

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	03/24/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 5/2/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

10 44 34 01-.05

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator Telephone Number
Michele Phinney 410-767-5623

Mailing Address

201 W. Preston Street

City State Zip Code
Baltimore MD 21201

Email
michele.phinney@maryland.gov

5. Name of Person to Call About this Document Telephone No.
Murray Sherman 410-402-8530

Email Address
murray.sherman@maryland.gov

6. Check applicable items:
X- New Regulations

- Amendments to Existing Regulations
 - Date when existing text was downloaded from COMAR online: .
 - Repeal of Existing Regulations
 - Recodification
 - Incorporation by Reference of Documents Requiring DSD Approval
 - Reproposal of Substantively Different Text:
 - : Md. R
 - (vol.) (issue) (page nos) (date)
- Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

- Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

- OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Grant Gerber, Assistant Attorney General, (telephone #410-767-5469) on March 12, 2014. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Joshua M. Sharfstein, M.D.

Title

Secretary

Telephone No.

410-767-6500

Date

March 24, 2014

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 44 BOARD OF DENTAL EXAMINERS

10.44.34 Ownership and Management of a Dental Practice

Authority: Health Occupations Article, §4-101(l), Annotated Code of Maryland

Notice of Proposed Action

□

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01—.05 under a new Chapter, COMAR 10.44.34 Ownership and Management of a Dental Practice.

This action was considered by the Board of Dental Examiners at a public meeting held on February 19, 2014 notice of which was given under the Notice of Public Meetings link on the Board's website pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to delineate what constitutes lawful and unlawful ownership and management of a dental practice.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to dhmf.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through June 2, 2014. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2014
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:
- E. If these regulations have no economic impact under Part A, indicate reason briefly: Delineating what constitutes unlawful ownership and management of a dental practice will not have an economic impact. Although the chapter is new, the proscriptions conform with existing statutory law.
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
- See E. above
- G. Small Business Worksheet:

Attached Document:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 44 BOARD OF DENTAL EXAMINERS

10.44.34 Ownership and Management of a Dental Practice

Authority: Health Occupations Article, §4-101(l), Annotated Code of Maryland

.01 Scope.

In Maryland only licensed dentists may own, manage, conduct, operate, or be the proprietor of a dental practice, regardless how small the ownership interest. However there are an increasing number of non-dentists who have become owners of dental practices or who are exercising unlawful authority or control over the clinical practice of dentistry in dental offices through the guise of "management." This chapter is intended to:

- A. Preserve a dentist's professional independence; and*
- B. Address the concern that licensed dentists may be misrepresenting their alleged ownership in a dental practice.*

.02 Definitions.

A. In this chapter, the following terms have the meaning indicated.

B. Terms Defined.

(1) "Ancillary personnel" means a dental hygienist, dental radiation technologist, dental assistant, or any other individual who provides clinical services in a dental office.

(2) Dentist.

(a) "Dentist" means an individual who holds an active general license to practice dentistry in Maryland.

(b) "Dentist" does not include an individual who in this State holds:

(i) An inactive status registration certificate;

(ii) A limited license;

(iii) A teacher's license;

(iv) A retired volunteer license;

(v) A volunteer license; or

(vi) A temporary volunteer license.

(3) "Person" means a natural person, partnership, professional association, professional corporation, limited partnership, limited liability company, trust, estate, corporation, association, unincorporated association, custodian, two or more persons having a joint or common interest, nominee, or any other individual, legal or commercial entity in its own or any representative capacity.

(4) "Practice dentistry" means to:

(a) Be a manager, a proprietor, or a conductor of or an operator in any place in which a dental service or dental operation is performed intraorally;

(b) Perform or attempt to perform any intraoral dental service or intraoral dental operation;

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

(d) Perform or offer to perform dental laboratory work;

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

(f) Administer anesthesia for the purposes of dentistry and not as a medical specialty.

.03 Prohibitions.

A. Only a dentist shall own, manage, conduct, operate, or be the proprietor of a dental practice.

B. A dentist may not falsely represent to the Board that the dentist is an owner or has an ownership interest in a dental practice.

C. A dentist shall be solely responsible for patient management.

D. Only a dentist shall exercise authority or control over the clinical practice of dentistry.

E. The Board shall 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:

(1) A finding, decision, or recommendation of a dentist regarding 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;

(7) The manner in which a dentist or ancillary personnel uses dental equipment or materials for the provision of dental treatment;

(8) A dentist's referral of a patient to another dentist or other health care provider;

(9) The contents of patient records;

(10) Access to patient records by the dentist, the patient, or the patient's legal representative in accordance with applicable law;

(11) A decision of a dentist to refund payments made by a patient or third party payor for dental work not performed or dental work performed incorrectly by either a dentist, ancillary personnel, or dental laboratory;

(12) The necessity of utilizing a dental laboratory;

(13) The purchase of dental equipment or materials provided that the dentist reasonably believes that the failure to purchase the equipment would impair the ability of the dentist or a dental hygienist to provide proper dental care to a patient;

(14) A decision regarding the advertising of the practice of a dentist provided that the decision would result in a violation of Health Occupations Article, §4-503, Annotated Code of Maryland, or COMAR 10.44.06;

(15) The establishment of fees for dental services or services provided by ancillary personnel;

(16) A decision regarding the clinical supervision of ancillary personnel by a dentist;

(17) The hiring or firing of ancillary personnel or the clinical terms of their employment;

(18) The decision of a dentist to refuse to work with ancillary personnel if the decision is related to the clinical competence of the ancillary personnel, regardless of who employs the ancillary personnel; or

(19) The material terms of any provider contracts or arrangements between a dentist or a person and third party payors.

.04 Support to a Dental Practice.

A. Nothing in this chapter shall prohibit a person from providing goods or services for the support of the business of a dental practice provided that the person does not:

(1) Provide such goods or services in exchange for a percentage, or share of revenue or profits of the dental practice; or

(2) Exert any authority or control over the clinical practice of dentistry.

B. The following may not be considered to be exerting authority or 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 regarding the purchase, sale, financing or lease of dental equipment, instruments and supplies as long as the:

(a) Dentist maintains the complete care, custody, and control of the dental instruments and supplies; and

(b) Lease or agreement does not provide for a payment or fee based on a percentage of the revenue received by the dentist or the dental practice.

.05 Violations.

A. 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 contained in Health Occupations Article, §4-606, Annotated Code of Maryland.

B. A dentist may not:

(1) Enter 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) Permit a non-dentist person to exert any authority or control over the dentist's clinical practice of dentistry;

(3) Be employed by, work at the direction of, or be an independent contractor for a non-dentist person; or

(4) Have an ownership interest in a dental practice that is also owned by a non-dentist.

C. In addition to the violations contained in this regulation, a dentist's failure to comply with the provisions of this chapter constitutes unprofessional conduct and may constitute other violations of law.

JOSHUA M. SHARFSTEIN, M.D.

Secretary of Health and Mental Hygiene