

HOUSE BILL 438

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By: **Delegate West**

Introduced and read first time: January 25, 2018

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Dental Examiners – Ownership, Management, or 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 an unlicensed person to
6 take certain actions; prohibiting a licensed dentist from raising a certain defense in
7 a certain action; repealing a certain exemption from the requirements of the
8 Maryland Dentistry Act; authorizing the Board to take certain action against certain
9 applicants and licensees for accepting or tendering rebates or split fees; authorizing
10 the Board to issue a cease and desist order for certain violations; prohibiting certain
11 persons from aiding or abetting the unauthorized practice of dentistry; establishing
12 certain penalties for aiding or abetting the unauthorized practice of dentistry;
13 altering certain penalties; exempting certain persons from certain penalty
14 provisions; repealing certain references to certain places of imprisonment;
15 establishing certain civil penalties; requiring the Office of Oral Health in the
16 Maryland Department of Health to include the exception provided for in a certain
17 provision of this Act in a certain report; repealing the requirement that the Office
18 include a certain exception in a certain report; repealing the exemption for certain
19 dental practices from the requirement that a dental practice be owned, managed, or
20 operated by a licensed dentist; providing for the effective dates of this Act; altering
21 a certain definition; making stylistic changes; and generally relating to the
22 ownership, management, and operation of a dental practice.

23 BY repealing and reenacting, with amendments,
24 Article – Health – General
25 Section 13–2504
26 Annotated Code of Maryland
27 (2015 Replacement Volume and 2017 Supplement)

28 BY repealing and reenacting, with amendments,
29 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)(34) and (35), 4–601, and 4–606
2 Annotated Code of Maryland
3 (2014 Replacement Volume and 2017 Supplement)

4 BY adding to
5 Article – Health Occupations
6 Section 4–103, 4–315(a)(36), and 4–321
7 Annotated Code of Maryland
8 (2014 Replacement Volume and 2017 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 2017 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – Health – General
16 Section 13–2504(b)
17 Annotated Code of Maryland
18 (2015 Replacement Volume and 2017 Supplement)
19 (As enacted by Section 1 of this Act)

20 BY repealing and reenacting, with amendments,
21 Article – Health Occupations
22 Section 4–103(d)(1)
23 Annotated Code of Maryland
24 (2014 Replacement Volume and 2017 Supplement)
25 (As enacted by Section 1 of this Act)

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

28 **Article – Health – General**

29 13–2504.

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

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

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

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

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

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

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

8 (1) The results of the Program;

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

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

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

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

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

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

22 **(6) THE EXCEPTION PROVIDED FOR IN § 4–103(C)(1)(IV) OF THE**
23 **HEALTH OCCUPATIONS ARTICLE.**

24 **Article – Health Occupations**

25 4–101.

26 (l) **(1)** “Practice dentistry” means to:

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

30 **[(2) (II)** Perform or attempt to perform any intraoral dental service or
31 intraoral dental operation;

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

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

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

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

10 **(2) "PRACTICE DENTISTRY" INCLUDES:**

11 **(I) PATIENT EVALUATION, DIAGNOSIS, AND DETERMINATION**
12 **OF TREATMENT PLANS;**

13 **(II) DETERMINATION OF OR INFLUENCE ON TREATMENT**
14 **OPTIONS, INCLUDING WHICH RESTORATIVE AND TREATMENT MATERIALS AND**
15 **DIAGNOSTIC EQUIPMENT SHOULD BE USED AND THE SOURCES FOR OBTAINING THE**
16 **MATERIALS AND EQUIPMENT;**

17 **(III) DETERMINATION AND ESTABLISHMENT OF PATIENT**
18 **PROTOCOLS, STANDARDS, AND PRACTICE GUIDELINES; AND**

19 **(IV) ANY OTHER DECISION THAT AFFECTS PATIENT CARE AND**
20 **TREATMENT.**

21 4-102.

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

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

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

30 [(c) This title does not apply to a clinic maintained by a public school, a State
31 institution, or charitable institution, or a business corporation, for its pupils, inmates, or

1 employees if:

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

4 (2) Notwithstanding the provisions of this subsection:

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

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

10 **4-103.**

11 (A) (1) SUBJECT TO SUBSECTION (B) OF THIS SECTION AND § 4-301 OF
12 THIS TITLE AND EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A
13 DENTAL PRACTICE SHALL BE OWNED, MANAGED, OR OPERATED ONLY BY A
14 LICENSED DENTIST.

15 (2) THE OWNERSHIP, MANAGEMENT, OR OPERATION OF A DENTAL
16 PRACTICE INCLUDES:

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

20 (II) DIRECT SUPERVISION OVER THE TRAINING OF A DENTAL
21 HYGIENIST OR DENTAL ASSISTANT WHO ASSISTS IN THE CARE AND TREATMENT OF
22 DENTAL PATIENTS;

23 (III) THE PREPARATION, OWNERSHIP, OR CONTROL OF PATIENT
24 TREATMENT RECORDS; AND

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

27 (B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, AN UNLICENSED
28 PERSON MAY:

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

1 **(2) PROVIDE BOOKKEEPING, ACCOUNTING, AND TAX PREPARATION**
2 **SERVICES;**

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

4 **(4) INTERACT WITH PATIENTS AND THIRD-PARTY PAYORS FOR THE**
5 **BILLING AND COLLECTIONS FOR DENTAL SERVICES;**

6 **(5) CREATE AND PLACE ADVERTISING AND MARKETING, AS**
7 **APPROVED BY A LICENSED DENTIST;**

8 **(6) DETERMINE WHICH INFORMATION TECHNOLOGY TO ACQUIRE**
9 **AND ASSIST IN ITS ACQUISITION;**

10 **(7) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (A) OF THIS**
11 **SECTION, PROVIDE HUMAN RESOURCE FUNCTIONS;**

12 **(8) PROVIDE GENERAL OFFICE MANAGEMENT, PROPERTY**
13 **MANAGEMENT, AND MAINTENANCE; AND**

14 **(9) ASSIST IN RISK MANAGEMENT, INCLUDING LEGAL AND**
15 **REGULATORY COMPLIANCE AND THE PROCESSING OF INSURANCE CLAIMS.**

16 **(C) (1) THE REQUIREMENTS OF SUBSECTION (A) OF THIS SECTION DO**
17 **NOT APPLY TO:**

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

19 1. **A PUBLIC SCHOOL;**

20 2. **A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY**
21 **OR INSTITUTION;**

22 3. **A DENTAL OR DENTAL HYGIENE PROGRAM THAT IS**
23 **APPROVED BY THE COMMISSION ON DENTAL ACCREDITATION (CODA) FOR AN**
24 **INSTITUTION OF HIGHER EDUCATION, AS DEFINED IN § 10-101 OF THE EDUCATION**
25 **ARTICLE; OR**

26 4. **A CHARITABLE ORGANIZATION, AS DEFINED IN §**
27 **6-101 OF THE BUSINESS REGULATION ARTICLE;**

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

1 (III) A NONPROFIT ORGANIZATION THAT PROVIDES DENTAL
2 SERVICES AND IS:

3 1. A HEALTH CARE CENTER OR PROGRAM THAT OFFERS
4 DENTAL SERVICES:

5 A. FREE OF COST OR ON A SLIDING SCALE FEE
6 SCHEDULE; AND

7 B. WITHOUT REGARD TO AN INDIVIDUAL'S ABILITY TO
8 PAY; OR

9 2. A FEDERALLY QUALIFIED HEALTH CENTER OR A
10 FEDERALLY QUALIFIED HEALTH CENTER LOOK-ALIKE; OR

11 (IV) A DENTAL PRACTICE IN WHICH AT LEAST 75% OF THE
12 PATIENTS ON WHOM PROCEDURES ARE PERFORMED DURING THE CALENDAR YEAR
13 ARE MEDICAID-ELIGIBLE.

14 (2) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (1) OF THIS
15 SUBSECTION:

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

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

22 (D) IN AN ACTION BROUGHT BY THE BOARD AGAINST A LICENSED DENTIST,
23 THE LICENSED DENTIST MAY NOT RAISE AS A DEFENSE THAT A DUTY OR AN
24 OBLIGATION OF THE DENTIST UNDER THIS SECTION WAS DELEGATED OR ASSIGNED
25 TO A THIRD PARTY.

26 4-301.

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

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

1 (b) This section does not apply to:

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

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

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

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

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

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

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

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

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

20 (6) An heir of a deceased licensed dentist or a personal representative of a
21 deceased licensed dentist, if:

22 (i) The deceased licensed dentist was the owner of the dental
23 practice;

24 (ii) The deceased licensed dentist did not provide for the disposition
25 of the dental practice; and

26 (iii) The heir or the personal representative of the deceased licensed
27 dentist serves as the owner of the dental practice, regardless of whether the heir or the
28 personal representative is licensed to practice dentistry, for no longer than 1 year after the
29 death of the licensed dentist unless the Board extends the time period under subsection
30 (c)(1) of this section.

31 (c) (1) On written request and good cause shown by the heir or personal
32 representative of a deceased licensed dentist, including evidence of a good faith effort to sell

1 or close the dental practice, the Board, in its sole discretion, may extend the 1–year period
 2 under subsection (b)(6)(iii) of this section for up to an additional 6 months to allow the heir
 3 or personal representative sufficient time to sell or otherwise dispose of the dental practice.

4 (2) During the temporary ownership of a dental practice by an heir or a
 5 representative of a deceased licensed dentist under subsection (b)(6)(iii) of this section and,
 6 if applicable, paragraph (1) of this subsection, all patient care shall be provided:

7 (i) By an appropriate individual who is licensed under this title; and

8 (ii) In accordance with the individual’s scope of practice.

9 (3) The temporary ownership of a dental practice by an heir or a personal
 10 representative of a deceased licensed dentist under this subsection may not affect the
 11 exercise of the independent judgment of a licensed dentist who provides care to patients of
 12 the dental practice.

13 4–315.

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

19 (34) Willfully and without legal justification, fails to cooperate with a lawful
 20 investigation conducted by the Board; [or]

21 (35) Fails to comply with § 1–223 of this article; OR

22 **(36) ACCEPTS OR TENDERS REBATES OR SPLIT FEES.**

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

25 **Article – Health Occupations**

26 **4–321.**

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

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

1 **(2) IS GROUNDS FOR DISCIPLINARY ACTION UNDER § 4-315(A) OF**
2 **THIS SUBTITLE; OR**

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

5 4-601.

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

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

11 4-602.

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

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

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

22 4-606.

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

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

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

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

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

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

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

18 Article – Health – General

19 13–2504.

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

23 (1) The results of the Program;

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

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

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

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

33 (ii) Corrective action by managed care organizations and dental
 34 managed care organizations to achieve the utilization targets; **AND**

1 (5) The allocation and use of funds authorized for dental services under the
2 Maryland Medical Assistance Program[; and

3 (6) The exception provided for in § 4–103(d)(1)(iv) of the Health
4 Occupations Article].

5 Article – Health Occupations

6 4–103.

7 (d) (1) The requirements of subsection (a) of this section do not apply to:

8 (i) A clinic maintained by:

9 1. A public school;

10 2. A federal, State, or local government agency or institution;

11 3. A dental or dental hygiene program that is approved by
12 the Commission on Dental Accreditation (CODA) for an institution of higher education, as
13 defined in § 10–101 of the Education Article; or

14 4. A charitable organization, as defined in § 6–101 of the
15 Business Regulation Article;

16 (ii) A federal, State, or local government agency; **OR**

17 (iii) A nonprofit organization that provides dental services and is:

18 1. A health care center or program that offers dental
19 services:

20 A. Free of cost or on a sliding scale fee schedule; and

21 B. Without regard to an individual's ability to pay; or

22 2. A Federally Qualified Health Center or a Federally
23 Qualified Health Center Look–Alike[; or

24 (iv) A dental practice in which at least 75% of the patients on whom
25 procedures are performed during the calendar year are Medicaid–eligible].

26 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
27 effect July 1, 2019.

1 SECTION 5. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take
2 effect July 1, 2022.

3 SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in
4 Sections 4 and 5 of this Act, this Act shall take effect July 1, 2018.