

SENATE BILL 764

J2

8lr2601
CF HB 811

By: **Senator Conway**

Introduced and read first time: February 1, 2008

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Dental Examiners - Nomination of Members - Investigation**
3 **and Disciplinary Procedures - Data Collection**

4 FOR the purpose of requiring certain academies, associations, organizations, or
5 societies committed to the practice of dentistry and dental hygiene to submit to
6 the Governor certain lists of names of individuals for nomination for
7 membership on the State Board of Dental Examiners; requiring that individuals
8 on certain lists reflect certain diversity of the State; requiring that certain
9 members appointed to the Board reflect certain diversity of the State; requiring
10 the Governor to appoint a president of the Board from among certain Board
11 members; requiring the executive director of the Board to report to the
12 Secretary of Health and Mental Hygiene; altering the parties who may initiate
13 or file certain complaints; prohibiting certain complaints from being filed more
14 than a certain time after a certain date; requiring that certain investigations be
15 based on certain facts; prohibiting the Board from investigating certain
16 complaints; prohibiting certain assistant attorneys general from assisting in or
17 conducting certain investigations; prohibiting certain assistant attorneys
18 general from being involved in certain disciplinary proceedings until certain
19 votes to charge have taken place; prohibiting the Board from conducting certain
20 records under certain circumstances; prohibiting the Board from continuing
21 certain investigations under certain circumstances; requiring the Board to
22 conclude certain actions on complaints within a certain time after a complaint is
23 filed unless the Board can demonstrate certain delays; requiring the Board to
24 adopt certain regulations concerning certain disciplinary procedures before a
25 certain date; requiring the Board to begin collecting certain information on race
26 and ethnicity, develop a certain methodology and database for tracking and
27 analyzing certain complaints, institute a certain status report monitoring tool
28 for certain disciplinary cases, implement a certain case-audit study, and
29 develop a certain nominating process by a certain date; requiring the Office of
30 the Attorney General to provide a rotation process for certain assistant

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 attorneys general; requiring the Board to submit a certain report by a certain
2 date; and generally relating to the State Board of Dental Examiners.

3 BY repealing and reenacting, with amendments,
4 Article – Health Occupations
5 Section 4–202(a), 4–203, 4–204(c), and 4–316
6 Annotated Code of Maryland
7 (2005 Replacement Volume and 2007 Supplement)

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

10 **Article – Health Occupations**

11 4–202.

12 (a) (1) The Board consists of 16 members.

13 (2) Of the 16 Board members:

14 (i) 9 shall be licensed dentists;

15 (ii) 4 shall be licensed dental hygienists; and

16 (iii) 3 shall be consumer members.

17 (3) (I) The Governor shall appoint the dentist Board members,
18 with the advice of the Secretary, from a list of names submitted to the Governor
19 [jointly] by the [Maryland State Dental Association and the Maryland Dental Society]
20 **ESTABLISHED ACADEMIES, ASSOCIATIONS, ORGANIZATIONS, OR SOCIETIES IN**
21 **THE STATE COMMITTED TO EXCELLENCE IN THE PRACTICE OF DENTISTRY.**

22 (II) The number of names on the list for one vacancy shall be at
23 least four names, for two vacancies at least three names for each vacancy, and for
24 three or more vacancies at least two names for each vacancy.

25 (III) **THE INDIVIDUALS ON THE LIST SHALL REASONABLY**
26 **REFLECT THE GEOGRAPHIC, RACIAL, ETHNIC, CULTURAL, AND GENDER**
27 **DIVERSITY OF THE STATE.**

28 (4) (I) The Governor shall appoint the dental hygienist Board
29 members, with the advice of the Secretary, from a list of names submitted to the
30 Governor by the [Maryland Dental Hygienists' Association] **ESTABLISHED**
31 **ACADEMIES, ASSOCIATIONS, ORGANIZATIONS, OR SOCIETIES IN THE STATE**
32 **COMMITTED TO EXCELLENCE IN THE PRACTICE OF DENTAL HYGIENE.**

1 (II) The number of names on the list shall be four times the
2 number of vacancies.

3 (III) **THE INDIVIDUALS ON THE LIST SHALL REASONABLY**
4 **REFLECT THE GEOGRAPHIC, RACIAL, ETHNIC, CULTURAL, AND GENDER**
5 **DIVERSITY OF THE STATE.**

6 (5) The Governor shall appoint the consumer members with the advice
7 of the Secretary and the advice and consent of the Senate.

8 (6) **TO THE EXTENT PRACTICABLE, THE MEMBERS APPOINTED TO**
9 **THE BOARD SHALL REASONABLY REFLECT THE GEOGRAPHIC, RACIAL, ETHNIC,**
10 **CULTURAL, AND GENDER DIVERSITY OF THE STATE.**

11 4-203.

12 (A) **FROM AMONG THE BOARD MEMBERS, THE GOVERNOR SHALL**
13 **APPOINT A PRESIDENT.**

14 [(a)] (B) From among its members, the Board shall elect [a president and] a
15 secretary.

16 [(b)] (C) The Board shall determine:

17 (1) The manner of election of [officers] **THE SECRETARY;**

18 (2) The term of office of each officer; and

19 (3) The duties of each officer.

20 4-204.

21 (c) (1) [The] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
22 **SUBSECTION, THE** Board may employ a staff, **INCLUDING AN EXECUTIVE**
23 **DIRECTOR,** in accordance with the budget of the Board.

24 (2) **THE EXECUTIVE DIRECTOR OF THE BOARD SHALL REPORT TO**
25 **THE SECRETARY.**

26 4-316.

27 (a) (1) On [its own initiative or on] a written complaint **AGAINST A**
28 **LICENSEE** filed with the Board by [any person] **A PATIENT OF THE LICENSEE OR A**
29 **PATIENT'S LEGAL GUARDIAN,** the Board may commence proceedings under § 4-315
30 of this subtitle.

1 **(2) A COMPLAINT MAY NOT BE FILED MORE THAN 2 YEARS AFTER**
2 **THE DATE OF THE OCCURRENCE ON WHICH THE COMPLAINT IS BASED.**

3 (b) [If a person who is not a member of the Board files a complaint, the] **A**
4 complaint shall:

5 (1) Be in writing;

6 (2) Be verified by a person who is familiar with the alleged facts;

7 (3) Request Board action; and

8 (4) Be filed with the secretary of the Board.

9 (c) (1) The Board shall investigate each complaint filed with the Board if
10 the complaint:

11 (i) Alleges facts that are grounds for action under § 4-315 of
12 this subtitle; and

13 (ii) Meets the requirements of this section.

14 (2) [If the Board begins action on its own initiative or if after
15 investigation it elects to substitute its own complaint for one filed by a person who is
16 not a member of the Board, the Board shall prepare a written complaint.]

17 **(I) EACH INVESTIGATION SHALL BE BASED ON THE FACTS**
18 **OF A COMPLAINT.**

19 **(II) IF A COMPLAINT IS NOT SUPPORTED BY FACTS, THE**
20 **BOARD MAY NOT CONDUCT AN INVESTIGATION.**

21 **(III) THE BOARD MAY NOT INVESTIGATE A COMPLAINT MADE**
22 **BY A THIRD PARTY.**

23 **(3) (I) AN ASSISTANT ATTORNEY GENERAL MAY NOT ASSIST IN**
24 **OR CONDUCT AN INVESTIGATION.**

25 **(II) AN ASSISTANT ATTORNEY GENERAL MAY NOT BECOME**
26 **INVOLVED IN A DISCIPLINARY PROCEEDING UNTIL AFTER THE BOARD HAS**
27 **VOTED TO CHARGE A LICENSEE.**

28 (d) **(1)** If, after performing [any] **A** preliminary investigation, the Board
29 determines that an allegation involving fees for professional or ancillary services does
30 not constitute grounds for discipline or other action, the Board may refer the

1 allegation concerning a member of a professional society or association composed of
2 providers of dental care to a committee of the Society for Mediation.

3 **(2) IF AFTER PERFORMING A PRELIMINARY INVESTIGATION, THE**
4 **BOARD DETERMINES THAT A COMPLAINT IS NOT SUPPORTED BY FACTS, THE**
5 **BOARD MAY NOT COLLECT ADDITIONAL RECORDS.**

6 **(E) THE BOARD MAY NOT CONTINUE TO INVESTIGATE A COMPLAINT OR**
7 **DISCIPLINE A LICENSEE IF THE PATIENT WHO INITIATED THE COMPLAINT OR**
8 **THE PATIENT'S GUARDIAN WITHDRAWS THE COMPLAINT.**

9 **(F) UNLESS THE BOARD CAN DEMONSTRATE DELAYS OUTSIDE OF ITS**
10 **CONTROL, THE BOARD SHALL CONCLUDE ITS ACTION ON A COMPLAINT,**
11 **INCLUDING DISCIPLINE AND PROBATIONARY PERIODS, WITHIN 2 YEARS AFTER**
12 **THE DATE THE COMPLAINT WAS FILED.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That:

14 (a) On or before December 31, 2008, the State Board of Dental Examiners
15 shall adopt new regulations for the rules of procedure for the disciplinary process.

16 (b) The Board shall draft the new regulations in consultation with each
17 established academy, association, organization, or society committed to excellence in
18 dentistry.

19 (c) The new regulations shall include:

20 (1) guidelines for complaints;

21 (2) guidelines for investigations such as when an investigation is
22 warranted and the thoroughness and length of an investigation that is warranted
23 under different circumstances;

24 (3) a severity ranking system for substantiated complaints and
25 guidelines for corresponding degrees of sanctions based on the sanctioning
26 methodologies and scoring tools identified in the pilot study prepared by the Virginia
27 Department of Health Professions;

28 (4) guidelines for probationary periods such as length;

29 (5) an appeals process;

30 (6) guidelines for confidentiality including the removal of the name
31 and address from the disciplinary and complaint documents that come before the
32 Board; and

33 (7) a process for expunging a licensee's disciplinary records if:

1 (i) the act resulting in the disciplinary action occurred over 10
2 years before the expungement; and

3 (ii) the licensee has not had another disciplinary action within
4 10 years before the expungement.

5 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before December
6 31, 2008, the State Board of Dental Examiners shall:

7 (1) begin to collect race and ethnicity information on all licensees
8 during the application process based on the Maryland official standard method for
9 collecting race and ethnicity information;

10 (2) develop a concise methodology of tracking the status of all
11 complaints from the initial allegation through to sanctions and final action and keep
12 records of the information for future audits;

13 (3) develop a database by re-engineering or modifying the software
14 that analyzes complaint data so that the data may be analyzed in a variety of manners
15 and subjectivity and individual bias may be reduced;

16 (4) institute the development, use, and routine review of a
17 comprehensive status report as a monitoring tool for all disciplinary cases;

18 (5) implement a case audit that studies selected cases, de-identifying
19 files, and using outside experts; and

20 (6) develop a nominating process for Board members that includes
21 each established academy, association, organization, or society committed to
22 excellence in the practice of dentistry and dental hygiene and so that nominees
23 reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of the
24 State.

25 SECTION 4. AND BE IT FURTHER ENACTED, That the Office of the Attorney
26 General shall provide a rotation process for assistant attorneys general working for
27 the State Board of Dental Examiners.

28 SECTION 5. AND BE IT FURTHER ENACTED, That, on or before December
29 31, 2008, the State Board of Dental Examiners shall report to the General Assembly,
30 in accordance with § 2-1246 of the State Government Article, on the implementation
31 of this Act.

32 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 July 1, 2008.