

BY: Senator Mooney

AMENDMENTS TO SENATE BILL NO. 836

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 7, after “organizations;” insert “altering a certain definition to provide that practice of medicine includes engaging in testimony or offering an opinion as a medical expert witness under certain circumstances; providing certain exemptions from license requirements for practicing medicine; providing that certain medical expert witnesses are subject to certain proceedings of the Board of Physicians under certain circumstances;”.

On page 3, after line 13, insert:

“BY repealing and reenacting, without amendments,

Article - Health Occupations

Section 14-101(a)

Annotated Code of Maryland

(2000 Replacement Volume and 2004 Supplement)

BY repealing and reenacting, with amendments,

Article - Health Occupations

Section 14-101(l), 14-302, and 14-401(i)

Annotated Code of Maryland

(2000 Replacement Volume and 2004 Supplement)

BY adding to

Article - Health Occupations

Section 14-401.1

Annotated Code of Maryland

(2000 Replacement Volume and 2004 Supplement)

(Over)

BY repealing and reenacting, without amendments,

Article - Health Occupations

Section 14-405

Annotated Code of Maryland

(2000 Replacement Volume and 2004 Supplement)

(As enacted by Ch. 5 of the Acts of the General Assembly of the 2004 Special Session)".

AMENDMENT NO. 2

On page 5, after line 16, insert:

"Article - Health Occupations

14-101.

(a) In this title the following words have the meanings indicated.

(1) (1) "Practice medicine" means to engage, with or without compensation[, in medical]:

(i) IN MEDICAL:

1. Diagnosis;

[(ii)] 2. Healing;

[(iii)] 3. Treatment; or

[(iv)] 4. Surgery; OR

(II) IN TESTIFYING AS OR OFFERING AN OPINION AS A MEDICAL EXPERT WITNESS REGARDING THE CONDUCT DESCRIBED IN ITEM (I) OF THIS PARAGRAPH IN THE COURSE OF A LEGAL PROCEEDING.

(2) "Practice medicine" includes doing, undertaking, professing to do, and attempting any of the following:

(i) Diagnosing, healing, treating, preventing, prescribing for, or removing

any physical, mental, or emotional ailment or supposed ailment of an individual:

1. By physical, mental, emotional, or other process that is exercised or invoked by the practitioner, the patient, or both; or

2. By appliance, test, drug, operation, or treatment;

(ii) Ending of a human pregnancy; and

(iii) Performing acupuncture.

(3) "Practice medicine" does not include:

(i) Selling any nonprescription drug or medicine;

(ii) Practicing as an optician; or

(iii) Performing a massage or other manipulation by hand, but by no other means.

14-302.

Subject to the rules, regulations, and orders of the Board, the following individuals may practice medicine without a license:

(1) A medical student or an individual in a postgraduate medical training program that is approved by the Board, while doing the assigned duties at any office of a licensed physician, hospital, clinic, or similar facility;

(2) A physician licensed by and residing in another jurisdiction, while engaging in consultation with a physician licensed in this State;

(3) A physician employed in the service of the federal government while

(Over)

performing the duties incident to that employment;

(4) A physician who resides in and is authorized to practice medicine by any state adjoining this State and whose practice extends into this State, if:

(i) The physician does not have an office or other regularly appointed place in this State to meet patients; and

(ii) The same privileges are extended to licensed physicians of this State by the adjoining state; [and]

(5) An individual while under the supervision of a licensed physician who has specialty training in psychiatry, and whose specialty training in psychiatry has been approved by the Board, if the individual submits an application to the Board on or before October 1, 1993, and either:

(i) 1. Has a master's degree from an accredited college or university;
and

2. Has completed a graduate program accepted by the Board in a behavioral science that includes 1,000 hours of supervised clinical psychotherapy experience; or

(ii) 1. Has a baccalaureate degree from an accredited college or university; and

2. Has 4,000 hours of supervised clinical experience that is approved by the Board; AND

(6) A PHYSICIAN LICENSED BY AND RESIDING IN ANOTHER JURISDICTION, WHILE TESTIFYING IN A CIVIL ACTION OR ATTESTING TO COMPLIANCE WITH OR DEPARTURES FROM STANDARDS OF CARE FOR PURPOSES OF A CERTIFICATE OF QUALIFIED EXPERT UNDER TITLE 3, SUBTITLE 2A OF THE COURTS ARTICLE.

(i) Those individuals not licensed under this title but covered under § 14-302(6) OF THIS TITLE OR § 14-413(a)(1)(ii)3 and 4 of this subtitle are subject to the hearing provisions of § 14-405 of this subtitle.

14-401.1.

SUBJECT TO THE HEARING PROVISIONS OF § 14-405 OF THIS SUBTITLE AND APPROPRIATE PEER REVIEW, THE BOARD, ON THE AFFIRMATIVE VOTE OF A MAJORITY OF THE QUORUM, MAY ISSUE FINDINGS AND A REPORT CONCERNING AN INDIVIDUAL COVERED UNDER § 14-302(6) OF THIS TITLE WHO FALSELY TESTIFIES OR FALSELY OFFERS AN OPINION AS A MEDICAL EXPERT WITNESS REGARDING MEDICAL DIAGNOSIS, HEALING, TREATMENT, OR SURGERY.

14-405.

(a) Except as otherwise provided in the Administrative Procedure Act, before the Board takes any action under § 14-404(a) of this subtitle or § 14-5A-17(a) of this title, it shall give the individual against whom the action is contemplated an opportunity for a hearing before a hearing officer.

(b) (1) The hearing officer shall give notice and hold the hearing in accordance with the Administrative Procedure Act.

(2) Factual findings shall be supported by a preponderance of the evidence.

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

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

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

(Over)

(f) The Board may adopt regulations to govern the taking of depositions and discovery in the hearing of charges.

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