

HOUSE No. 238

The Commonwealth of Massachusetts

PRESENTED BY:

Denise C. Garlick

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a dentist diversion program.

PETITION OF:

NAME:

Denise C. Garlick

DISTRICT/ADDRESS:

13th Norfolk

HOUSE No. 238

By Ms. Garlick of Needham, a petition (accompanied by bill, House, No. 238) of Denise C. Garlick relative to establishing a remediation program for dentists dealing with illness, substance abuse or mental health issues. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1980 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act establishing a dentist diversion program.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 112 of the General Laws is hereby amended by inserting after
2 section 52G the following section:-

3 Section 52H. In sections 52H and 53I, the following words shall have the following
4 meanings:

5 “Impairment”, the inability of a licensed healthcare provider to practice with reasonable
6 skill and safety as a result of a substance use or other mental disorder, or physical illness or
7 condition, including but not limited to those illnesses or conditions that would adversely affect
8 cognitive, motor, or perceptive skills. Impairment is a functional classification which exists

9 dynamically on a continuum of severity and can change over time rather than being a static
10 phenomenon. Illness, per se, does not constitute impairment.

11 “Remediation Program”, a confidential program for licensed dental professionals whose
12 ability to practice may be impaired due to illness, typically substance use or other mental health
13 disorders. The program offers a means of recovery and rehabilitation without the loss of a license
14 by providing access to early identification, intervention, evaluation, monitoring, referral to
15 appropriate intervention programs and treatment services, and earned advocacy, when
16 appropriate, of licensees with potentially impairing illness, ideally prior to functional
17 impairment.

18 “Continuing Care”, guidance, support, toxicology collection, and accountability through
19 a formal monitoring contract concurrent with or following an evaluation and treatment process.

20 “Substantive Non-Compliance”, a pattern of non-compliance or dishonesty in continuing
21 care monitoring or an episode of non-compliance which could place patients at risk.

22 “Peer Review Committee”, a committee of healthcare providers which has as its function
23 the evaluation or improvement of the quality of health care rendered by providers of health care
24 services, and the evaluation and assistance of health care providers impaired or allegedly
25 impaired by reason of alcohol, drugs, physical disability, mental instability or otherwise.

26 SECTION 2. Said chapter 112 is hereby further amended by inserting after section 52H
27 the following section:-

28 Section 52I. (a) The board is hereby authorized and directed to select one or more entities
29 to serve as designated remediation programs. A designated remediation program shall: (i) serve

30 as a voluntary alternative to traditional disciplinary actions; (ii) establish criteria for the
31 acceptance, denial, or termination of registered dentists and dental hygienists in the program; and
32 (iii) establish an outreach program to identify registered dentists and dental hygienists who may
33 have a substance use disorder and to provide education about the rehabilitation program. Any
34 registered dentist or dental hygienist in Massachusetts may request to participate in the program.

35 (b) To be eligible for designation, a remediation program shall have demonstrable
36 experience in the field of substance use disorder and employ a licensed mental health
37 professional with experience in the treatment of substance use disorders. No employee or
38 volunteer member of the remediation program who is licensed to practice by the Department of
39 Public Health Division of Professional Licensure or by the Board of Registration in Dentistry
40 shall have had any type of disciplinary or enforcement action taken against them by their
41 respective licensing board, the United States Food and Drug Administration or the United States
42 Drug Enforcement Administration during the 5 years preceding their appointment to the
43 program. No member of the board shall be employed by or volunteer for the program.

44 (c) The remediation program shall have the following duties and responsibilities: (i) to
45 evaluate registered dentists and dental hygienists who request to participate in the program
46 regarding admission into the program; (ii) to agree to accept referrals from the board; (iii) to
47 review and designate treatment facilities and assessment services to which participants may be
48 referred; (iv) to receive and review information concerning a participant in the program; (v) to
49 disclose to the board aggregate data (statistics) on compliance based on ongoing recovery
50 documentation; (vi) to provide each participant, through contracted agreements, with an
51 individualized remediation plan according to guidelines developed through collaboration
52 between the board and the remediation program with regards to requirements for supervision;

53 (vii) to provide information to dentists or dental hygienists who request to participate in the
54 program, and (viii) to establish an outreach program to identify registered dentists and dental
55 hygienists who may have a substance use or other mental health disorder, and to provide
56 education about the remediation program.

57 (d) In accordance with peer review law, proceedings, reports, and records of the
58 remediation program are to be kept confidential (G.L. c. 111, § 204). Such records are not to be
59 disclosed, are not subject to subpoena or discovery, and cannot be introduced into evidence in
60 any judicial or administrative proceeding, subject to paragraph (e) and (f).

61 (e) A registered dentist or dental hygienist who requests to participate in the remediation
62 program shall agree to cooperate with the individualized remediation plan recommended by the
63 remediation program. The remediation program may report to the board the name and license
64 number of a registered dentist or dental hygienist that fails to comply with the provisions of an
65 individualized remediation plan.

66 (f) After the remediation program, in its discretion, has determined that a registered
67 dentist or dental hygienist has successfully completed an individualized remediation plan
68 through the program, the board shall seal all records pertaining to the participation of the
69 registered dentist or dental hygienist in the program. No record shall be sealed sooner than 5
70 years from the participant's date of entry into the program. All board and remediation program
71 records of a participant's involvement in the program shall be kept confidential and shall not be
72 subject to discovery or subpoena in any civil, criminal, legislative or administrative proceeding
73 without the prior written consent of the participant.