

CHAPTER 212

(House Bill 811)

AN ACT concerning

~~State Board of Dental Examiners – Nomination of Members – Investigation and Disciplinary Procedures – Data Collection~~
State Board of Dental Examiners Nomination and Disciplinary Processes – Task Force on the Discipline of Health Care Professionals and Improved Patient Care

FOR the purpose of requiring ~~certain academies, associations, organizations, or societies committed to the practice of dentistry and dental hygiene to the State Board of Dental Examiners to conduct a certain solicitation and balloting process and submit to the Governor certain lists of names of individuals for nomination for membership on the State Board of Dental Examiners Board; requiring that individuals on certain lists reflect the Board to develop guidelines for certain solicitations and ballots that to the extent possible will result in a certain Board composition reflecting certain diversity of the State; requiring that certain members appointed to the Board reflect certain diversity of the State; requiring the Governor to appoint a president of the Board from among certain Board members; requiring the executive director of the Board to report to the Secretary of Health and Mental Hygiene; altering the parties who may initiate or file certain complaints; prohibiting certain complaints from being filed more than a certain time after a certain date; requiring that certain investigations be based on certain facts; prohibiting the Board from investigating certain complaints; prohibiting certain assistant attorneys general from assisting in or conducting certain investigations; prohibiting certain assistant attorneys general from being involved in certain disciplinary proceedings until certain votes to charge have taken place; prohibiting the Board from conducting certain records under certain circumstances; prohibiting the Board from continuing certain investigations under certain circumstances; requiring the Board to conclude certain actions on complaints within a certain time after a complaint is filed unless the Board can demonstrate certain delays; requiring the Board to adopt certain regulations in consultation with the Office of the Attorney General and the Secretary of Health and Mental Hygiene concerning certain disciplinary procedures before a certain date; requiring the Board to begin collecting certain information on race and ethnicity, develop a certain methodology and database for tracking and analyzing certain complaints, institute a certain status report monitoring tool for certain disciplinary cases, implement a certain case-audit study, and develop a certain nominating process by a certain date; requiring the Office of the Attorney General to provide a rotation process for certain assistant attorneys general; requiring the Board to submit a certain report by a certain date; establishing a~~

Task Force on the Discipline of Health Care Professionals and Improved Patient Care; providing for the membership of the Task Force; providing for the designation of a chair of the Task Force; providing for staff for the Task Force; prohibiting a member of the Task Force from receiving compensation; authorizing a member of the Task Force to receive reimbursement for certain expenses; requiring the Task Force to study certain issues, issue certain recommendations, and report to the Governor and certain committees of the General Assembly on or before a certain date; and generally relating to the State Board of Dental Examiners and the Task Force on the Discipline of Health Care Professionals and Improved Patient Care.

BY repealing and reenacting, with amendments,
 Article – Health Occupations
 Section 4–202(a), ~~4–203, 4–204(e), and 4–316~~ and (b)
 Annotated Code of Maryland
 (2005 Replacement Volume and 2007 Supplement)

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

Article – Health Occupations

4–202.

(a) (1) The Board consists of 16 members.

(2) Of the 16 Board members:

(i) 9 shall be licensed dentists;

(ii) 4 shall be licensed dental hygienists; and

(iii) 3 shall be consumer members.

(3) (I) ~~The~~ **SUBJECT TO SUBSECTION (B)(1) OF THIS SECTION,** **THE** Governor shall appoint the dentist Board members, with the advice of the Secretary, from a list of names submitted to the Governor [jointly] by the [Maryland State Dental Association and the Maryland Dental Society] ~~ESTABLISHED ACADEMIES, ASSOCIATIONS, ORGANIZATIONS, OR SOCIETIES IN THE STATE COMMITTED TO EXCELLENCE IN THE PRACTICE OF DENTISTRY~~ **BOARD.**

(II) The number of names on the list for one vacancy shall be at least four names, for two vacancies at least three names for each vacancy, and for three or more vacancies at least two names for each vacancy.

~~(III) THE INDIVIDUALS ON THE LIST SHALL REASONABLY REFLECT THE GEOGRAPHIC, RACIAL, ETHNIC, CULTURAL, AND GENDER DIVERSITY OF THE STATE.~~

(4) (I) ~~The~~ SUBJECT TO SUBSECTION (B)(2) OF THIS SECTION, ~~THE~~ Governor shall appoint the dental hygienist Board members, with the advice of the Secretary, from a list of names submitted to the Governor by the [Maryland Dental Hygienists' Association] ~~ESTABLISHED ACADEMIES, ASSOCIATIONS, ORGANIZATIONS, OR SOCIETIES IN THE STATE COMMITTED TO EXCELLENCE IN THE PRACTICE OF DENTAL HYGIENE~~ BOARD.

(II) The number of names on the list shall be four times the number of vacancies.

~~(III) THE INDIVIDUALS ON THE LIST SHALL REASONABLY REFLECT THE GEOGRAPHIC, RACIAL, ETHNIC, CULTURAL, AND GENDER DIVERSITY OF THE STATE.~~

(5) The Governor shall appoint the consumer members with the advice of the Secretary and the advice and consent of the Senate.

(6) **TO THE EXTENT PRACTICABLE, THE MEMBERS APPOINTED TO THE BOARD SHALL REASONABLY REFLECT THE GEOGRAPHIC, RACIAL, ETHNIC, CULTURAL, AND GENDER DIVERSITY OF THE STATE.**

(b) [(1) At a joint meeting held by the Maryland State Dental Association and the Maryland Dental Society called to choose nominees for a dentist vacancy on the Board, a majority of the dentists present at the meeting shall choose the list of names of dentist nominees to the Board for submission to the Governor.]

(2) At a meeting held by the Maryland Dental Hygienists' Association called to choose nominees for a dental hygienist vacancy on the Board, a majority of the dental hygienists present at the meeting shall choose the list of names of dental hygienist nominees to the Board for submission to the Governor.

(3) At least 2 weeks before a meeting is held under paragraph (1) of this subsection, the secretaries of the appropriate organizations shall mail to each licensed practitioner actively practicing in Maryland, at the address appearing in their records or the records of the Board, a notice that states the time, place, and purpose of the meeting.

(4) At least 2 weeks before a meeting is held under paragraph (2) of this subsection, the Secretary of the Maryland Dental Hygienists' Association shall mail to each licensed dental hygienist, at the address appearing in their records or the records of the Board, a notice that states the time, place, and purpose of the meeting.]

(1) FOR EACH LICENSED DENTIST VACANCY, THE BOARD SHALL:

(I) SEND BY MAIL A WRITTEN SOLICITATION FOR NOMINATIONS TO FILL THE VACANCY TO:

- 1. EACH DENTIST LICENSED BY THE BOARD; AND**
- 2. EACH STATE DENTAL ORGANIZATION AFFILIATED WITH A NATIONAL ORGANIZATION; AND**

(II) CONDUCT A BALLOTING PROCESS BY WHICH EACH DENTIST LICENSED BY THE STATE IS ELIGIBLE TO VOTE TO SELECT THE NAMES OF THE LICENSED DENTISTS TO BE SUBMITTED TO THE GOVERNOR.

(2) FOR EACH LICENSED DENTAL HYGIENIST VACANCY, THE BOARD SHALL:

(I) SEND BY MAIL A WRITTEN SOLICITATION FOR NOMINATIONS TO FILL THE VACANCY TO:

- 1. EACH DENTAL HYGIENIST LICENSED BY THE BOARD; AND**
- 2. EACH STATE DENTAL HYGIENIST ORGANIZATION AFFILIATED WITH A NATIONAL ORGANIZATION; AND**

(II) CONDUCT A BALLOTING PROCESS BY WHICH EACH DENTAL HYGIENIST LICENSED BY THE STATE IS ELIGIBLE TO VOTE TO SELECT THE NAMES OF THE LICENSED DENTAL HYGIENISTS TO BE SUBMITTED TO THE GOVERNOR.

(3) THE BOARD SHALL DEVELOP GUIDELINES FOR THE SOLICITATION OF NOMINATIONS AND BALLOTING PROCESS THAT TO THE EXTENT POSSIBLE WILL RESULT IN THE OVERALL COMPOSITION OF THE BOARD REASONABLY REFLECTING THE GEOGRAPHIC, RACIAL, ETHNIC, AND GENDER DIVERSITY OF THE STATE.

~~4-203.~~

~~(A) FROM AMONG THE BOARD MEMBERS, THE GOVERNOR SHALL APPOINT A PRESIDENT.~~

~~[(a)] (B) From among its members, the Board shall elect [a president and] a secretary.~~

~~[(b)] (C) The Board shall determine:~~

- ~~(1) The manner of election of [officers] THE SECRETARY;~~
- ~~(2) The term of office of each officer; and~~
- ~~(3) The duties of each officer.~~

~~4-204.~~

~~(e) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE Board may employ a staff, INCLUDING AN EXECUTIVE DIRECTOR, in accordance with the budget of the Board.~~

~~(2) THE EXECUTIVE DIRECTOR OF THE BOARD SHALL REPORT TO THE SECRETARY.~~

~~4-316.~~

~~(a) (1) On [its own initiative or on] a written complaint AGAINST A LICENSEE filed with the Board by [any person] A PATIENT OF THE LICENSEE OR A PATIENT'S LEGAL GUARDIAN, the Board may commence proceedings under § 4-315 of this subtitle.~~

~~(2) A COMPLAINT MAY NOT BE FILED MORE THAN 2 YEARS AFTER THE DATE OF THE OCCURRENCE ON WHICH THE COMPLAINT IS BASED.~~

~~(b) [If a person who is not a member of the Board files a complaint, the] A complaint shall:~~

- ~~(1) Be in writing;~~
- ~~(2) Be verified by a person who is familiar with the alleged facts;~~
- ~~(3) Request Board action; and~~
- ~~(4) Be filed with the secretary of the Board.~~

~~(e) (1) The Board shall investigate each complaint filed with the Board if the complaint:~~

~~(i) Alleges facts that are grounds for action under § 4-315 of this subtitle; and~~

~~(ii) Meets the requirements of this section.~~

~~(2) [If the Board begins action on its own initiative or if after investigation it elects to substitute its own complaint for one filed by a person who is not a member of the Board, the Board shall prepare a written complaint.]~~

~~(I) EACH INVESTIGATION SHALL BE BASED ON THE FACTS OF A COMPLAINT.~~

~~(II) IF A COMPLAINT IS NOT SUPPORTED BY FACTS, THE BOARD MAY NOT CONDUCT AN INVESTIGATION.~~

~~(III) THE BOARD MAY NOT INVESTIGATE A COMPLAINT MADE BY A THIRD PARTY.~~

~~(3) (I) AN ASSISTANT ATTORNEY GENERAL MAY NOT ASSIST IN OR CONDUCT AN INVESTIGATION.~~

~~(II) AN ASSISTANT ATTORNEY GENERAL MAY NOT BECOME INVOLVED IN A DISCIPLINARY PROCEEDING UNTIL AFTER THE BOARD HAS VOTED TO CHARGE A LICENSEE.~~

~~(d) (1) If, after performing [any] A preliminary investigation, the Board determines that an allegation involving fees for professional or ancillary services does not constitute grounds for discipline or other action, the Board may refer the allegation concerning a member of a professional society or association composed of providers of dental care to a committee of the Society for Mediation.~~

~~(2) IF AFTER PERFORMING A PRELIMINARY INVESTIGATION, THE BOARD DETERMINES THAT A COMPLAINT IS NOT SUPPORTED BY FACTS, THE BOARD MAY NOT COLLECT ADDITIONAL RECORDS.~~

~~(E) THE BOARD MAY NOT CONTINUE TO INVESTIGATE A COMPLAINT OR DISCIPLINE A LICENSEE IF THE PATIENT WHO INITIATED THE COMPLAINT OR THE PATIENT'S GUARDIAN WITHDRAWS THE COMPLAINT.~~

~~(F) UNLESS THE BOARD CAN DEMONSTRATE DELAYS OUTSIDE OF ITS CONTROL, THE BOARD SHALL CONCLUDE ITS ACTION ON A COMPLAINT, INCLUDING DISCIPLINE AND PROBATIONARY PERIODS, WITHIN 2 YEARS AFTER THE DATE THE COMPLAINT WAS FILED.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) On or before December 31, 2008, the State Board of Dental Examiners shall adopt new regulations for the rules of procedure for the disciplinary process.

(b) The Board shall draft the new regulations in consultation with ~~each established academy, association, organization, or society committed to excellence in dentistry~~ the Office of the Attorney General and the Secretary of Health and Mental Hygiene.

(c) The new regulations shall include:

(1) guidelines for complaints;

(2) guidelines for investigations such as when an investigation is warranted and the thoroughness and length of an investigation that is warranted under different circumstances;

(3) to assure that similar acts of misconduct receive similar penalties, a severity ranking system for substantiated complaints and guidelines for corresponding degrees of sanctions based on the sanctioning methodologies and scoring tools identified in the pilot study prepared by the Virginia Department of Health Professions;

(4) guidelines for probationary periods such as length and conditions for completion of probationary periods;

(5) an appeals process; and

(6) guidelines for confidentiality including the removal of the name and address from the disciplinary and complaint documents that come before the Board; ~~and~~

~~(7) a process for expunging a licensee's disciplinary records if:~~

~~(i) the act resulting in the disciplinary action occurred over 10 years before the expungement; and~~

~~(ii) the licensee has not had another disciplinary action within 10 years before the expungement.~~

SECTION 3. AND BE IT FURTHER ENACTED, That, on or before December 31, 2008, the State Board of Dental Examiners shall:

(1) begin to collect race, gender, and ethnicity information on all licensees during the application process based on the Maryland official standard method for collecting race, gender, and ethnicity information;

(2) develop a concise methodology ~~of~~ including standard definitions and written guidelines for tracking the status of all complaints from the initial allegation through to sanctions and final action and keep records of the information for future audits;

(3) develop a database by re-engineering or modifying the software that analyzes complaint data so that the data may be analyzed in a variety of manners and subjectivity and individual bias may be reduced;

(4) institute the development, use, and routine review of a comprehensive status report as a monitoring tool for all disciplinary cases;

(5) implement a case audit that studies selected cases, de-identifying files, and using outside experts; and

(6) develop a nominating process for Board members ~~that includes each established academy, association, organization, or society committed to excellence in the practice of dentistry and dental hygiene and so that nominees reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of the State in accordance with § 4-202(a) and (b) of the Health Occupations Article, as enacted by Section 1 of this Act.~~

~~SECTION 4. AND BE IT FURTHER ENACTED, That the Office of the Attorney General shall provide a rotation process for assistant attorneys general working for the State Board of Dental Examiners.~~

SECTION ~~5~~ 4. AND BE IT FURTHER ENACTED, That, on or before December 31, 2008, the State Board of Dental Examiners shall report to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the implementation of Section 1 through Section 3 of this Act.

SECTION 5. AND BE IT FURTHER ENACTED, That:

(a) There is a Task Force on the Discipline of Health Care Professionals and Improved Patient Care.

(b) The Task Force consists of the following members:

(1) one member of the House of Delegates, appointed by the Speaker of the House;

(2) one member of the Senate of Maryland, appointed by the President of the Senate;

(3) the Secretary of Health and Mental Hygiene, or the Secretary's designee;

(4) the Attorney General, or the Attorney General's designee;

(5) the Chief Administrative Law Judge, or the Chief Judge's designee;

(6) two current health occupation board members, appointed by the Secretary of Health and Mental Hygiene;

(7) two current executive directors or administrators for health occupation boards that may not be from the same boards as the representatives in item (5) of this subsection, appointed by the Secretary of Health and Mental Hygiene; and

(8) nine individuals appointed by the Governor having expertise in professional disciplinary matters including at least:

(i) two representatives of a patient advocacy organization;

(ii) two attorneys from the Maryland State Bar Association's Health Law Section with experience in representing health professionals;

(iii) two representatives of professional health care associations; and

(iv) two consumers of health care services.

(c) (1) The Secretary of Health and Mental Hygiene shall:

(i) appoint the chair of the Task Force;

(ii) establish subcommittees and appoint subcommittee chairs as necessary to facilitate the work of the Task Force; and

(iii) in conjunction with the Attorney General, provide staff support for the Task Force from the Department and the health occupation boards.

(2) To the extent practicable, the members appointed to the Task Force shall reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of this State.

(3) A member of the Task Force may not receive compensation as a member of the Task Force but is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(d) In performing its duties, the Task Force shall:

(1) consult with individuals and entities that the chair of the Task Force deems appropriate; and

(2) consider a broad range of viewpoints including those presented by organizations representing the interests of patients, licensees, payors, law enforcement, and other groups involved in the disciplinary system.

(e) The Task Force shall issue recommendations regarding:

(1) practices and procedures supporting the fundamental goals and objectives of the disciplinary programs of the health occupation boards;

(2) potential changes to the organizational structure of the health occupation boards and the relationship of all boards to the Department; and

(3) measures that will otherwise enhance the fair, consistent, and speedy resolution of reports concerning substandard, illegal, or unethical practices by health care professionals.

(f) The issues to be studied by the Task Force include:

(1) the extent to which the current disciplinary system:

(i) adequately protects patients from serious risks due to incompetent or unethical practices by licensees;

(ii) creates a burden to licensees that may be lessened, while ensuring continued protective and regulatory oversight;

(iii) uses mentors and the cost to licensees associated with using them;

(iv) adequately provides due process to licensees; and

(v) could be modified to more effectively protect patients, minimize incompetent or unethical behavior by licensees, provide more effective due process for licensees, and support the professional growth and development of all Maryland licensees;

(2) potential changes in the disciplinary program of the health occupation boards that will:

(i) increase the transparency of disciplinary procedures for members of the public and the regulated community;

(ii) improve the complaint process by addressing the roles of the boards, investigators, and assistant attorneys general including who may initiate complaints;

(iii) increase the consistency and fairness of disciplinary outcomes;

(iv) a statute of limitations for complaints to be brought against licensees;

(v) speed the resolution of meritorious complaints and the disposition of proceedings that do not require a public disciplinary order;

(vi) from the time a complaint is filed, specify a reasonable period of time in which a board will conclude its action unless the board can demonstrate delays outside of its control;

(vii) utilize the Office of Administrative Hearings more effectively;

(viii) under certain circumstances, expunge disciplinary proceedings from a licensee's file after a specified period of time; and

(ix) increase the wider adoption of consistent procedures and best practices by all boards including tracking of disciplinary data;

(3) an assessment of whether the current relationship between individual boards, the Department, and the Office of the Attorney General should be modified in connection with the disciplinary process of the board including:

(i) oversight of the board by the Department;

(ii) the role of an assistant attorney general in the investigation process; and

(iii) the length of time an assistant attorney general works for an individual board and the potential of having the assistant attorneys general rotate among the boards; and

(4) the extent to which the current disciplinary system has a differential impact on various groups of licensees and potential strategies for minimizing differences while improving the overall quality of health care services.

(g) On or before December 1, 2008, the Task Force shall report its final recommendations to the Governor and, subject to § 2-1246 of the State Government Article, to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee.

SECTION 6. AND BE IT FURTHER ENACTED, That Section 5 of this Act shall take effect July 1, 2008. It shall remain effective for a period of 1 year and, at the end of June 30, 2009, with no further action required by the General Assembly, Section 5 of this Act shall be abrogated and of no further force and effect.

SECTION ~~6~~ 7. AND BE IT FURTHER ENACTED, That, subject to the provisions of Section 6 of this Act, this Act shall take effect July 1, 2008.

Approved by the Governor, April 24, 2008.