

HOUSE BILL 671

Unofficial Copy
J2

2004 Regular Session
(4lr2155)

ENROLLED BILL

-- Health And Government Operations/Education, Health, and Environmental Affairs --

Introduced by ~~Delegate Hubbard~~ Delegates Hubbard, Hurson, Hammen,
Benson, Boteler, Boutin, Bromwell, Costa, Donoghue, Elliott,
Goldwater, Kach, Mandel, McDonough, Morhaim, Murray,
Nathan-Pulliam, Oaks, Pendergrass, Rosenberg, Rudolph, Smigiel, V.
Turner, and Weldon

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Board of Professional Counselors and Therapists - Hearings - Penalties**

3 FOR the purpose of increasing the statute of limitations for the prosecution of certain
4 offenses; adding to the grounds of discipline; giving the Board of Professional
5 Counselors and Therapists the authority to impose a monetary penalty on
6 licensees or certificate holders; ~~allowing the Board to delegate authority to~~
7 ~~conduct a disciplinary hearing to a certain number of Board members;~~
8 prohibiting a stay pending judicial review; allowing the Board to make certain
9 appeals; adding certain injunctive actions; establishing procedures for certain
10 injunctive actions; increasing the penalty provisions certain penalties; and
11 generally relating to the Board of Professional Counselors and Therapists,
12 hearings, and penalties.

13 BY repealing and reenacting, without amendments,

1 Article - Courts and Judicial Proceedings
 2 Section 5-106(a)
 3 Annotated Code of Maryland
 4 (2002 Replacement Volume and 2003 Supplement)

5 BY repealing and reenacting, with amendments,
 6 Article - Courts and Judicial Proceedings
 7 Section 5-106(y)
 8 Annotated Code of Maryland
 9 (2002 Replacement Volume and 2003 Supplement)

10 BY repealing and reenacting, with amendments,
 11 Article - Health Occupations
 12 Section 17-313 ~~through 17-315, 17-315,~~ and 17-402
 13 Annotated Code of Maryland
 14 (2000 Replacement Volume and 2003 Supplement)

15 BY repealing and reenacting, without amendments,
 16 Article - Health Occupations
 17 Section 17-314
 18 Annotated Code of Maryland
 19 (2000 Replacement Volume and 2003 Supplement)

20 BY adding to
 21 Article - Health Occupations
 22 Section 17-313.1 and 17-315.1
 23 Annotated Code of Maryland
 24 (2000 Replacement Volume and 2003 Supplement)

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

27 **Article - Courts and Judicial Proceedings**

28 5-106.

29 (a) Except as provided by this section, a prosecution for a misdemeanor shall
 30 be instituted within 1 year after the offense was committed.

31 (y) A prosecution for a misdemeanor offense under Title 9 AND TITLE 17 of the
 32 Health Occupations Article shall be instituted within 3 years after the offense was
 33 committed.

1

Article - Health Occupations

2 17-313.

3 Subject to the hearing provisions of § 17-314 of this subtitle, the Board, on the
4 affirmative vote of a majority of its members then serving, may deny a certificate to
5 any applicant, place any certificate holder on probation, reprimand any certificate
6 holder, or suspend or revoke a certificate of any certificate holder if the applicant or
7 certificate holder:

8 (1) Fraudulently or deceptively obtains or attempts to obtain a
9 certificate for the applicant or certificate holder or for another;

10 (2) Is addicted to any narcotic or is habitually intoxicated;

11 (3) Aids or abets an unauthorized person in practicing professional
12 counseling or representing to be a certified professional counselor;

13 (4) Violates the code of ethics adopted by the Board;

14 (5) Knowingly violates any provision of this title;

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

18 (7) Is professionally, physically, or mentally incompetent;

19 (8) Submits a false statement to collect a fee;

20 (9) Violates any rule or regulation adopted by the Board;

21 (10) Is disciplined by a licensing or disciplinary authority of any other
22 state or country or convicted or disciplined by a court of any state or country for an act
23 that would be grounds for disciplinary action under the Board's disciplinary statutes;
24 [or]

25 (11) Refuses, withholds from, denies, or discriminates against an
26 individual with regard to the provision of professional services for which the
27 certificate holder is certified and qualified to render because the individual is HIV
28 positive;

29 (12) **COMMITTS AN ACT OF IMMORAL OR UNPROFESSIONAL CONDUCT IN**
30 **THE PRACTICE OF PROFESSIONAL COUNSELING, ALCOHOL AND DRUG COUNSELING,**
31 **OR MARRIAGE AND FAMILY THERAPY; OR**

32 (13) **FAILS TO COOPERATE WITH A LAWFUL INVESTIGATION CONDUCTED**
33 **BY THE BOARD.**

1 17-313.1.

2 (A) IF AFTER A HEARING UNDER § 17-314 OF THIS SUBTITLE THE BOARD
3 FINDS THAT THERE ARE GROUNDS UNDER § 17-313 OF THIS SUBTITLE TO PLACE ANY
4 CERTIFICATE HOLDER ON PROBATION, REPRIMAND ANY CERTIFICATE HOLDER, OR
5 SUSPEND OR REVOKE A LICENSE OR CERTIFICATE, THE BOARD MAY IMPOSE A
6 PENALTY NOT EXCEEDING \$ 5,000:

7 (1) INSTEAD OF PLACING THE LICENSEE OR CERTIFICATE HOLDER ON
8 PROBATION, REPRIMANDING THE LICENSEE OR CERTIFICATE HOLDER, OR
9 SUSPENDING OR REVOKING THE LICENSE OR CERTIFICATE; OR

10 (2) IN ADDITION TO PLACING THE LICENSEE OR CERTIFICATE HOLDER
11 ON PROBATION, REPRIMANDING THE LICENSEE OR CERTIFICATE HOLDER, OR
12 SUSPENDING OR REVOKING THE LICENSE OR CERTIFICATE.

13 (B) THE BOARD SHALL ADOPT REGULATIONS TO SET STANDARDS FOR THE
14 IMPOSITION OF PENALTIES UNDER THIS SECTION.

15 (C) THE BOARD SHALL PAY ANY MONEY COLLECTED UNDER THIS SECTION
16 INTO THE GENERAL FUND OF THE STATE.

17 17-314.

18 (a) Except as otherwise provided in Title 10, Subtitle 2 of the State
19 Government Article, before the Board takes any action under § 17-313 of this subtitle,
20 it shall give the individual against whom the action is contemplated an opportunity
21 for a hearing before the Board.

22 (b) The Board shall give notice and hold the hearing in accordance with Title
23 10, Subtitle 2 of the State Government Article.

24 (c) The hearing notice to be given to the individual shall be served personally
25 or by registered mail to the last known address of the individual at least 30 days
26 before the hearing.

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

28 ~~(E) (1) IN ADDITION TO ANY DELEGATION OF AUTHORITY PROVIDED IN §~~
29 ~~10-205 OF THE STATE GOVERNMENT ARTICLE, THE CHAIRPERSON OF THE BOARD~~
30 ~~MAY DELEGATE AUTHORITY TO CONDUCT A HEARING TO A COMMITTEE CONSISTING~~
31 ~~OF THREE OR MORE BOARD MEMBERS.~~

32 ~~(2) THE COMMITTEE SHALL:~~

33 ~~(I) HOLD AN EVIDENTIARY HEARING; AND~~

34 ~~(II) PREPARE A RECOMMENDATION FOR CONSIDERATION BY A~~
35 ~~MAJORITY OF THE BOARD MEMBERS THEN SERVING, WHO MAY INCLUDE MEMBERS~~
36 ~~OF THE COMMITTEE.~~

1 ~~(3) THE COMMITTEE SHALL GIVE TO EACH PARTY NOTICE OF THE~~
 2 ~~OPPORTUNITY TO FILE EXCEPTIONS AND PRESENT ARGUMENT TO THE BOARD~~
 3 ~~REGARDING THE DECISION OF THE COMMITTEE.~~

4 ~~{(e)}~~ ~~(F)~~ (1) Over the signature of an officer or the administrator of the
 5 Board, the Board may issue subpoenas and administer oaths in connection with any
 6 investigation under this title and any hearings or proceedings before it.

7 (2) If, without lawful excuse, a person disobeys a subpoena from the
 8 Board or an order by the Board to take an oath or to testify or answer a question,
 9 then, on petition of the Board, a court of competent jurisdiction may punish the
 10 person as for contempt of court.

11 ~~{(f)}~~ ~~(G)~~ If after due notice the individual against whom the action is
 12 contemplated fails or refuses to appear, the Board may hear and determine the
 13 matter.

14 17-315.

15 (a) Except as provided in this section for an action under § 17-313 of this
 16 subtitle, any person aggrieved by a final decision of the Board in a contested case, as
 17 defined in § 10-201 of the State Government Article, may:

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

19 (2) Then take any further appeal allowed by Title 10, Subtitle 2 of the
 20 State Government Article.

21 (b) Any person aggrieved by a final decision of the Board under § 17-313 of
 22 this subtitle:

23 (1) May not appeal to the Board of Review; but

24 (2) May take a direct judicial appeal as provided in Title 10, Subtitle 2 of
 25 the State Government Article.

26 (C) AN ORDER OF THE BOARD MAY NOT BE STAYED PENDING JUDICIAL
 27 REVIEW.

28 (D) THE BOARD MAY APPEAL FROM ANY DECISION THAT REVERSES OR
 29 MODIFIES ITS ORDER.

30 17-315.1.

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 PROFESSIONAL COUNSELING
 34 AND CLINICAL PROFESSIONAL COUNSELING, ALCOHOL AND DRUG COUNSELING AND
 35 CLINICAL ALCOHOL AND DRUG COUNSELING, OR MARRIAGE AND FAMILY THERAPY
 36 AND CLINICAL MARRIAGE AND FAMILY THERAPY; OR

1 (2) CONDUCT THAT IS A GROUND FOR DISCIPLINARY ACTION UNDER §
2 17-313 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, IN THE NAME OF THE STATE; OR

6 (3) A STATE'S ATTORNEY, IN THE NAME OF THE 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 THAT ANY PERSON WILL SUSTAIN ANY
12 DAMAGE IF AN INJUNCTION IS NOT GRANTED IS NOT REQUIRED FOR AN ACTION
13 UNDER THIS SECTION.

14 (E) AN ACTION UNDER THIS SECTION IS IN ADDITION TO AND NOT INSTEAD
15 OF CRIMINAL PROSECUTION FOR THE UNAUTHORIZED PRACTICE OF PROFESSIONAL
16 COUNSELING AND CLINICAL PROFESSIONAL COUNSELING, ALCOHOL AND DRUG
17 COUNSELING AND CLINICAL ALCOHOL AND DRUG COUNSELING, OR MARRIAGE AND
18 FAMILY THERAPY AND CLINICAL MARRIAGE AND FAMILY THERAPY UNDER
19 §§ 17-3A-11 AND 17-401 OF THIS TITLE OR DISCIPLINARY ACTION UNDER § 17-313 OF
20 THIS SUBTITLE.

21 17-402.

22 (a) Any person who violates any provision of § 17-401 of this subtitle is guilty
23 of a misdemeanor and on conviction is subject to a fine not exceeding [\$500] ~~\$5,000~~
24 \$2,000 or imprisonment not exceeding [6 months] ~~3-YEARS~~ 1 YEAR or both.

25 (b) Each violation of this section is a separate offense.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2004.