

HOUSE BILL 944

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2004 Regular Session
4lr1775

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

Introduced and read first time: February 11, 2004

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 2004

CHAPTER _____

1 AN ACT concerning

2 **State Acupuncture Board - Maryland Acupuncture Act - Revisions**

3 FOR the purpose of requiring that certain prosecutions under the Maryland
4 Acupuncture Act be instituted within a certain time period; altering the term of
5 the members of the State Acupuncture Board; providing that certain licensees
6 have a certain grace period for license renewal under certain circumstances;
7 prohibiting the Board from placing licensees on inactive status for more than a
8 certain time period; requiring the Board to reactivate a license under certain
9 circumstances; authorizing, instead of requiring, the Board to reinstate certain
10 licenses under certain circumstances; providing for the reinstatement of certain
11 licenses under certain circumstances; prohibiting the Board from assessing a
12 certain fee on certain licensees under certain circumstances; requiring certain
13 individuals to obtain a certain license in a certain manner; establishing certain
14 grounds for disciplinary action against certain licensees; ~~authorizing the Board~~
15 ~~chairman to delegate certain authority to conduct certain hearings to a certain~~
16 ~~committee; requiring a certain committee to hold certain hearings, prepare~~
17 ~~certain recommendations, and give certain notice to certain parties;~~ increasing
18 certain penalties for a violation of the Maryland Acupuncture Act; requiring the
19 Board to send each licensee a certain notice in a certain manner and on or before
20 a certain date; and generally relating to the State Acupuncture Board and the
21 Maryland Acupuncture Act.

22 BY repealing and reenacting, with amendments,
23 Article - Courts and Judicial Proceedings
24 Section 5-106(y)

1 Annotated Code of Maryland
2 (2002 Replacement Volume and 2003 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Health Occupations
5 Section 1A-202(g), 1A-306, 1A-307, 1A-309, ~~1A-310~~, and 1A-403
6 Annotated Code of Maryland
7 (2000 Replacement Volume and 2003 Supplement)

8 BY repealing and reenacting, without amendments,
9 Article - Health Occupations
10 Section 1A-202(a) and 1A-310
11 Annotated Code of Maryland
12 (2000 Replacement Volume and 2003 Supplement)

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

15 **Article - Courts and Judicial Proceedings**

16 5-106.

17 (y) A prosecution for a misdemeanor offense under TITLE 1A OR Title 9 of the
18 Health Occupations Article shall be instituted within 3 years after the offense was
19 committed.

20 **Article - Health Occupations**

21 1A-202.

22 (a) (1) The Board consists of seven members appointed by the Governor.

23 (2) Of the seven members:

24 (i) Five shall be licensed acupuncturists appointed from a list
25 submitted as provided in subsection (c) of this section; and

26 (ii) Two shall be consumer members.

27 (g) (1) The term of a member is [3] 4 years.

28 (2) The terms of members are staggered as required by the terms
29 provided for members of the Board on July 1, 1994.

30 (3) At the end of a term, a member continues to serve until a successor is
31 appointed and qualifies.

32 (4) A member may not serve more than two consecutive full terms.

1 (5) A member who is appointed after a term has begun serves only for
2 the rest of the term and until a successor is appointed and qualifies.

3 1A-306.

4 (a) (1) The Board shall provide for the term and renewal of licenses under
5 this section.

6 (2) The term of a license may not be more than 3 years.

7 (3) A license expires at the end of its term, unless the license is renewed
8 for a term as provided by the Board.

9 (b) At least 1 month before the license expires, the Board shall send to the
10 licensee, by first-class mail to the last known address of the licensee, a renewal notice
11 that states:

12 (1) The date on which the current license expires;

13 (2) The date by which the renewal application must be received by the
14 Board for the renewal to be issued and mailed before the license expires; and

15 (3) The amount of the renewal fee.

16 (c) Before the license expires, the licensee periodically may renew it for an
17 additional term, if the licensee:

18 (1) Otherwise is entitled to be licensed;

19 (2) Pays to the Board a renewal fee set by the Board; and

20 (3) Submits to the Board:

21 (i) A renewal application on the form that the Board requires; and

22 (ii) Satisfactory evidence of compliance with any continuing
23 education requirements set under this section for license renewal.

24 (d) In addition to any other qualifications and requirements established by
25 the Board, the Board may establish continuing education requirements as a condition
26 to the renewal of licenses under this section.

27 (e) The Board shall renew the license of and issue a renewal certificate to each
28 licensee who meets the requirements of this section.

29 (F) AN ACUPUNCTURIST HAS A GRACE PERIOD OF 30 DAYS AFTER THE
30 ACUPUNCTURIST'S LICENSE EXPIRES IN WHICH TO RENEW IT RETROACTIVELY, IF
31 THE ACUPUNCTURIST:

32 (1) OTHERWISE IS ENTITLED TO HAVE THE LICENSE RENEWED; AND

1 (2) PAYS TO THE BOARD THE RENEWAL FEE AND ANY LATE FEE SET BY
2 THE BOARD.

3 [(f)] (G) A licensee may advertise only as permitted by regulations adopted by
4 the Board.

5 1A-307.

6 (a) (1) The Board shall place a licensee on inactive status if the licensee
7 submits to the Board:

8 [(1)] (I) An application for inactive status on the form required by
9 the Board; and

10 [(2)] (II) The inactive status fee set by the Board.

11 (2) THE BOARD MAY NOT PLACE A LICENSEE ON INACTIVE STATUS FOR
12 MORE THAN 6 YEARS.

13 (b) The Board shall [issue] REACTIVATE a license to an individual who is on
14 inactive status if the individual complies with the renewal requirements that exist at
15 the time the individual changes from inactive to active status.

16 (c) The Board [shall] MAY reinstate the license of a former licensee who has
17 failed to renew the license for any reason if the former licensee:

18 (1) Meets the [renewal] CONTINUING EDUCATION requirements of §
19 1A-306 of this subtitle FOR EACH YEAR THAT THE LICENSE HAS LAPSED; [and]

20 (2) APPLIES FOR REINSTATEMENT MORE THAN 30 DAYS AFTER THE
21 LICENSE RENEWAL DEADLINE;

22 (3) SUBMITS TO THE BOARD AN APPLICATION FOR REINSTATEMENT ON
23 THE FORM REQUIRED BY THE BOARD; AND

24 [(2)] (4) Pays to the Board a reinstatement fee AND A RENEWAL FEE set
25 by the Board.

26 (D) THE BOARD MAY NOT ASSESS THE REINSTATEMENT FEE REQUIRED
27 UNDER SUBSECTION (C) OF THIS SECTION ON AN INDIVIDUAL WHO HAS BEEN ON
28 INACTIVE STATUS FOR MORE THAN 6 YEARS IF THE INDIVIDUAL CAN PROVIDE
29 DOCUMENTATION OF MAINTAINING AN ACTIVE LICENSE IN ANOTHER STATE.

30 (E) AN INDIVIDUAL WHO HAS BEEN PREVIOUSLY LICENSED BY THE BOARD
31 SHALL OBTAIN A LICENSE ONLY BY MEANS OF LICENSE RENEWAL OR
32 REINSTATEMENT AS PROVIDED IN THIS ARTICLE AND IN REGULATIONS ADOPTED BY
33 THE BOARD.

1 1A-309.

2 Subject to the hearing provisions of § 1A-310 of this subtitle, the Board, on the
3 affirmative vote of a majority of its full authorized membership, may deny a license to
4 practice acupuncture to any applicant, reprimand any licensee, place any licensee on
5 probation, or suspend or revoke a license if the licensee:

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

8 (2) Fraudulently or deceptively:

9 (i) Uses a license; or

10 (ii) Solicits or advertises;

11 (3) Is guilty of immoral or unprofessional conduct in the practice of
12 acupuncture;

13 (4) Is professionally, physically, or mentally incompetent;

14 (5) Provides professional services while:

15 (i) Under the influence of alcohol; or

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

19 (6) Knowingly violates any provision of this title or any rule or
20 regulation of the Board adopted under this title;

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

24 (8) Practices acupuncture with an unauthorized person or assists an
25 unauthorized person in the practice of acupuncture;

26 (9) Is disciplined by the licensing or disciplinary authority of any [other]
27 state or country or convicted or disciplined by a court of any state or country for an act
28 that would be grounds for disciplinary action under this section;

29 (10) Willfully makes or files a false report or record in the practice of
30 acupuncture;

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

34 (12) Submits a false statement to collect a fee;

1 (13) Refuses, withholds from, denies, or discriminates against an
2 individual with regard to the provision of professional services for which the person is
3 licensed and qualified to render because the individual is HIV positive;

4 (14) Fails to display the notice required under § 1A-313 of this subtitle;
5 [or]

6 (15) Fails to cooperate with a lawful investigation conducted by the Board;

7 (16) COMMITS ANY ACT OF GROSS NEGLIGENCE, INCOMPETENCE, OR
8 MISCONDUCT IN THE PRACTICE OF ACUPUNCTURE;

9 (17) ENGAGES IN A COURSE OF CONDUCT THAT IS INCONSISTENT WITH
10 GENERALLY ACCEPTED PROFESSIONAL STANDARDS IN THE PRACTICE OF
11 ACUPUNCTURE; OR

12 (18) FAILS TO COMPLY WITH ANY BOARD ORDER.

13 1A-310.

14 (a) Except as provided in the Administrative Procedure Act, before the Board
15 takes any action under § 1A-309 of this subtitle, it shall give the individual against
16 whom the action is contemplated an opportunity for a hearing before the Board.

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

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

20 ~~(D) (1) THE BOARD CHAIRMAN MAY DELEGATE THE AUTHORITY TO~~
21 ~~CONDUCT A HEARING TO A COMMITTEE CONSISTING OF THREE OR MORE BOARD~~
22 ~~MEMBERS.~~

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

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

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

27 ~~(3) THE COMMITTEE SHALL GIVE TO EACH PARTY THAT IS THE SUBJECT~~
28 ~~OF THE HEARING NOTICE OF THE OPPORTUNITY TO FILE EXCEPTIONS AND PRESENT~~
29 ~~ARGUMENTS TO THE BOARD REGARDING THE DECISION OF THE COMMITTEE.~~

30 ~~{(d)}~~ ~~(E)~~ Over the signature of an officer or the administrator of the Board, the
31 Board may issue subpoenas and administer oaths in connection with any
32 investigation under this title and any hearings or proceedings before it.

33 ~~{(e)}~~ ~~(F)~~ If, after due notice, the individual against whom the action is
34 contemplated fails or refuses to appear, the Board may hear and determine the
35 matter.

1 ~~{(f)}~~ ~~(G)~~ If, after a hearing, an individual is found in violation of § 1A-309 of
2 this subtitle, the individual shall pay the costs of the hearing as specified in a
3 regulation adopted by the Board.

4 1A-403.

5 A person who violates any provision of this subtitle is guilty of a misdemeanor
6 and on conviction is subject to a fine not exceeding [\$1,000] \$5,000 or imprisonment
7 not exceeding [1 year] 3 YEARS or both.

8 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before the effective
9 date of this Act, the State Acupuncture Board shall send to each licensee, by
10 first-class mail to the last known address of the licensee, a summary of the changes
11 made to the Maryland Acupuncture Act by this Act.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2004.