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By: **Delegate Weir**

Introduced and read first time: February 7, 2001

Assigned to: Environmental Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Board of Physician Quality Assurance - Complaint and Hearing Procedures**

3 FOR the purpose of prohibiting the Board of Physician Quality Assurance and the  
4 Medical and Chirurgical Faculty of the State of Maryland from referring an  
5 allegation against a provider in a standard of care case unless the patient or  
6 custodian, guardian, or personal representative of the patient provides a certain  
7 affidavit; prohibiting the use of hearsay in medical testimony in a hearing before  
8 the Board; prohibiting the issuance of a subpoena for medical records on a  
9 random basis; requiring certain court approval before a Board investigator may  
10 enter the places of business of a provider; altering the identity of the persons  
11 who may allege grounds for an investigation and the identity of the persons  
12 whom an investigator may interview in an investigation; limiting the use of  
13 hearsay in a hearing before the Board; requiring the Board to adopt regulations  
14 to allow for the taking of depositions and discovery during a certain period prior  
15 to a hearing on charges; providing that the investigative files of the Board  
16 investigator shall be fully discoverable by the defendant; requiring the Board to  
17 maintain an expert witness roster and to make the roster available to a  
18 defendant in a Board proceeding; providing for certain presumptions regarding  
19 providers listed on the roster; providing for a certain rebuttable presumption  
20 relating to standard of care; providing for the retroactive application of this Act;  
21 authorizing any health care provider subject to a Board proceeding during a  
22 certain period to request that the Board vacate the order and rehear the charges  
23 previously alleged under the conditions and requirements imposed by this Act; if  
24 a provider's privilege to practice medicine has been revoked or suspended  
25 without a showing of injury to a patient, requiring the Board to obtain a court  
26 order reinstating the provider and expunging the disciplinary record; and  
27 generally relating to the complaint and hearing procedures of the Board of  
28 Physician Quality Assurance.

29 BY repealing and reenacting, with amendments,  
30 Article - Health Occupations  
31 Section 14-206, 14-401, and 14-405  
32 Annotated Code of Maryland  
33 (2000 Replacement Volume)

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

3 **Article - Health Occupations**

4 14-206.

5 (a) (1) Over the signature of an officer, the executive director, or the deputy  
6 director of the Board, the Board may issue subpoenas and administer oaths in  
7 connection with any investigation under this title and any hearings or proceedings  
8 before it.

9 (2) (I) ANY SUBPOENA FOR MEDICAL RECORDS ISSUED SHALL SEEK  
10 INFORMATION RELEVANT TO WRITTEN ALLEGATIONS THAT ARE THE BASIS FOR A  
11 DISCIPLINARY OR OTHER ACTION UNDER THIS TITLE.

12 (II) A SIGNATURE MAY NOT BE ISSUED FOR PATIENT MEDICAL  
13 RECORDS SOUGHT ON A RANDOM BASIS.

14 (b) If, without lawful excuse, a person disobeys a subpoena from the Board or  
15 an order by the Board to take an oath or to testify or answer a question, then, on  
16 petition of the Board, a court of competent jurisdiction may punish the person as for  
17 contempt of court.

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

20 (d) (1) If the entry is necessary to carry out a duty under this title, ON  
21 APPROVAL BY A COURT OF COMPETENT JURISDICTION, the Board's executive director  
22 or other duly authorized agent or investigator of the Board may enter at any  
23 reasonable hour a place of business of a licensed physician or public premises.

24 (2) A person may not deny or interfere with an entry under this  
25 subsection.

26 (3) A person who violates any provision of this subsection is guilty of a  
27 misdemeanor and on conviction is subject to a fine not exceeding \$100.

28 (e) The Board may issue a cease and desist order or obtain injunctive relief for  
29 practicing medicine without a license.

30 14-401.

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

34 (b) If an allegation of grounds for disciplinary or other action is made by a  
35 patient or a [family member] CUSTODIAN, GUARDIAN, OR PERSONAL  
36 REPRESENTATIVE of a patient in a standard of care case and a full investigation

1 results from that allegation, the full investigation shall include an offer of an  
2 interview with the patient or a [family member] CUSTODIAN, GUARDIAN, OR  
3 PERSONAL REPRESENTATIVE of the patient who was present on or about the time  
4 that the incident that gave rise to the allegation occurred.

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

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

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

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

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

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

19 1. County medical society; or

20 2. Committee of the Faculty.

21 (III) 1. IN A STANDARD OF CARE CASE, THE BOARD MAY NOT  
22 REFER THE ALLEGATION UNLESS THE PATIENT OR, IF THE PATIENT IS LEGALLY  
23 INCOMPETENT, A CUSTODIAN, GUARDIAN, OR PERSONAL REPRESENTATIVE OF THE  
24 PATIENT PROVIDES AN AFFIDAVIT STATING THAT THE PATIENT OR CUSTODIAN,  
25 GUARDIAN, OR PERSONAL REPRESENTATIVE ALLEGES THAT THE PHYSICIAN FAILED  
26 TO EXERCISE THE APPLICABLE STANDARD OF CARE IN TREATING THE PATIENT.

27 2. IN ALL OTHER CASES, AFTER RECEIPT OF WRITTEN  
28 DOCUMENTATION OF ALLEGED GROUNDS FOR DISCIPLINARY OR OTHER ACTION,  
29 THE BOARD SHALL PERFORM ANY NECESSARY PRELIMINARY INVESTIGATION  
30 BEFORE THE BOARD REFERS THE ALLEGATION TO AN INVESTIGATORY BODY.

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

35 (4) (i) If the Board determines that an agreement for corrective action  
36 is warranted and patient safety is not an issue, the Board shall notify the licensee of  
37 the identified deficiencies and enter into an agreement for corrective action, which

1 may not be made public and which shall not be considered a disciplinary action for  
2 purposes of this subtitle.

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

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

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

10 (iii) The Board shall provide a summary of the corrective action  
11 agreements in the executive director's report of Board activities.

12 (d) (1) The Faculty, all committees of the Faculty, except the physician  
13 rehabilitation committee, and all county medical societies shall refer to the Board all  
14 complaints that [set]:

15 (I) SET forth allegations of grounds for disciplinary action under §  
16 14-404 of this subtitle; AND

17 (II) IN A STANDARD OF CARE CASE, ARE SUPPORTED BY AN  
18 AFFIDAVIT OF THE PATIENT OR, IF THE PATIENT IS LEGALLY INCOMPETENT, A  
19 CUSTODIAN, GUARDIAN, OR PERSONAL REPRESENTATIVE OF THE PATIENT STATING  
20 THAT THE PATIENT OR CUSTODIAN, GUARDIAN, OR PERSONAL REPRESENTATIVE  
21 ALLEGES THE PHYSICIAN FAILED TO EXERCISE THE APPLICABLE STANDARD OF  
22 CARE IN TREATING THE PATIENT.

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

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

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

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

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

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

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

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

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

14 (i) Investigators;

15 (ii) Attorneys;

16 (iii) Accountants;

17 (iv) Expert witnesses;

18 (v) Consultants; and

19 (vi) Mediators.

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

22 (h) Those individuals not licensed under this title but covered under §  
23 14-413(a)(1)(ii)3 and 4 of this subtitle are subject to the hearing provisions of §  
24 14-405 of this subtitle.

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

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

32 14-405.

33 (a) Except as otherwise provided in the Administrative Procedure Act, before  
34 the Board takes any action under § 14-404(a) of this subtitle or § 14-5A-17 of this

1 title, it shall give the individual against whom the action is contemplated an  
2 opportunity for a hearing before a hearing officer.

3 (b) (1) The hearing officer shall give notice and hold the hearing in  
4 accordance with the Administrative Procedure Act except that factual findings shall  
5 be supported by clear and convincing evidence.

6 (2) NOTWITHSTANDING § 10-213(C) OF THE STATE GOVERNMENT  
7 ARTICLE, HEARSAY IS NOT ADMISSIBLE IN MEDICAL TESTIMONY IN A HEARING  
8 BEFORE THE BOARD.

9 (c) The individual may be represented at the hearing by counsel.

10 (d) If after due notice the individual against whom the action is contemplated  
11 fails or refuses to appear, nevertheless the hearing officer may hear and refer the  
12 matter to the Board for disposition.

13 (e) After performing any necessary hearing under this section, the hearing  
14 officer shall refer proposed factual findings to the Board for the Board's disposition.

15 (f) (1) The Board [may] SHALL adopt regulations to [govern] ALLOW FOR  
16 the taking of depositions and discovery [in] AT LEAST 30 DAYS PRIOR TO the hearing  
17 of charges.

18 (2) THE INVESTIGATION FILES OF THE BOARD INVESTIGATOR SHALL BE  
19 FULLY SUBJECT TO INSPECTION AND DISCOVERY BY THE DEFENDANT IN A BOARD  
20 PROCEEDING.

21 (G) (1) (I) THE BOARD SHALL CREATE AND MAINTAIN AN EXPERT  
22 WITNESS ROSTER OF PHYSICIANS AND OTHER HEALTH CARE PROVIDERS WHICH  
23 SHALL BE MADE AVAILABLE TO A DEFENDANT IN A BOARD PROCEEDING.

24 (II) EACH ENTRY ON THE ROSTER SHALL INDICATE THE  
25 DISCIPLINE OF THE PROVIDER.

26 (2) ANY PROVIDER LISTED ON THE ROSTER SHALL BE PRESUMED TO BE  
27 QUALIFIED TO SERVE AS AN EXPERT WITNESS BEFORE THE BOARD IN TESTIFYING  
28 TO:

29 (I) THE APPLICABLE STANDARD OF CARE FOR THE DISCIPLINE OF  
30 THE PROVIDER; AND

31 (II) THE STANDARD OF CARE EXERCISED IN TREATMENT BY A  
32 DEFENDANT IN A BOARD PROCEEDING.

33 (H) IN A STANDARD OF CARE CASE INVOLVING A SURGERY, THE FACT THAT  
34 THE PROCEDURE AT ISSUE WAS PREAPPROVED BY THE HEAD OF THE SURGICAL  
35 DEPARTMENT FOR THE HOSPITAL OR AMBULATORY SURGICAL CENTER IN WHICH  
36 THE SURGERY WAS PERFORMED SHALL CREATE A REBUTTABLE PRESUMPTION THAT

1 THE APPLICABLE STANDARD OF CARE WAS MET IN SCHEDULING THE SURGERY TO  
2 BE PERFORMED.

3 [(g)] (I) The hearing of charges may not be stayed or challenged by any  
4 procedural defects alleged to have occurred prior to the filing of charges.

5 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before May 1, 2002,  
6 any health care provider who was the subject of a proceeding before the Board of  
7 Physician Quality Assurance between November 1, 1995 and October 1, 2001 may  
8 request that the Board vacate any order previously issued during that time and  
9 rehear the charges alleged in that earlier proceeding in accordance with the  
10 standards and requirements imposed by this Act. If, without a showing of injury to a  
11 patient, a provider's privilege to practice medicine has been revoked or suspended for  
12 a breach of the standard of care, the Board shall obtain a court order reinstating the  
13 provider and expunging the disciplinary record.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 2001, and shall apply retroactively to any proceeding before the Board in a  
16 complaint filed on or after November 1, 1995.