

HOUSE BILL 841

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4lr2457

By: **Delegates Smigiel, Dwyer, Glass, and McComas**

Introduced and read first time: February 5, 2014

Assigned to: Health and Government Operations

A BILL ENTITLED

AN ACT concerning

State Board of Professional Counselors and Therapists and State Board of Social Work Examiners – Grounds for Denying Licenses and Certificates

FOR the purpose of prohibiting the State Board of Professional Counselors and Therapists and the State Board of Social Work Examiners from issuing a certain license or certificate to an individual who had a certain license or certificate revoked or who surrendered a certain license or certificate because the individual was convicted of or pled guilty or nolo contendere to a certain felony or crime; authorizing a certain appeal if certain circumstances exist; prohibiting the Boards from issuing certain licenses or certificates to certain sex offenders; and generally relating to the State Board of Professional Counselors and Therapists, the State Board of Social Work Examiners, and grounds for denying licenses and certificates.

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 17–509 and 19–311
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY adding to
Article – Health Occupations
Section 17–509.1 and 19–311.2
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

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

Article – Health Occupations

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



17-509.

[Subject] **EXCEPT AS PROVIDED IN § 17-509.1 OF THIS SUBTITLE AND SUBJECT** to the hearing provisions of § 17-511 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license or certificate to any applicant, place any licensee or certificate holder on probation, reprimand any licensee or certificate holder, or suspend or revoke a license of any licensee or a certificate of any certificate holder if the applicant, licensee, or certificate holder:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license or certificate for the applicant, licensee, or certificate holder or for another;
- (2) Habitually is intoxicated;
- (3) Provides professional services:
 - (i) While under the influence of alcohol; or
 - (ii) While 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;
- (4) Aids or abets an unauthorized individual in practicing clinical or nonclinical counseling or therapy or representing to be an alcohol and drug counselor, marriage and family therapist, professional counselor, or professional art therapist;
- (5) Promotes the sale of drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain;
- (6) Willfully makes or files a false report or record in the practice of counseling or therapy;
- (7) Makes a willful misrepresentation while counseling or providing therapy;
- (8) Violates the code of ethics adopted by the Board;
- (9) Knowingly violates any provision of this title;
- (10) Is convicted of or pleads guilty or nolo contendere to a felony or a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;
- (11) Is professionally, physically, or mentally incompetent;
- (12) Submits a false statement to collect a fee;

(13) Violates any rule or regulation adopted by the Board;

(14) Is disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes;

(15) 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 or the certificate holder is certified and qualified to render because the individual is HIV positive;

(16) Commits an act of immoral or unprofessional conduct in the practice of clinical or nonclinical counseling or therapy;

(17) Knowingly fails to report suspected child abuse in violation of § 5-704 of the Family Law Article;

(18) Fails to cooperate with a lawful investigation conducted by the Board; or

(19) Fails to submit to a criminal history records check in accordance with § 17-501.1 of this subtitle.

17-509.1.

(A) (1) THE BOARD MAY NOT ISSUE A LICENSE OR CERTIFICATE TO AN INDIVIDUAL:

(I) WHO FORMERLY WAS LICENSED OR CERTIFIED IN ANOTHER STATE; AND

(II) WHOSE LICENSE OR CERTIFICATE WAS REVOKED OR WHO SURRENDERED THE INDIVIDUAL'S LICENSE OR CERTIFICATE BECAUSE THE INDIVIDUAL WAS CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO A FELONY OR A CRIME INVOLVING MORAL TURPITUDE, WHETHER OR NOT AN APPEAL OR OTHER PROCEEDING IS PENDING TO HAVE THE CONVICTION OR PLEA SET ASIDE.

(2) IF EXTRAORDINARY CIRCUMSTANCES EXIST, AN INDIVIDUAL WHO IS DENIED A LICENSE OR CERTIFICATE UNDER THIS SUBSECTION MAY APPEAL THE DENIAL TO THE SECRETARY.

(B) THE BOARD MAY NOT ISSUE A LICENSE OR CERTIFICATE TO A SEX OFFENDER AS DEFINED BY § 11-701 OF THE CRIMINAL PROCEDURE ARTICLE.

19-311.

[Subject] **EXCEPT AS PROVIDED IN § 19-311.2 OF THIS SUBTITLE AND SUBJECT** to the hearing provisions of § 19-312 of this subtitle, the Board may deny a license to any applicant, fine a licensee, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

- (1) Obtained or attempted to obtain a license for the applicant or licensee or for another through fraud, deceit, or misrepresentation;
- (2) Fraudulently or deceptively uses a license;
- (3) Is mentally or physically incompetent to practice social work;
- (4) Commits any act of gross negligence, incompetence, or misconduct in the practice of social work;
- (5) Engages in a course of conduct that is inconsistent with generally accepted professional standards in the practice of social work;
- (6) Violates any provision of this title or regulations governing the practice of social work adopted and published by the Board;
- (7) 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;
- (8) 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 prescribed amounts or without valid medical indication;
- (9) Is disciplined by a licensing or disciplinary authority of any state, country, or branch of the armed services, or the Veterans' Administration for an act that would be grounds for disciplinary action under this section;
- (10) Practices social work with an unauthorized person or supervises or aids an unauthorized person in the practice of social work;
- (11) Makes or files a false report or record in the practice of social work;

(12) 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 the report;

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

(14) Fails to report suspected child abuse or neglect in violation of § 5–704 of the Family Law Article;

(15) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services on the basis of race, age, gender, sexual orientation, disability, religion, or ethnic origin or because the individual is HIV positive;

(16) Fails to cooperate with a lawful investigation conducted by the Board;

(17) By threats, force, or improper means, intimidates or influences, or attempts to intimidate or influence, for the purpose of:

(i) Causing any person to withhold or change testimony in hearings or proceedings before the Board or otherwise delegated to the Office of Administrative Hearings; or

(ii) Hindering, preventing, or otherwise delaying a person from making information available to the Board in furtherance of an investigation by the Board;

(18) Fails to report suspected abuse or neglect of a vulnerable adult in violation of § 3–604 or § 3–605 of the Criminal Law Article;

(19) Fails to comply with the requirements of any order entered by the Board as a result of any disciplinary matter with the Board, including payment of costs as required by § 19–312 of this subtitle;

(20) Fails to maintain adequate patient records; or

(21) Fails to comply with the maintenance, disclosure, and destruction of medical records as required under Title 4, Subtitles 3 and 4 of the Health – General Article.

19–311.2.

(A) (1) THE BOARD MAY NOT ISSUE A LICENSE TO AN INDIVIDUAL:

**(I) WHO WAS FORMERLY LICENSED IN ANOTHER STATE;
AND**

(II) WHOSE LICENSE WAS REVOKED OR WHO SURRENDERED THE INDIVIDUAL'S LICENSE BECAUSE THE INDIVIDUAL WAS CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO A FELONY OR A CRIME INVOLVING MORAL TURPITUDE, WHETHER OR NOT AN APPEAL OR OTHER PROCEEDING IS PENDING TO HAVE THE CONVICTION OR PLEA SET ASIDE.

(2) IF EXTRAORDINARY CIRCUMSTANCES EXIST, AN INDIVIDUAL WHO IS DENIED A LICENSE UNDER THIS SUBSECTION MAY APPEAL THE DENIAL TO THE SECRETARY.

(B) THE BOARD MAY NOT ISSUE A LICENSE TO A SEX OFFENDER AS DEFINED BY § 11-701 OF THE CRIMINAL PROCEDURE ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.