

HOUSE BILL 899

J2

3lr2216
CF SB 550

By: **Delegate Kach**

Introduced and read first time: February 7, 2013

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Physicians – Disciplinary and Licensure Procedures –**
3 **Revision**

4 FOR the purpose of requiring that continuing education requirements allow a certain
5 licensee to receive up to a certain number of credit hours for providing certain
6 services; requiring that the factual findings of a hearing officer under a certain
7 provision of law be supported by clear and convincing evidence, rather than a
8 preponderance of the evidence; authorizing a licensee whose license has been
9 summarily suspended by the State Board of Physicians under a certain
10 provision of law to elect to have a hearing officer make certain final findings and
11 conclusions and determine, under certain circumstances, the disciplinary action
12 that should be imposed on the licensee; requiring the hearing officer to refer
13 certain final findings and conclusions and disciplinary action to the Board for a
14 certain purpose; requiring the Board, under certain circumstances, to pass a
15 certain order within a certain time period; prohibiting the Board, under certain
16 circumstances, from altering certain final findings and conclusions made by a
17 hearing officer and from implementing a disciplinary action that is different
18 from the disciplinary action the hearing officer determined should be imposed;
19 requiring the Board to dismiss charges under certain circumstances; repealing
20 the authorization for a certain person aggrieved by a final decision of the Board
21 in a contested case to appeal to the Board of Review; authorizing a person
22 aggrieved by a final decision of a hearing officer under a certain provision of this
23 Act to take a direct judicial appeal; authorizing a licensee to seek expungement
24 of the licensee's disciplinary record; requiring the Board to adopt certain
25 regulations regarding the expungement of a licensee's disciplinary record;
26 requiring the Board, on or before a certain date, to issue a certain request for
27 proposal regarding a certain continuing education program; making certain
28 conforming changes; and generally relating to the disciplinary and licensure
29 procedures of the State Board of Physicians.

30 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Health Occupations
 2 Section 14–316(d), 14–405, 14–406, 14–408, 14–5A–17.1, 14–5B–14.1,
 3 14–5D–15, 14–5E–17, 15–313(b), and 15–315
 4 Annotated Code of Maryland
 5 (2009 Replacement Volume and 2012 Supplement)

6 BY adding to
 7 Article – Health Occupations
 8 Section 14–409.1
 9 Annotated Code of Maryland
 10 (2009 Replacement Volume and 2012 Supplement)

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

13 **Article – Health Occupations**

14 14–316.

15 (d) (1) In addition to any other qualifications and requirements
 16 established by the Board, the Board may establish continuing education requirements
 17 as a condition to the renewal of licenses under this section.

18 (2) In establishing these requirements, the Board shall evaluate
 19 existing methods, devices, and programs in use among the various medical specialties
 20 and other recognized medical groups.

21 **(3) THE REQUIREMENTS SHALL ALLOW A LICENSEE SEEKING**
 22 **RENEWAL OF A LICENSE TO RECEIVE UP TO 10 CONTINUING EDUCATION CREDIT**
 23 **HOURS FOR PROVIDING VOLUNTEER PRO BONO MEDICAL SERVICES IN THE**
 24 **STATE.**

25 **[(3)] (4)** The Board may not establish or enforce these requirements
 26 if they would so reduce the number of physicians in a community as to jeopardize the
 27 availability of adequate medical care in that community.

28 **[(4)] (5)** The Board may impose a civil penalty of up to \$100 per
 29 continuing medical education credit in lieu of a sanction under § 14–404 of this title,
 30 for a first offense, for the failure of a licensee to obtain the continuing medical
 31 education credits required by the Board.

32 14–405.

33 (a) Except as otherwise provided in the Administrative Procedure Act, before
 34 the Board takes any action under § 14–404(a) of this subtitle or § 14–5A–17(a) of this

1 title, it shall give the individual against whom the action is contemplated an
2 opportunity for a hearing before a hearing officer.

3 (b) (1) The hearing officer shall give notice and hold the hearing in
4 accordance with the Administrative Procedure Act.

5 (2) Factual findings shall be supported by [a preponderance of the]
6 **CLEAR AND CONVINCING** evidence.

7 (c) The individual may be represented at the hearing by counsel.

8 (d) If after due notice the individual against whom the action is
9 contemplated fails or refuses to appear, nevertheless the hearing officer may hear and
10 refer the matter to the Board for disposition.

11 (e) (1) [After] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
12 **SECTION, AFTER** performing any necessary hearing under this section, the hearing
13 officer shall refer proposed factual findings to the Board for the Board's disposition.

14 (2) (I) **A LICENSEE WHOSE LICENSE HAS BEEN SUMMARILY**
15 **SUSPENDED BY THE BOARD UNDER § 10-226(C)(2) OF THE STATE**
16 **GOVERNMENT ARTICLE MAY ELECT TO HAVE THE HEARING OFFICER:**

17 1. **MAKE FINAL FINDINGS OF FACT AND**
18 **CONCLUSIONS OF LAW; AND**

19 2. **IF THE HEARING OFFICER CONCLUDES THAT**
20 **THERE ARE GROUNDS FOR DISCIPLINARY ACTION, DETERMINE THE**
21 **DISCIPLINARY ACTION THAT SHOULD BE IMPOSED ON THE LICENSEE.**

22 (II) **AFTER HOLDING ANY NECESSARY HEARING, THE**
23 **HEARING OFFICER SHALL REFER THE FINDINGS, CONCLUSIONS, AND, IF ANY,**
24 **THE DISCIPLINARY ACTION THAT SHOULD BE IMPOSED AGAINST THE LICENSEE**
25 **TO THE BOARD FOR APPROPRIATE ACTION UNDER § 14-406 OF THIS SUBTITLE.**

26 (f) The Board may adopt regulations to govern the taking of depositions and
27 discovery in the hearing of charges.

28 (g) The hearing of charges may not be stayed or challenged by any
29 procedural defects alleged to have occurred prior to the filing of charges.

30 14-406.

31 (a) (1) [Following] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
32 **SUBSECTION, FOLLOWING** the filing of charges, if a majority of the quorum of the

1 Board finds that there are grounds for action under § 14–404 of this subtitle, the
2 Board shall pass an order in accordance with the Administrative Procedure Act.

3 **(2) (I) IF A HEARING OFFICER NOTIFIES THE BOARD UNDER §**
4 **14–405(E)(2) OF THIS SUBTITLE THAT THE HEARING OFFICER HAS CONCLUDED**
5 **THAT THERE ARE GROUNDS FOR DISCIPLINARY ACTION, WITHIN 15 DAYS AFTER**
6 **RECEIVING THE NOTICE, THE BOARD SHALL PASS AN ORDER IN ACCORDANCE**
7 **WITH SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH.**

8 **(II) THE ORDER THE BOARD PASSES UNDER**
9 **SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL:**

10 **1. INCLUDE THE FINAL FINDINGS OF FACT AND**
11 **CONCLUSIONS OF LAW MADE BY THE HEARING OFFICER; AND**

12 **2. IMPLEMENT THE DISCIPLINARY ACTION THAT**
13 **THE HEARING OFFICER DETERMINED SHOULD BE IMPOSED ON THE LICENSEE.**

14 **(III) WHEN THE BOARD PASSES AN ORDER UNDER**
15 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE BOARD MAY NOT:**

16 **1. ALTER THE FINAL FINDINGS OF FACT AND**
17 **CONCLUSIONS OF LAW MADE BY THE HEARING OFFICER; OR**

18 **2. IMPLEMENT A DISCIPLINARY ACTION THAT IS**
19 **DIFFERENT FROM THE DISCIPLINARY ACTION THE HEARING OFFICER**
20 **DETERMINED SHOULD BE IMPOSED ON THE LICENSEE.**

21 (b) After the charges are filed, if the Board finds, on an affirmative vote of a
22 majority of its quorum, **OR A HEARING OFFICER DETERMINES UNDER §**
23 **14–405(E)(2) OF THIS SUBTITLE**, that there are no grounds for action under §
24 14–404 of this subtitle, the Board:

25 (1) Immediately shall dismiss the charges and exonerate the licensee;

26 (2) (i) Except as provided in item (ii) of this paragraph, shall
27 expunge all records of the charges 3 years after the charges are dismissed; or

28 (ii) If the physician executes a document releasing the Board
29 from any liability related to the charges, shall immediately expunge all records of the
30 charges; and

31 (3) May not take any further action on the charges.

32 14–408.

1 (a) Except as provided in this section for an action under § 14–404 of this
2 subtitle or § 14–5A–17 of this title, any person aggrieved by a final decision of the
3 Board in a contested case, as defined in the Administrative Procedure Act, may[:

4 (1) Appeal that decision to the Board of Review; and

5 (2) Then] take any [further] appeal allowed by the Administrative
6 Procedure Act.

7 (b) (1) Any person aggrieved by a final decision of the Board under §
8 14–404 of this subtitle or § 14–5A–17 of this title **OR A FINAL DECISION OF A**
9 **HEARING OFFICER UNDER § 14–405(E)(2) OF THIS SUBTITLE** may not appeal to
10 the Secretary or Board of Review but may take a direct judicial appeal.

11 (2) The appeal shall be made as provided for judicial review of final
12 decisions in the Administrative Procedure Act.

13 (c) An order of the Board may not be stayed pending review.

14 (d) The Board may appeal from any decision that reverses or modifies its
15 order.

16 **14–409.1.**

17 **(A) A LICENSEE MAY SEEK THE EXPUNGEMENT OF THE LICENSEE’S**
18 **DISCIPLINARY RECORD.**

19 **(B) THE BOARD SHALL ADOPT REGULATIONS GOVERNING:**

20 **(1) THE PROCESS FOR SEEKING AN EXPUNGEMENT OF A**
21 **DISCIPLINARY RECORD UNDER THIS SECTION; AND**

22 **(2) THE CIRCUMSTANCES UNDER WHICH THE BOARD WILL**
23 **EXPUNGE A DISCIPLINARY RECORD UNDER THIS SECTION.**

24 **14–5A–17.1.**

25 (a) (1) Any person aggrieved by a final decision of the Board under this
26 subtitle **OR A FINAL DECISION OF A HEARING OFFICER UNDER § 14–405(E)(2) OF**
27 **THIS TITLE** may not appeal to the Secretary or Board of Review but may take a direct
28 judicial appeal.

29 (2) The appeal shall be made as provided for judicial review of final
30 decisions in the Administrative Procedure Act.

1 (b) An order of the Board may not be stayed pending review.

2 (c) The Board may appeal from any decision that reverses or modifies its
3 order.

4 14-5B-14.1.

5 (a) (1) Any person aggrieved by a final decision of the Board under this
6 subtitle **OR A FINAL DECISION OF A HEARING OFFICER UNDER § 14-405(E)(2) OF**
7 **THIS TITLE** may not appeal to the Secretary or Board of Review but may take a direct
8 judicial appeal.

9 (2) The appeal shall be made as provided for judicial review of final
10 decisions in the Administrative Procedure Act.

11 (b) An order of the Board may not be stayed pending review.

12 (c) The Board may appeal from any decision that reverses or modifies its
13 order.

14 14-5D-15.

15 (a) (1) Except as otherwise provided in § 10-226 of the State Government
16 Article, before the Board takes any action under § 14-5D-14 of this subtitle, it shall
17 give the individual against whom the action is contemplated an opportunity for a
18 hearing before a hearing officer.

19 (2) The hearing officer shall give notice and hold the hearing in
20 accordance with Title 10, Subtitle 2, of the State Government Article.

21 (3) The Board may administer oaths in connection with any
22 proceedings under this section.

23 (4) At least 14 days before the hearing, a hearing notice shall be sent
24 by certified mail to the last known address of the individual.

25 **(5) A LICENSEE WHOSE LICENSE HAS BEEN SUMMARILY**
26 **SUSPENDED BY THE BOARD UNDER § 10-226(C)(2) OF THE STATE**
27 **GOVERNMENT ARTICLE MAY ELECT UNDER § 14-405(E)(2) OF THIS TITLE TO**
28 **HAVE THE HEARING OFFICER MAKE FINAL FINDINGS OF FACT AND**
29 **CONCLUSIONS OF LAW AND DETERMINE THE DISCIPLINARY ACTION, IF ANY,**
30 **THAT SHOULD BE IMPOSED ON THE LICENSEE.**

31 (b) (1) Any person aggrieved by a final decision of the Board under this
32 subtitle **OR A FINAL DECISION OF A HEARING OFFICER UNDER § 14-405(E)(2) OF**

1 **THIS TITLE** may not appeal to the Secretary or Board of Review but may take a direct
2 judicial appeal.

3 (2) The appeal shall be made as provided for judicial review of final
4 decisions in the Administrative Procedure Act.

5 (c) An order of the Board may not be stayed pending review.

6 (d) The Board may appeal from any decision that reverses or modifies its
7 order.

8 14–5E–17.

9 (a) (1) Any person aggrieved by a final decision of the Board under this
10 subtitle **OR A FINAL DECISION OF A HEARING OFFICER UNDER § 14–405(E)(2) OF**
11 **THIS TITLE** may not appeal to the Secretary or Board of Review but may take a direct
12 judicial appeal.

13 (2) The appeal shall be made as provided for judicial review of final
14 decisions in Title 10, Subtitle 2 of the State Government Article.

15 (b) An order of the Board may not be stayed pending review.

16 (c) The Board may appeal from any decision that reverses or modifies its
17 order.

18 15–313.

19 (b) Any applicant aggrieved under this subtitle by a final decision of the
20 Board denying a license or rejecting or modifying a delegation agreement or advanced
21 duty may[:

22 (1) Appeal that decision to the Board of Review; and

23 (2) Then] take any [further] appeal allowed under Title 10, Subtitle 2
24 of the State Government Article.

25 15–315.

26 (a) (1) Except as otherwise provided under § 10–226 of the State
27 Government Article, before the Board takes any action under § 15–314(a) of this
28 subtitle, the Board shall give the individual against whom the action is contemplated
29 an opportunity for a hearing before a hearing officer.

30 (2) The hearing officer shall give notice and hold the hearing in
31 accordance with Title 10, Subtitle 2 of the State Government Article.

1 (3) The Board may administer oaths in connection with any
2 proceeding under this section.

3 (4) At least 14 days before the hearing, the hearing notice required
4 under this subtitle shall be sent by certified mail to the last known address of the
5 individual.

6 **(5) A LICENSEE WHOSE LICENSE HAS BEEN SUMMARILY**
7 **SUSPENDED BY THE BOARD UNDER § 10-226(C)(2) OF THE STATE**
8 **GOVERNMENT ARTICLE MAY ELECT UNDER § 14-405(E)(2) OF THIS ARTICLE TO**
9 **HAVE THE HEARING OFFICER MAKE FINAL FINDINGS OF FACT AND**
10 **CONCLUSIONS OF LAW AND DETERMINE THE DISCIPLINARY ACTION, IF ANY,**
11 **THAT SHOULD BE IMPOSED ON THE LICENSEE.**

12 (b) (1) Any licensee who is aggrieved by a final decision of the Board
13 under this subtitle **OR A FINAL DECISION OF A HEARING OFFICER UNDER §**
14 **14-405(E)(2) OF THIS ARTICLE** may not appeal to the Board of Review but may take
15 a direct judicial appeal.

16 (2) The appeal shall be as provided for judicial review of the final
17 decision in Title 10, Subtitle 2 of the State Government Article.

18 (c) An order of the Board under this subtitle may not be stayed pending
19 review.

20 (d) All of the findings and orders of the Board that relate to physician
21 assistants are subject to the provisions of Title 14, Subtitle 4 of this article.

22 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December
23 31, 2013, the State Board of Physicians shall issue a request for proposal for a
24 statewide organization certified by the Accreditation Council for Continuing Medical
25 Education to provide a yearly continuing medical education program for licensed
26 physicians on issues of importance to public health.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2013.