
By: **Delegate Barve**

Introduced and read first time: February 11, 2004

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Board of Examiners of Nursing Home Administrators - Inactive Status -**
3 **Hearings - Penalties**

4 FOR the purpose of authorizing the State Board of Examiners of Nursing Home
5 Administrators to place licensees on inactive status under certain
6 circumstances; authorizing the Board to impose monetary penalties for
7 licensees; requiring Board approval of an acting Nursing Home Administrator
8 designated due to death or unexpected cause; authorizing the Board to delegate
9 authority to a committee of Board members to conduct certain hearings;
10 prohibiting a stay pending review of a Board order; establishing procedures to
11 issue cease and desist letters and injunctive actions; authorizing the Board to
12 impose monetary penalties for nonlicensees; increasing certain penalties; and
13 generally relating to the laws of the Board.

14 BY repealing and reenacting, with amendments,
15 Article - Health Occupations
16 Section 9-301, 9-314 through 9-316, and 9-407
17 Annotated Code of Maryland
18 (2000 Replacement Volume and 2003 Supplement)

19 BY adding to
20 Article - Health Occupations
21 Section 9-312.1, 9-314.1, 9-316.1, and 9-408
22 Annotated Code of Maryland
23 (2000 Replacement Volume and 2003 Supplement)

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

1

Article - Health Occupations

2 9-301.

3 (a) Except as otherwise provided in this section, an individual shall be
4 licensed by the Board before the individual may practice as a nursing home
5 administrator in this State.

6 (b) (1) [Except] SUBJECT TO APPROVAL OF THE BOARD, EXCEPT as
7 provided in paragraph (2) of this subsection, if a licensee leaves or is removed from a
8 position as a nursing home administrator by death or for any other unexpected cause,
9 the owner of the nursing home or other appropriate nursing home authority shall
10 immediately designate a licensed nursing home administrator to serve in that
11 capacity.

12 (2) (i) In the event a nursing home administrator is not available, the
13 owner or other appropriate nursing home authority may appoint a nonlicensed person
14 to serve in the capacity of acting nursing home administrator for a period not to
15 exceed 90 days.

16 (ii) The owner or other appropriate nursing home authority shall
17 immediately notify the Board of the appointment and forward the credentials of the
18 person appointed to the Board for evaluation to assure that the person appointed is
19 experienced, trained, and competent.

20 (iii) The 90-day period begins on the date that the licensee leaves or
21 is removed from the position as a nursing home administrator.

22 (iv) The Board may extend the 90-day period for a further period of
23 not more than 30 days.

24 9-312.1.

25 (A) (1) THE BOARD SHALL PLACE A LICENSEE ON INACTIVE STATUS, IF THE
26 LICENSEE SUBMITS TO THE BOARD:

27 (I) AN APPLICATION FOR INACTIVE STATUS ON THE FORM
28 REQUIRED BY THE BOARD; AND

29 (II) THE INACTIVE STATUS FEE SET BY THE BOARD.

30 (2) THE BOARD SHALL PROVIDE A LICENSEE WHO HAS COMPLIED WITH
31 THE REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION WITH WRITTEN
32 NOTIFICATION OF:

33 (I) THE DATE THAT THE LICENSEE'S INACTIVE STATUS BECOMES
34 EFFECTIVE;

35 (II) THE DATE THAT THE LICENSEE'S INACTIVE STATUS EXPIRES;
36 AND

1 (III) THE CONSEQUENCES OF NOT RESUMING ACTIVE STATUS
2 BEFORE EXPIRATION OF THE PERIOD OF INACTIVE STATUS.

3 (3) AN INDIVIDUAL LICENSED AS A NURSING HOME ADMINISTRATOR ON
4 AN INACTIVE STATUS SHALL RETAIN THE INDIVIDUAL'S ORIGINAL ACTIVE LICENSE
5 NUMBER.

6 (B) A LICENSEE ON INACTIVE STATUS SHALL NOT PRACTICE AS A NURSING
7 HOME ADMINISTRATOR IN THIS STATE.

8 (C) THE BOARD SHALL LICENSE AN INDIVIDUAL ON INACTIVE STATUS WHO
9 APPLIES FOR A LICENSE IF THE INDIVIDUAL:

10 (1) SUBMITS A COMPLETED APPLICATION FORM FOR REACTIVATION OF
11 A LICENSE ON THE FORM REQUIRED BY THE BOARD WITHIN 5 YEARS OF OBTAINING
12 INACTIVE STATUS;

13 (2) COMPLIES WITH THE RENEWAL REQUIREMENTS IN EFFECT AT THE
14 TIME THE INDIVIDUAL SEEKS TO REACTIVATE THE LICENSE;

15 (3) MEETS THE CONTINUING EDUCATION REQUIREMENTS SET BY THE
16 BOARD;

17 (4) HAS NOT PRACTICED AS A NURSING HOME ADMINISTRATOR IN THIS
18 STATE WHILE ON INACTIVE STATUS;

19 (5) PAYS ALL APPROPRIATE FEES SET BY THE BOARD; AND

20 (6) IS OTHERWISE ENTITLED TO BE LICENSED.

21 (D) THE BOARD MAY NOT REACTIVATE THE LICENSE OF AN INDIVIDUAL WHO
22 FAILS TO APPLY FOR REACTIVATION OF THE LICENSE WITHIN THE 5-YEAR PERIOD
23 OF INACTIVE STATUS, UNLESS THE INDIVIDUAL:

24 (1) SUBMITS A NEW APPLICATION;

25 (2) COMPLETES A BOARD APPROVED 1-MONTH ADMINISTRATOR
26 REFRESHER PROGRAM; AND

27 (3) PASSES THE STATE'S STANDARDS EXAMINATION.

28 9-314.

29 (a) The Board shall investigate and take appropriate action as to any
30 complaint filed with the Board that alleges that a licensee has failed to meet any
31 standard of the Board.

32 (b) Subject to the hearing provisions of § 9-315 of this subtitle, the Board may
33 deny a license or limited license to any applicant, reprimand any licensee or holder of
34 a limited license, place any licensee or holder of a limited license on probation, [or]

1 suspend or revoke a license or limited license, OR IMPOSE A MONETARY PENALTY if
2 the applicant, holder, or licensee:

3 (1) Fraudulently or deceptively obtains or attempts to obtain a license
4 for the licensee or for another;

5 (2) Fraudulently or deceptively uses a license;

6 (3) Otherwise fails to meet substantially the standards of practice
7 adopted by the Board under § 9-205 of this title;

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

11 (5) Provides professional services while:

12 (i) Under the influence of alcohol; or

13 (ii) Using any narcotic or controlled dangerous substance, as
14 defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of
15 therapeutic amounts or without valid medical indication;

16 (6) Is disciplined by a licensing or disciplinary authority of any other
17 state or country or convicted or disciplined by a court of any state or country for an act
18 that would be grounds for disciplinary action under the Board's disciplinary statutes;

19 (7) Practices nursing home administration with an unauthorized person
20 or supervises or aids an unauthorized person in the practice of nursing home
21 administration;

22 (8) Willfully makes or files a false report or record in the practice of
23 nursing home administration;

24 (9) Willfully fails to file or record any report as required under law,
25 willfully impedes or obstructs the filing or recording of the report, or induces another
26 to fail to file or record the report;

27 (10) Submits a false statement to collect a fee;

28 (11) Commits an act of unprofessional conduct in the licensee's practice as
29 a nursing home administrator; or

30 (12) Refuses, withholds from, denies, or discriminates against an
31 individual with regard to the provision of professional services for which the licensee
32 is licensed and qualified to render because the individual is HIV positive.

33 9-314.1.

34 (A) IF, AFTER A HEARING UNDER § 9-315 OF THIS SUBTITLE, THE BOARD
35 FINDS THAT THERE ARE GROUNDS UNDER § 9-314 OF THIS SUBTITLE TO REPRIMAND

1 A LICENSEE, PLACE A LICENSEE ON PROBATION, OR SUSPEND OR REVOKE A
2 LICENSE, THE BOARD MAY IMPOSE A MONETARY PENALTY NOT EXCEEDING \$10,000:

3 (1) INSTEAD OF SUSPENDING OR REVOKING THE LICENSE; OR

4 (2) IN ADDITION TO PLACING THE LICENSEE ON PROBATION OR
5 SUSPENDING OR REVOKING THE LICENSE.

6 (B) IF, AFTER DISCIPLINARY PROCEDURES HAVE BEEN BROUGHT AGAINST A
7 LICENSEE, THE LICENSEE WAIVES THE RIGHT TO A HEARING REQUIRED UNDER THIS
8 SUBTITLE AND IF THE BOARD FINDS THAT THERE ARE GROUNDS UNDER § 9-314 OF
9 THIS SUBTITLE TO REPRIMAND THE LICENSEE, PLACE THE LICENSEE ON
10 PROBATION, OR SUSPEND OR REVOKE A LICENSE, THE BOARD MAY IMPOSE A
11 PENALTY NOT EXCEEDING \$10,000 FOR EACH VIOLATION IN ADDITION TO
12 REPRIMANDING THE LICENSEE, PLACING THE LICENSEE ON PROBATION, OR
13 SUSPENDING OR REVOKING THE LICENSE.

14 (C) THE BOARD SHALL ADOPT REGULATIONS TO SET STANDARDS FOR THE
15 IMPOSITION OF MONETARY PENALTIES UNDER THIS SECTION.

16 (D) THE BOARD SHALL PAY ANY MONETARY PENALTY COLLECTED UNDER
17 THIS SECTION INTO THE GENERAL FUND OF THE STATE.

18 9-315.

19 (a) Except as otherwise provided in the Administrative Procedure Act, before
20 the Board takes any action under § 9-314 of this subtitle, it shall give the individual
21 against whom the action is contemplated an opportunity for a hearing before the
22 Board.

23 (b) The Board shall give notice and hold the hearing in accordance with the
24 Administrative Procedure Act.

25 (C) (1) IN ADDITION TO ANY DELEGATION AUTHORITY PROVIDED IN § 10-205
26 OF THE STATE GOVERNMENT ARTICLE, THE CHAIRMAN OF THE BOARD MAY
27 DELEGATE AUTHORITY TO CONDUCT A HEARING TO A COMMITTEE CONSISTING OF
28 THREE OR MORE BOARD MEMBERS.

29 (2) THE COMMITTEE SHALL:

30 (I) HOLD AN EVIDENTIARY HEARING; AND

31 (II) PREPARE A RECOMMENDED DECISION FOR CONSIDERATION BY
32 A QUORUM OF THE BOARD, WHICH MAY INCLUDE MEMBERS OF THE COMMITTEE.

33 (3) THE COMMITTEE SHALL GIVE TO EACH PARTY NOTICE OF THE
34 OPPORTUNITY TO FILE EXCEPTIONS AND PRESENT ARGUMENT TO THE BOARD
35 REGARDING THE DECISION OF THE COMMITTEE.

1 [(c)] (D) Over the signature of an officer or the executive [secretary]
2 DIRECTOR of the Board, the Board may issue subpoenas and administer oaths in
3 connection with any investigation under this title and any hearings or proceedings
4 before it.

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

9 [(e)] (F) If after due notice the individual against whom the action is
10 contemplated fails or refuses to appear, nevertheless the Board may hear and
11 determine the matter.

12 9-316.

13 (a) Except as provided in this section for an action under § 9-314 of this
14 subtitle, any person aggrieved by a final decision of the Board in a contested case, as
15 defined in the Administrative Procedure Act, may:

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

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

19 (b) (1) Any person aggrieved by a final decision of the Board under § 9-314
20 of this subtitle may not appeal to the Secretary or Board of Review but may take a
21 direct judicial appeal.

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

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

26 9-316.1.

27 (A) THE BOARD MAY ISSUE A CEASE AND DESIST ORDER FOR PRACTICING
28 NURSING HOME ADMINISTRATION WITHOUT A LICENSE OR WITH AN
29 UNAUTHORIZED PERSON OR FOR SUPERVISING OR AIDING AN UNAUTHORIZED
30 PERSON IN THE PRACTICE OF NURSING HOME ADMINISTRATION.

31 (B) (1) AN ACTION FOR AIDING AND ABETTING MAY BE MAINTAINED IN THE
32 NAME OF THE STATE OR THE BOARD TO ENJOIN:

33 (I) THE UNAUTHORIZED PRACTICE OF NURSING HOME
34 ADMINISTRATION; OR

35 (II) CONDUCT THAT IS A GROUND FOR DISCIPLINARY ACTION
36 UNDER § 9-314 OF THIS SUBTITLE.

- 1 (2) AN ACTION UNDER THIS SECTION MAY BE BROUGHT BY:
- 2 (I) THE BOARD, IN ITS OWN NAME;
- 3 (II) THE ATTORNEY GENERAL, IN THE NAME OF THE STATE; OR
- 4 (III) A STATE'S ATTORNEY, IN THE NAME OF THE STATE.

5 (3) AN ACTION UNDER THIS SECTION SHALL BE BROUGHT IN THE
6 COUNTY WHERE THE DEFENDANT RESIDES OR ENGAGES IN THE ACTS SOUGHT TO
7 BE ENJOINED.

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

11 (5) AN ACTION UNDER THIS SECTION IS IN ADDITION TO AND NOT
12 INSTEAD OF CRIMINAL PROSECUTION FOR THE UNAUTHORIZED PRACTICE OF
13 NURSING HOME ADMINISTRATION UNDER § 9-401 OF THIS TITLE OR DISCIPLINARY
14 ACTION UNDER § 9-314 OF THIS SUBTITLE.

15 9-407.

16 A person who violates any provision of this title is guilty of a misdemeanor and
17 on conviction is subject to:

- 18 (1) A fine not exceeding [\$1,000] \$5,000 for a first offense; and
- 19 (2) A fine not exceeding [\$5,000] \$10,000 or imprisonment not exceeding
20 [6 months] 3 YEARS or both for any subsequent violation of the same provision.

21 9-408.

22 (A) ANY PERSON WHO VIOLATES §§ 9-401 THROUGH 9-404 OF THIS SUBTITLE
23 IS SUBJECT TO A CIVIL FINE OF NOT MORE THAN \$50,000 TO BE ASSESSED BY THE
24 BOARD.

25 (B) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS SECTION
26 INTO THE GENERAL FUND OF THE STATE.

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