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By: **Delegates Mandel and Barve**

Introduced and read first time: February 10, 2005

Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Examiners of Nursing Home Administrators - Inactive**  
3 **Status - Penalties and Disciplinary Actions**

4 FOR the purpose of requiring the State Board of Examiners of Nursing Home  
5 Administrators' evaluation of an acting nursing home administrator under  
6 certain circumstances; authorizing the Board to place licensees on inactive  
7 status for a certain term under certain circumstances; requiring the Board to  
8 provide written notification to licensees on inactive status under certain  
9 circumstances; prohibiting a licensee on inactive status from practicing as a  
10 nursing home administrator in the State; authorizing the Board to issue a  
11 license to a licensee on inactive status under certain circumstances; authorizing  
12 the Board to reactivate a license for certain individuals under certain  
13 circumstances; requiring a nursing home administrator whose inactive license  
14 expires to meet certain requirements in order to be reinstated; authorizing the  
15 Board to impose certain disciplinary actions and civil fines on licensees under  
16 certain circumstances; requiring the Board to deposit civil fines collected into  
17 the General Fund of the State; altering the signature requirement to issue  
18 subpoenas and administer oaths in connection with certain investigations;  
19 prohibiting a stay of a Board order pending judicial review; establishing  
20 procedures to issue cease and desist letters and file injunctive actions; altering  
21 certain criminal penalties; and generally relating to the licensure and regulation  
22 of nursing home administrators.

23 BY repealing and reenacting, with amendments,  
24 Article - Health Occupations  
25 Section 9-301, 9-314 through 9-316, and 9-407  
26 Annotated Code of Maryland  
27 (2000 Replacement Volume and 2004 Supplement)

28 BY adding to  
29 Article - Health Occupations  
30 Section 9-312.1, 9-314.1, and 9-316.1  
31 Annotated Code of Maryland  
32 (2000 Replacement Volume and 2004 Supplement)

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

3 **Article - Health Occupations**

4 9-301.

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

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

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

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

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

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

26 9-312.1.

27 (A) IF AN INDIVIDUAL HAS BEEN LICENSED BY THE BOARD TO PRACTICE AS A  
28 NURSING HOME ADMINISTRATOR IN THE STATE IN ACCORDANCE WITH THE  
29 REQUIREMENTS OF THIS SUBTITLE, THE INDIVIDUAL MAY BE LICENSED  
30 SUBSEQUENTLY AS A NURSING HOME ADMINISTRATOR ON INACTIVE STATUS,  
31 RETAINING THE LICENSEE'S ORIGINAL LICENSE NUMBER.

32 (B) (1) THE BOARD SHALL PLACE A LICENSEE ON INACTIVE STATUS IF THE  
33 LICENSEE SUBMITS TO THE BOARD:

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

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

1           (2)     A LICENSEE'S INACTIVE STATUS EXPIRES ON THE SECOND  
2 ANNIVERSARY OF ITS EFFECTIVE DATE, UNLESS THE LICENSEE RENEWS THE  
3 INACTIVE STATUS FOR A 2-YEAR TERM AS PROVIDED IN THIS SECTION.

4           (3)     THE BOARD SHALL PROVIDE A LICENSEE WHO HAS COMPLIED WITH  
5 THE REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION WITH WRITTEN  
6 NOTIFICATION OF:

7                   (I)     THE DATE THAT THE LICENSEE'S INACTIVE STATUS BECOMES  
8 EFFECTIVE;

9                   (II)    THE DATE THAT THE LICENSEE'S 2-YEAR TERM OF INACTIVE  
10 STATUS EXPIRES; AND

11                   (III)   THE CONSEQUENCES OF:

12                           1.     NOT RENEWING INACTIVE STATUS BEFORE EXPIRATION  
13 OF THE 2-YEAR TERM OF INACTIVE STATUS; AND

14                           2.     NOT RESUMING ACTIVE STATUS WITHIN THE 5-YEAR  
15 PERIOD OF INACTIVE STATUS, BEGINNING ON THE FIRST DAY OF INACTIVE STATUS.

16    (C)     A LICENSEE ON INACTIVE STATUS MAY NOT PRACTICE AS A NURSING  
17 HOME ADMINISTRATOR IN THE STATE.

18    (D)     THE BOARD SHALL ISSUE A LICENSE TO A LICENSEE WHO IS ON INACTIVE  
19 STATUS IF THE LICENSEE:

20                   (1)     COMPLETES AN APPLICATION FORM FOR REACTIVATION OF A  
21 LICENSE BEFORE EXPIRATION OF THE 2-YEAR TERM OF INACTIVE STATUS ON THE  
22 FORM REQUIRED BY THE BOARD;

23                   (2)     COMPLIES WITH THE RENEWAL REQUIREMENTS IN EFFECT AT THE  
24 TIME THE LICENSEE SEEKS TO REACTIVATE THE LICENSE;

25                   (3)     MEETS THE CONTINUING EDUCATION REQUIREMENTS SET BY THE  
26 BOARD;

27                   (4)     HAS NOT PRACTICED AS A NURSING HOME ADMINISTRATOR IN THE  
28 STATE WHILE ON INACTIVE STATUS;

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

30                   (6)     HAS BEEN ON INACTIVE STATUS FOR LESS THAN 5 YEARS; AND

31                   (7)     IS OTHERWISE ENTITLED TO BE LICENSED.

32    (E)     BEFORE THE BOARD MAY REACTIVATE THE LICENSE OF AN INDIVIDUAL  
33 WHO HAS BEEN ON INACTIVE STATUS FOR 5 YEARS OR MORE, THE INDIVIDUAL  
34 SHALL:

- 1 (1) SUBMIT A NEW APPLICATION;
  - 2 (2) PAY ALL APPROPRIATE FEES SET BY THE BOARD;
  - 3 (3) COMPLETE A BOARD APPROVED 1-MONTH ADMINISTRATOR  
4 REFRESHER PROGRAM; AND
  - 5 (4) PASS THE STATE'S STANDARDS EXAMINATION.
- 6 (F) A NURSING HOME ADMINISTRATOR WHOSE INACTIVE LICENSE EXPIRES  
7 BEFORE THE NURSING HOME ADMINISTRATOR RETURNS TO ACTIVE LICENSURE  
8 SHALL MEET THE REINSTATEMENT REQUIREMENTS OF § 9-312 OF THIS SUBTITLE.

9 9-314.

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

13 (b) Subject to the hearing provisions of § 9-315 of this subtitle, the Board may  
14 deny a license or limited license to any applicant, reprimand any licensee or holder of  
15 a limited license, place any licensee or holder of a limited license on probation, [or]  
16 suspend or revoke a license or limited license, OR IMPOSE A CIVIL FINE if the  
17 applicant, holder, or licensee:

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

20 (2) Fraudulently or deceptively uses a license;

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

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

26 (5) Provides professional services while:

27 (i) Under the influence of alcohol; or

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

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

1 (7) Practices nursing home administration with an unauthorized person  
2 or supervises or aids an unauthorized person in the practice of nursing home  
3 administration;

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

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

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

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

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

15 9-314.1.

16 (A) IF, AFTER A HEARING UNDER § 9-315 OF THIS SUBTITLE, THE BOARD  
17 FINDS THAT THERE ARE GROUNDS UNDER § 9-314 OF THIS SUBTITLE TO REPRIMAND  
18 A LICENSEE, PLACE A LICENSEE ON PROBATION, OR SUSPEND OR REVOKE A  
19 LICENSE, THE BOARD MAY IMPOSE A CIVIL FINE NOT EXCEEDING \$10,000:

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

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

23 (B) IF, AFTER DISCIPLINARY PROCEDURES HAVE BEEN BROUGHT AGAINST A  
24 LICENSEE, THE LICENSEE WAIVES THE RIGHT TO A HEARING REQUIRED UNDER THIS  
25 SUBTITLE AND IF THE BOARD FINDS THAT THERE ARE GROUNDS UNDER § 9-314 OF  
26 THIS SUBTITLE TO REPRIMAND THE LICENSEE, PLACE THE LICENSEE ON  
27 PROBATION, OR SUSPEND OR REVOKE A LICENSE, THE BOARD MAY IMPOSE A CIVIL  
28 FINE NOT EXCEEDING \$10,000 FOR EACH VIOLATION IN ADDITION TO REPRIMANDING  
29 THE LICENSEE, PLACING THE LICENSEE ON PROBATION, OR SUSPENDING OR  
30 REVOKING THE LICENSE.

31 (C) THE BOARD SHALL PAY ANY CIVIL FINE COLLECTED UNDER THIS  
32 SECTION INTO THE GENERAL FUND OF THE STATE.

33 9-315.

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

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

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

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

10 (e) If after due notice the individual against whom the action is contemplated  
11 fails or refuses to appear, nevertheless the Board may hear and 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) [A] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A person  
17 who violates any provision of this title is guilty of a misdemeanor and on conviction is  
18 subject to:

19 (1) A fine not exceeding \$1,000 for a first offense; and

20 (2) A fine not exceeding \$5,000 or imprisonment not exceeding 6 months  
21 or both for any subsequent violation of the same provision.

22 (B) A PERSON WHO VIOLATES § 9-401 OF THIS SUBTITLE IS GUILTY OF A  
23 FELONY AND ON CONVICTION IS SUBJECT TO:

24 (1) A FINE NOT EXCEEDING \$2,000 FOR A FIRST OFFENSE; AND

25 (2) A FINE NOT EXCEEDING \$10,000 OR IMPRISONMENT NOT EXCEEDING  
26 1 YEAR OR BOTH FOR ANY SUBSEQUENT VIOLATION OF THE SAME PROVISION.

27 (C) THE BOARD SHALL PAY ANY FINE COLLECTED UNDER THIS SECTION INTO  
28 THE GENERAL FUND OF THE STATE.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 October 1, 2005.