

HOUSE BILL 1726

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8lr0114

By: **Chair, Health and Government Operations Committee (By Request – Departmental – Health)**

Introduced and read first time: February 19, 2018

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Dentistry Act – Revisions**

3 FOR the purpose of authorizing the president or executive director of the State Board of
4 Dental Examiners to apply to a certain court for a search warrant for a certain
5 purpose based on a certain complaint; requiring an application for a certain search
6 warrant to be in writing, be signed by a certain individual, and include certain
7 information; authorizing a court to issue a search warrant on a certain finding;
8 establishing a certain limitation on a certain search warrant; requiring a certain
9 search warrant to be executed and returned to a certain court within a certain time
10 period; authorizing the Board to issue a cease and desist order against an individual
11 for taking certain actions; altering the grounds for which the Board may obtain
12 injunctive relief against an individual; providing that proof of actual damage or that
13 any person will sustain any damage if a certain cease and desist order is not issued
14 is not required for issuance of the cease and desist order; providing that an injunction
15 or cease and desist order is in addition to and not instead of certain other actions;
16 prohibiting a person from practicing, attempting to practice, or offering to practice
17 clinical dentistry or nonclinical dentistry without a license to practice dentistry;
18 prohibiting a person from aiding or abetting unauthorized practice of clinical
19 dentistry or nonclinical dentistry; prohibiting a person from making certain
20 representations; establishing and altering certain penalties for certain violations of
21 law; providing that certain penalties do not apply to a certain licensee; providing
22 that certain fines collected by the Board be paid to the General Fund of the State;
23 altering a certain definition; defining certain terms; making conforming changes;
24 and generally relating to the practice of dentistry and dental hygiene in the State.

25 BY repealing and reenacting, with amendments,
26 Article – Health Occupations
27 Section 4–101, 4–320, 4–601, 4–602, and 4–606
28 Annotated Code of Maryland
29 (2014 Replacement Volume and 2017 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Health Occupations
3 Section 4–316.1, 4–602.1, and 4–602.2
4 Annotated Code of Maryland
5 (2014 Replacement Volume and 2017 Supplement)

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

8 **Article – Health Occupations**

9 4–101.

- 10 (a) In this title the following words have the meanings indicated.
- 11 (b) “Board” means the State Board of Dental Examiners.
- 12 (c) “Dental appliance” means any:
- 13 (1) Oral prosthesis;
- 14 (2) Orthodontic appliance;
- 15 (3) Regulatory appliance;
- 16 (4) Supportive appliance; or
- 17 (5) Other intraoral appliance or restoration.
- 18 (d) “Dental hygienist” means an individual, other than a dentist, who practices
19 dental hygiene.
- 20 (e) “Dental laboratory” means any commercial laboratory or workroom in which
21 a person engages in dental laboratory work.
- 22 (f) “Dental laboratory work” means making, repairing, or altering a dental
23 appliance extraorally.
- 24 (g) “Dentist” means an individual who practices dentistry.
- 25 (h) (1) “License” means, unless the context requires otherwise, a license issued
26 by the Board to:
- 27 (i) Practice dentistry; or
- 28 (ii) Practice dental hygiene.

- 1 (2) “License” includes, unless the context requires otherwise:
- 2 (i) A general license to practice dentistry;
- 3 (ii) A limited license to practice dentistry;
- 4 (iii) A teacher’s license to practice dentistry;
- 5 (iv) A general license to practice dental hygiene;
- 6 (v) A teacher’s license to practice dental hygiene;
- 7 (vi) A retired volunteer dentist’s license to practice dentistry;
- 8 (vii) A retired volunteer dental hygienist’s license to practice dental
9 hygiene;
- 10 (viii) A volunteer dentist’s license to practice dentistry;
- 11 (ix) A volunteer dental hygienist’s license to practice dental hygiene;
- 12 (x) A temporary volunteer dentist’s license to practice dentistry; and
- 13 (xi) A temporary dental hygienist’s license to practice dental
14 hygiene.

15 (i) (1) “Licensed dental hygienist” means, unless the context requires
16 otherwise, a dental hygienist who is licensed by the Board to practice dental hygiene.

17 (2) “Licensed dental hygienist” includes, unless the context requires
18 otherwise, a holder of:

- 19 (i) A general license to practice dental hygiene;
- 20 (ii) A teacher’s license to practice dental hygiene;
- 21 (iii) A retired volunteer dental hygienist’s license to practice dental
22 hygiene;
- 23 (iv) A volunteer dental hygienist’s license to practice dental hygiene;
24 or
- 25 (v) A temporary volunteer dental hygienist’s license to practice
26 dental hygiene.

27 (j) (1) “Licensed dentist” means, unless the context requires otherwise, a

1 dentist who is licensed by the Board to practice dentistry.

2 (2) "Licensed dentist" includes, unless the context requires otherwise, a
3 holder of:

4 (i) A general license to practice dentistry;

5 (ii) A limited license to practice dentistry;

6 (iii) A teacher's license to practice dentistry;

7 (iv) A retired volunteer dentist's license to practice dentistry;

8 (v) A volunteer dentist's license to practice dentistry; or

9 (vi) A temporary volunteer dentist's license to practice dentistry.

10 (K) "PRACTICE CLINICAL DENTISTRY" MEANS TO:

11 (1) PERFORM OR ATTEMPT TO PERFORM ANY INTRAORAL DENTAL
12 SERVICE OR INTRAORAL DENTAL OPERATION;

13 (2) DIAGNOSE, TREAT, OR ATTEMPT TO DIAGNOSE OR TREAT, ANY
14 DISEASE, INJURY, MALOCCLUSION, OR MALPOSITION OF A TOOTH, GUM, OR JAW, OR
15 STRUCTURES ASSOCIATED WITH A TOOTH, GUM, OR JAW, IF THE SERVICE,
16 OPERATION, OR PROCEDURE IS INCLUDED IN THE CURRICULA OF AN ACCREDITED
17 DENTAL SCHOOL OR IN AN APPROVED DENTAL RESIDENCY PROGRAM OF AN
18 ACCREDITED HOSPITAL OR TEACHING INSTITUTION;

19 (3) PERFORM OR OFFER TO PERFORM DENTAL LABORATORY WORK;

20 (4) PLACE OR ADJUST A DENTAL APPLIANCE IN A HUMAN MOUTH; OR

21 (5) ADMINISTER ANESTHESIA FOR THE PURPOSES OF DENTISTRY
22 AND NOT AS A MEDICAL SPECIALTY.

23 [(k)] (L) "Practice dental hygiene" means to:

24 (1) Perform a preliminary dental examination;

25 (2) Perform a complete prophylaxis, including the removal of any deposit,
26 accretion, or stain from the surface of a tooth or a restoration;

27 (3) Polish a tooth or a restoration;

1 (4) Chart cavities, restorations, missing teeth, periodontal conditions, and
2 other features observed during preliminary examination, prophylaxis, or polishing;

3 (5) Apply a medicinal agent to a tooth for a prophylactic purpose;

4 (6) Take a dental X ray;

5 (7) Perform a manual curettage in conjunction with scaling and root
6 planing;

7 (8) Administer local anesthesia in accordance with § 4–206.1 or § 4–206.3
8 of this title;

9 (9) Administer nitrous oxide in accordance with § 4–206.2 of this title; or

10 (10) Perform any other intraoral function that the Board authorizes by a
11 rule or regulation adopted under § 4–206 of this title.

12 **[(1)] (M)** “Practice dentistry” means to:

13 (1) [Be a manager, a proprietor, or a conductor of or an operator in any
14 place in which a dental service or dental operation is performed intraorally] **PRACTICE**
15 **NONCLINICAL DENTISTRY; OR**

16 (2) [Perform or attempt to perform any intraoral dental service or intraoral
17 dental operation;

18 (3) Diagnose, treat, or attempt to diagnose or treat any disease, injury,
19 malocclusion, or malposition of a tooth, gum, or jaw, or structures associated with a tooth,
20 gum, or jaw if the service, operation, or procedure is included in the curricula of an
21 accredited dental school or in an approved dental residency program of an accredited
22 hospital or teaching institution;

23 (4) Perform or offer to perform dental laboratory work;

24 (5) Place or adjust a dental appliance in a human mouth; or

25 (6) Administer anesthesia for the purposes of dentistry and not as a
26 medical specialty] **PRACTICE CLINICAL DENTISTRY.**

27 **(N) “PRACTICE NONCLINICAL DENTISTRY” MEANS TO BE A MANAGER, A**
28 **PROPRIETOR, OR A CONDUCTOR OF OR AN OPERATOR IN ANY PLACE IN WHICH A**
29 **DENTAL SERVICE OR DENTAL OPERATION IS PERFORMED INTRAORALLY.**

30 **[(m)] (O)** Except as provided in § 4–308(f)(2) of this title, “supervision” means
31 supervision of a dental hygienist by a dentist, where the dentist may or may not be present

1 when the dental hygienist performs the dental hygiene procedures but is available on the
2 premises.

3 [(n)] (P) “Temporary dental clinic permit” means, unless the context requires
4 otherwise, a temporary permit issued by the Board to a bona fide charitable organization
5 to provide dental services to the poor, elderly, or disabled at a dental clinic.

6 [(o)] (Q) “Third party” means any person who collects premiums, assumes
7 financial risks, pays claims, or provides administrative services relating to any:

8 (1) Insurance policy;

9 (2) Insurance contract;

10 (3) Health prepayment contract;

11 (4) Health care plan; or

12 (5) Nonprofit health service plan contract.

13 **4-316.1.**

14 (A) **BASED ON A COMPLAINT RECEIVED BY THE BOARD OR A COMPLAINT**
15 **INITIATED BY THE BOARD, THE PRESIDENT OR EXECUTIVE DIRECTOR OF THE**
16 **BOARD MAY APPLY TO A DISTRICT COURT OR CIRCUIT COURT FOR A SEARCH**
17 **WARRANT TO ENTER PRIVATE PREMISES WHERE THE BOARD HAS DETERMINED**
18 **THERE IS CAUSE TO BELIEVE THAT AN INDIVIDUAL WHO IS NOT LICENSED BY THE**
19 **BOARD TO PRACTICE DENTISTRY IS PRACTICING, ATTEMPTING TO PRACTICE, OR**
20 **OFFERING TO PRACTICE CLINICAL DENTISTRY.**

21 (B) **AN APPLICATION FOR A SEARCH WARRANT SHALL:**

22 (1) **BE IN WRITING;**

23 (2) **BE SIGNED BY THE PRESIDENT OR THE EXECUTIVE DIRECTOR OF**
24 **THE BOARD;**

25 (3) **SPECIFY THE LOCATION OF THE PREMISES TO BE SEARCHED; AND**

26 (4) **DESCRIBE THE NATURE, SCOPE, AND PURPOSE OF THE SEARCH.**

27 (C) **THE COURT THAT RECEIVES AN APPLICATION FOR A SEARCH WARRANT**
28 **UNDER SUBSECTION (A) OF THIS SECTION MAY ISSUE A WARRANT ON A FINDING**
29 **THAT:**

1 **(1) THE SCOPE OF THE PROPOSED SEARCH IS REASONABLE;**

2 **(2) THE APPLICATION FOR THE SEARCH WARRANT IS BASED ON A**
3 **COMPLAINT RECEIVED BY THE BOARD OR A COMPLAINT INITIATED BY THE BOARD;**
4 **AND**

5 **(3) OBTAINING CONSENT TO ENTER THE PRIVATE PREMISES MAY**
6 **JEOPARDIZE THE BOARD'S ATTEMPT TO DETERMINE WHETHER AN INDIVIDUAL WHO**
7 **IS NOT LICENSED BY THE BOARD TO PRACTICE DENTISTRY IS PRACTICING,**
8 **ATTEMPTING TO PRACTICE, OR OFFERING TO PRACTICE CLINICAL DENTISTRY.**

9 **(D) A SEARCH CONDUCTED IN ACCORDANCE WITH A SEARCH WARRANT**
10 **ISSUED UNDER SUBSECTION (C) OF THIS SECTION MAY NOT EXCEED THE LIMITS**
11 **SPECIFIED IN THE WARRANT.**

12 **(E) A SEARCH WARRANT ISSUED UNDER SUBSECTION (C) OF THIS SECTION**
13 **SHALL BE EXECUTED AND RETURNED TO THE ISSUING COURT:**

14 **(1) WITHIN THE PERIOD SPECIFIED IN THE WARRANT, WHICH MAY**
15 **NOT EXCEED 30 DAYS AFTER THE DATE OF ISSUANCE; OR**

16 **(2) WITHIN 15 DAYS AFTER THE DATE OF ISSUANCE, IF NO PERIOD IS**
17 **SPECIFIED IN THE WARRANT.**

18 4-320.

19 **(a) [An action may be maintained in the name of this State or the Board to enjoin]**
20 **THE BOARD MAY ISSUE A CEASE AND DESIST ORDER OR OBTAIN INJUNCTIVE RELIEF**
21 **AGAINST AN INDIVIDUAL FOR:**

22 **(1) [Unauthorized practice of] PRACTICING:**

23 **(I) CLINICAL dentistry WITHOUT A LICENSE TO PRACTICE**
24 **DENTISTRY IN VIOLATION OF § 4-301 OF THIS SUBTITLE; or**

25 **(II) [dental] DENTAL hygiene WITHOUT A LICENSE IN VIOLATION**
26 **OF § 4-301 OF THIS SUBTITLE;**

27 **(2) REPRESENTING TO THE PUBLIC BY TITLE, BY DESCRIPTION OF**
28 **SERVICES, METHODS, OR PROCEDURES, OR OTHERWISE, THAT THE INDIVIDUAL IS**
29 **LICENSED TO PRACTICE DENTISTRY, CLINICAL DENTISTRY, NONCLINICAL**
30 **DENTISTRY, OR DENTAL HYGIENE IN THE STATE IF THE INDIVIDUAL IS NOT**
31 **LICENSED;**

1 **(3) ADMINISTERING ANESTHESIA OR SEDATION WITHOUT A PERMIT;**

2 **(4) PRACTICING DENTAL RADIATION TECHNOLOGY WITHOUT A**
 3 **CERTIFICATE IN VIOLATION OF § 4–505 OF THIS TITLE;**

4 **(5) PRACTICING BEYOND THE SCOPE OF BASIC DENTAL ASSISTING,**
 5 **AS DEFINED IN REGULATION, WITHOUT BOARD RECOGNITION;**

6 **(6) PRACTICING BEYOND THE LICENSEE’S LAWFUL SCOPE OF**
 7 **PRACTICE;**

8 **[(2)] (7)** Conduct that is a ground for disciplinary action under § 4–315(a)
 9 of this subtitle;

10 **[(3)] (8)** Conduct that violates any prohibition in Subtitle 4 of this title,
 11 which relates to dental laboratory work; **[or]**

12 **[(4)] (9)** Conduct that violates the practice limitations of § 4–603 of this
 13 title; **OR**

14 **(10) TAKING ANY ACTION:**

15 **(I) FOR WHICH THE BOARD DETERMINES THERE IS EVIDENCE**
 16 **OF A GROUND FOR DISCIPLINE UNDER § 4–315(A) OF THIS SUBTITLE; AND**

17 **(II) THAT POSES A SERIOUS RISK TO THE HEALTH, SAFETY, AND**
 18 **WELFARE OF A PATIENT.**

19 (b) An action under this section may be brought by:

20 (1) The Board, in its own name;

21 (2) The Attorney General, in the name of this State; or

22 (3) A State’s Attorney, in the name of this State.

23 (c) An action **FOR AN INJUNCTION** under this section shall be brought in the
 24 county where the defendant:

25 (1) Resides; or

26 (2) Engages in the acts sought to be enjoined.

27 (d) **(1)** Proof of actual damage or that any person will sustain any damage if
 28 an injunction is not granted is not required for an **[action] INJUNCTION** under this section.

1 **(2) PROOF OF ACTUAL DAMAGE OR THAT ANY PERSON WILL SUSTAIN**
2 **ANY DAMAGE IF A CEASE AND DESIST ORDER IS NOT ISSUED IS NOT REQUIRED FOR**
3 **A CEASE AND DESIST ORDER UNDER THIS SECTION.**

4 (e) An [action] **INJUNCTION OR CEASE AND DESIST ORDER** under this section
5 is in addition to and not instead of [criminal]:

6 **(1) CRIMINAL** prosecution for:

7 **(I) THE** unauthorized practice of **CLINICAL** dentistry under §
8 **4-601 OF THIS TITLE; OR**

9 **(II) THE UNLICENSED PRACTICE OF DENTAL HYGIENE UNDER §**
10 **4-602.1** of this title; or [disciplinary]

11 **(2) DISCIPLINARY** action under § 4-315 of this subtitle.

12 4-601.

13 (a) Except as otherwise provided in this title, a person may not practice, attempt
14 to practice, or offer to practice **CLINICAL** dentistry [or dental hygiene] on a human being
15 in this State unless licensed by the Board **TO PRACTICE DENTISTRY.**

16 **(B) EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT**
17 **PRACTICE, ATTEMPT TO PRACTICE, OR OFFER TO PRACTICE NONCLINICAL**
18 **DENTISTRY IN THIS STATE UNLESS LICENSED BY THE BOARD TO PRACTICE**
19 **DENTISTRY.**

20 **[(b)] (C)** A person may not aid or abet unauthorized practice of [dental hygiene]
21 **CLINICAL DENTISTRY OR NONCLINICAL DENTISTRY** in this State.

22 4-602.

23 (a) **[(1)]** Except as otherwise provided in this section, unless authorized to
24 practice dentistry, **CLINICAL DENTISTRY, OR NONCLINICAL DENTISTRY** under this title,
25 a person may not represent to the public by title, by description of services, methods, or
26 procedures, or otherwise, that the person is authorized to practice dentistry, **CLINICAL**
27 **DENTISTRY, OR NONCLINICAL DENTISTRY** in this State.

28 **[(2)** Unless authorized to practice dental hygiene under this title, a person
29 may not represent to the public by title, by description of services, methods, or procedures,
30 or otherwise, that the person is authorized to practice dental hygiene in this State.]

31 (b) This title does not affect the right of a holder of a dental degree who does not

1 directly or indirectly practice or attempt to practice dentistry **OR CLINICAL DENTISTRY** in
2 this State to use the degree or an abbreviation for the degree in connection with the name
3 of the holder.

4 **4-602.1.**

5 (A) **EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A PERSON MAY NOT**
6 **PRACTICE, ATTEMPT TO PRACTICE, OR OFFER TO PRACTICE DENTAL HYGIENE ON A**
7 **HUMAN BEING IN THIS STATE UNLESS LICENSED BY THE BOARD.**

8 (B) **A PERSON MAY NOT AID OR ABET THE UNAUTHORIZED PRACTICE OF**
9 **DENTAL HYGIENE IN THIS STATE.**

10 **4-602.2.**

11 **EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, UNLESS AUTHORIZED TO**
12 **PRACTICE DENTAL HYGIENE UNDER THIS TITLE, A PERSON MAY NOT REPRESENT TO**
13 **THE PUBLIC BY TITLE, BY DESCRIPTION OF OFFERED SERVICES AND PROCEDURES,**
14 **OR OTHERWISE, THAT THE PERSON IS AUTHORIZED TO PRACTICE DENTAL HYGIENE**
15 **IN THIS STATE.**

16 **4-606.**

17 (a) A person who practices or attempts to practice **NONCLINICAL** dentistry
18 without a license **TO PRACTICE DENTISTRY** in violation of [~~§ 4-601(a)~~] **§ 4-601(B)** of this
19 subtitle or represents to the public in violation of § 4-602 of this subtitle that the person is
20 authorized to practice **NONCLINICAL** dentistry is guilty of a misdemeanor and on
21 conviction is subject to:

22 (1) For a first offense, a fine not exceeding \$2,000 or imprisonment in jail
23 not exceeding 6 months; or

24 (2) For a subsequent offense, a fine not exceeding \$6,000 or imprisonment
25 in the State penitentiary not exceeding 1 year.

26 (B) **EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A PERSON**
27 **WHO PRACTICES OR ATTEMPTS TO PRACTICE CLINICAL DENTISTRY WITHOUT A**
28 **LICENSE TO PRACTICE DENTISTRY IN VIOLATION OF § 4-601(A) OF THIS SUBTITLE**
29 **OR REPRESENTS TO THE PUBLIC IN VIOLATION OF § 4-602 OF THIS SUBTITLE THAT**
30 **THE PERSON IS AUTHORIZED TO PRACTICE CLINICAL DENTISTRY IS GUILTY OF A**
31 **FELONY AND ON CONVICTION IS SUBJECT TO:**

32 (1) **A FINE NOT EXCEEDING \$10,000 OR IMPRISONMENT NOT**
33 **EXCEEDING 5 YEARS OR BOTH; AND**

1 **(2) A CIVIL FINE OF NOT MORE THAN \$50,000 TO BE LEVIED BY THE**
2 **BOARD.**

3 **(C) THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION DO NOT APPLY**
4 **TO A LICENSEE WHO HAS FAILED TO RENEW A LICENSE UNDER § 4-309 OF THIS**
5 **TITLE IF:**

6 **(1) LESS THAN 6 MONTHS HAS ELAPSED SINCE THE EXPIRATION OF**
7 **THE LICENSE; AND**

8 **(2) THE LICENSEE HAS APPLIED FOR LICENSE RENEWAL AND PAID**
9 **THE RENEWAL FEE.**

10 **(D) A PERSON WHO AIDS OR ABETS THE PRACTICE OF CLINICAL DENTISTRY**
11 **WITHOUT A LICENSE TO PRACTICE DENTISTRY IN THIS STATE IS GUILTY OF A**
12 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$5,000**
13 **OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.**

14 **(E) A PERSON WHO AIDS OR ABETS THE PRACTICE OF NONCLINICAL**
15 **DENTISTRY WITHOUT A LICENSE TO PRACTICE DENTISTRY IN THIS STATE IS GUILTY**
16 **OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING**
17 **\$2,000 OR IMPRISONMENT NOT EXCEEDING 6 MONTHS OR BOTH.**

18 **[(b)] (F) A person who practices or attempts to practice dental hygiene without**
19 **a license in violation of [§ 4-601(a)] § 4-602.1(A) of this subtitle, aids or abets**
20 **unauthorized practice of dental hygiene in violation of [§ 4-601(b)] § 4-602.1(B) of this**
21 **subtitle, or represents to the public in violation of [§ 4-602] § 4-602.2 of this subtitle that**
22 **the person is authorized to practice dental hygiene is guilty of a misdemeanor and on**
23 **conviction is subject to a fine not exceeding [\$1,000] \$3,000 OR IMPRISONMENT NOT**
24 **EXCEEDING 1 YEAR OR BOTH.**

25 **[(c)] (G) A person who violates any provision of Subtitle 4 of this title, which**
26 **relates to dental laboratory work, or who advertises a dental appliance in violation of §**
27 **4-503(c) of this title is guilty of a [misdemeanor] FELONY and on conviction is subject to a**
28 **fine not exceeding [\$2,000] \$5,000 or imprisonment [in jail] not exceeding [6 months] 1**
29 **YEAR OR BOTH.**

30 **(H) THE BOARD SHALL PAY ANY FINES COLLECTED UNDER THIS SECTION**
31 **INTO THE GENERAL FUND OF THE STATE.**

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
33 1, 2018.