

HOUSE BILL 939

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CF SB 174

By: **Delegates Cullison and Krebs**

Introduced and read first time: February 5, 2020

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Dental Examiners – Practice of Dentistry – Revisions**

3 FOR the purpose of requiring a dental practice to be owned by a licensed dentist or a dental
4 professional corporation; establishing that only a certain individual licensed by the
5 State Board of Dental Examiners may take certain actions; prohibiting certain
6 provisions of this Act from being construed to prohibit a dentist or dental professional
7 corporation from entering into an agreement under which an unlicensed person may
8 take certain actions; prohibiting a licensed dentist from sharing revenues or splitting
9 fees except under certain circumstances; repealing a certain exemption from the
10 requirements of the Maryland Dentistry Act; authorizing the Board to take certain
11 action against certain applicants and licensees for accepting or tendering rebates or
12 splitting fees in violation of a certain provision of this Act; providing that certain
13 contractual provisions are void and unenforceable as contrary to the public policy of
14 the State; establishing that it is unlawful for a person who is not a licensed dentist
15 to direct, control, or interfere with certain independent professional judgments of a
16 dentist or dental hygienist; altering a certain definition and defining a certain term;
17 providing for the application of certain provisions of this Act; and generally relating
18 to the practice of dentistry.

19 BY repealing and reenacting, without amendments,
20 Article – Health Occupations
21 Section 4–101(a) and 4–301
22 Annotated Code of Maryland
23 (2014 Replacement Volume and 2019 Supplement)

24 BY adding to
25 Article – Health Occupations
26 Section 4–101(f–1), 4–103, 4–315(a)(36), and 4–509
27 Annotated Code of Maryland
28 (2014 Replacement Volume and 2019 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 4–101(l), 4–102, and 4–315(a)(34) and (35)
Annotated Code of Maryland
(2014 Replacement Volume and 2019 Supplement)

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

Article – Health Occupations

4–101.

(a) In this title the following words have the meanings indicated.

(F–1) “DENTAL PROFESSIONAL CORPORATION” MEANS:

(1) A CORPORATION SOLELY OWNED BY AN INDIVIDUAL OR INDIVIDUALS LICENSED BY THE BOARD TO PRACTICE DENTISTRY AND FORMED UNDER TITLE 5 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE; OR

(2) A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY OWNED SOLELY BY AN INDIVIDUAL OR INDIVIDUALS LICENSED BY THE BOARD TO PRACTICE DENTISTRY AND FORMED UNDER TITLE 4A OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

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

[(1) 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;]

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

[(3)] (II) 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;

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

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

[(6)] (V) Administer anesthesia for the purposes of dentistry and not as a

1 medical specialty.

2 **(2) "PRACTICE DENTISTRY" INCLUDES:**

3 **(I) PATIENT EVALUATION, DIAGNOSIS, AND DETERMINATION**
4 **OF TREATMENT PLANS;**

5 **(II) DETERMINATION OF TREATMENT OPTIONS, INCLUDING**
6 **THE CHOICE OF RESTORATIVE AND TREATMENT MATERIALS AND DIAGNOSTIC**
7 **EQUIPMENT; AND**

8 **(III) DETERMINATION AND ESTABLISHMENT OF DENTAL**
9 **PATIENT PROTOCOLS, DENTAL STANDARDS OF CARE, AND DENTAL PRACTICE**
10 **GUIDELINES.**

11 4-102.

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

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

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

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

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

25 (2) Notwithstanding the provisions of this subsection:

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

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

31 **4-103.**

1 (A) ONLY AN INDIVIDUAL OR INDIVIDUALS LICENSED BY THE BOARD TO
2 PRACTICE DENTISTRY OR A DENTAL PROFESSIONAL CORPORATION MAY OWN A
3 DENTAL PRACTICE.

4 (B) ONLY AN INDIVIDUAL LICENSED BY THE BOARD TO PRACTICE
5 DENTISTRY MAY:

6 (1) DIRECT THE CLINICAL TRAINING OF A DENTIST, DENTAL
7 HYGIENIST, OR DENTAL ASSISTANT WHO ASSISTS IN THE CARE AND TREATMENT OF
8 DENTAL PATIENTS;

9 (2) DIRECT A DENTIST, DENTAL HYGIENIST, OR DENTAL ASSISTANT
10 IN PROVIDING DENTAL CARE AND TREATMENT TO DENTAL PATIENTS;

11 (3) HIRE, SUPERVISE, OR TERMINATE THE EMPLOYMENT OF A
12 DENTIST, DENTAL HYGIENIST, OR DENTAL ASSISTANT WHO PROVIDES DENTAL CARE
13 AND TREATMENT TO DENTAL PATIENTS;

14 (4) DIRECT THE PREPARATION AND MAINTENANCE OF PATIENT
15 TREATMENT RECORDS OR EXERT CONTROL OF A PATIENT'S OR TREATING DENTIST'S
16 RIGHT OF ACCESS TO PATIENT TREATMENT RECORDS; OR

17 (5) SHARE IN THE INCOME, REVENUES, PROFITS, OR FEES WITH
18 LICENSED DENTISTS WITHIN THE SAME DENTAL PRACTICE.

19 (C) EXCEPT AS PROVIDED IN SUBSECTION (B)(5) OF THIS SECTION, A
20 LICENSED DENTIST MAY NOT SHARE IN REVENUES OR SPLIT FEES.

21 (D) IT IS UNLAWFUL FOR ANY PERSON WHO IS NOT A LICENSED DENTIST TO
22 DIRECT, CONTROL, OR INTERFERE WITH THE INDEPENDENT PROFESSIONAL
23 JUDGMENT OF A DENTIST OR DENTAL HYGIENIST REGARDING THE DIAGNOSIS,
24 CARE, OR TREATMENT OF A PATIENT'S DENTAL DISEASE, DISORDER, OR PHYSICAL
25 CONDITION.

26 (E) SUBSECTIONS (A) AND (B) OF THIS SECTION MAY NOT BE CONSTRUED
27 TO PROHIBIT A DENTIST OR DENTAL PROFESSIONAL CORPORATION FROM
28 ENTERING INTO AN AGREEMENT UNDER WHICH AN UNLICENSED PERSON MAY:

29 (1) OWN, LEASE, OR OTHERWISE PROVIDE REAL PROPERTY OR
30 FURNISHINGS, EQUIPMENT, OR OTHER GOODS THAT ARE USED BY A DENTIST OR
31 DENTAL PRACTICE;

32 (2) PROVIDE BOOKKEEPING, ACCOUNTING, AND TAX PREPARATION
33 SERVICES;

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

2 **(4) PROVIDE ADMINISTRATIVE MANAGEMENT OF PATIENT**
3 **TREATMENT RECORDS;**

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

6 **(6) CREATE AND PLACE ADVERTISING AND MARKETING, AS**
7 **APPROVED BY A LICENSED DENTIST;**

8 **(7) PROVIDE SERVICES TO ASSIST IN THE RECRUITMENT OF**
9 **DENTISTS, DENTAL HYGIENISTS, AND DENTAL ASSISTANTS FOR INTERVIEW AND**
10 **HIRING BY A LICENSED DENTIST WITHIN THE DENTAL PRACTICE;**

11 **(8) HIRE, SUPERVISE, AND TERMINATE THE EMPLOYMENT OF**
12 **NONPROFESSIONAL OFFICE STAFF, SUBJECT TO APPROVAL BY A LICENSED DENTIST**
13 **WHO HAS THE AUTHORITY TO MAKE THAT DECISION;**

14 **(9) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS**
15 **SECTION, PROVIDE AND ADMINISTER ALL NORMAL AND USUAL HUMAN**
16 **RESOURCE-RELATED SERVICES TO NONDENTAL EMPLOYEES;**

17 **(10) DETERMINE AND ASSIST IN THE ACQUISITION OF INFORMATION**
18 **TECHNOLOGY;**

19 **(11) PROVIDE GENERAL PROPERTY MANAGEMENT AND**
20 **MAINTENANCE;**

21 **(12) ASSIST IN RISK MANAGEMENT, INCLUDING LEGAL AND**
22 **REGULATORY COMPLIANCE, SECURING APPROPRIATE INSURANCE COVERAGES AND**
23 **POLICY LIMITS, AND THE PROCESSING OF INSURANCE CLAIMS;**

24 **(13) PROVIDE CONSULTING SERVICES RELATING TO PRODUCTIVITY,**
25 **EFFICIENCY, AND COST MANAGEMENT OF A DENTAL PRACTICE;**

26 **(14) RECEIVE COMPENSATION IN THE FORM OF FEES NEGOTIATED**
27 **WITH AND APPROVED BY THE DENTIST OWNERS OF THE DENTAL PRACTICE THAT**
28 **SHALL BE A PREDETERMINED FIXED FEE OR FIXED COMPENSATION AND MAY BE**
29 **BASED ON PRIOR REVENUES OR PROFITS OVER A PRECEDING PERIOD OF 12 MONTHS**
30 **OR LONGER; OR**

31 **(15) CONTRACT WITH A THIRD PARTY TO PROVIDE ANY OF THE**

SERVICES SPECIFIED UNDER THIS SUBSECTION.

(F) (1) THE REQUIREMENTS OF SUBSECTIONS (A) AND (B) OF THIS SECTION DO NOT APPLY TO:

(I) A CLINIC MAINTAINED BY:

1. A PUBLIC SCHOOL;

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

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

4. A CHARITABLE ORGANIZATION, AS DEFINED IN § 6-101 OF THE BUSINESS REGULATION ARTICLE;

(II) A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY; OR

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

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

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

B. WITHOUT REGARD TO AN INDIVIDUAL'S ABILITY TO PAY; OR

2. A FEDERALLY QUALIFIED HEALTH CENTER OR A FEDERALLY QUALIFIED HEALTH CENTER LOOK-ALIKE.

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

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

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

4-301.

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

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

(b) This section does not apply to:

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

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

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

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

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

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

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

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

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

(6) An heir of a deceased licensed dentist or a personal representative of a deceased licensed dentist, if:

(i) The deceased licensed dentist was the owner of the dental

1 practice;

2 (ii) The deceased licensed dentist did not provide for the disposition
3 of the dental practice; and

4 (iii) The heir or the personal representative of the deceased licensed
5 dentist serves as the owner of the dental practice, regardless of whether the heir or the
6 personal representative is licensed to practice dentistry, for no longer than 1 year after the
7 death of the licensed dentist unless the Board extends the time period under subsection
8 (c)(1) of this section.

9 (c) (1) On written request and good cause shown by the heir or personal
10 representative of a deceased licensed dentist, including evidence of a good faith effort to sell
11 or close the dental practice, the Board, in its sole discretion, may extend the 1-year period
12 under subsection (b)(6)(iii) of this section for up to an additional 6 months to allow the heir
13 or personal representative sufficient time to sell or otherwise dispose of the dental practice.

14 (2) During the temporary ownership of a dental practice by an heir or a
15 representative of a deceased licensed dentist under subsection (b)(6)(iii) of this section and,
16 if applicable, paragraph (1) of this subsection, all patient care shall be provided:

17 (i) By an appropriate individual who is licensed under this title; and

18 (ii) In accordance with the individual's scope of practice.

19 (3) The temporary ownership of a dental practice by an heir or a personal
20 representative of a deceased licensed dentist under this subsection may not affect the
21 exercise of the independent judgment of a licensed dentist who provides care to patients of
22 the dental practice.

23 4-315.

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

29 (34) Willfully and without legal justification, fails to cooperate with a lawful
30 investigation conducted by the Board; [or]

31 (35) Fails to comply with § 1-223 of this article; **OR**

32 **(36) ACCEPTS OR TENDERS REBATES OR SPLITS FEES IN VIOLATION OF**
33 **§ 4-103(C) OF THIS SUBTITLE.**

34 **4-509.**

1 ANY CONTRACTUAL PROVISION THAT COULD BE INTERPRETED TO LIMIT,
2 RESTRICT, OR PREVENT A DENTIST, DENTAL HYGIENIST, DENTAL ASSISTANT, OR
3 OTHER PERSON FROM TESTIFYING OR PROVIDING INFORMATION TO THE BOARD,
4 THE GENERAL ASSEMBLY, OR A COURT OF COMPETENT JURISDICTION
5 CONCERNING A POTENTIAL VIOLATION OF THIS TITLE SHALL BE VOID AND
6 UNENFORCEABLE AS CONTRARY TO THE PUBLIC POLICY OF THE STATE.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2020.