

SENATE BILL 764

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8lr2601
CF HB 811

By: **Senator Conway**

Introduced and read first time: February 1, 2008

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2008

CHAPTER _____

1 AN ACT concerning

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

4 State Board of Dental Examiners Nomination and Disciplinary Processes -
5 Task Force on the Discipline of Health Care Professionals and Improved
6 Patient Care

7 FOR the purpose of requiring ~~certain academies, associations, organizations, or~~
8 ~~societies committed to the practice of dentistry and dental hygiene to~~ the State
9 Board of Dental Examiners to conduct a certain solicitation and balloting
10 process and submit to the Governor certain lists of names of individuals for
11 nomination for membership on the State Board of Dental Examiners Board;
12 requiring that individuals on certain lists reflect the Board to develop guidelines
13 for certain solicitations and ballots that to the extent possible will result in a
14 certain Board composition reflecting certain diversity of the State; requiring
15 that certain members appointed to the Board reflect certain diversity of the
16 State; requiring the Governor to appoint a president of the Board from among
17 certain Board members; requiring the executive director of the Board to report
18 to the Secretary of Health and Mental Hygiene; altering the parties who may
19 initiate or file certain complaints; prohibiting certain complaints from being
20 filed more than a certain time after a certain date; requiring that certain
21 investigations be based on certain facts; prohibiting the Board from
22 investigating certain complaints; prohibiting certain assistant attorneys general
23 from assisting in or conducting certain investigations; prohibiting certain
24 assistant attorneys general from being involved in certain disciplinary
25 proceedings until certain votes to charge have taken place; prohibiting the
26 Board from conducting certain records under certain circumstances; prohibiting

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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~~the Board from continuing certain investigations under certain circumstances;~~
~~requiring the Board to conclude certain actions on complaints within a certain~~
~~time after a complaint is filed unless the Board can demonstrate certain delays;~~
 requiring the Board to adopt certain regulations in consultation with the Office
of the Attorney General and the Secretary of the Department of Health and
Mental Hygiene concerning certain disciplinary procedures before a certain
 date; requiring the Board to begin collecting certain information on race and
 ethnicity, develop a certain methodology and database for tracking and
 analyzing certain complaints, institute a certain status report monitoring tool
 for certain disciplinary cases, implement a certain case-audit study, and
 develop a certain nominating process by a certain date; ~~requiring the Office of~~
~~the Attorney General to provide a rotation process for certain assistant~~
~~attorneys general;~~ requiring the Board to submit a certain report by a certain
 date; establishing a Task Force on the Discipline of Health Care Professionals
and Improved Patient Care; providing for the membership of the Task Force;
providing for the designation of a chair of the Task Force; providing for staff for
the Task Force; prohibiting a member of the Task Force from receiving
compensation; authorizing a member of the Task Force to receive
reimbursement for certain expenses; requiring the Task Force to study certain
issues, issue certain recommendations, and report to the Governor and certain
committees of the General Assembly on or before a certain date; and generally
 relating to the State Board of Dental Examiners and the Task Force on the
Discipline of Health Care Professionals and Improved Patient Care.

BY repealing and reenacting, with amendments,
 Article – Health Occupations
 Section ~~4–202(a), 4–203, 4–204(e), and 4–316~~ and (b)
 Annotated Code of Maryland
 (2005 Replacement Volume and 2007 Supplement)

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

Article – Health Occupations

4–202.

- (a) (1) The Board consists of 16 members.
- (2) Of the 16 Board members:
- (i) 9 shall be licensed dentists;
 - (ii) 4 shall be licensed dental hygienists; and
 - (iii) 3 shall be consumer members.

1 (3) (I) ~~The~~ SUBJECT TO SUBSECTION (B)(1) OF THIS SECTION,
2 THE Governor shall appoint the dentist Board members, with the advice of the
3 Secretary, from a list of names submitted to the Governor [jointly] by the [Maryland
4 State Dental Association and the Maryland Dental Society] ~~ESTABLISHED~~
5 ~~ACADEMIES, ASSOCIATIONS, ORGANIZATIONS, OR SOCIETIES IN THE STATE~~
6 ~~COMMITTED TO EXCELLENCE IN THE PRACTICE OF DENTISTRY~~ BOARD.

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

10 ~~(III) THE INDIVIDUALS ON THE LIST SHALL REASONABLY~~
11 ~~REFLECT THE GEOGRAPHIC, RACIAL, ETHNIC, CULTURAL, AND GENDER~~
12 ~~DIVERSITY OF THE STATE.~~

13 (4) (I) ~~The~~ SUBJECT TO SUBSECTION (B)(2) OF THIS SECTION,
14 THE Governor shall appoint the dental hygienist Board members, with the advice of
15 the Secretary, from a list of names submitted to the Governor by the [Maryland
16 Dental Hygienists' Association] ~~ESTABLISHED ACADEMIES, ASSOCIATIONS,~~
17 ~~ORGANIZATIONS, OR SOCIETIES IN THE STATE COMMITTED TO EXCELLENCE IN~~
18 ~~THE PRACTICE OF DENTAL HYGIENE~~ BOARD.

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

21 ~~(III) THE INDIVIDUALS ON THE LIST SHALL REASONABLY~~
22 ~~REFLECT THE GEOGRAPHIC, RACIAL, ETHNIC, CULTURAL, AND GENDER~~
23 ~~DIVERSITY OF THE STATE.~~

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

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

29 (b) [(1) At a joint meeting held by the Maryland State Dental Association
30 and the Maryland Dental Society called to choose nominees for a dentist vacancy on
31 the Board, a majority of the dentists present at the meeting shall choose the list of
32 names of dentist nominees to the Board for submission to the Governor.

33 (2) At a meeting held by the Maryland Dental Hygienists' Association
34 called to choose nominees for a dental hygienist vacancy on the Board, a majority of
35 the dental hygienists present at the meeting shall choose the list of names of dental
36 hygienist nominees to the Board for submission to the Governor.

1 (3) At least 2 weeks before a meeting is held under paragraph (1) of
2 this subsection, the secretaries of the appropriate organizations shall mail to each
3 licensed practitioner actively practicing in Maryland, at the address appearing in their
4 records or the records of the Board, a notice that states the time, place, and purpose of
5 the meeting.

6 (4) At least 2 weeks before a meeting is held under paragraph (2) of
7 this subsection, the Secretary of the Maryland Dental Hygienists' Association shall
8 mail to each licensed dental hygienist, at the address appearing in their records or the
9 records of the Board, a notice that states the time, place, and purpose of the meeting.]

10 **(1) FOR EACH LICENSED DENTIST VACANCY, THE BOARD SHALL:**

11 **(I) SEND BY MAIL A WRITTEN SOLICITATION FOR**
12 **NOMINATIONS TO FILL THE VACANCY TO:**

13 **1. EACH DENTIST LICENSED BY THE BOARD; AND**

14 **2. EACH STATE DENTAL ORGANIZATION AFFILIATED**
15 **WITH A NATIONAL ORGANIZATION; AND**

16 **(II) CONDUCT A BALLOTING PROCESS BY WHICH EACH**
17 **DENTIST LICENSED BY THE STATE IS ELIGIBLE TO VOTE TO SELECT THE NAMES**
18 **OF THE LICENSED DENTISTS TO BE SUBMITTED TO THE GOVERNOR.**

19 **(2) FOR EACH LICENSED DENTAL HYGIENIST VACANCY, THE**
20 **BOARD SHALL:**

21 **(I) SEND BY MAIL A WRITTEN SOLICITATION FOR**
22 **NOMINATIONS TO FILL THE VACANCY TO:**

23 **1. EACH DENTAL HYGIENIST LICENSED BY THE**
24 **BOARD; AND**

25 **2. EACH STATE DENTAL HYGIENIST ORGANIZATION**
26 **AFFILIATED WITH A NATIONAL ORGANIZATION; AND**

27 **(II) CONDUCT A BALLOTING PROCESS BY WHICH EACH**
28 **DENTAL HYGIENIST LICENSED BY THE STATE IS ELIGIBLE TO VOTE TO SELECT**
29 **THE NAMES OF THE LICENSED DENTAL HYGIENISTS TO BE SUBMITTED TO THE**
30 **GOVERNOR.**

31 **(3) THE BOARD SHALL DEVELOP GUIDELINES FOR THE**
32 **SOLICITATION OF NOMINATIONS AND BALLOTING PROCESS THAT TO THE**
33 **EXTENT POSSIBLE WILL RESULT IN THE OVERALL COMPOSITION OF THE BOARD**

1 REASONABLY REFLECTING THE GEOGRAPHIC, RACIAL, ETHNIC, AND GENDER
 2 DIVERSITY OF THE STATE.

3 ~~4-203.~~

4 ~~(A) FROM AMONG THE BOARD MEMBERS, THE GOVERNOR SHALL~~
 5 ~~APPOINT A PRESIDENT.~~

6 ~~[(a)] (B) From among its members, the Board shall elect [a president and] a~~
 7 ~~secretary.~~

8 ~~[(b)] (C) The Board shall determine:~~

9 ~~(1) The manner of election of [officers] THE SECRETARY;~~

10 ~~(2) The term of office of each officer; and~~

11 ~~(3) The duties of each officer.~~

12 ~~4-204.~~

13 ~~(e) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS~~
 14 ~~SUBSECTION, THE Board may employ a staff, INCLUDING AN EXECUTIVE~~
 15 ~~DIRECTOR, in accordance with the budget of the Board.~~

16 ~~(2) THE EXECUTIVE DIRECTOR OF THE BOARD SHALL REPORT TO~~
 17 ~~THE SECRETARY.~~

18 ~~4-316.~~

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

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

25 ~~(b) [If a person who is not a member of the Board files a complaint, the] A~~
 26 ~~complaint shall:~~

27 ~~(1) Be in writing;~~

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

1 ~~(3) Request Board action; and~~

2 ~~(4) Be filed with the secretary of the Board.~~

3 ~~(e) (1) The Board shall investigate each complaint filed with the Board if~~
4 ~~the complaint:~~

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

7 ~~(ii) Meets the requirements of this section.~~

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

11 ~~(I) EACH INVESTIGATION SHALL BE BASED ON THE FACTS~~
12 ~~OF A COMPLAINT.~~

13 ~~(II) IF A COMPLAINT IS NOT SUPPORTED BY FACTS, THE~~
14 ~~BOARD MAY NOT CONDUCT AN INVESTIGATION.~~

15 ~~(III) THE BOARD MAY NOT INVESTIGATE A COMPLAINT MADE~~
16 ~~BY A THIRD PARTY.~~

17 ~~(3) (I) AN ASSISTANT ATTORNEY GENERAL MAY NOT ASSIST IN~~
18 ~~OR CONDUCT AN INVESTIGATION.~~

19 ~~(II) AN ASSISTANT ATTORNEY GENERAL MAY NOT BECOME~~
20 ~~INVOLVED IN A DISCIPLINARY PROCEEDING UNTIL AFTER THE BOARD HAS~~
21 ~~VOTED TO CHARGE A LICENSEE.~~

22 ~~(d) (1) If, after performing [any] A preliminary investigation, the Board~~
23 ~~determines that an allegation involving fees for professional or ancillary services does~~
24 ~~not constitute grounds for discipline or other action, the Board may refer the~~
25 ~~allegation concerning a member of a professional society or association composed of~~
26 ~~providers of dental care to a committee of the Society for Mediation.~~

27 ~~(2) IF AFTER PERFORMING A PRELIMINARY INVESTIGATION, THE~~
28 ~~BOARD DETERMINES THAT A COMPLAINT IS NOT SUPPORTED BY FACTS, THE~~
29 ~~BOARD MAY NOT COLLECT ADDITIONAL RECORDS.~~

30 ~~(E) THE BOARD MAY NOT CONTINUE TO INVESTIGATE A COMPLAINT OR~~
31 ~~DISCIPLINE A LICENSEE IF THE PATIENT WHO INITIATED THE COMPLAINT OR~~
32 ~~THE PATIENT'S GUARDIAN WITHDRAWS THE COMPLAINT.~~

1 ~~(F) UNLESS THE BOARD CAN DEMONSTRATE DELAYS OUTSIDE OF ITS~~
2 ~~CONTROL, THE BOARD SHALL CONCLUDE ITS ACTION ON A COMPLAINT,~~
3 ~~INCLUDING DISCIPLINE AND PROBATIONARY PERIODS, WITHIN 2 YEARS AFTER~~
4 ~~THE DATE THE COMPLAINT WAS FILED.~~

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

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

8 (b) The Board shall draft the new regulations in consultation with ~~each~~
9 ~~established academy, association, organization, or society committed to excellence in~~
10 ~~dentistry~~ the Office of the Attorney General and the Secretary of the Department of
11 Health and Mental Hygiene.

12 (c) The new regulations shall include:

13 (1) guidelines for complaints;

14 (2) guidelines for investigations such as when an investigation is
15 warranted and the thoroughness and length of an investigation that is warranted
16 under different circumstances;

17 (3) to assure that similar acts of misconduct receive similar penalties,
18 a severity ranking system for substantiated complaints and guidelines for
19 corresponding degrees of sanctions based on the sanctioning methodologies and
20 scoring tools identified in the pilot study prepared by the Virginia Department of
21 Health Professions;

22 (4) guidelines for probationary periods such as length and conditions
23 for completion of probationary periods;

24 (5) an appeals process; and

25 (6) guidelines for confidentiality including the removal of the name
26 and address from the disciplinary and complaint documents that come before the
27 Board; ~~and~~

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

29 ~~(i) the act resulting in the disciplinary action occurred over 10~~
30 ~~years before the expungement; and~~

31 ~~(ii) the licensee has not had another disciplinary action within~~
32 ~~10 years before the expungement.~~

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1 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before December
2 31, 2008, the State Board of Dental Examiners shall:

3 (1) begin to collect race, gender, and ethnicity information on all
4 licensees during the application process based on the Maryland official standard
5 method for collecting race, gender, and ethnicity information;

6 (2) develop a concise methodology ~~of~~ including standard definitions
7 and written guidelines for tracking the status of all complaints from the initial
8 allegation through to sanctions and final action and keep records of the information for
9 future audits;

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

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

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

17 (6) develop a nominating process for Board members ~~that includes~~
18 ~~each established academy, association, organization, or society committed to~~
19 ~~excellence in the practice of dentistry and dental hygiene and so that nominees~~
20 ~~reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of the~~
21 ~~State in accordance with § 4-202(a) and (b) of the Health Occupations Article, as~~
22 enacted by Section 1 of this Act.

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

26 SECTION ~~5.~~ 4. AND BE IT FURTHER ENACTED, That, on or before December
27 31, 2008, the State Board of Dental Examiners shall report to the General Assembly,
28 in accordance with § 2-1246 of the State Government Article, on the implementation
29 of Section 1 through Section 3 of this Act.

30 SECTION 5. AND BE IT FURTHER ENACTED, That:

31 (a) There is a Task Force on the Discipline of Health Care Professionals and
32 Improved Patient Care.

33 (b) The Task Force consists of the following members:

34 (1) one member of the House of Delegates, appointed by the Speaker of
35 the House;

1 (2) one member of the Senate of Maryland, appointed by the President
2 of the Senate;

3 (3) the Secretary of Health and Mental Hygiene, or the Secretary's
4 designee;

5 (4) the Attorney General, or the Attorney General's designee;

6 (5) the Chief Administrative Law Judge, or the Chief Judge's
7 designee;

8 (6) two current health occupation board members, appointed by the
9 Secretary of Health and Mental Hygiene;

10 (7) two current executive directors or administrators for health
11 occupation boards that may not be from the same boards as the representatives in
12 item (5) of this subsection, appointed by the Secretary of Health and Mental Hygiene;
13 and

14 (8) nine individuals appointed by the Governor having expertise in
15 professional disciplinary matters including at least:

16 (i) two representatives of a patient advocacy organization;

17 (ii) two attorneys from the Maryland State Bar Association's
18 Health Law Section with experience in representing health professionals;

19 (iii) two representatives of professional health care associations;
20 and

21 (iv) two consumers of health care services.

22 (c) (1) The Secretary of Health and Mental Hygiene shall:

23 (i) appoint the chair of the Task Force;

24 (ii) establish subcommittees and appoint subcommittee chairs
25 as necessary to facilitate the work of the Task Force; and

26 (iii) in conjunction with the Attorney General, provide staff
27 support for the Task Force from the Department and the health occupation boards.

28 (2) To the extent practicable, the members appointed to the Task
29 Force shall reasonably reflect the geographic, racial, ethnic, cultural, and gender
30 diversity of this State.

1 (3) A member of the Task Force may not receive compensation as a
2 member of the Task Force but is entitled to reimbursement for expenses under the
3 Standard State Travel Regulations, as provided in the State budget.

4 (d) In performing its duties, the Task Force shall:

5 (1) consult with individuals and entities that the chair of the Task
6 Force deems appropriate; and

7 (2) consider a broad range of viewpoints including those presented by
8 organizations representing the interests of patients, licensees, payors, law
9 enforcement, and other groups involved in the disciplinary system.

10 (e) The Task Force shall issue recommendations regarding:

11 (1) practices and procedures supporting the fundamental goals and
12 objectives of the disciplinary programs of the health occupation boards;

13 (2) potential changes to the organizational structure of the health
14 occupation boards and the relationship of all boards to the Department; and

15 (3) measures that will otherwise enhance the fair, consistent, and
16 speedy resolution of reports concerning substandard, illegal, or unethical practices by
17 health care professionals.

18 (f) The issues to be studied by the Task Force include:

19 (1) the extent to which the current disciplinary system:

20 (i) adequately protects patients from serious risks due to
21 incompetent or unethical practices by licensees;

22 (ii) creates a burden to licensees that may be lessened, while
23 ensuring continued protective and regulatory oversight;

24 (iii) uses mentors and the cost to licensees associated with using
25 them;

26 (iv) adequately provides due process to licensees; and

27 (v) could be modified to more effectively protect patients,
28 minimize incompetent or unethical behavior by licensees, provide more effective due
29 process for licensees, and support the professional growth and development of all
30 Maryland licensees;

31 (2) potential changes in the disciplinary program of the health
32 occupation boards that will:

- 1 (i) increase the transparency of disciplinary procedures for
2 members of the public and the regulated community;
- 3 (ii) improve the complaint process by addressing the roles of the
4 boards, investigators, and assistant attorneys general including who may initiate
5 complaints;
- 6 (iii) increase the consistency and fairness of disciplinary
7 outcomes;
- 8 (iv) a statute of limitations for complaints to be brought against
9 licensees;
- 10 (v) speed the resolution of meritorious complaints and the
11 disposition of proceedings that do not require a public disciplinary order;
- 12 (vi) from the time a complaint is filed, specify a reasonable
13 period of time in which a board will conclude its action unless the board can
14 demonstrate delays outside of its control;
- 15 (vii) utilize the Office of Administrative Hearings more
16 effectively;
- 17 (viii) under certain circumstances, expunge disciplinary
18 proceedings from a licensee's file after a specified period of time; and
- 19 (ix) increase the wider adoption of consistent procedures and
20 best practices by all boards including tracking of disciplinary data;
- 21 (3) an assessment of whether the current relationship between
22 individual boards, the Department, and the Office of the Attorney General should be
23 modified in connection with the disciplinary process of the board including:
- 24 (i) oversight of the board by the Department;
- 25 (ii) the role of an assistant attorney general in the investigation
26 process; and
- 27 (iii) the length of time an assistant attorney general works for an
28 individual board and the potential of having the assistant attorneys general rotate
29 among the boards; and
- 30 (4) the extent to which the current disciplinary system has a
31 differential impact on various groups of licensees and potential strategies for
32 minimizing differences while improving the overall quality of health care services.
- 33 (g) On or before December 1, 2008, the Task Force shall report its final
34 recommendations to the Governor and, subject to § 2-1246 of the State Government

1 Article, to the Senate Education, Health, and Environmental Affairs Committee and
2 the House Health and Government Operations Committee.

3 SECTION 6. AND BE IT FURTHER ENACTED, That Section 5 of this Act shall
4 take effect July 1, 2008. It shall remain effective for a period of 1 year and, at the end
5 of June 30, 2009, with no further action required by the General Assembly, Section 5
6 of this Act shall be abrogated and of no further force and effect.

7 SECTION ~~6~~ 7. AND BE IT FURTHER ENACTED, That, subject to the
8 provisions of Section 6 of this Act, this Act shall take effect July 1, 2008.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.