
By: **Delegate Nathan-Pulliam**
Introduced and read first time: February 11, 1998
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 18, 1998

CHAPTER _____

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

1 Article - Health Occupations
 2 Section 6-205.1, 6-205.2, 6-205.3, ~~6-314.1~~, 6-315(c), ~~6-317~~, and ~~6-318~~ and
 3 6-317
 4 Annotated Code of Maryland
 5 (1994 Replacement Volume and 1997 Supplement)

6 BY repealing and reenacting, without amendments,
 7 Article - Health Occupations
 8 Section 6-101(a), (b), and (c) and 6-315(b)
 9 Annotated Code of Maryland
 10 (1994 Replacement Volume and 1997 Supplement)

11 BY repealing and reenacting, with amendments,
 12 Article - Health Occupations
 13 Section 6-312 and 6-314
 14 Annotated Code of Maryland
 15 (1994 Replacement Volume and 1997 Supplement)

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

18 **Article - Health Occupations**

19 6-101.

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

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

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

23 6-205.1.

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

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

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

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

1 (C) THE FAILURE OR REFUSAL OF THE LICENSEE TO SUBMIT TO AN
2 EXAMINATION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION IS PRIMA FACIE
3 EVIDENCE OF THE LICENSEE'S INABILITY TO PRACTICE ELECTROLOGY
4 COMPETENTLY, UNLESS THE BOARD FINDS THAT THE FAILURE OR REFUSAL WAS
5 BEYOND THE CONTROL OF THE LICENSEE.

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

8 6-205.2.

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

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

16 6-205.3.

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

18 (I) TO A CIVIL ACTION BROUGHT BY A PARTY TO A PROCEEDING
19 BEFORE THE BOARD IF THE PARTY CLAIMS TO BE AGGRIEVED BY THE DECISION OF
20 THE BOARD; OR

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

24 (B) EXCEPT BY THE EXPRESS STIPULATION AND CONSENT OF ALL PARTIES TO
25 A PROCEEDING BEFORE THE BOARD OR ANY OF ITS INVESTIGATIVE BODIES, THE
26 PROCEEDINGS, RECORDS, AND FILES OF THE BOARD OR ITS INVESTIGATIVE BODIES
27 ARE NOT DISCOVERABLE AND ARE NOT ADMISSIBLE IN EVIDENCE IN A CIVIL
28 ACTION.

29 (C) IF ANY MEDICAL OR HOSPITAL RECORD OR ANY OTHER EXHIBIT IS
30 SUBPOENAED AND OTHERWISE IS ADMISSIBLE IN EVIDENCE, THE USE OF THE
31 RECORD OR EXHIBIT IN THE PROCEEDING BEFORE THE BOARD OR ANY OF ITS
32 INVESTIGATIVE BODIES DOES NOT PREVENT ITS PRODUCTION IN ANY OTHER
33 PROCEEDING.

34 6-312.

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

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

- 1 (16) Submits a false statement to collect a fee;
- 2 (17) Violates any PROVISION OF THIS TITLE OR ANY rule or regulation
3 adopted by the Board;
- 4 (18) Uses or promotes or causes the use of any misleading, deceiving, or
5 untruthful advertising matter, promotional literature, or testimonial;
- 6 (19) Is professionally, physically, or mentally incompetent;
- 7 (20) Promotes the sale of devices, appliances, or goods to a patient so as to
8 exploit the patient for financial gain;
- 9 (21) Behaves immorally in the practice of electrology;
- 10 (22) Commits an act of unprofessional conduct in the practice of
11 electrology;
- 12 (23) Refuses, withholds from, denies, or discriminates against an
13 individual with regard to the provision of professional services for which the licensee
14 is licensed and qualified to render because the individual is HIV positive;
- 15 (24) Except in an emergency life-threatening situation where it is not
16 feasible or practicable, fails to comply with the Centers for Disease Control's
17 guidelines on universal precautions;
- 18 (25) Fails to display the notice required under § 6-505 of this title; [or]
- 19 (26) Fails to allow an inspection under § 6-205(10) or (11) of this title; OR
- 20 (27) FAILS TO COOPERATE WITH A LAWFUL INVESTIGATION CONDUCTED
21 BY THE BOARD.

22 (b) An individual whose license has been revoked or suspended by the Board
23 shall return the license to the Board. If at that time the license is lost, the individual
24 shall send a sworn statement to this effect to the Board.

25 6-314.

26 (a) Except as otherwise provided in the Administrative Procedure Act, before
27 the Board takes any action under § 6-312 or § 6-403 of this title, it shall give the
28 person against whom the action is contemplated an opportunity for a hearing before
29 the Board.

30 (b) The Board shall give notice and hold the hearing in accordance with the
31 Administrative Procedure Act.

32 (c) The hearing notice to be given to the person shall be sent by certified mail,
33 return receipt requested, bearing a postmark from the United States Postal Service,
34 to the last known address of the person at least 30 days before the hearing.

1 (d) The person may be represented at the hearing by counsel.

2 (e) (1) The Board may issue subpoenas and administer oaths in connection
3 with any proceeding under this section.

4 (2) IF, WITHOUT LAWFUL EXCUSE, AN INDIVIDUAL DISOBEYS A
5 SUBPOENA FROM THE BOARD OR AN ORDER BY THE BOARD TO TAKE AN OATH,
6 TESTIFY, OR ANSWER A QUESTION, THEN ON PETITION OF THE BOARD, A COURT OF
7 COMPETENT JURISDICTION:

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

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

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

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

15 ~~6-314.1.~~

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

19 ~~(B) THE COSTS OF THE HEARING CONSIST OF THE COST OF THE REPORTING~~
20 ~~SERVICE AND PER DIEM AND MILEAGE COSTS FOR THE MEMBERS OF THE BOARD~~
21 ~~WHICH ARE GREATER THAN THE AMOUNT FOR THE REGULARLY SCHEDULED~~
22 ~~MEETINGS OF THE BOARD.~~

23 6-315.

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

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

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

30 6-317.

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

33 (1) THE UNAUTHORIZED PRACTICE OF ELECTROLOGY; OR

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

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

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

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

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

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

9 (1) RESIDES; OR

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

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

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

18 ~~6-318.~~

19 (A) ~~IN THIS SECTION, "CENTRAL REPOSITORY" MEANS THE CRIMINAL JUSTICE~~
20 ~~INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC~~
21 ~~SAFETY AND CORRECTIONAL SERVICES.~~

22 ~~(B)(1) THE BOARD MAY REQUEST FROM THE CENTRAL REPOSITORY A FEDERAL~~
23 ~~AND STATE CRIMINAL HISTORY RECORD CHECK OF EACH APPLICANT FOR A LICENSE~~
24 ~~AND EACH CURRENT LICENSEE.~~

25 ~~(2) THE BOARD SHALL SEND TO THE CENTRAL REPOSITORY:~~

26 ~~(I) THE REQUEST FORM SPECIFIED BY THE CENTRAL REPOSITORY;~~

27 ~~(II) THE MANDATORY PROCESSING FEE REQUIRED BY THE~~
28 ~~FEDERAL BUREAU OF INVESTIGATION FOR A FEDERAL CRIMINAL HISTORY RECORD~~
29 ~~CHECK;~~

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

32 ~~(IV) A COMPLETE SET OF FINGERPRINTS OF THE APPLICANT AND~~
33 ~~LICENSEE.~~

1 ~~(C) THE CENTRAL REPOSITORY SHALL PROVIDE TO THE BOARD THE FEDERAL~~
2 ~~AND STATE CRIMINAL HISTORY RECORDS OF EACH APPLICANT FOR A LICENSE AND~~
3 ~~EACH LICENSEE.~~

4 ~~(D) IN ORDER TO EFFECTUATE THE PURPOSE OF THIS SECTION, THE BOARD~~
5 ~~MAY REQUIRE AN APPLICANT FOR A LICENSE AND A LICENSEE TO SUBMIT A SET OF~~
6 ~~FINGERPRINTS TO THE BOARD.~~

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