

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:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Denise C. Garlick</i>	<i>13th Norfolk</i>	<i>1/14/2019</i>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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