

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Health and Mental Hygiene  
(DLS Control No. 14-048)**

---

**Overview and Legal and Fiscal Impact**

The regulations delineate what constitutes lawful and unlawful ownership and management of a dental practice.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Department of Health and Mental Hygiene:**

Board of Dental Examiners: Ownership and Management of a Dental Practice:  
COMAR 10.44.34.01-.05

---

**Legal Analysis**

**Summary of Regulations**

**Scope**

According to the Department of Health and Mental Hygiene, the intent of the regulations is to (1) preserve a dentist's professional independence and (2) address concerns that licensed dentists may be misrepresenting their alleged ownership in a practice.

**Prohibitions**

The regulations provide that only a dentist may own, manage, conduct, operate, or be the proprietor of a dental practice. A dentist may not falsely represent to the Board of Dental Examiners that the dentist is an owner or has an ownership interest in a dental practice. A dentist is required to be solely responsible for patient management. Only a dentist may exercise authority or control over the clinical practice of dentistry.

The board is required to deem that a person is exercising authority or control over the clinical practice of dentistry if the person, by agreement, lease, policy, understanding, or other arrangement, exercises authority or control over specified circumstances, including (1) a finding, decision, or recommendation of a dentist relating to a course or alternative course of treatment for a patient; (2) the procedures or materials to be used as all or a part of a course of treatment, or the manner in which a course of treatment is to be implemented by a dentist or other ancillary

personnel; (3) the length of time a dentist or a dental hygienist spends treating or consulting with a patient; (4) conditions on the number of patients a dentist or a dental hygienist may treat in a certain period of time; (5) communications that the dentist has with patients that are clinical in nature; (6) the clinical practice of a dental hygienist regarding appropriate dental hygiene treatment; or (7) the manner in which a dentist or ancillary personnel use dental equipment or materials for the provision of dental treatment.

### **Goods or Services for the Support of a Dental Practice**

The regulations specify that a person is not prohibited from providing goods or services for the support of the business of a dental practice, provided that the person does not (1) provide goods or services in exchange for a percentage, or share of revenue or profits of the dental practice or (2) exert authority or control over the clinical practice of dentistry. The regulations provide that the following may not be considered to be exerting control over a dental practice: (1) a lease, mortgage agreement, or other arrangement regarding the use of space for dental offices, based on a set, non-percentage fee reasonably related to the fair market value of the office space provided at the time the lease became effective; or (2) agreements relating to the purchase, sale, financing, or lease of dental equipment, instruments, and supplies provided that the dentist maintains the complete care, custody, and control of the dental instruments and supplies and the lease or agreement does not provide for a payment or fee based on a percentage of the revenue received by the dentist or dental practice.

### **Violations**

A non-dentist person who practices dentistry, or who otherwise exercises authority or control over a dental practice, is guilty of a misdemeanor and is subject to the penalties specified in § 4-606 of the Health Occupations Article. The regulations prohibit a dentist from (1) entering into an agreement with a non-dentist person in which the non-dentist exerts any authority or control over the clinical practice of dentistry; (2) permitting a non-dentist person to exert any authority or control over the dentist's clinical practice of dentistry; (3) being employed by, working at the direction of, or being an independent contractor for a non-dentist person; or (4) having an ownership interest in a dental practice that is also owned by a non-dentist.

In addition to specified violations, the regulations provide that a dentist's failure to comply with the provisions of the regulations constitutes unprofessional conduct and may constitute other violations of law.

### **Legal Issue**

The regulations present no legal issue of concern.

### **Statutory Authority and Legislative Intent**

The department cites §§ 4-101(l), 4-315(a)(18), 4-601(a), 4-602(a), and 4-606(a) of the Health Occupations Article as legal authority for the regulations. Section 4-101(l) defines the term "practice dentistry." Section 4-315(a)(18) authorizes the board to discipline a licensed dentist who violates any rule or regulation adopted by the board. With specified exceptions, § 4-601(a) prohibits a person from practicing, attempting to practice, or offering to practice dentistry or dental hygiene on a human being in the State unless licensed by the board. With

specified exceptions, unless authorized to practice dentistry under State law, § 4-602 prohibits a person from representing to the public by title, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice dentistry in the State. Section 4-606(a) provides that a person who practices or attempts to practice dentistry without a license in violation of § 4-601(a) or represents to the public in violation of 4-602(a) that the person is authorized to practice dentistry is guilty of a misdemeanor and on conviction is subject to specified fines and imprisonment.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The regulations clarify current law by delineating what constitutes lawful and unlawful ownership management of a dental practice. The bill specifies actions that the State Board of Dentistry deems to constitute an exercise of authority or control over the practice of dentistry. The department advises that there is no fiscal impact because the regulations merely clarify current law. The Department of Legislative Services concurs.

### **Impact on Budget**

There is no impact on the State operating or capital budgets.

### **Agency Estimate of Projected Small Business Impact**

The department advises that the regulations have minimal or no impact on small businesses in the State. The Department of Legislative Services concurs.

## **Contact Information**

**Legal Analysis:** Lynne Blume Rosen – (410) 946/(301) 970-5350

**Fiscal Analysis:** Kathleen P. Kennedy – (410) 946/(301) 970-5510