF THE LICENSED DENTIST UNLESS
28 THE BOARD EXTENDS THE TIME PERIOD UNDER PARAGRAPH (2) OF THIS
29 SUBSECTION.

30 (2) ON WRITTEN REQUEST AND GOOD CAUSE SHOWN BY THE HEIR OF
31 THE LICENSED DENTIST, INCLUDING EVIDENCE OF A GOOD FAITH EFFORT TO SELL
32 OR CLOSE THE DENTAL PRACTICE, THE BOARD, IN ITS SOLE DISCRETION, MAY
33 EXTEND THE 1-YEAR PERIOD FOR UP TO AN ADDITIONAL 6 MONTHS TO ALLOW THE

1 HEIR SUFFICIENT TIME TO SELL OR OTHERWISE DISPOSE OF THE DENTAL
2 PRACTICE.

3 (3) DURING THE TEMPORARY OWNERSHIP OF A DENTAL PRACTICE BY
4 AN HEIR UNDER THIS SUBSECTION, ALL PATIENT CARE SHALL BE PROVIDED BY AN
5 APPROPRIATE INDIVIDUAL WHO IS LICENSED UNDER THIS TITLE AND IN
6 ACCORDANCE WITH THE INDIVIDUAL'S SCOPE OF PRACTICE.

7 (4) THE TEMPORARY OWNERSHIP OF A DENTAL PRACTICE BY AN HEIR
8 UNDER THIS SUBSECTION MAY NOT AFFECT THE EXERCISE OF THE INDEPENDENT
9 JUDGMENT OF A LICENSED DENTIST WHO PROVIDES CARE TO PATIENTS OF THE
10 DENTAL PRACTICE.

11 (C) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, AN UNLICENSED
12 PERSON MAY:

13 (1) OWN OR LEASE REAL PROPERTY OR FURNISHINGS, EQUIPMENT,
14 OR OTHER GOODS THAT ARE USED BY A DENTIST OR DENTAL PRACTICE;

15 (2) PROVIDE BOOKKEEPING, ACCOUNTING, AND TAX PREPARATION
16 SERVICES;

17 (3) ADMINISTER AND PROCESS PAYROLL OF A DENTAL PRACTICE;

18 (4) INTERACT WITH PATIENTS AND THIRD PARTY PAYORS FOR THE
19 BILLING AND COLLECTIONS FOR DENTAL SERVICES;

20 (5) CREATE AND PLACE ADVERTISING AND MARKETING, AS
21 APPROVED BY A LICENSED DENTIST;

22 (6) DETERMINE WHICH INFORMATION TECHNOLOGY TO ACQUIRE
23 AND ASSIST IN ITS ACQUISITION;

24 (7) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (A) OF THIS
25 SECTION, PROVIDE HUMAN RESOURCE FUNCTIONS;

26 (8) PROVIDE GENERAL OFFICE MANAGEMENT, PROPERTY
27 MANAGEMENT, AND MAINTENANCE; AND

28 (9) ASSIST IN RISK MANAGEMENT, INCLUDING LEGAL AND
29 REGULATORY COMPLIANCE AND THE PROCESSING OF INSURANCE CLAIMS.

1 **(D) (1) THE REQUIREMENTS OF SUBSECTION (A) OF THIS SECTION DO**
2 **NOT APPLY TO:**

3 **(I) A CLINIC MAINTAINED BY:**

4 **1. A PUBLIC SCHOOL;**

5 **2. A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY**
6 **OR INSTITUTION;**

7 **3. A DENTAL OR DENTAL HYGIENE PROGRAM THAT IS**
8 **APPROVED BY THE COMMISSION ON DENTAL ACCREDITATION (CODA) FOR AN**
9 **INSTITUTION OF HIGHER EDUCATION, AS DEFINED IN § 10–101 OF THE EDUCATION**
10 **ARTICLE; OR**

11 **4. A CHARITABLE ORGANIZATION, AS DEFINED IN §**
12 **6–101 OF THE BUSINESS REGULATION ARTICLE;**

13 **(II) A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY;**

14 **(III) A NONPROFIT ORGANIZATION THAT PROVIDES DENTAL**
15 **SERVICES AND IS:**

16 **1. A HEALTH CARE CENTER OR PROGRAM THAT OFFERS**
17 **DENTAL SERVICES:**

18 **A. FREE OF COST OR ON A SLIDING SCALE FEE**
19 **SCHEDULE; AND**

20 **B. WITHOUT REGARD TO AN INDIVIDUAL’S ABILITY TO**
21 **PAY; OR**

22 **2. A FEDERALLY QUALIFIED HEALTH CENTER OR A**
23 **FEDERALLY QUALIFIED HEALTH CENTER LOOK–ALIKE; OR**

24 **(IV) A DENTAL PRACTICE IN WHICH AT LEAST 75% OF ITS**
25 **PATIENTS ON WHOM PROCEDURES ARE PERFORMED DURING THE CALENDAR YEAR**
26 **ARE MEDICAID–ELIGIBLE.**

27 **(2) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (1) OF THIS**
28 **SUBSECTION:**

1 **(I) EACH DENTAL HYGIENIST, DENTAL ASSISTANT, OR DENTAL**
2 **TECHNICIAN EMPLOYED BY AN ENTITY DESCRIBED IN PARAGRAPH (1) OF THIS**
3 **SUBSECTION SHALL BE SUBJECT TO THE PROVISIONS OF THIS TITLE; AND**

4 **(II) EACH DENTIST EMPLOYED BY AN ENTITY DESCRIBED IN**
5 **PARAGRAPH (1) OF THIS SUBSECTION SHALL BE LICENSED AND SUBJECT TO THE**
6 **PROVISIONS OF SUBTITLE 3 OF THIS TITLE.**

7 **(E) IN AN ACTION BROUGHT BY THE BOARD AGAINST A LICENSED DENTIST,**
8 **THE LICENSED DENTIST MAY NOT RAISE AS A DEFENSE THAT A DUTY OR OBLIGATION**
9 **OF THE DENTIST UNDER THIS SECTION WAS DELEGATED OR ASSIGNED TO A THIRD**
10 **PARTY.**

11 4-301.

12 (a) (1) Except as otherwise provided in this title, an individual shall be
13 licensed by the Board to practice dentistry before the individual may practice dentistry on
14 a human being in this State.

15 (2) Except as otherwise provided in this title, an individual shall be
16 licensed by the Board to practice dental hygiene before the individual may practice dental
17 hygiene on a human being in this State.

18 (b) This section does not apply to:

19 (1) A student of dentistry while engaged in an educational program at an
20 approved school of dentistry;

21 (2) A student of dental hygiene while engaged in an approved educational
22 program in dental hygiene;

23 (3) A dentist while performing official duties in a federal dental service;

24 (4) An individual licensed to practice dentistry in any other state or a
25 foreign country, while the individual:

26 (i) Makes a clinical demonstration before a dental society, dental
27 convention, association of dentists, or dental college; or

28 (ii) Performs professional duties on a specific case for which the
29 individual is called into this State; or

30 (5) A dental assistant, if the dental assistant:

(i) Subject to the rules and regulations adopted by the Board, performs only procedures that do not require the professional skills of a licensed dentist; and

(ii) Performs intraoral tasks only under the direct supervision of a licensed dentist who personally is present in the office area where the tasks are performed.

4–315.

(a) Subject to the hearing provisions of § 4–318 of this subtitle, the Board may deny a general license to practice dentistry, a limited license to practice dentistry, or a teacher’s license to practice dentistry to any applicant, reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the applicant or licensee:

(33) Fails to comply with any Board order; [or]

(34) Willfully and without legal justification, fails to cooperate with a lawful investigation conducted by the Board; OR

(35) ACCEPTS OR TENDERS REBATES OR SPLIT FEES.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Health Occupations

4–320.1.

IN ADDITION TO ANY OTHER PENALTIES OR DISCIPLINARY ACTION AUTHORIZED UNDER THIS TITLE, THE BOARD MAY ISSUE A CEASE AND DESIST ORDER FOR CONDUCT THAT:

(1) IS IN VIOLATION OF § 4–103, § 4–601, § 4–602, OR § 4–603 OF THIS TITLE OR § 4–301 OF THIS SUBTITLE;

(2) IS A GROUND FOR DISCIPLINARY ACTION UNDER § 4–315(A) OF THIS SUBTITLE; OR

(3) VIOLATES ANY PROHIBITION IN SUBTITLE 4 OF THIS TITLE THAT RELATES TO DENTAL LABORATORY WORK.

4–601.

1 (a) Except as otherwise provided in this title, a person may not practice, attempt
2 to practice, or offer to practice dentistry or dental hygiene on a human being in this State
3 unless licensed by the Board.

4 (b) A person may not aid or abet **THE** unauthorized practice of **DENTISTRY OR**
5 dental hygiene in this State.

6 4-602.

7 (a) (1) Except as otherwise provided in this section, unless authorized to
8 practice dentistry under this title, a person may not represent to the public by title, by
9 description of services, methods, or procedures, or otherwise, that the person is authorized
10 to practice dentistry in this State.

11 (2) Unless authorized to practice dental hygiene under this title, a person
12 may not represent to the public by title, by description of services, methods, or procedures,
13 or otherwise, that the person is authorized to practice dental hygiene in this State.

14 (b) This title does not affect the right of a holder of a dental degree who does not
15 directly or indirectly practice or attempt to practice dentistry in this State to use the degree
16 or an abbreviation for the degree in connection with the name of the holder.

17 4-606.

18 (a) **[A] EXCEPT FOR A PERSON WHOSE LICENSE HAS LAPSED FOR A PERIOD**
19 **OF NOT MORE THAN 6 MONTHS,** A person who practices or attempts to practice dentistry
20 without a license in violation of § 4-601(a) of this subtitle, **AIDS OR ABETS THE**
21 **UNAUTHORIZED PRACTICE OF DENTISTRY IN VIOLATION OF § 4-601(B) OF THIS**
22 **SUBTITLE,** or represents to the public in violation of § 4-602 of this subtitle that the person
23 is authorized to practice dentistry is guilty of a **[misdemeanor] FELONY** and on conviction
24 is subject to:

25 (1) For a first offense, a fine not exceeding **[\$2,000] \$5,000** or
26 imprisonment **[in jail] not exceeding [6 months] 1 YEAR;** or

27 (2) For a subsequent offense, a fine not exceeding **[\$6,000] \$20,000 PER**
28 **DAY** or imprisonment **[in the State penitentiary] not exceeding [1 year] 5 YEARS.**

29 (b) **[A] EXCEPT FOR A PERSON WHOSE LICENSE HAS LAPSED FOR A PERIOD**
30 **OF NOT MORE THAN 6 MONTHS,** A person who practices or attempts to practice dental
31 hygiene without a license in violation of § 4-601(a) of this subtitle, aids or abets **THE**
32 unauthorized practice of dental hygiene in violation of § 4-601(b) of this subtitle, or
33 represents to the public in violation of § 4-602 of this subtitle that the person is authorized
34 to practice dental hygiene is guilty of a misdemeanor and on conviction is subject to a fine
35 not exceeding \$1,000.

1 (c) A person who violates any provision of Subtitle 4 of this title, which relates to
2 dental laboratory work, or who advertises a dental appliance in violation of § 4-503(c) of
3 this title is guilty of a [misdemeanor] **FELONY** and on conviction is subject to a fine not
4 exceeding \$2,000 **PER DAY** or imprisonment [in jail] not exceeding [6 months] **2 YEARS**.

5 **(D) EXCEPT FOR A PERSON WHOSE LICENSE HAS LAPSED FOR A PERIOD OF**
6 **NOT MORE THAN 6 MONTHS, A PERSON WHO VIOLATES § 4-601 OR § 4-602 OF THIS**
7 **SUBTITLE IS SUBJECT TO A CIVIL FINE NOT EXCEEDING \$50,000 TO BE ASSESSED BY**
8 **THE BOARD IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE BOARD.**

9 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
10 as follows:

11 **Article – Health – General**

12 13-2504.

13 (a) (1) The Office of Oral Health shall conduct an annual evaluation of the
14 Program.

15 (2) The evaluation required under this subsection shall include:

16 (i) Data on any progress resulting from each grant awarded under
17 this subtitle;

18 (ii) Data on any progress of the overall Program;

19 (iii) Data demonstrating any increase in the use of restorative dental
20 care among underserved populations; and

21 (iv) Data from any statewide survey conducted by the Department
22 that demonstrates any progress of the Program.

23 (b) The Department, in conjunction with the Office of Oral Health, shall report to
24 the Governor and, in accordance with § 2-1246 of the State Government Article, the
25 General Assembly on or before November 1 of each year on:

26 (1) The results of the Program;

27 (2) Findings and recommendations for the Oral Health Program and any
28 other oral health programs established under Title 18, Subtitle 8 of this article;

29 (3) The availability and accessibility of dentists throughout the State
30 participating in the Maryland Medical Assistance Program;

1 (4) The outcomes that managed care organizations and dental managed
2 care organizations under the Maryland Medical Assistance Program achieve concerning
3 the utilization of targets required by the Five Year Oral Health Care Plan, including:

4 (i) Loss ratios that the managed care organizations and dental
5 managed care organizations experience for providing dental services; and

6 (ii) Corrective action by managed care organizations and dental
7 managed care organizations to achieve the utilization targets; [and]

8 (5) The allocation and use of funds authorized for dental services under the
9 Maryland Medical Assistance Program; AND

10 **(6) THE EXCEPTION PROVIDED FOR IN § 4-103(D)(1)(IV) OF THE**
11 **HEALTH OCCUPATIONS ARTICLE.**

12 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
13 effect July 1, 2017.

14 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section
15 4 of this Act, this Act shall take effect July 1, 2016. Section 3 of this Act shall remain
16 effective for a period of 4 years and, at the end of June 30, 2020, with no further action
17 required by the General Assembly, Section 3 of this Act shall be abrogated and of no further
18 force and effect.