

SB0169_MSDA_FAV_Dan Doherty

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Position: FAV

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Dentistry Act gives the SBDE no authority over a person not licensed by the Board, even a person whose license has been revoked.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 The cases involve foreign persons who are unlicensed; dentists whose licenses have been revoked for cause, dentists with limited licenses who practice beyond the prescribed limitations.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

SB0169 _HEAU, OAG_FAV_P. O'Connor

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January 30, 2020

To: The Honorable Paul G. Pinsky
Chair, Education, Health and Environmental Affairs Committee

From: Patricia F. O'Connor, Health Education and Advocacy Unit (HEAU)

Re: Senate Bill 169 (Health Occupations- Violations of the Maryland Dentistry Act- Penalties and Cease and Desist Orders): **SUPPORT**

The HEAU submits the following written testimony in support of Senate Bill 169. The bill codifies the authority of the Maryland State Board of Dental Examiners (the Board) to issue cease and desist orders against persons practicing dentistry without a license or violating laws that regulate dental appliances and dental laboratory work. Existing criminal penalties are increased under the bill, and the Board is newly authorized to impose a civil fine of up to \$50,000 upon a person who practices dentistry without a license, or who aids or abets a person practicing dentistry without a license.

The HEAU receives complaints from consumers who have suffered serious personal and economic injury arising out of the unauthorized practice of dentistry and violations of the laws that regulate dental appliances and dental laboratory work. While the wrongful conduct is also subject to the enforcement authority of the Consumer Protection Division, the Board has the subject matter expertise to address the unauthorized practice of dentistry and illegal dental appliance fabrication and sales more efficiently, particularly with the expanded civil authority this bill provides.

Compared to current law, we believe the bill's enhanced criminal penalties, new civil fine and codified cease and desist order authority, would more effectively deter this conduct that seriously harms consumers.

For these reasons, we ask that the Committee return a favorable report on the bill.

cc: Members of the Education, Health and Environmental Affairs Committee

SB169_FAV_West

Uploaded by: Senator West, Senator West

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January 30, 2020

Senate Education, Health, and Environment Committee
The Honorable Paul Pinsky
2 West Miller Senate Building
Annapolis, Maryland 21401-1991

RE: SB 169 – Violations of the Maryland Dentistry Act – Penalties and Cease and Desist Orders

Dear Chairman Pinsky and Members of the Committee:

Maryland's Dental Practice Act currently makes it a crime to practice dentistry without a license. However, it is merely a misdemeanor and subject to a relatively small fine and short potential period of incarceration. As a result, many state's attorneys decline to investigate and prosecute these cases.

The State Board of Dental Examiners has experienced blatant cases of the delivery of dental services by persons not licensed to practice dentistry, either in Maryland or in any of the other 49 states. Some of these cases involve persons from other countries who are attempting to treat dental disease in neighborhoods populated by others from those countries. Horror stories abound of people whose mouths have been seriously damaged by such unlicensed people. Efforts to refer such cases to the State's Attorney for the County (or City) where the unlicensed conduct occurred are frequently met with rejection, principally because the crime is not a felony, and the statutory punishments are minor.

Senate Bill 169 will brand the offense of practicing dentistry without a license as a felony, with the first offense punishable by a fine of not more than \$5,000 or imprisonment of not more than 1 year. For a subsequent offense, the fine ramps up considerably to up to \$20,000 per day, and the possible imprisonment increases to up to 5 years. In addition, the Board of Dental Examiners is given the power to impose a civil fine of up to \$50,000 on such an unlicensed person practicing dentistry.

The bill exempts from these rigorous penalties a dentist whose license has been expired for a period of 6 months or less in order to avoid penalizing careless dentists who miss the deadline for license renewals. Such stiff penalties are not unprecedented or even unusual. Under Section 14-606 of the Health Occupations Article, in the case of a first time offense, a person who practices medicine without a license is guilty of a felony, is subject to a fine of up to \$10,000, imprisonment for up to 5 years, or both and is subject to a civil fine of up to \$50,000.

SB0169_Dental Board_FAV_Arpana Verma

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Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

Maryland State Board of Dental Examiners

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2020 SESSION

POSITION PAPER – LETTER OF SUPPORT

BILL NO: SB 169

COMMITTEE: Education, Health, and Environmental Affairs

POSITION: Support

TITLE: Health Occupations -Violations of the Maryland Dentistry Act - Penalties and Cease and Desist Orders

BILL ANALYSIS: The bill increases the penalties and fines for practicing dentistry without a license, and violating the laws related to dental laboratory work. For a person who practices dentistry without a license, the penalty is increased from a misdemeanor to a felony. In addition, the fine is increased from \$2,000 to \$5,000, and the term of imprisonment increased from 6 months to 1 year. For a subsequent offense the fine is increased from a flat \$6,000 to \$20,000 per day, and the term of imprisonment increases from 1 year to 5 years. The provisions would not apply to a dentist who allowed their license to lapse for less than 6 months. The Board may also issue a cease and desist order against those who are practicing dentistry without a license.

In addition, a person who practices dentistry without a license is subject to a civil fine of not more than \$50,000 to be levied by the Board. The Board may also issue a cease and desist order for conduct that violates the laws related to dental laboratory work. For a person who violates the laws regarding dental laboratory work, the penalty is increased from a misdemeanor to a felony, the fine is increased from a flat \$2,000 to \$2,000 per day, and the term of imprisonment is increased from 6 months to 2 years.

POSITION AND RATIONALE: The Board supports SB 169. Although the Board investigates all complaints of unauthorized practice of clinical dentistry, it has no jurisdiction over individuals who do not possess a license. Consequently, cases are referred to the State's Attorneys office of the various counties, but the Board finds that because the criminal violation is only a misdemeanor, no charges are filed, or, if brought to trial, the penalty is so slight that the unlicensed offender returns almost immediately to the unlawful practice. One individual routinely performed tooth extractions with household pliers. This is truly a public protection issue. The Board believes that increasing the sanction to a felony will more appropriately fit the

punishment to the crime, and serve to deter future criminal activity. The majority of the complaints received by the Board for the unlawful practice of clinical dentistry stem from the most disadvantaged areas of the State. The Board hopes that the increase in penalties will act both as a deterrent and an incentive to law enforcement to actively pursue and prosecute those who, by their unlawful acts, have injured the State's most vulnerable citizens. The Board believes that if SB 169 is to adequately protect the public, not only must the monetary penalties be increased, but the proposed sanction be increased from a misdemeanor to a felony.

The Board asks that SB 169 receive a favorable vote.

The opinion of the Maryland State Board of Dental Examiners expressed in this support position does not necessarily reflect that of the Department of Health or the Administration.

I hope that this information is useful. If you would like to discuss this further, please contact Dr. James Goldsmith, Board President at 301-367-2352, jgoldsm217@comcast.net, or Dr. Arpana Verma, the Board's Legislative Committee Chair at 240-498-8159, asverma93@gmail.com. In addition, the Board's Executive Director, Mr. Frank McLaughlin, may be reached at 443-878-5253, frank.mclaughlin@maryland.gov.