
By: **Delegate Nathan-Pulliam**

Introduced and read first time: February 12, 1999

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Examiners of Psychologists - Disciplinary and Regulatory**
3 **Authority**

4 FOR the purpose of authorizing the State Board of Examiners of Psychologists to
5 disclose any information contained in a record of the Board to certain health
6 occupations boards on a certain request; authorizing the Board, certain officials
7 of the Board, or the Office of the Attorney General to disclose certain
8 information to certain persons; altering and adding certain grounds for
9 disciplinary action by the Board; authorizing the Board to impose a certain
10 monetary penalty under certain circumstances and in a certain manner;
11 authorizing the Board to adopt certain regulations; requiring the Board to pay a
12 certain penalty into the General Fund of the State; authorizing rather than
13 requiring the Board to direct a certain licensee to submit to a certain
14 examination under certain circumstances; prohibiting a certain stay of or
15 challenge to the hearing of certain charges under certain circumstances;
16 prohibiting a certain stay of a certain decision of the Board pending certain
17 judicial review; authorizing an action to be maintained in the name of the State
18 or the Board to enjoin certain conduct; authorizing a certain action to be brought
19 by the Board or certain State officials; requiring a certain action to be brought in
20 a certain county; providing that certain proof is not required under certain
21 circumstances; specifying that a certain action is in addition to and not instead
22 of a certain prosecution or disciplinary action; and generally relating to the
23 State Board of Examiners of Psychologists and the practice of psychology.

24 BY adding to
25 Article - Health Occupations
26 Section 18-206.1, 18-313.1, and 18-317.1
27 Annotated Code of Maryland
28 (1994 Replacement Volume and 1998 Supplement)

29 BY repealing and reenacting, with amendments,
30 Article - Health Occupations
31 Section 18-313 through 18-316, inclusive
32 Annotated Code of Maryland

1 (1994 Replacement Volume and 1998 Supplement)

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

4 **Article - Health Occupations**

5 18-206.1.

6 (A) THE BOARD MAY DISCLOSE ANY INFORMATION CONTAINED IN A RECORD
7 OF THE BOARD TO ANY OTHER HEALTH OCCUPATIONS REGULATORY BOARD OF THIS
8 STATE OR ANOTHER STATE IF THE HEALTH OCCUPATIONS REGULATORY BOARD OF
9 THIS STATE OR ANOTHER STATE REQUESTS THE INFORMATION IN WRITING.

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

15 18-313.

16 Subject to the hearing provisions of § 18-315 of this subtitle, the Board, on the
17 affirmative vote of a majority of its members then serving, may deny a license to any
18 applicant, reprimand any licensee, place any licensee on probation, or suspend or
19 revoke a license of any licensee if the applicant or licensee:

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

22 (2) Fraudulently or deceptively uses a license;

23 (3) Is convicted of or pleads guilty or nolo contendere to a felony or a
24 crime involving moral turpitude, whether or not any appeal or other proceeding is
25 pending to have the conviction or plea set aside;

26 (4) Is or has been addicted to any narcotic or habitually intoxicated;

27 (5) Aids or abets an unauthorized person in practicing psychology or
28 representing oneself to be a psychologist;

29 (6) Practices psychology fraudulently or deceitfully;

30 (7) Violates the code of ethics adopted by the Board under § 18-311 of
31 this subtitle;

32 (8) Willfully fails to file or record any report as required under law,
33 willfully impedes or obstructs the filing or recording of the report, or induces another
34 to fail to file or record the report;

- 1 (9) Submits a false statement to collect a fee;
- 2 (10) Willfully makes or files a false report or record in the practice of
3 psychology;
- 4 (11) Is disciplined by a licensing or disciplinary authority of any [other]
5 state or country or convicted or disciplined by a court of any state or country OR
6 DISCIPLINED BY ANY BRANCH OF THE UNITED STATES UNIFORMED SERVICES OR
7 THE UNITED STATES VETERANS ADMINISTRATION for an act that would be grounds
8 for disciplinary action under the Board's disciplinary statutes;
- 9 (12) Violates any PROVISION OF THIS TITLE OR ANY [rule or] regulation
10 adopted by the Board;
- 11 (13) Uses or promotes or causes the use of any misleading, deceiving, or
12 untruthful advertising matter, promotional literature, or testimonial;
- 13 (14) Is professionally, physically, or mentally incompetent;
- 14 (15) Promotes the sale of devices, appliances, or goods to a patient so as to
15 exploit the patient for financial gain;
- 16 (16) Behaves immorally in the practice of psychology;
- 17 (17) Commits an act of unprofessional conduct in the practice of
18 psychology; [or]
- 19 (18) Refuses, withholds from, denies, or discriminates against an
20 individual with regard to the provision of professional services for which the licensee
21 is licensed and qualified to render because the individual is HIV positive;
- 22 (19) FAILS TO COOPERATE WITH A LAWFUL INVESTIGATION CONDUCTED
23 BY THE BOARD; OR
- 24 (20) DOES AN ACT THAT IS INCONSISTENT WITH GENERALLY ACCEPTED
25 PROFESSIONAL STANDARDS IN THE PRACTICE OF PSYCHOLOGY.
- 26 18-313.1.
- 27 (A) IF, AFTER A HEARING UNDER § 18-315 OF THIS SUBTITLE, THE BOARD
28 FINDS THAT THERE ARE GROUNDS UNDER § 18-313 OF THIS SUBTITLE TO SUSPEND
29 OR REVOKE A LICENSE OR TO REPRIMAND A LICENSEE, THE BOARD MAY IMPOSE A
30 MONETARY PENALTY NOT EXCEEDING \$10,000:
- 31 (1) INSTEAD OF SUSPENDING THE LICENSE; OR
- 32 (2) IN ADDITION TO SUSPENDING OR REVOKING THE LICENSE.
- 33 (B) THE BOARD SHALL ADOPT REGULATIONS TO SET STANDARDS FOR THE
34 IMPOSITION OF MONETARY PENALTIES UNDER THIS SECTION.

1 (C) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS SECTION
2 INTO THE GENERAL FUND OF THE STATE.

3 18-314.

4 (a) If, in investigating an allegation brought against a licensee under this
5 title, the Board has reason to believe that the licensee may cause harm to persons
6 affected by the licensee's practice of psychology, the Board, on its own initiative,
7 [shall] MAY direct the licensee to submit to an appropriate examination by a
8 psychologist or physician designated by the Board.

9 (b) In return for the privilege given to a licensee to practice psychology in the
10 State, the licensee is deemed to have:

11 (1) Consented to submit to an examination under this section, if
12 requested by the Board in writing; and

13 (2) Waived any claim of privilege as to the testimony or examination
14 reports of the examining psychologist or physician.

15 (c) The failure or refusal of the licensee to submit to an examination required
16 under subsection (b) of this section is prima facie evidence of the licensee's inability to
17 practice psychology competently, unless the Board finds that the failure or refusal
18 was beyond the control of the licensee.

19 (d) The Board shall pay the cost of any examination made under this section.
20 18-315.

21 (a) Except as otherwise provided in the Administrative Procedure Act, before
22 the Board takes any action under § 18-313 of this subtitle, it shall give the individual
23 against whom the action is contemplated an opportunity for a hearing before the
24 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 individual shall be served personally
28 or by certified mail, return receipt requested, bearing a postmark from the United
29 States Postal Service, to the last known address of the individual at least 10 days
30 before the hearing.

31 (d) The individual may be represented at the hearing by counsel.

32 (e) (1) Over the signature of an officer or the administrator of the Board, the
33 Board may issue subpoenas and administer oaths in connection with any
34 investigation under this title and any hearings or proceedings before the Board.

35 (2) The Board shall issue subpoenas on behalf of the individual if the
36 individual:

1 (i) Requests that the Board do so; and

2 (ii) States under oath that the testimony or evidence sought is
3 necessary to the individual's defense.

4 (3) If, without lawful excuse, an individual disobeys a subpoena from the
5 Board or an order by the Board to take an oath, testify, or answer a question, on
6 petition of the Board, a court of competent jurisdiction may compel compliance with
7 the subpoena.

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

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

13 18-316.

14 (a) Except as provided in this section for an action under § 18-313 of this
15 subtitle, any person aggrieved by a final decision of the Board in a contested case, as
16 defined in the Administrative Procedure Act, may:

17 (1) Appeal that decision to the Board of Review; and

18 (2) Then take any further appeal allowed by the Administrative
19 Procedure Act.

20 (b) (1) Any person aggrieved by a final decision of the Board under § 18-313
21 of this subtitle may not appeal to the Secretary or Board of Review but may take a
22 direct judicial appeal.

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

25 (C) A DECISION OF THE BOARD TO DENY, SUSPEND, OR REVOKE A LICENSE
26 MAY NOT BE STAYED PENDING JUDICIAL REVIEW.

27 18-317.1.

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

30 (1) THE UNAUTHORIZED PRACTICE OF PSYCHOLOGY; OR

31 (2) CONDUCT THAT IS A GROUND FOR DISCIPLINARY ACTION UNDER §
32 18-313 OF THIS SUBTITLE.

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

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

1 (2) THE ATTORNEY GENERAL, IN THE NAME OF THE STATE; OR

2 (3) A STATE'S ATTORNEY, IN THE NAME OF THE STATE.

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

5 (1) RESIDES; OR

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

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

10 (E) AN ACTION UNDER THIS SECTION IS IN ADDITION TO AND NOT INSTEAD
11 OF CRIMINAL PROSECUTION FOR THE UNAUTHORIZED PRACTICE OF PSYCHOLOGY
12 UNDER § 18-401 OF THIS TITLE OR DISCIPLINARY ACTION UNDER § 18-313 OF THIS
13 SUBTITLE.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 1999.