

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 232 (Delegate Bromwell)(By Request - Departmental - State
Acupuncture Board)
Health and Government Operations

**State Acupuncture Board - Disciplinary Procedures - Judicial Appeals and
Prohibition on Stays**

This bill prohibits a hearing of charges filed by the State Acupuncture Board from being stayed or challenged by procedural defect alleged to have occurred prior to the filing of charges. The bill also prohibits an order of the board from being stayed pending judicial review. The board may appeal from any decision that reverses or modifies its order. The bill clarifies that any person aggrieved by a final decision of the board may take a direct judicial appeal, which must be made as provided under the Administrative Procedure Act (APA).

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: 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 APA. Any party may seek an appeal from a decision of the board. The decision of the board must be governed by APA.

Chapter 457 of 2014 changed the process for appealing decisions of several health occupations boards, including the State Acupuncture Board, in contested cases. Prior to enactment of Chapter 457, a person aggrieved by a final decision of a health occupations board in a contested case (except for a disciplinary action) could appeal the decision to the Board of Review in the Department of Health and Mental Hygiene and take any further appeal as allowed by APA. Chapter 457 struck the appeal to the Board of Review and instead established that a person aggrieved by a final decision of a health occupations board may petition for direct judicial review as allowed by APA.

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 similar prohibitions for 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 70/House Bill 98 of 2015 would prohibit stays for an order of suspension by the State Board of Morticians and Funeral Directors.

Additional Information

Prior Introductions: None.

Cross File: SB 50 (Senator Conway) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2015
min/jc

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

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 introduced, this bill and its cross file would, for the State Acupuncture Board, prohibit stays for procedural defects and stays pending judicial review.

Source: Laws of Maryland, Department of Legislative Services