

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 70

(Senator Conway)

Education, Health, and Environmental Affairs

Health and Government Operations

State Board of Morticians and Funeral Directors - Orders of Summary
Suspension - Stays

This bill amends the general rule that, if a person notes an appeal from an order of suspension or revocation by the State Board of Morticians and Funeral Directors, the order is stayed. Under the bill, if the board issues an order of suspension of a licensed funeral establishment on a finding that the public health, safety, or welfare requires emergency action, and the establishment notes an appeal, the order is automatically stayed. If any other licensee of the board notes an appeal for such a suspension, the order *may be* stayed. Before staying an order of the board, a court must notify the licensee and the board of the opportunity to be heard. A court may not stay an order for an individual licensee if the court finds, after a hearing, that the violation presents a substantial likelihood of risk of serious harm to the public health, safety or welfare.

Fiscal Summary

State Effect: None. The changes are procedural in nature and do not directly affect governmental finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law/Background: Before the board takes disciplinary action, it must give the individual against whom the action is contemplated an opportunity for a hearing. The board must give notice and hold the hearing in accordance with the Administrative

Procedure Act (APA). Any party may seek an appeal from a decision of the board. The decision of the board must be governed by APA. A person aggrieved by a final decision of the board may petition for direct judicial review as allowed by APA. Both an order of suspension and an order of revocation by the board are stayed if a person notes an appeal.

Section 10-226(c)(2) of the State Government Article authorizes a unit of government to order summarily the suspension of a license if the unit finds that the public health, safety, or welfare imperatively requires emergency action and promptly gives the licensee (1) written notice of the suspension, the finding, and the reasons that support that finding and (2) an opportunity to be heard.

The bill maintains that an order of suspension or revocation by the board (that is not a summary suspension) is automatically stayed if a person notes an appeal. However, in cases in which the board summarily suspends a license, the bill subjects individual licensees of the board and licensed funeral establishments to different stay provisions – automatically staying an order of suspension for an establishment, while permitting the court to stay an order of suspension for any other licensee.

A summary of *prohibitions* on stays for the health occupations boards can be found in **Appendix 1**.

Additional Comments: In recent years, several bills have been proposed that would have established *prohibitions* against stays across other health occupations boards. Senate Bill 837/House Bill 1290 of 2013 would have standardized provisions of law for most health occupations boards regarding (1) prohibitions on stays pending judicial review and (2) prohibitions against a hearing of charges filed by boards from being stayed or challenged by procedural defect alleged to have occurred prior to the filing of charges. Senate Bill 50/House Bill 232 of 2015 would prohibit stays for procedural defects and stays pending judicial review for the State Acupuncture Board.

The board advises that the bill may violate the requirement of administrative exhaustion as it allows a licensee to seek judicial review for a summary suspension prior to exhausting all administrative remedies before the board.

Additional Information

Prior Introductions: None.

Cross File: HB 98 (Delegate Pendergrass) - Health and Government Operations.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2015
md/jc Revised - Senate Third Reader - March 30, 2015

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Appendix 1 – Health Occupations Boards’ Prohibitions on Stays

<u>Title</u>	<u>Board</u>	<u>Current Law</u>	<u>Prohibits Stays for Procedural Defects</u>	<u>Prohibits Stays Pending Judicial Review</u>
1A	Acupuncture			
2	Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists	An order of the board may not be stayed pending review.		CL
3	Chiropractic and Massage Therapy			
4	Dental			
5	Dietetic Practice	An order of the board may not be stayed pending review.		CL
7	Morticians and Funeral Directors	If a person notes an appeal from an order of suspension or revocation by the board, the order is stayed.		
8	Nursing		CL (electrologists only)	CL
9	Nursing Home Administrators	An order of the board may not be stayed pending review.		CL
10	Occupational Therapy			
11	Optometry	If an optometrist seeks judicial review of an order of suspension or revocation by the board, the order must be stayed until the optometrist’s judicial remedies are exhausted.		

<u>Title</u>	<u>Board</u>	<u>Current Law</u>	<u>Prohibits Stays for Procedural Defects</u>	<u>Prohibits Stays Pending Judicial Review</u>
12	Pharmacy	Regarding pharmacy permits, if an appeal is taken, the board <i>may</i> stay its order of suspension or revocation pending the decision of the court.	CL	
13	Physical Therapy			
14	Physicians	An order of the board may not be stayed pending review.	CL	CL
15	Physician Assistants			CL
16	Podiatric			
17	Professional Counselors and Therapists			CL
18	Psychologists	A decision of the board to deny a license or registration, enforce a suspension of a license or registration for more than one year, or revoke a license or registration may not be stayed pending judicial review.	CL	CL
19	Social Work			
20	Residential Child Care Program Professionals			
21	Environmental Health Specialists			

Notes: CL = prohibition under current law. As amended, this bill would, for the State Board of Morticians and Funeral Directors, authorize a stay from an order of suspension of a license by the board if the licensee (other than a funeral establishment) appeals, under certain circumstances.

Source: Laws of Maryland, Department of Legislative Services