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Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 8, 2005

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CHAPTER \_\_\_\_\_

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

25 BY repealing and reenacting, with amendments,

1 Article - Health Occupations  
2 Section 9-301, 9-314 through 9-316, and 9-407  
3 Annotated Code of Maryland  
4 (2000 Replacement Volume and 2004 Supplement)

5 BY adding to  
6 Article - Health Occupations  
7 Section 9-312.1, 9-314.1, and 9-316.1  
8 Annotated Code of Maryland  
9 (2000 Replacement Volume and 2004 Supplement)

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

12 **Article - Health Occupations**

13 9-301.

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

17 (b) (1) ~~[Except] SUBJECT TO THE EVALUATION OF THE BOARD, EXCEPT~~ as  
18 provided in paragraph (2) of this subsection, if a licensee leaves or is removed from a  
19 position as a nursing home administrator by death or for any other unexpected cause,  
20 the owner of the nursing home or other appropriate nursing home authority shall  
21 immediately;

22 (I) designate a licensed nursing home administrator to serve in  
23 that capacity; AND

24 (II) NOTIFY THE BOARD OF THE DESIGNATED LICENSED NURSING  
25 HOME ADMINISTRATOR'S NAME.

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

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

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

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

3 9-312.1.

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

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

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

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

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

17 (3) THE BOARD SHALL PROVIDE A LICENSEE WHO HAS COMPLIED WITH  
18 THE REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION WITH WRITTEN  
19 NOTIFICATION OF:

20 (I) THE DATE THAT THE LICENSEE'S INACTIVE STATUS BECOMES  
21 EFFECTIVE;

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

24 (III) THE CONSEQUENCES OF:

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

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

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

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

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

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

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

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

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

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

9 (7) IS OTHERWISE ENTITLED TO BE LICENSED.

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

13 (1) SUBMIT A NEW APPLICATION;

14 (2) PAY ALL APPROPRIATE FEES SET BY THE BOARD;

15 (3) COMPLETE A BOARD APPROVED 1-MONTH ADMINISTRATOR  
16 REFRESHER PROGRAM; AND

17 (4) PASS THE STATE'S STANDARDS EXAMINATION.

18 (F) A NURSING HOME ADMINISTRATOR WHOSE INACTIVE LICENSE EXPIRES  
19 BEFORE THE NURSING HOME ADMINISTRATOR RETURNS TO ACTIVE LICENSURE  
20 SHALL MEET THE REINSTATEMENT REQUIREMENTS OF § 9-312 OF THIS SUBTITLE.

21 9-314.

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

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

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

32 (2) Fraudulently or deceptively uses a license;

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

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

4 (5) Provides professional services while:

5 (i) Under the influence of alcohol; or

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

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

12 (7) Practices nursing home administration with an unauthorized person  
 13 or supervises or aids an unauthorized person in the practice of nursing home  
 14 administration;

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

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

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

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

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

26 9-314.1.

27 (A) (1) IF, AFTER A HEARING UNDER § 9-315 OF THIS SUBTITLE, THE BOARD  
 28 FINDS THAT THERE ARE GROUNDS UNDER § 9-314 OF THIS SUBTITLE TO REPRIMAND  
 29 A LICENSEE, PLACE A LICENSEE ON PROBATION, OR SUSPEND OR REVOKE A  
 30 LICENSE, THE BOARD MAY IMPOSE A CIVIL FINE ~~NOT EXCEEDING \$10,000:~~

31 ~~(+)~~ (I) INSTEAD OF SUSPENDING OR REVOKING THE LICENSE; OR

32 ~~(=)~~ (II) IN ADDITION TO PLACING THE LICENSEE ON PROBATION OR  
 33 SUSPENDING OR REVOKING THE LICENSE.

34 (2) A CIVIL FINE IMPOSED UNDER THIS SUBSECTION MAY NOT EXCEED:

35 (I) \$1,000 FOR A FIRST VIOLATION; AND

1 (II) \$5,000 FOR ANY SUBSEQUENT VIOLATION OF THE SAME  
2 PROVISION.

3 (B) IF, AFTER DISCIPLINARY PROCEDURES HAVE BEEN BROUGHT AGAINST A  
4 LICENSEE, THE LICENSEE WAIVES THE RIGHT TO A HEARING REQUIRED UNDER THIS  
5 SUBTITLE AND IF THE BOARD FINDS THAT THERE ARE GROUNDS UNDER § 9-314 OF  
6 THIS SUBTITLE TO REPRIMAND THE LICENSEE, PLACE THE LICENSEE ON  
7 PROBATION, OR SUSPEND OR REVOKE A LICENSE, THE BOARD, IN ADDITION TO  
8 REPRIMANDING THE LICENSEE, PLACING THE LICENSEE ON PROBATION, OR  
9 SUSPENDING OR REVOKING THE LICENSE, MAY IMPOSE:

10 (1) A CIVIL FINE NOT EXCEEDING ~~\$10,000~~ \$1,000 FOR EACH A FIRST  
11 VIOLATION ~~IN ADDITION TO REPRIMANDING THE LICENSEE, PLACING THE LICENSEE~~  
12 ~~ON PROBATION, OR SUSPENDING OR REVOKING THE LICENSE; AND~~

13 (2) A CIVIL FINE NOT EXCEEDING \$5,000 FOR ANY SUBSEQUENT  
14 VIOLATION OF THE SAME PROVISION.

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

17 9-315.

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

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

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

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

31 (e) If after due notice the individual against whom the action is contemplated  
32 fails or refuses to appear, nevertheless the Board may hear and determine the matter.

33 9-316.

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

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

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

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

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

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

10 9-316.1.

11 (A) THE BOARD MAY ISSUE A CEASE AND DESIST ORDER FOR PRACTICING  
12 NURSING HOME ADMINISTRATION WITHOUT A LICENSE OR WITH AN  
13 UNAUTHORIZED PERSON OR FOR SUPERVISING OR AIDING AN UNAUTHORIZED  
14 PERSON IN THE PRACTICE OF NURSING HOME ADMINISTRATION.

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

17 (I) THE UNAUTHORIZED PRACTICE OF NURSING HOME  
18 ADMINISTRATION; OR

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

21 (2) AN ACTION UNDER THIS SECTION MAY BE BROUGHT BY:

22 (I) THE BOARD, IN ITS OWN NAME;

23 (II) THE ATTORNEY GENERAL, IN THE NAME OF THE STATE; OR

24 (III) A STATE'S ATTORNEY, IN THE NAME OF THE STATE.

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

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

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

1 9-407.

2 (A) ~~{A} EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,~~ A person  
3 who violates any provision of this title is guilty of a misdemeanor and on conviction is  
4 subject to:

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

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

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

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

11 ~~(2) A FINE NOT EXCEEDING \$10,000 OR IMPRISONMENT NOT EXCEEDING~~  
12 ~~1 YEAR OR BOTH FOR ANY SUBSEQUENT VIOLATION OF THE SAME PROVISION.~~

13 ~~(C)~~ (B) THE BOARD SHALL PAY ANY FINE COLLECTED UNDER THIS SECTION  
14 INTO THE GENERAL FUND OF THE STATE.

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