
By: **Delegate Nathan-Pulliam**

Introduced and read first time: February 11, 1998

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Electrology Practice Act**

3 FOR the purpose of authorizing the State Board of Electrologists to require an
4 examination, under certain circumstances, of a licensed electrologist during an
5 investigation against the licensee; clarifying privileges waived by a licensed
6 electrologist in the State; establishing that a licensee's refusal to submit to an
7 examination is prima facie evidence of certain findings under certain
8 circumstances; clarifying to whom certain reports and investigatory files may be
9 disclosed; clarifying that certain Board proceedings, records, and files are not
10 discoverable or admissible in civil actions unless all parties consent; clarifying
11 that the use of certain records or exhibits used in Board proceedings does not
12 preclude use in other proceedings; establishing exceptions to admissibility and
13 the use of certain records, files, and exhibits; expanding the grounds under
14 which the Board may deny, suspend, or revoke a license or otherwise discipline
15 a licensee; authorizing certain courts to penalize individuals who disobey
16 subpoenas or orders by the Board to take certain actions; prohibiting certain
17 procedural challenges to the Board's proceedings; requiring that hearing costs
18 be paid by an individual under certain circumstances; describing the hearing
19 costs; prohibiting the staying of a Board order pending review; establishing
20 when, by whom, and where actions for certain injunctions may be brought;
21 describing certain proof not required for the injunction action; establishing that
22 an injunction action is in addition to certain criminal prosecution actions;
23 authorizing the Board to use the Department of Public Safety and Correctional
24 Services central repository for certain purposes; describing certain procedures
25 for using the central repository; and generally relating to the investigation and
26 discipline of licensed electrologists.

27 BY adding to
28 Article - Health Occupations
29 Section 6-205.1, 6-205.2, 6-205.3, 6-314.1, 6-315(c), 6-317, and 6-318
30 Annotated Code of Maryland
31 (1994 Replacement Volume and 1997 Supplement)

32 BY repealing and reenacting, without amendments,
33 Article - Health Occupations

1 Section 6-101(a), (b), and (c) and 6-315(b)
2 Annotated Code of Maryland
3 (1994 Replacement Volume and 1997 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article - Health Occupations
6 Section 6-312 and 6-314
7 Annotated Code of Maryland
8 (1994 Replacement Volume and 1997 Supplement)

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

11 **Article - Health Occupations**

12 6-101.

13 (a) In this title the following words have the meanings indicated.

14 (b) "Board" means the State Board of Electrologists.

15 (c) "Electrologist" means an individual who practices electrology.

16 6-205.1.

17 (A) WHILE INVESTIGATING AN ALLEGATION AGAINST A LICENSEE UNDER
18 THIS TITLE, THE BOARD MAY REQUIRE THE LICENSEE TO SUBMIT TO AN
19 APPROPRIATE EXAMINATION BY A HEALTH CARE PROVIDER DESIGNATED BY THE
20 BOARD IF THE BOARD HAS REASON TO BELIEVE THAT THE LICENSEE MAY CAUSE
21 HARM TO A PERSON AFFECTED BY THE LICENSEE'S PRACTICE OF ELECTROLOGY.

22 (B) IN RETURN FOR THE PRIVILEGE GIVEN TO A LICENSEE TO PRACTICE
23 ELECTROLOGY IN THE STATE, THE LICENSEE IS DEEMED TO HAVE:

24 (1) CONSENTED TO SUBMIT TO AN EXAMINATION UNDER THIS SECTION,
25 IF REQUESTED BY THE BOARD IN WRITING; AND

26 (2) WAIVED ANY CLAIM OF PRIVILEGE AS TO THE TESTIMONY OR
27 REPORTS OF A HEALTH CARE PROVIDER WHO EXAMINES THE LICENSEE.

28 (C) THE FAILURE OR REFUSAL OF THE LICENSEE TO SUBMIT TO AN
29 EXAMINATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION IS PRIMA FACIE
30 EVIDENCE OF THE LICENSEE'S INABILITY TO PRACTICE ELECTROLOGY
31 COMPETENTLY, UNLESS THE BOARD FINDS THAT THE FAILURE OR REFUSAL WAS
32 BEYOND THE CONTROL OF THE LICENSEE.

33 (D) THE BOARD SHALL PAY THE COST OF ANY EXAMINATION MADE UNDER
34 THIS SECTION.

1 6-205.2.

2 (A) ON WRITTEN REQUEST BY A HEALTH OCCUPATION REGULATORY BOARD,
3 THE BOARD MAY DISCLOSE ANY INFORMATION CONTAINED IN A RECORD TO ANY
4 HEALTH OCCUPATION REGULATORY BOARD IN THIS STATE OR ANOTHER STATE.

5 (B) THE BOARD, ITS EXECUTIVE DIRECTOR OR ADMINISTRATOR, AND THE
6 OFFICE OF THE ATTORNEY GENERAL MAY DISCLOSE TO ANY LICENSING OR
7 DISCIPLINARY AUTHORITY, OR OTHER LAW ENFORCEMENT, PROSECUTORIAL, OR
8 JUDICIAL AUTHORITY, ANY INFORMATION IN THE BOARD'S INVESTIGATORY FILE.

9 6-205.3.

10 (A) (1) THIS SECTION DOES NOT APPLY:

11 (I) TO A CIVIL ACTION BROUGHT BY A PARTY TO A PROCEEDING
12 BEFORE THE BOARD IF THE PARTY CLAIMS TO BE AGGRIEVED BY THE DECISION OF
13 THE BOARD; OR

14 (II) TO ANY ORDERS OR FINDINGS OF THE BOARD THAT ARE
15 OTHERWISE SUBJECT TO DISCLOSURE UNDER § 10-617(H)(2)(VI) OF THE STATE
16 GOVERNMENT ARTICLE.

17 (B) EXCEPT BY THE EXPRESS STIPULATION AND CONSENT OF ALL PARTIES TO
18 A PROCEEDING BEFORE THE BOARD OR ANY OF ITS INVESTIGATIVE BODIES, THE
19 PROCEEDINGS, RECORDS, AND FILES OF THE BOARD OR ITS INVESTIGATIVE BODIES
20 ARE NOT DISCOVERABLE AND ARE NOT ADMISSIBLE IN EVIDENCE IN A CIVIL
21 ACTION.

22 (C) IF ANY MEDICAL OR HOSPITAL RECORD OR ANY OTHER EXHIBIT IS
23 SUBPOENAED AND OTHERWISE IS ADMISSIBLE IN EVIDENCE, THE USE OF THE
24 RECORD OR EXHIBIT IN THE PROCEEDING BEFORE THE BOARD OR ANY OF ITS
25 INVESTIGATIVE BODIES DOES NOT PREVENT ITS PRODUCTION IN ANY OTHER
26 PROCEEDING.

27 6-312.

28 (a) Subject to the hearing provisions of § 6-314 of this subtitle, the Board may
29 deny a license to any applicant, reprimand any licensee, place any licensee on
30 probation, or suspend or revoke a license if the applicant or licensee:

31 (1) Fraudulently or deceptively obtains or attempts to obtain a license
32 for the applicant or licensee or for another;

33 (2) Fraudulently or deceptively uses a license;

34 (3) As part of the practice of electrology, knowingly does any act that
35 exceeds the scope of the practice of electrology;

- 1 (4) Is grossly negligent in practicing or teaching an electrology education
2 program;
- 3 (5) Acts in a manner inconsistent with generally accepted standards for
4 the practice of electrology;
- 5 (6) Is convicted of or pleads guilty or nolo contendere to a felony or to a
6 crime involving moral turpitude, whether or not any appeal or other proceeding is
7 pending to have the conviction or plea set aside;
- 8 (7) Is disciplined by a licensing or disciplinary authority of any [other]
9 state or country, [or] convicted or disciplined by a court of any state or country, OR
10 DISCIPLINED BY ANY BRANCH OF THE UNITED STATES UNIFORMED SERVICES OR
11 THE VETERANS ADMINISTRATION for an act that would be grounds for disciplinary
12 action under the Board's disciplinary statutes;
- 13 (8) Provides professional services while:
- 14 (i) Under the influence of alcohol; or
- 15 (ii) Using any narcotic or controlled dangerous substance, as
16 defined in Article 27 of the Code, or other drug that is in excess of therapeutic
17 amounts or without valid medical indication;
- 18 (9) Uses types of instruments or procedures in the practice of electrology
19 that are not approved by the Board;
- 20 (10) Advertises in a manner that violates § 6-502 of this title;
- 21 (11) Uses a title not authorized by § 6-501 of this title;
- 22 (12) Is currently adjudicated as being a disabled person under Title 13 of
23 the Estates and Trusts Article;
- 24 (13) Practices electrology with an unauthorized person or supervises or
25 aids an unauthorized person in the practice of electrology;
- 26 (14) Willfully makes or files a false report or record in the practice of
27 electrology;
- 28 (15) Willfully fails to file or record any report as required by law, willfully
29 impedes or obstructs the filing or recording of the report, or induces another to fail to
30 file or record the report;
- 31 (16) Submits a false statement to collect a fee;
- 32 (17) Violates any PROVISION OF THIS TITLE OR ANY rule or regulation
33 adopted by the Board;
- 34 (18) Uses or promotes or causes the use of any misleading, deceiving, or
35 untruthful advertising matter, promotional literature, or testimonial;

- 1 (19) Is professionally, physically, or mentally incompetent;
- 2 (20) Promotes the sale of devices, appliances, or goods to a patient so as to
3 exploit the patient for financial gain;
- 4 (21) Behaves immorally in the practice of electrology;
- 5 (22) Commits an act of unprofessional conduct in the practice of
6 electrology;
- 7 (23) Refuses, withholds from, denies, or discriminates against an
8 individual with regard to the provision of professional services for which the licensee
9 is licensed and qualified to render because the individual is HIV positive;
- 10 (24) Except in an emergency life-threatening situation where it is not
11 feasible or practicable, fails to comply with the Centers for Disease Control's
12 guidelines on universal precautions;
- 13 (25) Fails to display the notice required under § 6-505 of this title; [or]
- 14 (26) Fails to allow an inspection under § 6-205(10) or (11) of this title; OR
- 15 (27) FAILS TO COOPERATE WITH A LAWFUL INVESTIGATION CONDUCTED
16 BY THE BOARD.
- 17 (b) An individual whose license has been revoked or suspended by the Board
18 shall return the license to the Board. If at that time the license is lost, the individual
19 shall send a sworn statement to this effect to the Board.
- 20 6-314.
- 21 (a) Except as otherwise provided in the Administrative Procedure Act, before
22 the Board takes any action under § 6-312 or § 6-403 of this title, it shall give the
23 person against whom the action is contemplated an opportunity for a hearing before
24 the Board.
- 25 (b) The Board shall give notice and hold the hearing in accordance with the
26 Administrative Procedure Act.
- 27 (c) The hearing notice to be given to the person shall be sent by certified mail,
28 return receipt requested, bearing a postmark from the United States Postal Service,
29 to the last known address of the person at least 30 days before the hearing.
- 30 (d) The person may be represented at the hearing by counsel.
- 31 (e) (1) The Board may issue subpoenas and administer oaths in connection
32 with any proceeding under this section.
- 33 (2) IF, WITHOUT LAWFUL EXCUSE, AN INDIVIDUAL DISOBEYS A
34 SUBPOENA FROM THE BOARD OR AN ORDER BY THE BOARD TO TAKE AN OATH,

1 TESTIFY, OR ANSWER A QUESTION, THEN ON PETITION OF THE BOARD, A COURT OF
2 COMPETENT JURISDICTION:

3 (I) SHALL COMPEL COMPLIANCE WITH THE SUBPOENA; AND

4 (II) MAY HOLD THE INDIVIDUAL IN CONTEMPT OF COURT.

5 (f) If after due notice the person against whom the action is contemplated
6 fails or refuses to appear, nevertheless the Board may hear and determine the matter.

7 (G) THE HEARING OF CHARGES MAY NOT BE STAYED OR CHALLENGED BY ANY
8 PROCEDURAL DEFECTS ALLEGED TO HAVE OCCURRED PRIOR TO THE FILING OF
9 CHARGES.

10 6-314.1.

11 (A) AFTER A HEARING, IF AN INDIVIDUAL IS FOUND IN VIOLATION OF § 6-312
12 OF THIS SUBTITLE, THE INDIVIDUAL SHALL PAY TO THE BOARD THE COSTS OF THE
13 HEARING, UNLESS THE PAYMENT IS AFFIRMATIVELY WAIVED BY THE BOARD.

14 (B) THE COSTS OF THE HEARING CONSIST OF THE COST OF THE REPORTING
15 SERVICE AND PER DIEM AND MILEAGE COSTS FOR THE MEMBERS OF THE BOARD
16 WHICH ARE GREATER THAN THE AMOUNT FOR THE REGULARLY SCHEDULED
17 MEETINGS OF THE BOARD.

18 6-315.

19 (b) (1) Any person aggrieved by a final decision of the Board under § 6-312
20 of this subtitle may not appeal to the Secretary or Board of Review but may take a
21 direct judicial appeal.

22 (2) The appeal shall be made as provided for judicial review of final
23 decisions in the Administrative Procedure Act.

24 (C) AN ORDER OF THE BOARD MAY NOT BE STAYED PENDING REVIEW.

25 6-317.

26 (A) AN ACTION MAY BE MAINTAINED IN THE NAME OF THE STATE OR THE
27 BOARD TO ENJOIN:

28 (1) THE UNAUTHORIZED PRACTICE OF ELECTROLOGY; OR

29 (2) CONDUCT THAT IS A GROUND FOR DISCIPLINARY ACTION UNDER
30 SECTION 6-312 OF THIS SUBTITLE.

31 (B) AN ACTION UNDER THIS SECTION MAY BROUGHT BY:

32 (1) THE BOARD, IN ITS OWN NAME;

33 (2) THE ATTORNEY GENERAL, ON BEHALF OF THIS STATE; OR

1 (3) A STATE'S ATTORNEY, ON BEHALF OF THIS STATE.

2 (C) AN ACTION UNDER THIS SECTION SHALL BE BROUGHT IN THE COUNTY
3 WHERE THE DEFENDANT:

4 (1) RESIDES; OR

5 (2) ENGAGES IN THE ACTS SOUGHT TO BE ENJOINED.

6 (D) PROOF OF ACTUAL DAMAGE, OR PROOF THAT ANY INDIVIDUAL WILL
7 SUSTAIN ANY DAMAGE IF AN INJUNCTION IS NOT GRANTED, IS NOT REQUIRED FOR
8 AN ACTION UNDER THIS SECTION.

9 (E) AN ACTION UNDER THIS SECTION IS IN ADDITION TO AND NOT INSTEAD
10 OF CRIMINAL PROSECUTION FOR UNAUTHORIZED PRACTICE OF ELECTROLOGY
11 UNDER § 6-601 OF THIS TITLE, OR DISCIPLINARY ACTION UNDER § 6-312 OF THIS
12 SUBTITLE.

13 6-318.

14 (A) IN THIS SECTION, "CENTRAL REPOSITORY" MEANS THE CRIMINAL JUSTICE
15 INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC
16 SAFETY AND CORRECTIONAL SERVICES.

17 (B)(1) THE BOARD MAY REQUEST FROM THE CENTRAL REPOSITORY A FEDERAL
18 AND STATE CRIMINAL HISTORY RECORD CHECK OF EACH APPLICANT FOR A LICENSE
19 AND EACH CURRENT LICENSEE.

20 (2) THE BOARD SHALL SEND TO THE CENTRAL REPOSITORY:

21 (I) THE REQUEST FORM SPECIFIED BY THE CENTRAL REPOSITORY;

22 (II) THE MANDATORY PROCESSING FEE REQUIRED BY THE
23 FEDERAL BUREAU OF INVESTIGATION FOR A FEDERAL CRIMINAL HISTORY RECORD
24 CHECK;

25 (III) THE FEE AUTHORIZED UNDER § 748(B)(8) OF ARTICLE 27 OF THE
26 CODE FOR ACCESS TO MARYLAND CRIMINAL HISTORY RECORDS; AND

27 (IV) A COMPLETE SET OF FINGERPRINTS OF THE APPLICANT AND
28 LICENSEE.

29 (C) THE CENTRAL REPOSITORY SHALL PROVIDE TO THE BOARD THE FEDERAL
30 AND STATE CRIMINAL HISTORY RECORDS OF EACH APPLICANT FOR A LICENSE AND
31 EACH LICENSEE.

32 (D) IN ORDER TO EFFECTUATE THE PURPOSE OF THIS SECTION, THE BOARD
33 MAY REQUIRE AN APPLICANT FOR A LICENSE AND A LICENSEE TO SUBMIT A SET OF
34 FINGERPRINTS TO THE BOARD.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 1998.