

Chapter 533

(Senate Bill 291)

AN ACT concerning

Health Occupations Boards – Revisions

FOR the purpose of requiring certain health occupations boards to provide certain notification to certain licensees or certificate holders of board vacancies; requiring certain health occupations boards to collect certain racial and ethnic information; requiring that, to the extent practicable, certain members of certain health occupations boards reasonably reflect certain geographic, racial, ethnic, cultural, and gender diversity; requiring certain health occupations boards to develop collaboratively certain training and materials for certain board members; requiring the Secretary of Health and Mental Hygiene to confirm the appointment of certain directors; requiring that after certain consultation and to the extent permitted by certain resources, certain health occupations boards establish certain subcommittees to be responsible for certain investigations, determine whether certain charges should be brought, and participate in certain preadjudication case resolution conferences; prohibiting certain health occupations boards from bringing certain charges based solely on certain complaints the board receives after a certain period of time; requiring certain health occupations boards that are authorized to use peer review to provide certain licensees and certificate holders an opportunity to review and respond to certain reports; requiring certain health occupations boards to consider certain reports and responses before taking certain action; authorizing certain health occupations boards to establish certain programs to provide certain training, mentoring, or other remediation for certain licensees or certificate holders who commit a certain number of standard of care violations; requiring certain health occupations boards to adopt certain sanctioning guidelines; requiring certain health occupations boards to post certain orders for disciplinary action on certain websites; requiring the Secretary to establish certain goals for the timeliness of complaint resolution; requiring the Secretary to monitor the timeliness of complaint resolution for certain health occupations boards; requiring the Secretary to establish certain goals on or before a certain date; requiring certain health occupations boards to collaborate with the Office of the Attorney General to make certain information available to the public concerning certain roles for assistant attorneys general; establishing that certain departure from sanctioning guidelines, failure to meet certain timeliness goals, and noncompliance with certain guidelines concerning certain roles for assistant attorneys general may not be grounds for certain hearings or appeals; requiring the Secretary, Department, and health occupations boards to make certain reports to certain committees of the General Assembly on or before certain dates; providing for the construction and the application of this Act;

defining certain terms; and generally relating to revisions for the health occupations boards.

BY adding to

Article – Health Occupations

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

Annotated Code of Maryland

(2009 Replacement Volume)

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

Article – Health Occupations

1–214.

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

1–215.

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

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

1–216.

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

1–217.

THE SECRETARY SHALL CONFIRM THE APPOINTMENT OF EACH ~~ADMINISTRATIVE~~ ADMINISTRATOR OR EXECUTIVE DIRECTOR TO EACH HEALTH

OCCUPATIONS BOARD AUTHORIZED TO ISSUE A LICENSE OR CERTIFICATE UNDER THIS ARTICLE.

1-218.

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

SUBTITLE 6. GENERAL CLARIFICATION OF THE DISCIPLINARY PROCESS.

1-601.

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

1-602.

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

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

(1) BE RESPONSIBLE FOR THE INVESTIGATION OF COMPLAINTS;

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

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

1-603.

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

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

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

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

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

(2) RECIPROCAL DISCIPLINE MATTERS;

(3) ONGOING SUBSTANCE ABUSE;

(4) FRAUDULENT CONCEALMENT OF MATERIAL INFORMATION;

OR

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

~~OR~~

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

1-604.

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

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

1-605.

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

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

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

1-606.

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

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

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

(B) SANCTIONING GUIDELINES ADOPTED UNDER THIS SECTION SHALL:

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

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

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

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

1-607.

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

1-608.

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

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

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

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

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

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

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

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

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

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

(C) ON OR BEFORE OCTOBER 1, 2012, THE SECRETARY OF HEALTH AND MENTAL HYGIENE SHALL, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, REPORT TO THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE AND THE HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE ON THE GOALS FOR THE TIMELINESS OF COMPLAINT RESOLUTION ESTABLISHED UNDER THIS SECTION.

1-609.

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

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

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

- (1) its success in meeting the goals and requirements of this Act; and
- (2) ways in which separation of the board's disciplinary functions can be further achieved.

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

- (1) study whether under certain circumstances it may be appropriate to expunge disciplinary proceedings from a licensee's file after a specified period of time; and
- (2) report the findings of the study to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee, in accordance with § 2-1246 of the State Government Article.

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

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

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

Approved by the Governor, May 20, 2010.