
By: **Senators Teitelbaum, Collins, Dyson, Hollinger, and Sfikas**
Introduced and read first time: January 27, 1999
Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Health Occupations - Sexual Misconduct**

3 FOR the purpose of establishing that health care providers may not assert consent of
4 the client or patient as a defense to certain types of sexual misconduct;
5 establishing that in such cases the sexual history of the client or patient and the
6 reputation of the client or patient regarding sexual conduct is irrelevant and
7 may not be subject to discovery or admitted as evidence; and generally relating
8 to health occupations and disciplinary actions involving sexual misconduct.

9 BY repealing and reenacting, with amendments,
10 Article - Health Occupations
11 Section 1-212
12 Annotated Code of Maryland
13 (1994 Replacement Volume and 1998 Supplement)

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

16 **Article - Health Occupations**

17 1-212.

18 (a) Each health occupation board authorized to issue a license or certificate
19 under this article shall adopt regulations that:

20 (1) Prohibit sexual misconduct; and

21 (2) Provide for the discipline of a licensee or certificate holder found to be
22 guilty of sexual misconduct.

23 (b) For the purposes of the regulations adopted in accordance with subsection
24 (a) of this section, "sexual misconduct" shall be construed to include, at a minimum,
25 behavior where a health care provider:

26 (1) Has engaged in sexual behavior with a client or patient in the context
27 of a professional evaluation, treatment, procedure, or other service to the client or

1 patient, regardless of the setting in which professional service is provided OR
2 WHETHER THE CLIENT OR PATIENT CONSENTED;

3 (2) Has engaged in sexual behavior with a client or patient under the
4 pretense of diagnostic or therapeutic intent or benefit REGARDLESS OF WHETHER
5 THE CLIENT OR PATIENT CONSENTED; or

6 (3) Has engaged in any sexual behavior that would be considered
7 unethical or unprofessional according to the code of ethics, professional standards of
8 conduct, or regulations of the appropriate health occupation board under this article.

9 (c) Subject to the provisions of the law governing contested cases, if an
10 applicant, licensee, or certificate holder violates a regulation adopted under
11 subsection (a) of this section a board may:

12 (1) Deny a license or certificate to the applicant;

13 (2) Reprimand the licensee or certificate holder;

14 (3) Place the licensee or certificate holder on probation; or

15 (4) Suspend or revoke the license or certificate.

16 (d) (1) AN APPLICANT, LICENSEE, OR CERTIFICATE HOLDER MAY NOT
17 ASSERT CONSENT OF THE CLIENT OR PATIENT AS A DEFENSE TO:

18 (I) THE TYPES OF SEXUAL MISCONDUCT SPECIFIED IN
19 SUBSECTION (B)(1) AND (2) OF THIS SECTION; OR

20 (II) THE TYPE OF SEXUAL MISCONDUCT SPECIFIED IN SUBSECTION
21 (B)(3) OF THIS SECTION, IF THE CODE OF ETHICS, PROFESSIONAL STANDARDS OF
22 CONDUCT, OR REGULATIONS OF THE APPROPRIATE HEALTH OCCUPATION BOARD
23 ESTABLISH THAT THE CONDUCT OF THE APPLICANT, LICENSEE, OR CERTIFICATE
24 HOLDER IS UNETHICAL OR UNPROFESSIONAL REGARDLESS OF WHETHER THE
25 CLIENT OR PATIENT CONSENTED.

26 (2) IN A CASE IN WHICH AN APPLICANT, LICENSEE, OR CERTIFICATE
27 HOLDER IS ALLEGED TO HAVE COMMITTED ANY OF THE TYPES OF SEXUAL
28 MISCONDUCT SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION, THE SEXUAL
29 HISTORY OF THE CLIENT OR PATIENT AND THE REPUTATION OF THE CLIENT OR
30 PATIENT REGARDING SEXUAL CONDUCT ARE IRRELEVANT AND MAY NOT BE
31 SUBJECT TO DISCOVERY OR ADMITTED AS EVIDENCE.

32 (E) This section does not negate any other disciplinary action under a health
33 occupation board's statutory or regulatory provisions.

34 [(e)] (F) (1) Each year, each health occupation board shall submit a
35 statistical report to the Secretary, indicating the number of complaints of sexual
36 misconduct received and the resolution of each complaint. The report shall cover the
37 period beginning October 1 and ending the following September 30 and shall be

1 submitted by the board not later than the November 15 following the reporting
2 period.

3 (2) The Secretary shall compile the information received from the health
4 occupation boards and submit an annual report to the General Assembly, in
5 accordance with § 2-1246 of the State Government Article, not later than December
6 31 of each year.

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