

SENATE BILL 654

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1998 Regular Session
8lr2371
CF 8lr2610

By: ~~Senator Hollinger~~ **Senators Hollinger, Hafer, Munson, Green, Kelley,
Blount, Astle, Ruben, Dorman, Hoffman, Fry, and Forehand**

Introduced and read first time: February 6, 1998
Assigned to: Economic and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted with floor amendments
Read second time: March 24, 1998

CHAPTER _____

1 AN ACT concerning

2 **Practice of Medicine – Definition State Board of Physician Quality**
3 **Assurance and State Board of Dental Examiners - Discipline of Members**

4 FOR the purpose of ~~including within the definition of "practice medicine" the~~
5 ~~supervising, directing, or otherwise being responsible for administering the~~
6 ~~delivery of certain medical services; and generally relating to the practice of~~
7 ~~medicine requiring the State Board of Physician Quality Assurance and the~~
8 ~~State Board of Dental Examiners to refer a certain allegation to a certain~~
9 ~~committee; authorizing these Boards to discipline physicians and dentists who~~
10 ~~have certain responsibilities relating to establishing or supervising protocols or~~
11 ~~procedures for a system of delivery of health care services and the protocols or~~
12 ~~procedures fail to meet certain standards; making certain exceptions; defining~~
13 ~~certain terms; providing for a delayed effective date; and generally relating to~~
14 ~~the authority of the State Board of Physician Quality Assurance and the State~~
15 ~~Board of Dental Examiners to discipline physicians and dentists and the~~
16 ~~practice of medicine and dentistry.~~

17 ~~BY repealing and reenacting, with amendments,~~
18 ~~Article – Health Occupations~~
19 ~~Section 14-101(k)~~
20 ~~Annotated Code of Maryland~~
21 ~~(1994 Replacement Volume and 1997 Supplement)~~

22 BY repealing and reenacting, with amendments,
23 Article - Health Occupations
24 Section 4-101(m), 4-315(a)(29) and (30), 14-101(k), and 14-404(a)(39) and (40)

1 Annotated Code of Maryland
2 (1994 Replacement Volume and 1997 Supplement)

3 BY repealing and reenacting, without amendments,
4 Article - Health Occupations
5 Section 14-401(a)
6 Annotated Code of Maryland
7 (1994 Replacement Volume and 1997 Supplement)

8 BY adding to
9 Article - Health Occupations
10 Section 4-315(a)(31), 14-401(c)(5), and 14-404(a)(41)
11 Annotated Code of Maryland
12 (1994 Replacement Volume and 1997 Supplement)

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

15 **Article - Health Occupations**

16 4-101.

17 (m) "Practice dentistry" means to:

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

20 (2) Perform or attempt to perform any intraoral dental service or
21 intraoral dental operation;

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

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

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

29 (6) Administer anesthesia for the purposes of dentistry and not as a
30 medical specialty; OR

31 (7) ESTABLISH OR SUPERVISE PROTOCOLS OR PROCEDURES FOR THE
32 DELIVERY OF DENTAL SERVICES INCLUDING MAKING A DETERMINATION THAT A
33 PROPOSED OR DELIVERED DENTAL CARE SERVICE IS NOT OR WAS NOT MEDICALLY
34 OR DENTALLY NECESSARY OR APPROPRIATE.

1 4-315.

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

7 (29) Fails to display the notice required under § 4-313(d) of this title; [or]

8 (30) Fails to begin to fulfill a public service requirement within 1 year of
 9 when the assignment is to begin that was a condition of the applicant or licensee
 10 receiving State or federal loans or scholarships for the applicant's or licensee's dental
 11 education[.]; OR

12 (31) IS A DENTIST WHO IS RESPONSIBLE FOR ESTABLISHING OR
 13 SUPERVISING PROTOCOLS OR PROCEDURES FOR THE DELIVERY OF DENTAL CARE, IS
 14 FULLY COMPENSATED FOR THAT RESPONSIBILITY, AND THE PROTOCOLS OR
 15 PROCEDURES FAIL TO MEET APPROPRIATE STANDARDS FOR THE DELIVERY OF
 16 QUALITY DENTAL CARE AS DETERMINED BY APPROPRIATE PEER REVIEW, EXCEPT
 17 THAT A DENTIST MAY NOT BE DISCIPLINED BY THE BOARD FOR:

18 (I) THE INDEPENDENT JUDGMENT ERROR OF A DENTAL CARE
 19 PROVIDER WHO PROVIDES DIRECT PATIENT CARE IN CONTRADICTION TO
 20 ESTABLISHED PROTOCOLS OR PROCEDURES FOR A SYSTEM OF DELIVERY OF
 21 QUALITY DENTAL CARE; OR

22 (II) ESTABLISHING OR DIRECTING PROTOCOLS OR PROCEDURES IN
 23 A HEALTH FACILITY AS DEFINED IN TITLE 19, SUBTITLES 3, 3A, AND 3B OF THE
 24 HEALTH - GENERAL ARTICLE IF THE PROTOCOLS OR PROCEDURES HAVE BEEN
 25 APPROVED BY THE HEALTH CARE FACILITY'S DENTAL STAFF OR DENTAL STAFF
 26 COMMITTEE.

27 14-101.

28 (k) (1) "Practice medicine" means to engage, with or without compensation,
 29 in medical:

30 (i) Diagnosis;

31 (ii) Healing;

32 (iii) Treatment; or

33 (iv) Surgery.

34 (2) "Practice medicine" includes doing, undertaking, professing to do,
 35 and attempting any of the following:

1 (i) Diagnosing, healing, treating, preventing, prescribing for, or
 2 removing any physical, mental, or emotional ailment or supposed ailment of an
 3 individual:

4 1. By physical, mental, emotional, or other process that is
 5 exercised or invoked by the practitioner, the patient, or both; or

6 2. By appliance, test, drug, operation, or treatment;

7 (ii) Ending of a human pregnancy; [and]

8 (iii) Performing acupuncture; AND

9 ~~(IV) SUPERVISING, DIRECTING, OR OTHERWISE BEING~~
 10 ~~RESPONSIBLE FOR ADMINISTERING THE DELIVERY OF MEDICAL SERVICES~~
 11 ~~INCLUDING:~~

12 ~~1. ESTABLISHING, PROMULGATING, OR ENFORCING~~
 13 ~~PROTOCOLS OR PROCEDURES FOR THE DELIVERY OF MEDICAL SERVICES; OR~~

14 ~~2. MAKING A DETERMINATION CONCERNING THE MEDICAL~~
 15 ~~APPROPRIATENESS OR MEDICAL NECESSITY OF HEALTH CARE.~~

16 (IV) MAKING A DETERMINATION THAT A PROPOSED OR DELIVERED
 17 HEALTH CARE SERVICE IS NOT OR WAS NOT MEDICALLY NECESSARY OR MEDICALLY
 18 APPROPRIATE.

19 (3) "Practice medicine" does not include:

20 (i) Selling any nonprescription drug or medicine;

21 (ii) Practicing as an optician; or

22 (iii) Performing a massage or other manipulation by hand, but by no
 23 other means.

24 14-401.

25 (a) The Board shall perform any necessary preliminary investigation before
 26 the Board refers to an investigatory body an allegation of grounds for disciplinary or
 27 other action brought to its attention.

28 (c) (5) AFTER PERFORMING ANY NECESSARY PRELIMINARY
 29 INVESTIGATION OF AN ALLEGATION OF GROUNDS FOR DISCIPLINARY OR OTHER
 30 ACTION, THE BOARD SHALL REFER ANY ALLEGATION BASED ON § 14-404(A)(41) OF
 31 THIS SUBTITLE TO A COMMITTEE THAT SHALL INCLUDE PHYSICIANS WHO ARE
 32 RESPONSIBLE FOR ESTABLISHING OR SUPERVISING PROTOCOLS OR PROCEDURES
 33 FOR THE DELIVERY OF HEALTH CARE SERVICES AND, IF APPROPRIATE, A PHYSICIAN
 34 WHO HAS A MEDICAL SPECIALTY RELATED TO THE CARE UNDER REVIEW.

1 14-404.

2 (a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on
3 the affirmative vote of a majority of its full authorized membership, may reprimand
4 any licensee, place any licensee on probation, or suspend or revoke a license if the
5 licensee:

6 (39) Intentionally misrepresents credentials for the purpose of testifying
7 or rendering an expert opinion in hearings or proceedings before the Board or those
8 otherwise delegated to the Office of Administrative Hearings[.]; [or]

9 (40) Fails to keep adequate medical records as determined by appropriate
10 peer review; OR

11 (41) IS A PHYSICIAN WHO IS RESPONSIBLE FOR ESTABLISHING OR
12 SUPERVISING PROTOCOLS OR PROCEDURES FOR THE DELIVERY OF HEALTH CARE
13 SERVICES AND THE PROTOCOLS OR PROCEDURES FAIL TO MEET APPROPRIATE
14 STANDARDS FOR THE DELIVERY OF QUALITY MEDICAL CARE AS DETERMINED BY
15 APPROPRIATE REVIEW, EXCEPT THAT A PHYSICIAN MAY NOT BE DISCIPLINED BY THE
16 BOARD FOR:

17 (I) THE INDEPENDENT JUDGMENT ERROR OF A HEALTH CARE
18 PROVIDER WHO IS PROVIDING DIRECT PATIENT CARE IN CONTRADICTION TO
19 ESTABLISHED PROTOCOLS OR PROCEDURES FOR A SYSTEM OF DELIVERY OF
20 QUALITY CARE; OR

21 (II) ESTABLISHING OR SUPERVISING PROTOCOLS OR PROCEDURES
22 IN A HEALTH CARE FACILITY AS DEFINED IN TITLE 19, SUBTITLES 3, 3A, AND 3B OF
23 THE HEALTH - GENERAL ARTICLE, OR FOR EMERGENCY MEDICAL SERVICES AS
24 DEFINED IN § 13-516(A)(5) OF THE EDUCATION ARTICLE, IF THE PROTOCOLS OR
25 PROCEDURES HAVE BEEN APPROVED BY THE HEALTH CARE FACILITY'S MEDICAL
26 STAFF OR MEDICAL STAFF COMMITTEE OR, IN THE CASE OF EMERGENCY MEDICAL
27 SERVICES, IF THE PROTOCOLS OR PROCEDURES HAVE BEEN ADOPTED IN
28 ACCORDANCE WITH THE REQUIREMENTS OF § 13-516(D) OF THE EDUCATION
29 ARTICLE.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 ~~October 1, 1998~~ June 1, 1999.