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**By: Senator Hollinger**

Introduced and read first time: January 24, 1996

Assigned to: Economic and Environmental Affairs

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A BILL ENTITLED

1 AN ACT concerning

2 **Nurses - Exercise of Professional Judgment**

3 FOR the purpose of providing grounds for disciplining a supervisory nurse directing  
4 another nurse to perform an act or take an assignment that the nurse has refused  
5 for certain reasons; creating a certain exception for emergencies under which the  
6 nurse should do the act or accept the assignment; providing grounds for disciplining  
7 a supervisory nurse for interfering with, inhibiting, or preventing another nurse  
8 from refusing to accept certain responsibility or do a certain act; prohibiting a  
9 certain person from interfering with, inhibiting, or preventing another nurse from  
10 refusing to accept certain responsibility or do a certain act; creating a certain  
11 exception for emergencies under which the nurse should accept responsibility or do  
12 the act; authorizing a certain board to discipline a certain licensee or certificate  
13 holder in a certain manner for violating a certain prohibition; exempting a certain  
14 licensee or certificate holder from discipline under a certain provision; authorizing  
15 a certain person to create and a certain board to approve certain performance  
16 protocols; exempting a person in compliance with a certain performance protocol  
17 from a certain disciplinary provision; subjecting a person not in compliance with a  
18 certain performance protocol to a certain disciplinary provision; and generally  
19 relating to the exercise of professional judgment by nurses.

20 BY renumbering

21 Article - Health Occupations  
22 Section 8-316(b) through (d), respectively  
23 to be Section 8-316(c) through (e), respectively  
24 (1994 Replacement Volume and 1995 Supplement)

25 BY repealing and reenacting, with amendments,

26 Article - Health Occupations  
27 Section 8-316(a)(27) and (28) and 8-710  
28 Annotated Code of Maryland  
29 (1994 Replacement Volume and 1995 Supplement)

30 BY adding to

31 Article - Health Occupations  
32 Section 8-316(a)(29) and (30) and (b) and 8-708

2

1 Annotated Code of Maryland  
2 (1994 Replacement Volume and 1995 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
4 MARYLAND, That Section(s) 8-316(b) through (d), respectively, of Article - Health  
5 Occupations of the Annotated Code of Maryland be renumbered to be Section(s)  
6 8-316(c) through (e), respectively.

7 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
8 read as follows:

9 **Article - Health Occupations**

10 8-316.

11 (a) Subject to the hearing provisions of § 8-317 of this subtitle, the Board may  
12 deny a license to any applicant, reprimand any licensee, place any licensee on probation,  
13 or suspend or revoke the license of a licensee if the applicant or licensee:

14 (27) Practices registered nursing or licensed practical nursing without a  
15 license before obtaining or renewing a license, including any period when the license or a  
16 temporary license of the applicant or licensee has lapsed; [or]

17 (28) After failing to renew a license or after a temporary license has lapsed,  
18 commits any act that would be grounds for disciplinary action under this section[.];

19 (29) SUBJECT TO THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION,  
20 DIRECTS ANOTHER NURSE TO PERFORM AN ACT OR ACCEPT AN ASSIGNMENT THAT  
21 THE NURSE ACTING AS A REASONABLE AND PRUDENT NURSE EXERCISING SOUND  
22 NURSING JUDGMENT HAS REFUSED TO PERFORM:

23 (I) BECAUSE THE ACT OR ASSIGNMENT IS NOT WITHIN THE  
24 NURSE'S PREPARATION, CAPABILITIES, AND EXPERIENCE; OR

25 (II) BECAUSE THE ASSIGNMENT, TAKING INTO ACCOUNT THE  
26 NURSE'S PREPARATION, CAPABILITIES, AND EXPERIENCE, IS NOT SUPPLEMENTED  
27 BY ANOTHER NURSE HAVING THE PREPARATION, CAPABILITIES, AND EXPERIENCE  
28 TO PERFORM THE ASSIGNMENT IN A SAFE AND COMPETENT MANNER; OR

29 (30) INTERFERES WITH, INHIBITS, OR PREVENTS ANOTHER NURSE'S  
30 REFUSAL TO ACCEPT RESPONSIBILITY AND ACCOUNTABILITY FOR SUPERVISING,  
31 MONITORING, INSTRUCTING, OR EVALUATING AN UNLICENSED INDIVIDUAL  
32 PERFORMING A NURSING TASK, ACT, OR RESPONSIBILITY, WHEN THE UNLICENSED  
33 INDIVIDUAL HAS NOT DEMONSTRATED IN THE NURSE'S PROFESSIONAL NURSING  
34 JUDGMENT THE KNOWLEDGE, EXPERIENCE, PREPARATION, AND ABILITY TO  
35 PERFORM THE NURSING TASK, ACT, OR RESPONSIBILITY IN A SAFE AND COMPETENT  
36 MANNER.

37 (B) (1) FOR THE PURPOSES OF PARAGRAPH (A)(29) OF THIS SECTION, IF AN  
38 EMERGENCY SITUATION PRESENTING A CLEAR AND SIGNIFICANT RISK OF DEATH,  
39 SERIOUS INJURY, OR HARM TO A PATIENT EXISTS, THE NURSE SHALL PERFORM THE  
40 ACT OR ACCEPT THE ASSIGNMENT.

3

1 (2) SHOULD AN EMERGENCY SITUATION UNDER PARAGRAPH (1) OF  
2 THIS SUBSECTION RESULT FROM RECURRING AND REASONABLY ANTICIPATED  
3 CONDITIONS, THE DIRECTING NURSE IS SUBJECT TO DISCIPLINE UNDER THIS  
4 SECTION.

5 8-708.

6 (A) SUBJECT TO THE PROVISIONS OF SUBSECTION (B) OF THIS SECTION, A  
7 PERSON MAY NOT INTERFERE WITH, INHIBIT, OR PREVENT A NURSE'S REFUSAL:

8 (1) TO ACCEPT RESPONSIBILITY AND ACCOUNTABILITY FOR  
9 SUPERVISING, MONITORING, INSTRUCTING, OR EVALUATING AN UNLICENSED  
10 INDIVIDUAL PERFORMING A NURSING TASK, ACT, OR RESPONSIBILITY WHEN THE  
11 UNLICENSED INDIVIDUAL HAS NOT DEMONSTRATED IN THE NURSE'S  
12 PROFESSIONAL JUDGMENT THE KNOWLEDGE, EXPERIENCE, PREPARATION, AND  
13 ABILITY TO PERFORM THE TASK, ACT, OR RESPONSIBILITY IN A SAFE AND  
14 COMPETENT MANNER; OR

15 (2) TO PERFORM AN ACT OR ACCEPT AN ASSIGNMENT THAT IS NOT  
16 WITHIN THE NURSE'S PREPARATION, CAPABILITIES, AND EXPERIENCE AFTER THE  
17 NURSE HAS INFORMED THE PERSON THAT THE ACT OR ASSIGNMENT IS NOT WITHIN  
18 THE NURSE'S PREPARATION, CAPABILITIES, AND EXPERIENCE.

19 (B) (1) FOR THE PURPOSES OF SUBSECTION (A) OF THIS SECTION, IF AN  
20 EMERGENCY SITUATION PRESENTING A CLEAR AND SIGNIFICANT RISK OF DEATH,  
21 SERIOUS INJURY, OR HARM TO A PATIENT EXISTS, THE NURSE SHALL PERFORM THE  
22 ACT OR ACCEPT THE ASSIGNMENT.

23 (2) SHOULD AN EMERGENCY SITUATION UNDER PARAGRAPH (1) OF  
24 THIS SUBSECTION RESULT FROM RECURRING AND REASONABLY ANTICIPATED  
25 CONDITIONS, THE PERSON INTERFERING WITH, INHIBITING, OR PREVENTING A  
26 NURSE'S REFUSAL IS SUBJECT TO DISCIPLINE UNDER THIS SUBTITLE.

27 8-710.

28 (a) Except for a violation of § 8-707 of this subtitle, a person who violates any  
29 provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine  
30 not exceeding \$5,000 or imprisonment not exceeding 1 year or both.

31 (b) A person who violates any provision of § 8-707 of this subtitle is guilty of a  
32 misdemeanor and on conviction is subject:

33 (1) For a first offense, to a fine not exceeding \$100; and

34 (2) For any subsequent violation of the same provision, to a fine not  
35 exceeding \$500 or imprisonment not exceeding 6 months or both.

36 (C) (1) SUBJECT TO THE APPROPRIATE HEARING AND APPEAL PROVISIONS,  
37 THE APPROPRIATE HEALTH OCCUPATIONS BOARD, ON THE AFFIRMATIVE VOTE OF  
38 A MAJORITY OF ITS MEMBERS MAY REPRIMAND A LICENSEE OR CERTIFICATE  
39 HOLDER, PLACE A LICENSEE OR CERTIFICATE HOLDER ON PROBATION, OR  
40 SUSPEND OR REVOKE A LICENSE OR CERTIFICATE OF A PERSON WHO VIOLATES §  
41 8-708 OF THIS SUBTITLE.

4

1                   (2) A PERSON WHO IS LICENSED, CERTIFIED, OR OTHERWISE  
2 AUTHORIZED TO PROVIDE HEALTH CARE SERVICES UNDER THIS ARTICLE IS NOT  
3 SUBJECT TO THE PENALTY PROVIDED IN SUBSECTION (A) OF THIS SECTION.

4                   (D) A PERSON WHO IS EMPLOYED IN A SUPERVISORY CAPACITY IN AN  
5 ACCREDITED HOSPITAL AS DEFINED IN § 19-301(B) OF THE HEALTH-GENERAL  
6 ARTICLE AND WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED TO  
7 PROVIDE HEALTH CARE SERVICES UNDER THIS ARTICLE IS NOT SUBJECT TO THE  
8 PENALTY PROVIDED IN SUBSECTION (A) OF THIS SECTION.

9                   (E) (1) A HOSPITAL, RELATED INSTITUTION, ANY OTHER ENTITY, OR  
10 PERSON WHICH EMPLOYS A NURSE MAY DEVELOP AND SUBMIT TO THE BOARD FOR  
11 ITS APPROVAL, WRITTEN PROTOCOLS GOVERNING AN EMPLOYEE NURSE'S  
12 PERFORMANCE OF ACTS, ACCEPTANCE OF ASSIGNMENTS, AND RESPONSIBILITY,  
13 AND ACCOUNTABILITY FOR SUPERVISING, MONITORING, INSTITUTING, OR  
14 EVALUATING AN UNLICENSED INDIVIDUAL PERFORMING A NURSING TASK, ACT, OR  
15 RESPONSIBILITY.

16                   (2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS  
17 PARAGRAPH, A PERSON ACTING IN COMPLIANCE WITH THE PERSON'S OR THE  
18 EMPLOYER'S BOARD APPROVED PROTOCOLS IS NOT SUBJECT TO THE PENALTY  
19 PROVIDED IN SUBSECTION (A) OF THIS SECTION.

20                   (II) A PERSON WHO FAILS TO COMPLY WITH BOARD APPROVED  
21 PROTOCOLS IS IN VIOLATION OF SUBSECTION (A) OF THIS SECTION AND, EXCEPT AS  
22 PROVIDED IN SUBSECTION (C)(2) OF THIS SECTION, IS SUBJECT TO A PENALTY  
23 UNDER SUBSECTION (A) OF THIS SECTION.

24                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 October 1, 1996.