

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 671

(Delegate Hubbard, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

---

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

---

This bill makes various changes to hearing procedures and penalties applicable to the Board of Professional Counselors and Therapists.

---

**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. No effect on the board's special fund expenditures or the Office of Administrative Hearings (OAH) general fund expenditures because the bill is not expected to increase the number of hearings.

**Local Effect:** Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

**Small Business Effect:** Meaningful for violators who are found guilty of a misdemeanor offense and charged a fine.

---

**Analysis**

**Bill Summary:**

*Penalties*

The board may impose a maximum \$5,000 administrative penalty instead of or in addition to placing a licensee or certificate holder on probation, reprimanding a licensee or certificate holder, or suspending or revoking a license or certificate if the individual

engages in certain prohibited acts. Any penalties imposed and collected are paid to the general fund.

The maximum misdemeanor penalty for a person misrepresenting her/himself as certified to practice professional counseling would increase to a \$2,000 fine and/or one year in prison.

Prosecution of misdemeanor offenses committed by board-regulated counselors and therapists must be instituted within three years after the offense was committed.

### *Board Orders and Actions*

An order from the board may not be stayed pending judicial review. The board may appeal any decision that reverses or modifies its order. An action may be maintained in the name of the State or the board to enjoin: (1) the unauthorized practice of professional counseling and clinical professional counseling, alcohol and drug counseling and clinical alcohol and drug counseling, or marriage and family therapy and clinical marriage and family therapy; or (2) conduct that is grounds for disciplinary action for denial, probation, suspension, or revocation of a certificate application or certificate holder.

An action may be brought by the board, in its own name, or by the Attorney General or the State's Attorney, in the State's name. An action must be brought in the county where the defendant resides or engages in the acts sought to be enjoined. An action does not require proof of actual damage or that a person will sustain any damage if an injunction is not granted. An action is in addition to and not instead of criminal prosecution for the unauthorized practice of professional counseling and clinical professional counseling, alcohol and drug counseling and clinical alcohol and drug counseling, or marriage and family therapy and clinical marriage and family therapy for practicing without a license or engaging in specific prohibited acts.

**Current Law:** Generally, prosecution for a misdemeanor must be instituted within one year after the offense was committed. Prosecution for a misdemeanor offense under the State Board of Nursing Home Administrators must be instituted within three years after the offense was committed. A board, commission, or agency head authorized to conduct a contested case hearing must: (1) conduct the hearing; or (2) delegate the authority to conduct the hearing to OAH or, with the prior written approval of the Chief Administrative Law Judge, to a person not employed by OAH.

### *Therapists and Counselors Disciplinary Hearings*

Violations that can lead the board to deny a certificate to a therapist or counselor applicant, place a certificate holder on probation, reprimand a certificate holder, or

suspend or revoke a certificate includes: (1) fraudulently obtaining or attempting to obtain a certificate for the applicant, the certificate holder, or another person; (2) addiction to any narcotic or habitual intoxication; (3) violating the board's code of ethics; (4) submitting a false statement to collect a fee; or (5) being professionally, physically, or mentally incompetent.

Before the board takes any action against an individual, it must give the individual an opportunity for a hearing before the board. The hearing notice must be served personally or by registered mail to the person's last known address at least 30 days before the hearing. The person may be represented at the hearing by counsel. Any person aggrieved by the board's final decision regarding the denial of a certificate to an applicant, the placing of a certificate holder on probation, the reprimanding of a certificate holder, or the suspension or revocation of a certificate holder, may not appeal the decision to the Department of Health and Mental Hygiene's (DHMH) Board of Review but may take a direct judicial appeal. Otherwise, any person aggrieved by a final board decision in a contested case may appeal that decision to the Board of Review and then may take any further appeal allowed.

This board's maximum misdemeanor penalties for a person misrepresenting himself as certified to practice professional counseling is a \$500 fine and/or six-month imprisonment. The maximum misdemeanor penalties vary considerably for other health occupations boards.

**State Revenues:** General fund revenues could increase minimally as a result of the bill's increased misdemeanor monetary penalty provisions from cases heard in the District Court and from board-imposed administrative penalties.

**State Expenditures:** General fund expenditures could increase minimally as a result of the bill's increased incarceration penalty due to people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of these proposed crimes is expected to be minimal.

DHMH special fund expenditures and OAH general fund expenditures are not expected to increase in fiscal 2005 or the out-years because the bill is not expected to increase the number of hearings.

**Local Revenues:** Revenues could increase minimally as a result of the bill's increased monetary penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures could increase minimally as a result of the bill's increased incarceration penalty. Counties pay the full cost of incarceration for people in

their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of Administrative Hearings, Department of Health and Mental Hygiene, Department of Legislative Services

**Fiscal Note History:** First Reader - March 2, 2004  
mll/ljm Revised - House Third Reader - March 19, 2004  
Revised - Enrolled Bill - May 7, 2004

---

Analysis by: Lisa A. Daigle

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510