

# SENATE BILL 371

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CF HB 470

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By: **Senators West, Nathan–Pulliam, Carozza, Eckardt, Salling, and Serafini**

Introduced and read first time: January 31, 2019

Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 14, 2019

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

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

4 FOR the purpose of requiring a dental practice to be owned, managed, or operated by a  
5 licensed dentist, subject to certain exceptions; authorizing an unlicensed person to  
6 take certain actions; prohibiting a licensed dentist from raising a certain defense in  
7 a certain action; repealing a certain exemption from the requirements of the  
8 Maryland Dentistry Act; authorizing the State Board of Dental Examiners to take  
9 certain action against certain applicants and licensees for accepting or tendering  
10 rebates or split fees; altering a certain definition; providing for a delayed effective  
11 date; and generally relating to the ownership, management, and operation of a  
12 dental practice.

13 BY repealing and reenacting, without amendments,  
14 Article – Health Occupations  
15 Section 4–101(a) and 4–301  
16 Annotated Code of Maryland  
17 (2014 Replacement Volume and 2018 Supplement)

18 BY repealing and reenacting, with amendments,  
19 Article – Health Occupations  
20 Section 4–101(l), 4–102, and 4–315(a)(34) and (35)  
21 Annotated Code of Maryland  
22 (2014 Replacement Volume and 2018 Supplement)

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to  
2 Article – Health Occupations  
3 Section 4–103 and 4–315(a)(36)  
4 Annotated Code of Maryland  
5 (2014 Replacement Volume and 2018 Supplement)

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

8 **Article – Health Occupations**

9 4–101.

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

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

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

15 **[(2)] (II)** Perform or attempt to perform any intraoral dental service or  
16 intraoral dental operation;

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

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

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

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

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

27 **(I) PATIENT EVALUATION, DIAGNOSIS, AND DETERMINATION**  
28 **OF TREATMENT PLANS;**

29 **(II) DETERMINATION OF TREATMENT OPTIONS, INCLUDING**  
30 **THE CHOICE OF RESTORATIVE AND TREATMENT MATERIALS AND DIAGNOSTIC**  
31 **EQUIPMENT; AND**

1                   **(III) DETERMINATION AND ESTABLISHMENT OF PATIENT**  
2 **PROTOCOLS, STANDARDS OF CARE, AND PRACTICE GUIDELINES.**

3 4–102.

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

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

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

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

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

17           (2)   Notwithstanding the provisions of this subsection:

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

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

23 **4–103.**

24           **(A)   (1)   SUBJECT TO SUBSECTION (B) OF THIS SECTION AND EXCEPT AS**  
25 **PROVIDED IN SUBSECTION (D) OF THIS SECTION, ONLY A LICENSED DENTIST MAY**  
26 **OWN, MANAGE, OR OPERATE A DENTAL PRACTICE.**

27           **(2)   THE OWNERSHIP, MANAGEMENT, OR OPERATION OF A DENTAL**  
28 **PRACTICE INCLUDES:**

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

1 (II) DIRECT SUPERVISION OVER THE TRAINING OF A DENTAL  
2 HYGIENIST OR DENTAL ASSISTANT WHO ASSISTS IN THE CARE AND TREATMENT OF  
3 DENTAL PATIENTS;

4 (III) THE PREPARATION OF PATIENT TREATMENT RECORDS AND  
5 THE CONTROL OF A PATIENT'S OR TREATING DENTIST'S RIGHT OF ACCESS TO, OR TO  
6 CREATE COPIES OF, PATIENT TREATMENT RECORDS; AND

7 (IV) THE ETHICAL SHARING OF INCOME, REVENUES, PROFITS,  
8 OR FEES AMONG DENTISTS WITHIN THE SAME DENTAL PRACTICE.

9 (B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, AN UNLICENSED  
10 PERSON MAY:

11 (1) ~~OWN OR~~ LEASE, OR OTHERWISE PROVIDE REAL PROPERTY OR  
12 FURNISHINGS, EQUIPMENT, OR OTHER GOODS THAT ARE USED BY A DENTIST OR  
13 DENTAL PRACTICE;

14 (2) PROVIDE BOOKKEEPING, ACCOUNTING, AND TAX PREPARATION  
15 SERVICES;

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

17 (4) PROVIDE ADMINISTRATIVE MANAGEMENT OF PATIENT  
18 TREATMENT RECORDS;

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

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

23 (7) ~~RECRUIT~~ PROVIDE SERVICES TO ASSIST IN THE RECRUITMENT OF  
24 DENTISTS, DENTAL HYGIENISTS, AND DENTAL ASSISTANTS FOR INTERVIEW AND  
25 HIRING BY A LICENSED DENTIST WITHIN THE DENTAL PRACTICE;

26 (8) HIRE, SUPERVISE, AND TERMINATE THE EMPLOYMENT OF  
27 NONPROFESSIONAL OFFICE STAFF, SUBJECT TO APPROVAL BY A LICENSED  
28 DENTIST;

29 (9) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (A) OF THIS  
30 SECTION, PROVIDE AND ADMINISTER ALL NORMAL AND USUAL HUMAN RESOURCE  
31 ~~FUNCTIONS~~ RELATED SERVICES TO OFFICE EMPLOYEES;

1           **(10) DETERMINE AND ASSIST IN THE ACQUISITION OF INFORMATION**  
2 **TECHNOLOGY;**

3           **(11) PROVIDE GENERAL PROPERTY MANAGEMENT AND**  
4 **MAINTENANCE;**

5           **(12) ASSIST IN RISK MANAGEMENT, INCLUDING LEGAL AND**  
6 **REGULATORY COMPLIANCE AND THE PROCESSING OF INSURANCE CLAIMS;**

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

9           **(14) RECEIVE COMPENSATION IN THE FORM OF FEES NEGOTIATED**  
10 **WITH AND APPROVED BY THE DENTIST OWNERS OF THE DENTAL PRACTICE THAT**  
11 **MAY NOT BE BASED ON REVENUES, PROFITS, OR A PERCENTAGE OF REVENUES OR**  
12 **PROFITS; AND**

13           **(15) CONTRACT WITH A THIRD PARTY TO PROVIDE ANY OF THE**  
14 **SERVICES SPECIFIED UNDER THIS SUBSECTION.**

15           **(C) IN AN ACTION BROUGHT BY THE BOARD AGAINST A LICENSED DENTIST,**  
16 **THE LICENSED DENTIST MAY NOT RAISE AS A DEFENSE THAT A DUTY OR AN**  
17 **OBLIGATION OF THE DENTIST UNDER THIS SECTION WAS DELEGATED OR ASSIGNED**  
18 **TO A THIRD PARTY.**

19           **(D) (1) THE REQUIREMENTS OF SUBSECTION (A) OF THIS SECTION DO**  
20 **NOT APPLY TO:**

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

22                           1. **A PUBLIC SCHOOL;**

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

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

29                           4. **A CHARITABLE ORGANIZATION, AS DEFINED IN §**  
30 **6–101 OF THE BUSINESS REGULATION ARTICLE;**

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

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

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

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

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

9 2. A FEDERALLY QUALIFIED HEALTH CENTER OR A  
10 FEDERALLY QUALIFIED HEALTH CENTER LOOK-ALIKE; OR

11 (IV) A DENTAL PRACTICE IN WHICH AT LEAST ~~75%~~ 60% OF THE  
12 PATIENTS OF RECORD WHO ARE PROCEDURALLY TREATED DURING THE CALENDAR  
13 YEAR ARE MEDICAID-ELIGIBLE.

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

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

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

22 4-301.

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

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

29 (b) This section does not apply to:

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

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

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

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

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

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

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

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

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

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

19                  (i)     The deceased licensed dentist was the owner of the dental  
20 practice;

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

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

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

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

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

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

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

4–315.

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

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

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

**(36) ACCEPTS OR TENDERS REBATES OR SPLIT FEES.**

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.