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HB 425/95 - ENV

1996 Regular Session
6r1739
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By: Senator Hollinger

Introduced and read first time: January 24, 1996
Assigned to: Economic and Environmental Affairs

Committee Report: Favorable
Senate action: Adopted
Read second time: March 5, 1996

CHAPTER ____

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

2

1 Section 8-316(a)(27) and (28) and 8-710
2 Annotated Code of Maryland
3 (1994 Replacement Volume and 1995 Supplement)

4 BY adding to

5 Article - Health Occupations
6 Section 8-316(a)(29) and (30) and (b) and 8-708
7 Annotated Code of Maryland
8 (1994 Replacement Volume and 1995 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That Section(s) 8-316(b) through (d), respectively, of Article - Health
11 Occupations of the Annotated Code of Maryland be renumbered to be Section(s)
12 8-316(c) through (e), respectively.

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

15 **Article - Health Occupations**

16 8-316.

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

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

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

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

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

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

35 (30) INTERFERES WITH, INHIBITS, OR PREVENTS ANOTHER NURSE'S
36 REFUSAL TO ACCEPT RESPONSIBILITY AND ACCOUNTABILITY FOR SUPERVISING,
37 MONITORING, INSTRUCTING, OR EVALUATING AN UNLICENSED INDIVIDUAL
38 PERFORMING A NURSING TASK, ACT, OR RESPONSIBILITY, WHEN THE UNLICENSED
39 INDIVIDUAL HAS NOT DEMONSTRATED IN THE NURSE'S PROFESSIONAL NURSING
40 JUDGMENT THE KNOWLEDGE, EXPERIENCE, PREPARATION, AND ABILITY TO

3
1 PERFORM THE NURSING TASK, ACT, OR RESPONSIBILITY IN A SAFE AND COMPETENT
2 MANNER.

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

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

11 8-708.

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

14 (1) TO ACCEPT RESPONSIBILITY AND ACCOUNTABILITY FOR
15 SUPERVISING, MONITORING, INSTRUCTING, OR EVALUATING AN UNLICENSED
16 INDIVIDUAL PERFORMING A NURSING TASK, ACT, OR RESPONSIBILITY WHEN THE
17 UNLICENSED INDIVIDUAL HAS NOT DEMONSTRATED IN THE NURSE'S
18 PROFESSIONAL JUDGMENT THE KNOWLEDGE, EXPERIENCE, PREPARATION, AND
19 ABILITY TO PERFORM THE TASK, ACT, OR RESPONSIBILITY IN A SAFE AND
20 COMPETENT MANNER; OR

21 (2) TO PERFORM AN ACT OR ACCEPT AN ASSIGNMENT THAT IS NOT
22 WITHIN THE NURSE'S PREPARATION, CAPABILITIES, AND EXPERIENCE AFTER THE
23 NURSE HAS INFORMED THE PERSON THAT THE ACT OR ASSIGNMENT IS NOT WITHIN
24 THE NURSE'S PREPARATION, CAPABILITIES, AND EXPERIENCE.

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

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

33 8-710.

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

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

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

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

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

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

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

17 (E) (1) A HOSPITAL, RELATED INSTITUTION, ANY OTHER ENTITY, OR
18 PERSON WHICH EMPLOYS A NURSE MAY DEVELOP AND SUBMIT TO THE BOARD FOR
19 ITS APPROVAL, WRITTEN PROTOCOLS GOVERNING AN EMPLOYEE NURSE'S
20 PERFORMANCE OF ACTS, ACCEPTANCE OF ASSIGNMENTS, AND RESPONSIBILITY,
21 AND ACCOUNTABILITY FOR SUPERVISING, MONITORING, INSTITUTING, OR
22 EVALUATING AN UNLICENSED INDIVIDUAL PERFORMING A NURSING TASK, ACT, OR
23 RESPONSIBILITY.

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

28 (II) A PERSON WHO FAILS TO COMPLY WITH BOARD APPROVED
29 PROTOCOLS IS IN VIOLATION OF SUBSECTION (A) OF THIS SECTION AND, EXCEPT AS
30 PROVIDED IN SUBSECTION (C)(2) OF THIS SECTION, IS SUBJECT TO A PENALTY
31 UNDER SUBSECTION (A) OF THIS SECTION.

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