

Maryland State Board of Dental Examiners – Proposed Language for New Chapter Titled

COMAR 10.44.34 Ownership and Management of a Dental Practice – Maryland Register – May 2, 2014

.01 Scope.

In Maryland only licensed dentists may own, manage, conduct, operate, or be the proprietor of a dental practice, regardless of how small the ownership interest. However there are an increasing number of nondentists who have become owners of dental practices or who are exercising unlawful authority or control over the clinical practice of dentistry in dental offices through the guise of “management”. This chapter is intended to:

- A. Preserve a dentist’s professional independence; and
- B. Address the concern that licensed dentists may be misrepresenting their alleged ownership in a dental practice.

.02 Definitions.

A. In this chapter, the following terms have the meaning indicated.

B. Terms Defined.

(1) “Ancillary personnel” means a dental hygienist, dental radiation technologist, dental assistant, or any other individual who provides clinical services in a dental office.

(2) Dentist.

(a) “Dentist” means an individual who holds an active general license to practice dentistry in Maryland.

(b) “Dentist” does not include an individual who in this State holds:

- (i) An inactive status registration certificate;
- (ii) A limited license;
- (iii) A teacher’s license;
- (iv) A retired volunteer license;
- (v) A volunteer license; or
- (vi) A temporary volunteer license.

(3) “Person” means a natural person, partnership, professional association, professional corporation, limited partnership, limited liability company, trust, estate, corporation, association, unincorporated association, custodian, two or more persons having a joint or common interest, nominee, or any other individual, legal or commercial entity in its own or any representative capacity.

(4) “Practice dentistry” means to:

- (a) 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;
- (b) Perform or attempt to perform any intraoral dental service or intraoral dental operation;
- (c) 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;
- (d) Perform or offer to perform dental laboratory work;
- (e) Place or adjust a dental appliance in a human mouth; or
- (f) Administer anesthesia for the purposes of dentistry and not as a medical specialty.

.03 Prohibitions.

A. Only a dentist shall own, manage, conduct, operate, or be the proprietor of a dental practice.

B. A dentist may not falsely represent to the Board that the dentist is an owner or has an ownership interest in a dental practice.

C. A dentist shall be solely responsible for patient management.

D. Only a dentist shall exercise authority or control over the clinical practice of dentistry.

E. The Board shall deem that a person is exercising authority or control over the clinical practice of dentistry if the person, by agreement, lease, policy, understanding, or other arrangement, exercises authority or control over:

- (1) A finding, decision, or recommendation of a dentist regarding a course or alternative course of treatment for a patient;
- (2) The procedures or materials to be used as all or a part of a course of treatment, or the manner in which a course of treatment is to be implemented by a dentist, or other ancillary personnel;
- (3) The length of time a dentist or a dental hygienist spends treating or consulting with a patient;
- (4) Conditions on the number of patients a dentist or a dental hygienist may treat in a certain period of time;
- (5) Communications that the dentist has with patients that are clinical in nature;
- (6) The clinical practice of a dental hygienist regarding appropriate dental hygiene treatment;
- (7) The manner in which a dentist or ancillary personnel uses dental equipment or materials for the provision of dental treatment;
- (8) A dentist’s referral of a patient to another dentist or other health care provider;
- (9) The contents of patient records;

- (10) Access to patient records by the dentist, the patient, or the patient's legal representative in accordance with applicable law;
- (11) A decision of a dentist to refund payments made by a patient or third-party payor for dental work not performed or dental work performed incorrectly by either a dentist, ancillary personnel, or dental laboratory;
- (12) The necessity of utilizing a dental laboratory;
- (13) The purchase of dental equipment or materials, provided that the dentist reasonably believes that the failure to purchase the equipment would impair the ability of the dentist or a dental hygienist to provide proper dental care to a patient;
- (14) A decision regarding the advertising of the practice of a dentist, provided that the decision would result in a violation of Health Occupations Article, §4-503, Annotated Code of Maryland, or COMAR 10.44.06;
- (15) The establishment of fees for dental services or services provided by ancillary personnel;
- (16) A decision regarding the clinical supervision of ancillary personnel by a dentist;
- (17) The hiring or firing of ancillary personnel or the clinical terms of their employment;
- (18) The decision of a dentist to refuse to work with ancillary personnel if the decision is related to the clinical competence of the ancillary personnel, regardless of who employs the ancillary personnel; or
- (19) The material terms of any provider contracts or arrangements between a dentist or a person and third-party payors.

.04 Support to a Dental Practice.

A. Nothing in this chapter shall prohibit a person from providing goods or services for the support of the business of a dental practice, provided that the person does not:

- (1) Provide such goods or services in exchange for a percentage or share of revenue or profits of the dental practice; or
- (2) Exert any authority or control over the clinical practice of dentistry.

B. The following may not be considered to be exerting authority or control over a dental practice:

- (1) A lease, mortgage, agreement, or other arrangement regarding the use of space for dental offices, based on a set nonpercentage fee reasonably related to the fair market value of the office space provided at the time the lease became effective; or
- (2) Agreements regarding the purchase, sale, financing, or lease of dental equipment, instruments, and supplies as long as the:
- (a) Dentist maintains the complete care, custody, and control of the dental instruments and supplies; and
- (b) Lease or agreement does not provide for a payment or fee based on a percentage of the revenue received by the dentist or the dental practice.

.05 Violations.

A. A nondentist person who practices dentistry, or who otherwise exercises authority or control over a dental practice is guilty of a misdemeanor and is subject to the penalties contained in Health Occupations Article, §4-606, Annotated Code of Maryland.

B. A dentist may not:

- (1) Enter into an agreement with a nondentist person in which the nondentist exerts any authority or control over the clinical practice of dentistry;
- (2) Permit a nondentist person to exert any authority or control over the dentist's clinical practice of dentistry;
- (3) Be employed by, work at the direction of, or be an independent contractor for a nondentist person; or
- (4) Have an ownership interest in a dental practice that is also owned by a nondentist.

C. In addition to the violations contained in this regulation, a dentist's failure to comply with the provisions of this chapter constitutes unprofessional conduct and may constitute other violations of law.