

SENATE BILL 372

J2, J1, C4

9lr1998

By: **Senators West, Bailey, Carozza, Eckardt, and Salling**

Introduced and read first time: January 31, 2019

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Physicians – Discipline – Procedures and Effects**

3 FOR the purpose of requiring a disciplinary panel to obtain a third peer review report from
4 a certain source or dismiss certain complaints against licensed physicians if only one
5 of the two peer review reports makes a certain finding; requiring the Board to
6 expunge all records of a public reprimand or probation after a certain amount of time;
7 prohibiting hospitals and related institutions, certain insurers, and certain carriers
8 from taking adverse action, under certain circumstances, against certain physicians
9 based solely on the fact that the physician was placed on probation; requiring the
10 Board to immediately rescind certain discipline imposed against certain licensees
11 and expunge certain records under certain circumstances; prohibiting the Board and
12 the disciplinary panels from taking certain actions under certain circumstances; and
13 generally relating to the discipline of licensed physicians.

14 BY adding to

15 Article – Health – General
16 Section 19–360.1
17 Annotated Code of Maryland
18 (2015 Replacement Volume and 2018 Supplement)

19 BY repealing and reenacting, without amendments,

20 Article – Health Occupations
21 Section 14–401.1(a) and (c)(1) and 14–404(a)(22)
22 Annotated Code of Maryland
23 (2014 Replacement Volume and 2018 Supplement)

24 BY repealing and reenacting, with amendments,

25 Article – Health Occupations
26 Section 14–401.1(c)(2)
27 Annotated Code of Maryland
28 (2014 Replacement Volume and 2018 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Health Occupations
3 Section 14–407.1
4 Annotated Code of Maryland
5 (2014 Replacement Volume and 2018 Supplement)

6 BY repealing and reenacting, without amendments,
7 Article – Insurance
8 Section 15–112(a)(1), (5), (16), and (17)
9 Annotated Code of Maryland
10 (2017 Replacement Volume and 2018 Supplement)

11 BY adding to
12 Article – Insurance
13 Section 15–112(y)
14 Annotated Code of Maryland
15 (2017 Replacement Volume and 2018 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Insurance
18 Section 19–104
19 Annotated Code of Maryland
20 (2017 Replacement Volume and 2018 Supplement)

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

23 **Article – Health – General**

24 **19–360.1.**

25 **A HOSPITAL OR RELATED INSTITUTION MAY NOT TAKE ADVERSE ACTION**
26 **AGAINST A PHYSICIAN BASED SOLELY ON THE FACT THAT THE PHYSICIAN WAS**
27 **PLACED ON PROBATION FOR A VIOLATION OF A GROUND FOR DISCIPLINE UNDER §**
28 **14–404(A) OF THE HEALTH OCCUPATIONS ARTICLE IF THE PROBATION HAS ENDED.**

29 **Article – Health Occupations**

30 14–401.1.

31 (a) (1) The Board shall perform any necessary preliminary investigation
32 regarding an allegation of grounds for disciplinary or other action brought to the Board’s
33 attention before the allegation is assigned to a disciplinary panel.

34 (2) (i) After the completion of any necessary preliminary investigation

1 under paragraph (1) of this subsection, a complaint shall be assigned to a disciplinary panel.

2 (ii) Subject to the provisions of this section, a disciplinary panel:

3 1. Shall determine the final disposition of a complaint
4 against a physician or an allied health professional; and

5 2. Has the independent authority to make a determination
6 regarding the final disposition of a complaint.

7 (iii) The Board may not vote to approve or disapprove any action
8 taken by a disciplinary panel, including the final disposition of a complaint.

9 (3) A disciplinary panel that is assigned a complaint under paragraph (2)(i)
10 of this subsection may:

11 (i) Conduct any additional investigation into a complaint that is
12 deemed necessary to determine whether a violation of this title or Title 15 of this article
13 has occurred; and

14 (ii) Enter into a consent order with a physician or an allied health
15 professional after conducting a meeting between the disciplinary panel and the physician
16 or allied health professional to discuss any proposed disposition of the complaint.

17 (4) A disciplinary panel that is assigned a complaint against an allied
18 health professional under paragraph (2)(i) of this subsection shall consult with the chair of
19 the appropriate allied health advisory committee, or the chair's designee, before taking
20 disciplinary action against the allied health professional.

21 (5) (i) If a complaint proceeds to a hearing under § 14-405 of this
22 subtitle, § 14-5A-17, § 14-5B-14, § 14-5C-17, § 14-5D-15, § 14-5E-16, or § 14-5F-21 of
23 this title, or § 15-315 of this article, the chair of the disciplinary panel that was assigned
24 the complaint under paragraph (2)(i) of this subsection shall refer the complaint to the other
25 disciplinary panel.

26 (ii) If the complaint proceeds to a hearing and is referred to the other
27 disciplinary panel under subparagraph (i) of this paragraph, the disciplinary panel that
28 was assigned the complaint under paragraph (2)(i) of this subsection, or any of its members,
29 may not:

30 1. Continue to handle the complaint;

31 2. Participate in any disciplinary proceedings regarding the
32 complaint; or

33 3. Determine the final disposition of the complaint.

1 (c) (1) Except as otherwise provided in this subsection, after being assigned a
2 complaint under subsection (a) of this section, the disciplinary panel may:

3 (i) Refer an allegation for further investigation to the entity that
4 has contracted with the Board under subsection (e) of this section;

5 (ii) Take any appropriate and immediate action as necessary; or

6 (iii) Come to an agreement for corrective action with a licensee
7 pursuant to paragraph (4) of this subsection.

8 (2) (i) If, after being assigned a complaint and completing the
9 preliminary investigation, the disciplinary panel finds that the licensee may have violated
10 § 14-404(a)(22) of this subtitle, the disciplinary panel shall refer the allegation to the entity
11 or entities that have contracted with the Board under subsection (e) of this section for
12 further investigation and physician peer review within the involved medical specialty or
13 specialties.

14 (ii) 1. A disciplinary panel shall obtain two peer review reports
15 from the entity or individual with whom the Board contracted under subsection (e) of this
16 section for each allegation the disciplinary panel refers for peer review.

17 2. **IF ONLY ONE OF THE TWO PEER REVIEW REPORTS**
18 **OBTAINED UNDER THIS SUBPARAGRAPH FINDS THAT A LICENSEE DID NOT VIOLATE**
19 **§ 14-404(A)(22) OF THIS SUBTITLE, THE DISCIPLINARY PANEL SHALL:**

20 **A. VOTE BY A TWO-THIRDS MAJORITY TO OBTAIN A**
21 **THIRD PEER REVIEW REPORT FROM THE ENTITY OR INDIVIDUAL WITH WHOM THE**
22 **BOARD CONTRACTED UNDER SUBSECTION (E) OF THIS SECTION TO DETERMINE IF**
23 **THE LICENSEE VIOLATED § 14-404(A)(22) OF THIS SUBTITLE; OR**

24 **B. DISMISS THE COMPLAINT.**

25 14-404.

26 (a) Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary
27 panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may
28 reprimand any licensee, place any licensee on probation, or suspend or revoke a license if
29 the licensee:

30 (22) Fails to meet appropriate standards as determined by appropriate peer
31 review for the delivery of quality medical and surgical care performed in an outpatient
32 surgical facility, office, hospital, or any other location in this State;

33 **14-407.1.**

1 (a) Each policy that insures a health care provider against damages due to
2 medical injury arising from providing or failing to provide health care shall contain
3 provisions that:

4 (1) are consistent with the requirements of Title 3, Subtitle 2A of the
5 Courts Article; and

6 (2) authorize the insurer, without restriction, to negotiate and effect a
7 compromise of claims within the limits of the insurer's liability, if the entire amount settled
8 on is to be paid by the insurer.

9 (b) (1) An insurer may make payments to or on behalf of claimants for
10 reasonable hospital and medical costs, loss of wages, and expenses for rehabilitation
11 services and treatment, within the limits of the insurer's liability, before a final disposition
12 of the claim.

13 (2) A payment made under this subsection:

14 (i) is not an admission of liability to or of damages sustained by a
15 claimant; and

16 (ii) does not prejudice the insurer or any other party with respect to
17 any right, claim, or defense.

18 (c) (1) A policy issued or delivered under subsection (a) of this section may
19 include coverage for the defense of a health care provider in a disciplinary hearing arising
20 out of the practice of the health care provider profession if the cost of the included coverage
21 is:

22 (i) itemized in the billing statement, invoice, or declarations page
23 for the policy; and

24 (ii) reported to the Commissioner in a form and manner required by
25 the Commissioner.

26 (2) A policy providing coverage for the defense of a health care provider in
27 a disciplinary hearing arising out of the practice of the health care provider's profession
28 may be offered and priced separately from a policy issued or delivered under subsection (a)
29 of this section.

30 **(D) AN INSURER THAT ISSUES INSURANCE GOVERNED BY THIS SECTION**
31 **MAY NOT TAKE ANY ADVERSE ACTION, INCLUDING DENYING INSURANCE COVERAGE**
32 **OR RAISING PREMIUM RATES, AGAINST A PHYSICIAN BASED SOLELY ON THE FACT**
33 **THAT THE PHYSICIAN WAS PLACED ON PROBATION UNDER § 14-404 OF THE HEALTH**
34 **OCCUPATIONS ARTICLE IF THE PROBATION HAS ENDED.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That:

2 (a) If a disciplinary panel found, from July 1, 2017, to June 30, 2019, both
3 inclusive, that a licensee violated § 14–404(a)(22) of the Health Occupations Article and
4 either of the two reports obtained under § 14–401.1(c)(2)(ii) of the Health Occupations
5 Article concluded that a violation of § 14–404(a)(22) of the Health Occupations Article did
6 not occur, the State Board of Physicians:

7 (1) immediately shall rescind any discipline imposed on the licensee; and

8 (2) shall expunge all records of the charge:

9 (i) 3 years after the discipline was imposed; or

10 (ii) immediately, if the physician executes a document releasing the
11 Board from any liability related to the charges.

12 (b) If the State Board of Physicians is required to rescind discipline and expunge
13 records under subsection (a) of this section, the Board and the disciplinary panels may not
14 take any further action against the licensee based on the alleged violation of § 14–404(a)(22)
15 of the Health Occupations Article involved in the prior case.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June
17 1, 2019.