

SENATE BILL 153

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1999 Regular Session
9lr0792

By: **Senators Teitelbaum, Collins, Dyson, Hollinger, and Sfikas**

Introduced and read first time: January 27, 1999

Assigned to: Economic and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 12, 1999

CHAPTER _____

1 AN ACT concerning

2 **Health Occupations - Sexual Misconduct**

3 FOR the purpose of establishing that health care providers may not assert consent of
4 the client or patient as a defense to certain types of sexual misconduct;
5 establishing that in such cases the sexual history of the client or patient and the
6 reputation of the client or patient regarding sexual conduct is irrelevant and
7 may not be subject to discovery or admitted as evidence; repealing a certain
8 definition; providing for a certain exception; and generally relating to health
9 occupations and disciplinary actions involving sexual misconduct.

10 BY repealing and reenacting, with amendments,
11 Article - Health Occupations
12 Section 1-212
13 Annotated Code of Maryland
14 (1994 Replacement Volume and 1998 Supplement)

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

17 **Article - Health Occupations**

18 1-212.

19 (a) Each health occupation board authorized to issue a license or certificate
20 under this article shall adopt regulations that:

21 (1) Prohibit sexual misconduct; and

1 (2) Provide for the discipline of a licensee or certificate holder found to be
2 guilty of sexual misconduct AS DETERMINED BY THE BOARD OR COMMISSION.

3 (b) For the purposes of the regulations adopted in accordance with subsection
4 (a) of this section, "sexual misconduct" shall be construed to include, at a minimum,
5 behavior where a health care provider:

6 (1) ~~Has engaged in sexual behavior with a client or patient in the context~~
7 ~~of a professional evaluation, treatment, procedure, or other service to the client or~~
8 ~~patient, regardless of the setting in which professional service is provided OR~~
9 ~~WHETHER THE CLIENT OR PATIENT CONSENTED;~~

10 (2) ~~Has engaged in sexual behavior with a client or patient under the~~
11 ~~pretense of diagnostic or therapeutic intent or benefit REGARDLESS OF WHETHER~~
12 ~~THE CLIENT OR PATIENT CONSENTED; or~~

13 (3) ~~Has engaged in any sexual behavior that would be considered~~
14 ~~unethical or unprofessional according to the code of ethics, professional standards of~~
15 ~~conduct, or regulations of the appropriate health occupation board under this article.~~

16 (c) (B) Subject to the provisions of the law governing contested cases, if an
17 applicant, licensee, or certificate holder violates a regulation adopted under
18 subsection (a) of this section a board may:

- 19 (1) Deny a license or certificate to the applicant;
- 20 (2) Reprimand the licensee or certificate holder;
- 21 (3) Place the licensee or certificate holder on probation; or
- 22 (4) Suspend or revoke the license or certificate.

23 (d) (C) (1) AN APPLICANT, LICENSEE, OR CERTIFICATE HOLDER MAY NOT
24 ASSERT CONSENT OF THE CLIENT OR PATIENT AS A DEFENSE TO:

25 (1) ~~THE TYPES OF SEXUAL MISCONDUCT SPECIFIED IN~~
26 ~~SUBSECTION (B)(1) AND (2) OF THIS SECTION; OR~~

27 (2) ~~THE TYPE OF SEXUAL MISCONDUCT SPECIFIED IN SUBSECTION~~
28 ~~(B)(3) OF THIS SECTION SEXUAL MISCONDUCT, IF THE CODE OF ETHICS,~~
29 ~~PROFESSIONAL STANDARDS OF CONDUCT, OR REGULATIONS OF THE APPROPRIATE~~
30 ~~HEALTH OCCUPATION BOARD ESTABLISH THAT THE CONDUCT OF THE APPLICANT,~~
31 ~~LICENSEE, OR CERTIFICATE HOLDER IS UNETHICAL OR UNPROFESSIONAL~~
32 ~~REGARDLESS OF WHETHER THE CLIENT OR PATIENT CONSENTED.~~

33 (2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, IN A
34 CASE IN WHICH AN APPLICANT, LICENSEE, OR CERTIFICATE HOLDER IS ALLEGED TO
35 HAVE COMMITTED ANY OF THE TYPES OF SEXUAL MISCONDUCT SPECIFIED IN
36 PARAGRAPH (1) OF THIS SUBSECTION, THE SEXUAL HISTORY OF THE CLIENT OR
37 PATIENT AND THE REPUTATION OF THE CLIENT OR PATIENT REGARDING SEXUAL

1 CONDUCT ARE IRRELEVANT AND MAY NOT BE SUBJECT TO DISCOVERY OR ADMITTED
2 AS EVIDENCE.

3 (3) THE SEXUAL HISTORY OF A CLIENT OR PATIENT MAY BE ADMITTED
4 INTO EVIDENCE AT A HEARING CONDUCTED BY OR ON BEHALF OF A HEALTH
5 OCCUPATION BOARD IF THE EVIDENCE:

6 (I) RELATES TO THE CLIENT'S OR PATIENT'S CONDITION THAT WAS
7 EVALUATED OR TREATED BY THE APPLICANT, LICENSEE, OR CERTIFICATE HOLDER;

8 (II) IS RELEVANT AND MATERIAL TO A FACT IN ISSUE IN THE CASE;
9 AND

10 (III) POSSESSES PROBATIVE VALUE THAT OUTWEIGHS ITS
11 INFLAMMATORY OR PREJUDICIAL NATURE.

12 ~~(E)~~ (D) This section does not negate any other disciplinary action under a
13 health occupation board's statutory or regulatory provisions.

14 ~~{(e)}~~ ~~(F)~~ (1) Each year, each health occupation board shall submit a
15 statistical report to the Secretary, indicating the number of complaints of sexual
16 misconduct received and the resolution of each complaint. The report shall cover the
17 period beginning October 1 and ending the following September 30 and shall be
18 submitted by the board not later than the November 15 following the reporting
19 period.

20 (2) The Secretary shall compile the information received from the health
21 occupation boards and submit an annual report to the General Assembly, in
22 accordance with § 2-1246 of the State Government Article, not later than December
23 31 of each year.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 1999.