

SENATE BILL 291

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SB 956/09 – EHE

0lr2062
CF HB 114

By: **Senator Conway**

Introduced and read first time: January 27, 2010

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 17, 2010

CHAPTER _____

1 AN ACT concerning

2 **Health Occupations Boards – Revisions**

3 FOR the purpose of requiring certain health occupations boards to provide certain
4 notification to certain licensees or certificate holders of board vacancies;
5 requiring certain health occupations boards to collect certain racial and ethnic
6 information; requiring that, to the extent practicable, certain members of
7 certain health occupations boards reasonably reflect certain geographic, racial,
8 ethnic, cultural, and gender diversity; requiring certain health occupations
9 boards to develop collaboratively certain training and materials for certain
10 board members; requiring the Secretary of Health and Mental Hygiene to
11 confirm the appointment of certain directors; requiring that after certain
12 consultation and to the extent permitted by certain resources, certain health
13 occupations boards establish certain subcommittees to be responsible for certain
14 investigations, determine whether certain charges should be brought, and
15 participate in certain preadjudication case resolution conferences; prohibiting
16 certain health occupations boards from bringing certain charges based solely on
17 certain complaints the board receives after a certain period of time; requiring
18 certain health occupations boards that are authorized to use peer review to
19 provide certain licensees and certificate holders an opportunity to review and
20 respond to certain reports; requiring certain health occupations boards to
21 consider certain reports and responses before taking certain action; authorizing
22 certain health occupations boards to establish certain programs to provide
23 certain training, mentoring, or other remediation for certain licensees or
24 certificate holders who commit a certain number of standard of care violations;
25 requiring certain health occupations boards to adopt certain sanctioning

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 guidelines; requiring certain health occupations boards to post certain orders for
 2 disciplinary action on certain websites; requiring the Secretary to establish
 3 certain goals for the timeliness of complaint resolution; requiring the Secretary
 4 to monitor the timeliness of complaint resolution for certain health occupations
 5 boards; requiring the Secretary to establish certain goals on or before a certain
 6 date; requiring certain health occupations boards to collaborate with the Office
 7 of the Attorney General to make certain information available to the public
 8 concerning certain roles for assistant attorneys general; establishing that
 9 certain departure from sanctioning guidelines, failure to meet certain timeliness
 10 goals, and noncompliance with certain guidelines concerning certain roles for
 11 assistant attorneys general may not be grounds for certain hearings or appeals;
 12 requiring the Secretary, Department, and health occupations boards to make
 13 certain reports to certain committees of the General Assembly on or before
 14 certain dates; providing for the construction and the application of this Act;
 15 defining certain terms; and generally relating to revisions for the health
 16 occupations boards.

17 BY adding to

18 Article – Health Occupations

19 Section 1–214 through 1–218; and 1–601 through 1–609 to be under the new
 20 subtitle “Subtitle 6. General Clarification of the Disciplinary Process”

21 Annotated Code of Maryland

22 (2009 Replacement Volume)

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

25 **Article – Health Occupations**

26 **1–214.**

27 **TO THE EXTENT PRACTICABLE, THE MEMBERS APPOINTED TO EACH**
 28 **HEALTH OCCUPATIONS BOARD AUTHORIZED TO ISSUE A LICENSE OR**
 29 **CERTIFICATE UNDER THIS ARTICLE SHALL REASONABLY REFLECT THE**
 30 **GEOGRAPHIC, RACIAL, ETHNIC, CULTURAL, AND GENDER DIVERSITY OF THE**
 31 **STATE.**

32 **1–215.**

33 **(A) EACH HEALTH OCCUPATIONS BOARD AUTHORIZED TO ISSUE A**
 34 **LICENSE OR CERTIFICATE UNDER THIS ARTICLE SHALL NOTIFY ALL LICENSEES**
 35 **OR CERTIFICATE HOLDERS OF BOARD VACANCIES.**

36 **(B) A HEALTH OCCUPATIONS BOARD MAY GIVE NOTICE OF A BOARD**
 37 **VACANCY BY ELECTRONIC MAIL OR A NOTICE ON THE BOARD’S WEBSITE.**

1 1-216.

2 THE HEALTH OCCUPATIONS BOARDS AUTHORIZED TO ISSUE A LICENSE
3 OR CERTIFICATE UNDER THIS ARTICLE SHALL DEVELOP COLLABORATIVELY A
4 TRAINING PROCESS AND MATERIALS FOR NEW BOARD MEMBERS THAT INCLUDE
5 TRAINING IN CULTURAL COMPETENCY.

6 1-217.

7 THE SECRETARY SHALL CONFIRM THE APPOINTMENT OF EACH
8 ~~ADMINISTRATIVE~~ ADMINISTRATOR OR EXECUTIVE DIRECTOR TO EACH HEALTH
9 OCCUPATIONS BOARD AUTHORIZED TO ISSUE A LICENSE OR CERTIFICATE
10 UNDER THIS ARTICLE.

11 1-218.

12 EACH HEALTH OCCUPATIONS BOARD AUTHORIZED TO ISSUE A LICENSE
13 OR CERTIFICATE UNDER THIS ARTICLE SHALL COLLECT RACIAL AND ETHNIC
14 INFORMATION ABOUT THE APPLICANT AS PART OF THE BOARD'S LICENSING,
15 CERTIFYING, OR RENEWAL PROCESS.

16 SUBTITLE 6. GENERAL CLARIFICATION OF THE DISCIPLINARY PROCESS.

17 1-601.

18 IN THIS SUBTITLE, "HEALTH OCCUPATIONS BOARD" MEANS A BOARD
19 AUTHORIZED TO ISSUE A LICENSE OR CERTIFICATE UNDER THIS ARTICLE.

20 1-602.

21 (A) AFTER CONSULTATION WITH THE SECRETARY AND TO THE EXTENT
22 PERMITTED BY EXISTING ADMINISTRATIVE AND FISCAL RESOURCES, EACH
23 HEALTH OCCUPATIONS BOARD SHALL ESTABLISH A DISCIPLINARY
24 SUBCOMMITTEE.

25 (B) TO THE EXTENT DEEMED PRACTICABLE BY EACH BOARD, A
26 DISCIPLINARY SUBCOMMITTEE SHALL:

27 (1) BE RESPONSIBLE FOR THE INVESTIGATION OF COMPLAINTS;

28 (2) DETERMINE WHETHER THE HEALTH OCCUPATIONS BOARD
29 SHOULD BRING CHARGES AGAINST A LICENSEE OR CERTIFICATE HOLDER; AND

30 (3) PARTICIPATE IN PREADJUDICATION CASE RESOLUTION
31 CONFERENCES RESULTING FROM THE CHARGES.

1 **1-603.**

2 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A
3 HEALTH OCCUPATIONS BOARD MAY NOT BRING CHARGES AGAINST A LICENSEE
4 OR CERTIFICATE HOLDER BASED SOLELY ON EVENTS CONTAINED IN A
5 COMPLAINT THE BOARD RECEIVES MORE THAN 6 YEARS AFTER:

6 (1) THE DAY THE COMPLAINANT ACTUALLY DISCOVERED THE
7 FACTS THAT FORM THE BASIS OF THE COMPLAINT; OR

8 (2) THE DAY WHEN A REASONABLE PERSON EXERCISING DUE
9 DILIGENCE SHOULD HAVE DISCOVERED THE FACTS THAT FORM THE BASIS OF
10 THE COMPLAINT.

11 (B) THIS SECTION DOES NOT APPLY TO A COMPLAINT BASED ON:

12 (1) CRIMINAL CONVICTIONS OR SEXUAL MISCONDUCT OR OTHER
13 SIMILAR BOUNDARY VIOLATIONS;

14 (2) RECIPROCAL DISCIPLINE MATTERS;

15 (3) ONGOING SUBSTANCE ABUSE;

16 (4) FRAUDULENT CONCEALMENT OF MATERIAL INFORMATION;

17 (5) ACTS THAT WERE PART OF A PATIENT'S REPRESSED MEMORY;

18 OR

19 (6) ACTS THAT OCCUR WHILE A PATIENT IS A MINOR.

20 **1-604.**

21 (A) IF A STATUTE AUTHORIZES A HEALTH OCCUPATIONS BOARD TO USE
22 A SYSTEM OF PEER REVIEW IN STANDARD OF CARE CASES AND THE PEER
23 REVIEWER OR PEER REVIEWERS DETERMINE THAT THERE HAS BEEN A
24 VIOLATION OF A STANDARD OF CARE, THE BOARD SHALL PROVIDE THE
25 LICENSEE OR CERTIFICATE HOLDER UNDER INVESTIGATION WITH AN
26 OPPORTUNITY TO REVIEW THE FINAL PEER REVIEW REPORT AND PROVIDE THE
27 BOARD WITH A WRITTEN RESPONSE WITHIN 10 BUSINESS DAYS AFTER THE
28 REPORT WAS SENT TO THE LICENSEE OR CERTIFICATE HOLDER.

29 (B) IF A HEALTH OCCUPATIONS BOARD RECEIVES A WRITTEN
30 RESPONSE TO A FINAL PEER REVIEW REPORT, THE BOARD SHALL CONSIDER
31 BOTH THE REPORT AND RESPONSE BEFORE TAKING ANY ACTION.

1 **1-605.**

2 (A) AS AN ALTERNATIVE TO A FORMAL HEARING, EACH HEALTH
3 OCCUPATIONS BOARD MAY ESTABLISH A PROGRAM FOR LICENSEES OR
4 CERTIFICATE HOLDERS WHO COMMIT A SINGLE STANDARD OF CARE VIOLATION.

5 (B) A PROGRAM ESTABLISHED UNDER THIS SECTION SHALL PROVIDE
6 TRAINING, MENTORING, OR OTHER FORMS OF REMEDIATION AS DETERMINED
7 BY THE HEALTH OCCUPATIONS BOARD.

8 (C) A HEALTH OCCUPATIONS BOARD MAY REFER A LICENSEE TO THE
9 PROGRAM.

10 **1-606.**

11 (A) EACH HEALTH OCCUPATIONS BOARD SHALL ADOPT SPECIFIC
12 SANCTIONING GUIDELINES, INCLUDING:

13 (1) A RANGE OF SANCTIONS THAT IS BASED ON HISTORICAL DATA
14 OR A NORMATIVE PROCESS FOR EACH TYPE OF VIOLATION; AND

15 (2) A LIST OF MITIGATING AND AGGRAVATING CIRCUMSTANCES
16 THAT MAY BE USED TO DECIDE IF A SANCTION FALLS WITHIN OR OUTSIDE THE
17 ESTABLISHED RANGE OF SANCTIONS.

18 (B) SANCTIONING GUIDELINES ADOPTED UNDER THIS SECTION SHALL:

19 (1) CONFORM TO A GENERAL FRAMEWORK OR INCORPORATE A
20 COMMON SET OF ELEMENTS; AND

21 (2) BE USED AS A GUIDE FOR SANCTIONING LICENSEES AND
22 CERTIFICATE HOLDERS IN FORMAL AND INFORMAL PROCEEDINGS.

23 (C) (1) TO THE EXTENT A HEALTH OCCUPATIONS BOARD DEPARTS
24 FROM THE SANCTIONING GUIDELINES ADOPTED UNDER THIS SECTION, THE
25 BOARD SHALL STATE ITS REASONS.

26 (2) A DEPARTURE FROM THE GUIDELINES ALONE IS NOT
27 GROUNDS FOR ANY HEARING OR APPEAL OF ANY BOARD ACTION.

28 **1-607.**

1 **EACH HEALTH OCCUPATIONS BOARD SHALL POST ON THE BOARD'S**
2 **WEBSITE EACH FINAL, PUBLIC ORDER FOR A DISCIPLINARY SANCTION ISSUED**
3 **TO A LICENSEE OR CERTIFICATE HOLDER.**

4 **1-608.**

5 **(A) THE SECRETARY SHALL MONITOR THE TIMELINESS OF COMPLAINT**
6 **RESOLUTION FOR EACH HEALTH OCCUPATIONS BOARD.**

7 **(B) (1) ON OR BEFORE OCTOBER 1, 2012, THE SECRETARY SHALL**
8 **ESTABLISH GOALS FOR THE TIMELINESS OF COMPLAINT RESOLUTION FOR ALL**
9 **OF THE BOARDS, A GROUP OF BOARDS, OR A SPECIFIC BOARD, INCLUDING:**

10 **(I) AFTER A COMPLAINT IS FILED WITH A BOARD, A GOAL**
11 **FOR THE LENGTH OF TIME A BOARD HAS TO COMPLETE AN INVESTIGATION AND**
12 **DETERMINE WHETHER TO BRING CHARGES;**

13 **(II) AFTER A BOARD MAKES A DECISION TO CHARGE, A**
14 **GOAL FOR THE LENGTH OF TIME A BOARD HAS TO ISSUE CHARGES;**

15 **(III) AFTER A BOARD ISSUES CHARGES, A GOAL FOR THE**
16 **LENGTH OF TIME A BOARD HAS TO SCHEDULE A HEARING; AND**

17 **(IV) AFTER THE DATE OF AN OPINION FROM THE OFFICE OF**
18 **ADMINISTRATIVE HEARINGS, OR THE FINAL DAY OF ANY HEARING, A GOAL FOR**
19 **THE LENGTH OF TIME A BOARD HAS TO ISSUE A FINAL DECISION.**

20 **(2) WHEN DETERMINING THE TIME FRAMES FOR COMPLAINT**
21 **RESOLUTION, THE SECRETARY SHALL CONSIDER:**

22 **(I) THE ADMINISTRATIVE AND FISCAL CONSTRAINTS OF**
23 **EACH HEALTH OCCUPATIONS BOARD; AND**

24 **(II) THE RECOMMENDATIONS FROM THE TASK FORCE ON**
25 **DISCIPLINE OF HEALTH CARE PROFESSIONALS AND IMPROVED PATIENT**
26 **CARE.**

27 **(3) THE GOALS ESTABLISHED BY THE SECRETARY IN**
28 **ACCORDANCE WITH THIS SECTION ARE NONBINDING AND FAILURE TO MEET**
29 **THE GOALS MAY NOT BE USED AS GROUNDS FOR ANY HEARING OR APPEAL OF**
30 **ANY BOARD ACTION.**

31 **(C) ON OR BEFORE OCTOBER 1, 2012, THE SECRETARY OF HEALTH**
32 **AND MENTAL HYGIENE SHALL, IN ACCORDANCE WITH § 2-1246 OF THE STATE**
33 **GOVERNMENT ARTICLE, REPORT TO THE SENATE EDUCATION, HEALTH, AND**

1 ENVIRONMENTAL AFFAIRS COMMITTEE AND THE HOUSE HEALTH AND
2 GOVERNMENT OPERATIONS COMMITTEE ON THE GOALS FOR THE TIMELINESS
3 OF COMPLAINT RESOLUTION ESTABLISHED UNDER THIS SECTION.

4 **1-609.**

5 (A) EACH HEALTH OCCUPATIONS BOARD SHALL COLLABORATE WITH
6 THE OFFICE OF THE ATTORNEY GENERAL TO MAKE GUIDELINES AVAILABLE TO
7 THE PUBLIC CONCERNING THE SEPARATE ROLES FOR ASSISTANT ATTORNEYS
8 GENERAL AS COUNSEL AND PROSECUTOR FOR THE BOARD.

9 (B) NONCOMPLIANCE WITH THE GUIDELINES MADE AVAILABLE UNDER
10 THIS SECTION MAY NOT BE USED AS GROUNDS FOR ANY HEARING OR APPEAL OF
11 ANY BOARD ACTION.

12 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before December
13 31, 2011, each health occupations board shall report to the Senate Education, Health,
14 and Environmental Affairs Committee and the House Health and Government
15 Operations Committee, in accordance with § 2-1246 of the State Government Article,
16 on:

17 (1) its success in meeting the goals and requirements of this Act; and

18 (2) ways in which separation of the board's disciplinary functions can
19 be further achieved.

20 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before December
21 31, 2011, the health occupations boards in collaboration with the Department of
22 Health and Mental Hygiene shall jointly:

23 (1) study whether under certain circumstances it may be appropriate
24 to expunge disciplinary proceedings from a licensee's file after a specified period of
25 time; and

26 (2) report the findings of the study to the Senate Education, Health,
27 and Environmental Affairs Committee and the House Health and Government
28 Operations Committee, in accordance with § 2-1246 of the State Government Article.

29 SECTION 4. AND BE IT FURTHER ENACTED, That this Act may not be
30 construed to diminish, alter, or enhance the existing authority of any party to exercise
31 any responsibility in the appointment of membership to any health occupations board,
32 as provided by the Health Occupations Article.

33 SECTION 5. AND BE IT FURTHER ENACTED, That, except as otherwise
34 provided by law, this Act shall be construed to apply only prospectively and may not be
35 applied or interpreted to have any effect on or application to any complaint made to a
36 health occupations board before the effective date of this Act.

1 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.