

SENATE BILL 228

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By: **Senator Conway**

Introduced and read first time: January 21, 2016

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Dental Examiners – Ownership, Management, and Operation of a**
3 **Dental Practice**

4 FOR the purpose of requiring a dental practice to be owned, managed, and operated by a
5 licensed dentist, subject to certain exceptions; authorizing an unlicensed person to
6 take certain actions; repealing a certain exemption from the requirements of the
7 Maryland Dentistry Act; authorizing the State Board of Dental Examiners to issue
8 a cease and desist order for certain violations; prohibiting certain persons from
9 aiding or abetting the unauthorized practice of dentistry; establishing certain
10 penalties for aiding or abetting the unauthorized practice of dentistry; altering
11 certain penalties; exempting certain persons from certain penalty provisions;
12 repealing certain references to certain places of imprisonment; establishing certain
13 civil penalties; requiring the Office of Oral Health in the Department of Health and
14 Mental Hygiene to include the exception provided for in a certain provision of this
15 Act in a certain report; providing for the effective dates of this Act; providing for the
16 termination of certain provisions of this Act; altering a certain definition; making
17 stylistic changes; and generally relating to the ownership, management, and
18 operation of a dental practice.

19 BY repealing and reenacting, with amendments,
20 Article – Health Occupations
21 Section 4–101(l), 4–102, 4–601, and 4–606
22 Annotated Code of Maryland
23 (2014 Replacement Volume and 2015 Supplement)

24 BY adding to
25 Article – Health Occupations
26 Section 4–103 and 4–320.1
27 Annotated Code of Maryland
28 (2014 Replacement Volume and 2015 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,
 2 Article – Health Occupations
 3 Section 4–301 and 4–602
 4 Annotated Code of Maryland
 5 (2014 Replacement Volume and 2015 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article – Health – General
 8 Section 13–2504
 9 Annotated Code of Maryland
 10 (2015 Replacement Volume)

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

13 **Article – Health Occupations**

14 4–101.

15 (l) (1) “Practice dentistry” means to:

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

19 [(2)] (II) Perform or attempt to perform any intraoral dental service or
 20 intraoral dental operation;

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

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

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

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

30 (2) **“PRACTICE DENTISTRY” INCLUDES:**

31 (I) **PATIENT EVALUATION, DIAGNOSIS, AND DETERMINATION**
 32 **OF TREATMENT PLANS;**

1 **(II) DETERMINATION OF OR INFLUENCE ON TREATMENT**
2 **OPTIONS, INCLUDING WHICH RESTORATIVE AND TREATMENT MATERIALS AND**
3 **DIAGNOSTIC EQUIPMENT SHOULD BE USED AND THE SOURCES FOR OBTAINING THE**
4 **MATERIALS AND EQUIPMENT;**

5 **(III) DETERMINATION AND ESTABLISHMENT OF PATIENT**
6 **PROTOCOLS, STANDARDS, AND PRACTICE GUIDELINES; AND**

7 **(IV) ANY OTHER DECISION THAT AFFECTS PATIENT CARE AND**
8 **TREATMENT.**

9 4–102.

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

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

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

18 [(c) This title does not apply to a clinic maintained by a public school, a State
19 institution, or charitable institution, or a business corporation, for its pupils, inmates, or
20 employees if:

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

23 (2) Notwithstanding the provisions of this subsection:

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

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

29 4–103.

30 **(A) (1) SUBJECT TO SUBSECTION (B) OF THIS SECTION AND EXCEPT AS**
31 **PROVIDED IN SUBSECTION (C) OF THIS SECTION, A DENTAL PRACTICE SHALL BE**
32 **OWNED, MANAGED, AND OPERATED ONLY BY A LICENSED DENTIST.**

1 **(2) THE OWNERSHIP, MANAGEMENT, AND OPERATION OF A DENTAL**
2 **PRACTICE INCLUDES:**

3 **(I) THE HIRING, SUPERVISION, OR TERMINATION OF**
4 **EMPLOYMENT OF A DENTIST, DENTAL HYGIENIST, OR DENTAL ASSISTANT WHO**
5 **ASSISTS IN THE CARE AND TREATMENT OF DENTAL PATIENTS;**

6 **(II) DIRECT SUPERVISION OVER THE TRAINING OF A DENTAL**
7 **HYGIENIST OR DENTAL ASSISTANT WHO ASSISTS IN THE CARE AND TREATMENT OF**
8 **DENTAL PATIENTS;**

9 **(III) THE PREPARATION, OWNERSHIP, OR CONTROL OF PATIENT**
10 **TREATMENT RECORDS; AND**

11 **(IV) THE SHARING OF INCOME, REVENUES, PROFITS, OR FEES OF**
12 **A DENTAL PRACTICE.**

13 **(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, AN UNLICENSED**
14 **PERSON MAY:**

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

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

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

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

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

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

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

28 **(8) PROVIDE GENERAL OFFICE MANAGEMENT, PROPERTY**
29 **MANAGEMENT, AND MAINTENANCE; AND**

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

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

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

6 **1. A PUBLIC SCHOOL;**

7 **2. A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY**
8 **OR INSTITUTION;**

9 **3. A DENTAL OR DENTAL HYGIENE PROGRAM THAT IS**
10 **APPROVED BY THE COMMISSION ON DENTAL ACCREDITATION (CODA) FOR AN**
11 **INSTITUTION OF HIGHER EDUCATION, AS DEFINED IN § 10–101 OF THE EDUCATION**
12 **ARTICLE; OR**

13 **4. A CHARITABLE ORGANIZATION, AS DEFINED IN §**
14 **6–101 OF THE BUSINESS REGULATION ARTICLE;**

15 **(II) A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY THAT**
16 **PROVIDES DENTAL SERVICES;**

17 **(III) A NONPROFIT ORGANIZATION THAT PROVIDES DENTAL**
18 **SERVICES AND IS:**

19 **1. A HEALTH CARE CENTER OR PROGRAM THAT OFFERS**
20 **DENTAL SERVICES:**

21 **A. FREE OF COST OR ON A SLIDING SCALE FEE**
22 **SCHEDULE; AND**

23 **B. WITHOUT REGARD TO AN INDIVIDUAL’S ABILITY TO**
24 **PAY; OR**

25 **2. A FEDERALLY QUALIFIED HEALTH CENTER OR A**
26 **FEDERALLY QUALIFIED HEALTH CENTER LOOK–ALIKE; OR**

27 **(IV) A DENTAL PRACTICE THAT OFFERS DENTAL SERVICES TO A**
28 **PATIENT POPULATION OF WHICH AT LEAST 75% OF THE PATIENTS EXAMINED**
29 **DURING THE CALENDAR YEAR ARE MEDICAID–ELIGIBLE.**

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

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

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

9 4-301.

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

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

16 (b) This section does not apply to:

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

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

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

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

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

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

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

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

1 (ii) Performs intraoral tasks only under the direct supervision of a
2 licensed dentist who personally is present in the office area where the tasks are performed.

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

5 **Article – Health Occupations**

6 **4–320.1.**

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

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

12 **(2) IS A GROUND FOR DISCIPLINARY ACTION UNDER § 4–315(A) OF**
13 **THIS SUBTITLE; OR**

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

16 **4–601.**

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

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

22 **4–602.**

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

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

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

4–606.

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

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

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

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

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

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

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

Article – Health – General

13–2504.

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

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

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

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

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

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

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

14 (1) The results of the Program;

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

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

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

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

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

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

28 **(6) THE EXCEPTION PROVIDED FOR IN § 4-103(C)(1)(IV) OF THE**
29 **HEALTH OCCUPATIONS ARTICLE.**

30 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
31 effect July 1, 2017.

1 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in Section
2 4 of this Act, this Act shall take effect July 1, 2016. Section 3 of this Act shall remain
3 effective for a period of 4 years and, at the end of June 30, 2020, with no further action
4 required by the General Assembly, Section 3 of this Act shall be abrogated and of no further
5 force and effect.