
By: **Delegate Kelly**

Introduced and read first time: February 13, 1998

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Physician Quality Assurance - Nonconventional Medical**
3 **Treatments**

4 FOR the purpose of increasing the membership of the State Board of Physician
5 Quality Assurance to include two additional physicians who dedicate a
6 significant portion of their practice to the use of a nonconventional medical
7 treatment; deeming a certain requirement concerning investigation and
8 physician peer review in certain standard of care cases to include a requirement
9 of participation under certain circumstances by at least one physician who
10 dedicates a significant portion of the physician's practice to the use of a
11 nonconventional medical treatment; providing that a certain requirement for
12 certain participation may not be construed to require participation of a
13 physician who uses a certain nonconventional medical method; prohibiting the
14 Board from taking certain disciplinary action against a physician licensee solely
15 because the licensee uses a nonconventional medical treatment unless the Board
16 can establish certain facts; defining a certain term; and generally relating to the
17 State Board of Physician Quality Assurance and nonconventional medical
18 treatments.

19 BY repealing and reenacting, without amendments,
20 Article - Health Occupations
21 Section 14-101(a), (b), and (d)
22 Annotated Code of Maryland
23 (1994 Replacement Volume and 1997 Supplement)

24 BY adding to
25 Article - Health Occupations
26 Section 14-101(m) and 14-404(c)
27 Annotated Code of Maryland
28 (1994 Replacement Volume and 1997 Supplement)

29 BY repealing and reenacting, with amendments,
30 Article - Health Occupations
31 Section 14-202(a) and 14-401

1 Annotated Code of Maryland
2 (1994 Replacement Volume and 1997 Supplement)

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

5 **Article - Health Occupations**

6 14-101.

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

8 (b) "Board" means the State Board of Physician Quality Assurance.

9 (d) "Faculty" means the Medical and Chirurgical Faculty of the State of
10 Maryland.

11 (M) "NONCONVENTIONAL MEDICAL TREATMENT" MEANS A METHOD OF
12 HEALTH CARE THAT IS NOT GENERALLY USED BY A PHYSICIAN TO TREAT A MEDICAL
13 CONDITION OF A PATIENT.

14 14-202.

15 (a) (1) The Board shall consist of [15] 17 members appointed by the
16 Governor.

17 (2) Of the [15] 17 members:

18 (i) 10 shall be practicing licensed physicians appointed from a list
19 submitted by the Faculty;

20 (ii) [1] 3 shall be [a] practicing licensed [physician] PHYSICIANS
21 appointed at the Governor's discretion, 2 OF WHOM DEDICATE A SIGNIFICANT
22 PORTION OF THEIR PRACTICE TO THE USE OF A NONCONVENTIONAL MEDICAL
23 TREATMENT;

24 (iii) 1 shall be a representative of the Department nominated by the
25 Secretary;

26 (iv) 2 shall be consumer members appointed with the advice and
27 consent of the Senate; and

28 (v) 1 shall be a consumer member knowledgeable in risk
29 management or quality assurance matters appointed from a list submitted by the
30 Maryland Hospital Association.

1 14-401.

2 (a) The Board shall perform any necessary preliminary investigation before
3 the Board refers to an investigatory body an allegation of grounds for disciplinary or
4 other action brought to its attention.

5 (b) If an allegation of grounds for disciplinary or other action is made by a
6 patient or a family member of a patient in a standard of care case and a full
7 investigation results from that allegation, the full investigation shall include an offer
8 of an interview with the patient or a family member of the patient who was present on
9 or about the time that the incident that gave rise to the allegation occurred.

10 (c) (1) Except as otherwise provided in this subsection, after performing any
11 necessary preliminary investigation of an allegation of grounds for disciplinary or
12 other action, the Board may:

13 (i) Refer the allegation for further investigation to the Faculty;

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

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

17 (2) (i) After performing any necessary preliminary investigation of an
18 allegation of grounds for disciplinary or other action, the Board shall refer any
19 allegation involving standards of medical care, as determined by the Board, and any
20 allegation based on § 14-404(a)(19) to the Faculty for further investigation and
21 physician peer review within the involved medical specialty or specialties.

22 (ii) The Faculty may refer the allegation for investigation and
23 report to the appropriate:

24 1. County medical society; or

25 2. Committee of the Faculty.

26 (3) If, after performing any necessary preliminary investigation, the
27 Board determines that an allegation involving fees for professional or ancillary
28 services does not constitute grounds for disciplinary or other action, the Board shall
29 offer the complainant and the licensee an opportunity to mediate the dispute.

30 (4) (i) If the Board determines that an agreement for corrective action
31 is warranted and patient safety is not an issue, the Board shall notify the licensee of
32 the identified deficiencies and enter into an agreement for corrective action, which
33 may not be made public and which shall not be considered a disciplinary action for
34 purposes of this subtitle.

35 (ii) The Board shall subsequently evaluate the licensee and shall:

1 1. Terminate the corrective action if the Board is satisfied
2 that the licensee is in compliance with the agreement for corrective action and has
3 corrected the deficiencies; or

4 2. Pursue disciplinary action under § 14-404 of this subtitle
5 if the deficiencies persist or the licensee has failed to comply with the agreement for
6 corrective action.

7 (iii) The Board shall provide a summary of the corrective action
8 agreements in the Executive Director's report of Board activities.

9 (C-1) (1) THE REQUIREMENT OF INVESTIGATION AND PHYSICIAN PEER
10 REVIEW UNDER SUBSECTION (C) OF THIS SECTION INCLUDES A REQUIREMENT THAT
11 AT LEAST ONE PHYSICIAN PARTICIPATE IN THE INVESTIGATION AND REVIEW WHO
12 DEDICATES A SIGNIFICANT PORTION OF THE PHYSICIAN'S PRACTICE TO THE USE OF
13 A NONCONVENTIONAL MEDICAL TREATMENT, IF THE CASE UNDER INVESTIGATION
14 AND REVIEW:

15 1. INVOLVES THE STANDARD OF CARE APPLICABLE TO A
16 PHYSICIAN WHO USES A NONCONVENTIONAL MEDICAL TREATMENT; AND

17 2. IS REFERRED TO THE FACULTY, A COMMITTEE OF THE
18 FACULTY, OR A COUNTY MEDICAL SOCIETY FOR INVESTIGATION AND PHYSICIAN
19 PEER REVIEW.

20 (2) PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE CONSTRUED TO
21 REQUIRE THE PARTICIPATION OF A PHYSICIAN WHO USES THE SAME
22 NONCONVENTIONAL MEDICAL TREATMENT AS THE PHYSICIAN WHO IS SUBJECT TO
23 INVESTIGATION AND REVIEW UNDER SUBSECTION (C) OF THIS SECTION.

24 (d) (1) The Faculty, all committees of the Faculty, except the physician
25 rehabilitation committee, and all county medical societies shall refer to the Board all
26 complaints that set forth allegations of grounds for disciplinary action under § 14-404
27 of this subtitle.

28 (2) If the Faculty determines that 3 or more malpractice claims have
29 been filed against an individual licensed physician under § 3-2A-04(a) of the Courts
30 and Judicial Proceedings Article within a 5-year period, the Faculty shall submit the
31 name of the individual licensed physician to the Board and, subject to the approval of
32 the Board, shall refer the claims to the Faculty's appropriate committee for
33 investigation and report to the Board as if the Board had referred the claims to the
34 committee of the Faculty.

35 (e) (1) (i) Unless the Board grants an extension, the medical society or
36 Faculty committee shall report to the Board on its investigation within 90 days after
37 the referral.

38 (ii) However, if the investigatory body does not complete its report
39 within 90 days, the Board may refer the allegation to another investigatory body.

1 (2) The report shall contain the information and recommendations
2 necessary for appropriate action by the Board.

3 (3) On receipt of the report, the Board shall consider the
4 recommendations made in the report and take the action, including further
5 investigation, that it finds appropriate under this title.

6 (f) (1) To facilitate the investigation and prosecution of disciplinary matters
7 and the mediation of fee disputes coming before it, the Board may:

8 (i) Contract with the Faculty, its committees, and the component
9 medical societies for the purchase of investigatory, mediation, and related services;
10 and

11 (ii) Contract with others for the purchase of investigatory,
12 mediation, and related services and make these services available to the Faculty, its
13 committees, and the component medical societies.

14 (2) Services that may be contracted for under this subsection include the
15 services of:

16 (i) Investigators;

17 (ii) Attorneys;

18 (iii) Accountants;

19 (iv) Expert witnesses;

20 (v) Consultants; and

21 (vi) Mediators.

22 (g) The Board may issue subpoenas and administer oaths in connection with
23 any investigation under this section and any hearing or proceeding before it.

24 (h) Those individuals not licensed under this title but covered under §
25 14-413(a)(1)(ii)3 and 4 of this subtitle are subject to the hearing provisions of §
26 14-405 of this subtitle.

27 (i) (1) It is the intent of this section that the disposition of every complaint
28 against a licensee that sets forth allegations of grounds for disciplinary action filed
29 with the Board shall be completed as expeditiously as possible and, in any event,
30 within 18 months after the complaint was received by the Board.

31 (2) If the Board is unable to complete the disposition of a complaint
32 within 1 year, the Board shall include in the record of that complaint a detailed
33 explanation of the reason for the delay.

1 14-404.

2 (C) THE BOARD MAY NOT REPRIMAND A LICENSEE, PLACE ANY LICENSEE ON
3 PROBATION, OR SUSPEND OR REVOKE A LICENSE SOLELY BECAUSE THE LICENSEE
4 USES A NONCONVENTIONAL MEDICAL TREATMENT UNLESS, BY COMPETENT
5 EVIDENCE, THE BOARD CAN ESTABLISH THAT:

6 (1) THE NONCONVENTIONAL MEDICAL TREATMENT HAS A SAFETY RISK
7 GREATER THAN THE TREATMENT GENERALLY USED FOR THE SAME MEDICAL
8 CONDITION; OR

9 (2) THE NONCONVENTIONAL MEDICAL TREATMENT IS GENERALLY NOT
10 EFFECTIVE.

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