HOUSE BILL 257

Unofficial Copy 2003 Regular Session
J2 (3lr0079)

ENROLLED BILL

-- Health and Government Operations/Education, Health, and Environmental Affairs --

Introduced by **Delegate Hubbard**

Read and Examined by Proofreaders:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____M.

_____
Speaker.

CHAPTER 134

AN ACT concerning

State Board of Podiatric Medical Examiners - Revisions - Licensure and Penalties

FOR the purpose of altering certain qualifications for members of the State Board of Podiatric Medical Examiners; altering certain requirements for applicants for a license to practice podiatry, for the reinstatement of licensees, for nonrenewed and inactive licensees, and for a limited license; adding certain requirements for individuals licensed in another state to practice or teach in Maryland for a certain period of time; increasing certain monetary penalties; making technical corrections; and generally relating to the State Board of Podiatric Medical Examiners and the licensure of podiatrists.

BY repealing and reenacting, with amendments,
Article - Health Occupations
Section 16-202, 16-303, 16-306 through 16-319, inclusive, and 16-505
Annotated Code of Maryland
(2000 Replacement Volume and 2002 Supplement)

BY repealing
Article - Health Occupations
Section 16-305
Annotated Code of Maryland
(2000 Replacement Volume and 2002 Supplement)

BY adding to
Article - Health Occupations
Section 16-318
Annotated Code of Maryland
(2000 Replacement Volume and 2002 Supplement)

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

Article - Health Occupations

16-202.

(a) (1) The Board consists of 7 members.

(2) Of the 7 Board members:

(i) 5 shall be licensed podiatrists; and

(ii) 2 shall be consumer members.

(3) The Governor shall appoint the podiatrist members, with the advice of the Secretary, from a list of names submitted by the Maryland Podiatric Medical Association. The number of names on the list shall be twice the number of vacancies.

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

(b) (1) The list submitted by the Maryland Podiatric Medical Association shall consist of names of nominees chosen by a majority of its members present at a meeting called for that purpose.

(2) At least 2 weeks before the meeting required by paragraph (1) of this subsection, the Secretary of the Association shall mail to its members, at the addresses that appear on the records of the Association, notice stating the time, place, and purpose of the meeting.

(c) Each podiatrist member of the Board shall be:

(1) A licensed practicing podiatrist of recognized ability and integrity; [and]

(2) A resident of this State who has practiced actively in this State for at least 5 years immediately before appointment; AND

(3) A LICENSED PODIATRIST WITH ~~SIGNIFICANT~~ PEER REVIEW EXPERIENCE.

(d) Each consumer member of the Board:

(1) Shall be a member of the general public;

(2) May not be or ever have been a podiatrist or in training to become a podiatrist;

(3) May not have a household member who is a podiatrist or in training to become a podiatrist;

(4) May not participate or ever have participated in a commercial or professional field related to podiatry;

(5) May not have a household member who participates in a commercial or professional field related to podiatry; and

(6) May not have had within 2 years before appointment a substantial financial interest in a person regulated by the Board.

(e) While a member of the Board, a consumer member may not have a substantial financial interest in a person regulated by the Board.

(f) Before taking office, each appointee to the Board shall take the oath required by Article I, § 9 of the State Constitution.

(g) (1) The term of a member is 4 years.

(2) The terms of the members are staggered as required by the terms provided for members of the Board on July 1, 1981.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(5) A member may not serve more than 2 consecutive full terms.

(6) To the extent practicable, the Governor shall fill any vacancy on the Board within 60 days of the date of the vacancy.

(h) (1) The Governor shall remove a member for continued neglect of duty, incompetence, or unprofessional or dishonorable conduct.

(2) The Governor shall remove a member whom the Governor finds to have been absent from 2 successive Board meetings without adequate reason.

16-303.

(A) To apply for a license, an applicant shall:

(1) Submit an application to the Board on the form that the Board requires; and

(2) Pay to the Board the application fee set by the Board.

(B) IF THE APPLICANT IS LICENSED AND HAS PRACTICED IN ANOTHER STATE, THE APPLICANT SHALL~~:~~

~~(1)~~ SUBMIT PROOF OF PRACTICE ~~FOR THE LAST 5 YEARS IMMEDIATELY BEFORE APPLYING~~ THAT IS SUFFICIENT TO DEMONSTRATE CURRENT CLINICAL PROFICIENCY, AS SPECIFIED IN REGULATIONS ADOPTED BY THE BOARD~~; AND~~

~~(2) SUBMIT CERTIFIED COPIES OF THE FINAL RESOLUTION OF ANY MALPRACTICE SUIT OR CLAIM FOR DAMAGES THAT HAS BEEN SETTLED AGAINST THE APPLICANT~~.

[16-305.

(a) (1) Subject to the provisions of this subsection, the Board shall waive the examination requirements of this subtitle for an applicant who is certified or licensed to practice podiatry in any other state.

(2) The Board may grant a waiver under this subsection only if the applicant:

(i) Is of good moral character;

(ii) Pays the application fee set by the Board; and

(iii) Provides adequate evidence that the applicant:

1. Is licensed in the other state;

2. Became licensed in the other state under requirements substantially equivalent to the requirements of this title; and

3. Practiced podiatry in the other state for at least 5 years immediately before applying for a license in this State.

(3) The Board may grant a waiver under this subsection only if:

(i) The state in which the applicant is licensed waives the examination of licensees of this State to a similar extent as this State waives the examination of individuals licensed in that state; and

(ii) The applicant has not previously failed the examination required by this State.

(b) The Board may waive the written examination requirement of this subtitle for an applicant who has passed the examination given by the National Board of Podiatry Examiners.]

[16-306.] 16-305.

(a) The Board shall issue a license to any applicant who, by the affirmative vote of a majority of the full authorized membership of the Board, meets the requirements of this title.

(b) The Board shall include on each license that the Board issues:

(1) The [signatures of at least three members of the Board] SIGNATURE OF THE SECRETARY OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE attesting that the individual meets the requirements of this title; and

(2) A serial number that corresponds to an entry in the registration records of the Board.

[16-307.] 16-306.

A license authorizes the licensee to practice podiatry while the license is effective.

[16-308.] 16-307.

(a) Except as provided for a limited license in [§ 16-318] § 16-317 of this subtitle, a license expires on the date set by the Board, unless the license is renewed for an additional term as provided in this section. A license may not be renewed for a term longer than 2 years.

(b) At least 1 month before a license expires, the Board shall send to the licensee, by first class mail to the last known address of the licensee, a renewal notice that states:

(1) The date on which the current license expires;

(2) The date by which the renewal application must be received by the Board for the renewal to be issued and mailed before the license expires; and

(3) The amount of the renewal fee.

(c) Before the license expires, a licensee periodically may renew it for an additional 2-year term, if the licensee:

(1) Otherwise is entitled to be licensed;

(2) Pays to the Board a renewal fee set by the Board; and

(3) Submits to the Board:

(i) A renewal application on the form that the Board requires; and

(ii) Satisfactory evidence of compliance with any continuing education requirements set under this subtitle for license renewal.

(d) The Board may establish continuing education requirements as a condition to the renewal of licenses under this section.

(e) The Board shall renew the license of each licensee who meets the requirements of this section.

(f) (1) A podiatrist has a grace period of 30 days after the podiatrist's license expires in which to renew the license retroactively, if the podiatrist:

[(1)] (I) Otherwise is entitled to have the license renewed; and

[(2)] (II) Pays to the Board the renewal fee and any late fee set by the Board.

(2) AFTER THE GRACE PERIOD OF 30 ~~DAYS, THE EXPIRED LICENSEE~~ *DAYS:*

(I) *THE EXPIRED LICENSE*:

~~(I)~~ LAPSES INTO A NONRENEWAL STATUS; AND

(II) ~~SHALL~~ *THE BOARD MAY REQUIRE THE LICENSEE TO* MEET THE REQUIREMENTS OF § 16-308 TO BE REINSTATED.

[16-309.] 16-308.

(a) (1) The Board may place a licensee on inactive status, if the licensee submits to the Board:

(i) An application for inactive status on the form required by the Board; and

(ii) The inactive status fee set by the Board.

(2) The Board shall issue a license to an individual who is on inactive status if the individual *IS OTHERWISE ENTITLED TO BE LICENSED UNDER THIS TITLE* submits to the Board:

(i) Satisfactory evidence of compliance with the continuing education requirements the Board adopts for this purpose; [and]

(ii) A reinstatement fee set by the Board;

(III) A LICENSURE AFFIDAVIT;

(IV) FEDERATION OF BOARDS CERTIFICATION OF GOOD STANDING;

(V) ~~AN ACCEPTABLE~~ *THE RESPONSE TO AN* INQUIRY TO THE NATIONAL HEALTHCARE INTEGRITY AND PROTECTION DATA BANK;

(VI) HISTORY OF MALPRACTICE CASES;

(VII) PROOF OF OUT OF STATE PRACTICE PRECEDING THE REQUEST FOR REINSTATEMENT THAT IS SUFFICIENT TO DEMONSTRATE CURRENT CLINICAL PROFICIENCY, AS SPECIFIED IN REGULATIONS ADOPTED BY THE BOARD; AND

(VIII) PROOF OF PASSING THE ETHICS-JURISPRUDENCE EXAMINATION AS ~~ADMINISTER~~ ADMINISTERED BY THE BOARD WITHIN THE LAST LICENSING CYCLE PRECEDING THE INDIVIDUAL'S REINSTATEMENT APPLICATION.

(3) THE BOARD SHALL REINSTATE THE LICENSE OF A PODIATRIST WHO HAS BEEN ON INACTIVE STATUS AND ~~NOT PRACTICING IMMEDIATELY PRECEDING THE REQUEST FOR REINSTATEMENT~~ WHO DOES NOT MEET THE REQUIREMENTS OF PARAGRAPH (2)(VII) OF THIS SUBSECTION, IF THE PODIATRIST MEETS THE ~~REQUIREMENTS OF OBTAINING A NEW LICENSE UNDER THIS TITLE~~ CONTINUING MEDICAL EDUCATION REQUIREMENTS PRESCRIBED BY THE BOARD.

(b) The Board shall reinstate the license of a podiatrist who has ~~not~~ been ~~put~~ on inactive status and who has failed to renew the license FOR 1 LICENSING CYCLE OR A 2-YEAR PERIOD, WHICHEVER IS LONGER, for any reason, if the podiatrist:

(1) Meets the renewal requirements of [§ 16-308] § 16-307(C) THROUGH (F) of this subtitle AND SUBSECTION (A) OF THIS SECTION;

(2) Pays to the Board all past-due renewal fees and the reinstatement fee set by the Board; and

[(3) Applies to the Board for reinstatement of the license within 5 years after the license expires.

(c) The Board may not reinstate the license of a podiatrist who fails to apply for reinstatement of the license within 5 years after the license expires. However, a podiatrist may become licensed by meeting the current requirements for obtaining a new license under this title.]

(3) MEETS THE REQUIREMENTS FOR OBTAINING A NEW LICENSE UNDER THIS SUBTITLE.

[16-310.] 16-309.

(A) Each licensee shall notify the Board of any change of address WITHIN 30 DAYS OF THE CHANGE OF ADDRESS.

(B) THE BOARD SHALL ASSESS A FEE AGAINST ANY LICENSEE WHO FAILS TO NOTIFY THE BOARD OF A CHANGE OF ADDRESS AS REQUIRED BY SUBSECTION (A) OF THIS SECTION.

[16-311.] 16-310.

(a) Unless the Board agrees to accept the surrender of a license, a licensed podiatrist or holder of a limited license may not surrender the license nor may the license lapse by operation of law while the licensee is under investigation or while charges are pending against the licensee.

(b) The Board may set conditions on its agreement with the licensee under investigation or against whom charges are pending to accept surrender of the license.

[16-312.] 16-311.

(a) Subject to the hearing provisions of [§ 16-314] § 16-313 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license or a limited license to any applicant, reprimand any licensee or holder of a limited license, impose an administrative monetary penalty not exceeding [$5,000] $50,000 on any licensee or holder of a limited license, place any licensee or holder of a limited license on probation, or suspend or revoke a license or a limited license if the applicant, licensee, or holder:

(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

(2) Fraudulently or deceptively uses a license;

(3) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

(4) Abandons a patient;

(5) Provides professional services while:

(i) Under the influence of alcohol; or

(ii) Using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication;

(6) Has a condition, illness, or disease that may impair the ability of the individual to perform podiatric services;

(7) Personally uses a controlled dangerous substance in violation of the law;

(8) Prescribes or distributes a controlled dangerous substance to any other person in violation of the law;

(9) Promotes the sale to a patient of drugs, devices, appliances, or goods in a manner that exploits the patient for financial gain;

(10) Willfully makes or files a false report or record of podiatric services rendered;

(11) Willfully fails to file or record any report as required by law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report;

(12) Submits a false statement to collect a fee;

(13) Fails to provide the details of the medical records of a patient to a licensed health care practitioner or institution or an authorized insurance carrier on proper request;

(14) Pays or agrees to pay any sum to any person for bringing or referring a patient;

(15) Practices podiatry with an unauthorized person or aids an unauthorized person in the practice of podiatry;

(16) Grossly overutilizes health care services;

(17) Behaves fraudulently, immorally, or unprofessional in the practice of podiatry;

(18) Is professionally or mentally incompetent;

(19) Violates any provision of this title;

(20) Advertises in a false or misleading manner;

(21) ~~Has had a license to practice podiatry denied, suspended, or revoked OR HAS HAD ANY OTHER DISCIPLINARY ACTION TAKEN AGAINST THE APPLICANT, LICENSEE, OR HOLDER in any [other] state~~ *HAS BEEN DISCIPLINED BY A LICENSING OR DISCIPLINARY AUTHORITY OF ANY STATE OR COUNTRY OR CONVICTED OR DISCIPLINED BY A COURT OF ANY STATE OR COUNTRY OR DISCIPLINED BY ANY BRANCH OF THE UNITED STATES UNIFORMED SERVICES OR THE UNITED STATES VETERANS ADMINISTRATION* for an act that would be grounds for disciplinary action under this section;

(22) Violates any rules or regulations adopted by the Board;

(23) Fails to comply with the provisions of § 12-102 of this article;

(24) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the licensee is licensed and qualified to render because the individual is HIV positive;

(25) Except in an emergency life-threatening situation where it is not feasible or practicable, fails to comply with the Centers for Disease Control's guidelines on universal precautions;

(26) Fails to display the notice required under § 16-404 of this title; or

(27) Fails to cooperate with a lawful investigation conducted by the Board.

(b) Subject to the hearing provisions of [§ 16-314] § 16-313 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may revoke the license of a podiatrist who practices podiatry while the podiatrist's license is suspended.

(c) On an affirmative vote of the majority of its members then serving, the Board may issue advisory opinions when:

(1) The Board determines that the licensee should modify or eliminate certain practices and that continuation of the practices may result in an action against the licensee's license; or

(2) The Board determines that there is not sufficient evidence to reprimand the licensee, place the licensee on probation, or suspend or revoke the license of the licensee.

(d) The Board may impose a monetary penalty under this section alone or in addition to a reprimand, probation, suspension, or revocation.

(e) By regulation, the Board shall establish standards for the imposition of penalties under this section.

[16-313.] 16-312.

(a) The Board may investigate any complaint filed with the Board that alleges that there are grounds for action under [§ 16-312] § 16-311 of this subtitle.

(b) After its investigation, the Board, on the affirmative vote of a majority of its members then serving, may commence action on any of the grounds set forth in [§ 16-312] § 16-311 of this subtitle.

(c) (1) Except as provided in paragraph (2) of this subsection, until the Board passes an order under [§ 16-315] § 16-314 of this subtitle, each related investigation, report, and recommendation is confidential.

(2) On the request of a person who has made a complaint to the Board, the Board shall provide the person with information on the status of the complaint.

[16-314.] 16-313.

(a) Except as otherwise provided in the Administrative Procedure Act, before the Board takes any action under [§ 16-312] § 16-311 of this subtitle, it shall give the

individual against whom the action is contemplated an opportunity for a hearing before the Board.

(b) The Board shall give notice and hold the hearing in accordance with the Administrative Procedure Act.

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

(d) Over the signature of an officer or the administrator of the Board, the Board may issue subpoenas and administer oaths in connection with any investigation under this title and any hearings or proceedings before it.

(e) If, without lawful excuse, a person disobeys a subpoena from the Board or an order by the Board to take an oath or to testify or answer a question, then, on petition of the Board, a court of competent jurisdiction may punish the person as for contempt of court.

(f) If after due notice the individual against whom the action is contemplated fails or refuses to appear, nevertheless the Board may hear and determine the matter.

(g) If, after a hearing, an individual is found in violation of [§ 16-312] § 16-311 of this subtitle, the individual shall pay the costs of the hearing as specified in a regulation adopted by the Board.

[16-315.] 16-314.

(a) (1) If the Board finds that there are grounds for action under [§ 16-312] § 16-311 of this subtitle, the Board shall pass an order in accordance with the Administrative Procedure Act.

(2) If the Board dismisses all charges, the Board shall expunge all record of the charges 3 years after the charges are dismissed.

(3) If the Board issues an advisory opinion, the Board, at the request of the licensee, shall expunge all record of the matter 5 years after the determination is made.

(b) (1) If a license is revoked or suspended, the holder shall surrender it to the Board on demand.

(2) At the end of a suspension period, the Board shall return to the licensee any license surrendered under this section.

[16-316.] 16-315.

(a) Except as provided in this section for an action under [§ 16-312] § 16-311 of this subtitle, any person aggrieved by a final decision of the Board in a contested case, as defined in the Administrative Procedure Act, may:

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

(2) Then take any further appeal allowed by the Administrative Procedure Act.

(b) (1) Any person aggrieved by a final decision of the Board under [§ 16-312] § 16-311 of this subtitle may not appeal to the Secretary or Board of Review but may take a direct judicial appeal.

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

[16-317.] 16-316.

(a) The Board may reinstate the license of any individual whose license has been suspended or revoked under this title only in accordance with:

(1) The terms and conditions of the order of suspension or revocation;

(2) A final judgment in any proceeding for review; or

(3) Subsection (b) of this section.

(b) If the license was revoked under [§ 16-312(b)] § 16-311(B) of this subtitle for practicing with a suspended license, it may be reinstated at the discretion of the Board.

[16-318.] 16-317.

(a) The Board may issue a limited license FOR TRAINING to an applicant who:

(1) Meets all the requirements of this title for a license to practice podiatry, except the ~~MBPME~~ NATIONAL BOARD OF PODIATRIC MEDICAL EXAMINERS - PART III examination [requirements];

(2) Has an appointment for postgraduate clinical training in podiatry or as a podiatric instructor in:

(i) A health care facility licensed or approved by the Department;

(ii) A program approved by the Council on Education of the American Podiatry Association; [or]

(iii) A program approved by the Board; OR

(IV) A PROGRAM AFFILIATED WITH THE COUNCIL OF PODIATRIC MEDICAL EDUCATION;

(3) Submits an application to the Board on the form that the Board requires; and

(4) Pays to the Board the application fee set by the Board.

(b) The Board shall include on any limited license that the Board issues:

(1) The name of the health care facility or program to which the individual holds an appointment; and

(2) The expiration date of the limited license.

(c) A limited license temporarily authorizes the licensee to practice podiatry, while the license is effective, only on:

(1) Patients of the health care facility or program named on the license; or

(2) Patients of a health care facility or program that is:

(i) Affiliated for training purposes with the health care facility or program named on the limited license; and

(ii) Approved by the Board.

(d) A limited license may be issued for a term of 1 year and may be renewed annually.

16-318.

(A) THE BOARD MAY ISSUE A TEMPORARY LICENSE TO A PODIATRIST LICENSED IN ANOTHER STATE TO PRACTICE OR TEACH PODIATRY IN THIS STATE IF:

(1) THE LICENSE ISSUED FROM THE OTHER STATE HAS LICENSING REQUIREMENTS EQUIVALENT TO THOSE IN THIS STATE; AND

(2) THE LICENSED PODIATRIST PAYS A TEMPORARY LICENSE FEE AS DETERMINED BY THE BOARD.

(B) A TEMPORARY LICENSE TEMPORARILY AUTHORIZES THE LICENSEE TO PRACTICE PODIATRY, WHILE THE LICENSE IS EFFECTIVE, ONLY ON:

(1) PATIENTS OF THE HEALTH CARE FACILITY OR PROGRAM NAMED ON THE LICENSE; OR

(2) PATIENTS OF A HEALTH CARE FACILITY OR PROGRAM THAT IS:

(I) AFFILIATED FOR TRAINING PURPOSES WITH THE HEALTH CARE FACILITY OR PROGRAM NAMED ON THE TEMPORARY LICENSE; AND

(II) APPROVED BY THE BOARD.

(C) A TEMPORARY LICENSE MAY BE ISSUED FOR A TERM OF 3 MONTHS AND MAY BE RENEWED AT THE DISCRETION OF THE BOARD.

16-319.

(a) An action may be maintained in the name of the State or the Board to enjoin:

(1) The unauthorized practice of podiatry; or

(2) Conduct that is a ground for disciplinary action under [§ 16-312] § 16-311 of this subtitle.

(b) An action under this section may be brought by:

(1) The Board, in its own name;

(2) The Attorney General, in the name of the State; or

(3) A State's Attorney, in the name of the State.

(c) An action under this section shall be brought in the county where the defendant:

(1) Resides; or

(2) Engages in the act sought to be enjoined.

(d) Proof of actual damage or that any person will sustain any damage if an injunction is not granted is not required for an action under this section.

(e) An action under this section is in addition to and not instead of criminal prosecution for the unauthorized practice of podiatry under § 16-501 of this title.

16-505.

(a) Any person who practices, attempts to practice, or offers to practice podiatry in this State without complying with the provisions of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding [$200] $5,000 or imprisonment not exceeding 90 days.

(b) Any person who violates § 16-501 of this subtitle is subject to a civil fine of not more than [$5,000] $50,000 to be levied by the Board.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2003.