

**MSDA Supports SB 169- Health Occupations - Violations of the Maryland Dentistry Act - Penalties and Cease and Desist Orders**  
*Respectfully Submitted on behalf of the Maryland State Dental Association by Daniel T. Doherty, Jr. and Frances P. Doherty*

The State Board of Dental Examiners (SBDE) has been stifled in its efforts to stop the unlawful practice of dentistry by unlicensed individuals. The current Dentistry Act gives the SBDE no authority over a person not licensed by the Board, even a person whose license has been revoked. The crime of practicing dentistry without a license is currently a misdemeanor, while, in comparison, the illegal practice of medicine is a felony. What is the significance of a felony vs a misdemeanor? When the crime is a misdemeanor a law enforcement officer is sent to a location where it has been alleged that an unlicensed person is practicing dentistry. If treatment of a person is actually observed by the officer, an arrest can be made. If actual treatment is not observed being provided, even though there is a dental chair and equipment, a calendar of appointments, patient files etc. nothing can be done. When the crime is raised to a felony, however, then a state's attorney may have a warrant issued to search the premises, gather information that circumstantially indicates that dentistry is being conducted, and the prosecutor may consider this evidence in making the decision whether or not to prosecute. It also facilitates gathering sufficient evidence to issue a cease and desist order.

Examples of cases endangering the public health and safety:

1. Non-licensed persons often do not follow CDC guidelines. This leads to a serious risk of exposure to infectious diseases. Virginia had a non-licensee who contaminated numerous patients with HIV and Hepatitis.
2. The numbers of cases of illegal practitioners operating are escalating. In 2019 Maryland had close to a dozen cases on which it couldn't take action. New York reports over 60 cases per year, Pennsylvania 40, Georgia 80, and Florida in excess of 100.
3. The cases involve foreign persons who are unlicensed; dentists whose licenses have been revoked for cause, dentists with limited licenses who practice beyond the prescribed limitations.
4. In Virginia, one unlicensed individual admitted treating over 3000 people over a threeyear period. In our state there is a revoked dentist licensee who continues an active practice. A law enforcement officer has gone to the premises, but each time was unable to physically observe the actual act of practicing dentistry. There have been 3 complaints against this individual. Each complainant has stated that the office was packed when they were there.

SB 169 is a critically important piece of legislation to assist the State Board of Dental Examiners in protecting the public from the illegal practice of dentistry. This is particularly important in cases where: 1) dentists have had their license to practice revoked by the Board but continue to treat patients; 2) persons are providing "dental services" who are from other countries but are not graduates of accredited dental schools and are not licensed; or 3) dental laboratories which are providing dental services using unlicensed laboratory personnel.

Under SB 169 the crime is elevated to a felony and the potential penalties are also significantly increased. The monetary fine for a first offense will increase from \$2,000 to \$5,000

and imprisonment will increase from no more than 6 months to no more than 1 year. Subsequent offenses face even greater criminal penalties. These increased penalties are more likely to act as a deterrent to illegal dental practitioners, and hopefully will assist prosecutors to pursue criminal prosecution.

These penalties are less severe than those of other health professions. The penalties provided under the Health Occupations Article for some other health occupation boards: i) acupuncturists - \$5,000 or 3 years; ii) audiologists and speech language pathologists - \$5,000 or 3 years; iii) nurses - \$10,000 or 5 years; iv) physical therapists - \$10,000 or 3 years; v) physicians \$10,000 or 5 years imprisonment; vi) physician assistants - \$5,000 or 5 years; vii) professional counselors and therapists - \$5000 and 1 year; viii) psychologists -\$10,000 or 1 year.; ix) social workers \$5,000 or 2 years; and x) environmental health specialists \$5,000 or 2 years.

Since the determination of whether to prosecute a person for unlawfully practicing dentistry rests with a state's attorney, the SBDE is not involved in charging, prosecuting or convicting the individual. The Board's function is to receive complaints, verify them and make a referral to the appropriate states' attorney. Once convicted the Board is given the authority to levy a civil penalty of not more than \$50,000. There are 8 other health occupation boards who may levy a civil penalty - 7 may impose a \$50,000 fine, and the other may impose a \$5,000 civil fine.

The bill also gives the SBDE the authority to issue a cease and desist order for conduct that violates the provisions for practicing dentistry without a license. The power to issue a cease and desist order is currently given to 5 other health occupation boards: i) acupuncturists; ii) dietitians-nutritionists; iii) nurses; iv) optometrists; and v) professional counselors and therapists.

Also, one may not contend that the SBDE will use the Cease and Desist authority to restrict competition in violation of the anti-trust laws. In response to the North Carolina Dental Board of Examiners v. FTC Supreme Court decision concerning improper anti-competitive action by health occupation boards, the General Assembly enacted in 2017 Chapter 614 - Secretaries of Principal Departments - Supervision and Review of Decisions and Actions by Units Within Departments which went into effect June 1, 2017. This law provides for supervision and review of any Health Occupation board's action that may be anti-competitive to assure that the action furthers a clearly articulated state policy to displace competition in the regulated market. This is to allow anyone practicing illegally an opportunity to stop and comply with the law and avoid conviction of a felony and the related consequences.

The bill needs one amendment to change the effective date to October 1, 2020.

**The Maryland State Dental Association respectfully requests that SB 169 be given a favorable report.**

**January 30, 2020**