

# HOUSE BILL 1275

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By: **Delegate Nathan-Pulliam**

Introduced and read first time: February 13, 2009

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Occupations Boards – Revisions**

3 FOR the purpose of requiring certain health occupations boards to provide certain  
4 notification to certain licensees or certificate holders of board vacancies;  
5 requiring certain health occupations boards to collect certain racial and ethnic  
6 information; requiring that, to the extent practicable, certain members of  
7 certain health occupations boards reasonably reflect certain geographic, racial,  
8 ethnic, cultural, and gender diversity; requiring the Secretary of Health and  
9 Mental Hygiene to confirm the appointment of certain executive directors;  
10 requiring that, to the extent practicable, certain health occupations boards limit  
11 the scope of subpoenas; requiring certain health occupations boards to establish  
12 certain subcommittees to be responsible for certain investigations, determine  
13 whether certain charges should be brought, and participate in certain  
14 preadjudication case resolution conferences; prohibiting certain health  
15 occupations boards from bringing certain charges after a certain period of time;  
16 requiring certain health occupations boards that use peer review to provide  
17 certain licensees and certificate holders an opportunity to review and respond to  
18 certain preliminary reports; requiring certain health occupations boards to  
19 determine a certain means of communication between a peer reviewer and a  
20 licensee or certificate holder; prohibiting certain members and counsel from  
21 being included in certain meetings; authorizing certain health occupations  
22 boards to establish certain programs to provide certain training, mentoring, or  
23 other remediation for certain licensees or certificate holders who commit a  
24 certain number of standard of care violations; requiring certain health  
25 occupations boards to adopt certain sanctioning guidelines; requiring certain  
26 health occupations boards to post certain final orders for disciplinary action on  
27 certain websites; requiring certain health occupations boards to remove certain  
28 postings on certain websites under certain circumstances; establishing that  
29 certain records may not be used in certain legal proceedings under certain  
30 circumstances; requiring the Secretary to establish certain goals for the  
31 timeliness of complaint resolution; requiring the Secretary to monitor certain

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 compliance with certain guidelines and make certain recommendations on or  
 2 before a certain date; requiring the Office of the Attorney General to establish  
 3 certain guidelines concerning certain functions of certain advisors and  
 4 advocates; requiring the Office of the Attorney General and certain health  
 5 occupations boards to post certain guidelines or a link to certain guidelines on  
 6 certain websites; authorizing the Office of the Attorney General to establish a  
 7 certain pool of advocates and assign the advocates to certain boards in a certain  
 8 manner; authorizing certain health occupations boards to create certain  
 9 positions under certain circumstances; providing that the creation of certain  
 10 positions may not be construed to require certain State General Fund support;  
 11 requiring certain health occupations boards to collaborate with the Department  
 12 of Health and Mental Hygiene and the Department of Budget and Management  
 13 to develop and adopt certain regulations; requiring the Department of Health  
 14 and Mental Hygiene to submit a certain report to the Department of Budget  
 15 and Management and the Department of Legislative Services; defining certain  
 16 terms; and generally relating to revisions for the health occupations boards.

17 BY adding to

18 Article – Health Occupations

19 Section 1–214 through 1–218; 1–601 through 1–610 to be under the new subtitle  
 20 “Subtitle 6. General Clarification of the Disciplinary Process”; 1–701  
 21 through 1–703 to be under the new subtitle “Subtitle 7. Role of Assistant  
 22 Attorneys General”; and 1–801 and 1–802 to be under the new subtitle  
 23 “Subtitle 8. Authority to Create Staff Positions”

24 Annotated Code of Maryland

25 (2005 Replacement Volume and 2008 Supplement)

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

28 **Article – Health Occupations**

29 **1-214.**

30 **TO THE EXTENT PRACTICABLE, THE MEMBERS APPOINTED TO EACH**  
 31 **HEALTH OCCUPATIONS BOARD AUTHORIZED TO ISSUE A LICENSE OR**  
 32 **CERTIFICATE UNDER THIS ARTICLE SHALL REASONABLY REFLECT THE**  
 33 **GEOGRAPHIC, RACIAL, ETHNIC, CULTURAL, AND GENDER DIVERSITY OF THE**  
 34 **STATE.**

35 **1-215.**

36 **(A) EACH HEALTH OCCUPATIONS BOARD AUTHORIZED TO ISSUE A**  
 37 **LICENSE OR CERTIFICATE UNDER THIS ARTICLE SHALL NOTIFY ALL LICENSEES**  
 38 **OR CERTIFICATE HOLDERS OF BOARD VACANCIES.**

1           **(B) A HEALTH OCCUPATIONS BOARD MAY GIVE NOTICE OF A BOARD**  
2 **VACANCY BY ELECTRONIC MAIL OR A NOTICE ON THE BOARD’S WEBSITE.**

3 **1-216.**

4           **EACH HEALTH OCCUPATIONS BOARD AUTHORIZED TO ISSUE A LICENSE**  
5 **OR CERTIFICATE UNDER THIS ARTICLE SHALL DEVELOP A TRAINING PROCESS**  
6 **AND MATERIALS FOR NEW BOARD MEMBERS THAT INCLUDE TRAINING IN**  
7 **CULTURAL COMPETENCY.**

8 **1-217.**

9           **THE SECRETARY SHALL CONFIRM THE APPOINTMENT OF EACH**  
10 **EXECUTIVE DIRECTOR TO EACH HEALTH OCCUPATIONS BOARD AUTHORIZED TO**  
11 **ISSUE A LICENSE OR CERTIFICATE UNDER THIS ARTICLE.**

12 **1-218.**

13           **EACH HEALTH OCCUPATIONS BOARD AUTHORIZED TO ISSUE A LICENSE**  
14 **OR CERTIFICATE UNDER THIS ARTICLE SHALL COLLECT RACIAL AND ETHNIC**  
15 **INFORMATION ABOUT THE APPLICANT AS PART OF THE BOARD’S LICENSING,**  
16 **CERTIFYING, OR RENEWAL PROCESS.**

17           **SUBTITLE 6. GENERAL CLARIFICATION OF THE DISCIPLINARY PROCESS.**

18 **1-601.**

19           **IN THIS SUBTITLE, “HEALTH OCCUPATIONS BOARD” MEANS A BOARD**  
20 **AUTHORIZED TO ISSUE A LICENSE OR CERTIFICATE UNDER THIS ARTICLE.**

21 **1-602.**

22           **TO THE EXTENT PRACTICABLE, A HEALTH OCCUPATIONS BOARD**  
23 **AUTHORIZED TO ISSUE A SUBPOENA UNDER THIS ARTICLE SHALL LIMIT THE**  
24 **SCOPE OF A SUBPOENA TO THE FACTS OF THE COMPLAINT BEING**  
25 **INVESTIGATED.**

26 **1-603.**

27           **(A) EACH HEALTH OCCUPATIONS BOARD SHALL ESTABLISH A**  
28 **DISCIPLINARY SUBCOMMITTEE:**

29           **(B) A DISCIPLINARY SUBCOMMITTEE SHALL:**

1 (1) BE RESPONSIBLE FOR THE INVESTIGATION OF COMPLAINTS;

2 (2) DETERMINE WHETHER THE HEALTH OCCUPATIONS BOARD  
3 SHOULD BRING CHARGES AGAINST A LICENSEE OR CERTIFICATE HOLDER; AND

4 (3) PARTICIPATE IN PREADJUDICATION CASE RESOLUTION  
5 CONFERENCES RESULTING FROM THE CHARGES.

6 (C) A MEMBER OF A DISCIPLINARY SUBCOMMITTEE MAY NOT  
7 PARTICIPATE IN ANY FINAL DECISION OR SANCTIONING FOLLOWING A  
8 CONTESTED CASE REGARDING THE CHARGES.

9 **1-604.**

10 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A  
11 HEALTH OCCUPATIONS BOARD MAY NOT BRING CHARGES AGAINST A LICENSEE  
12 OR CERTIFICATE HOLDER IF THE BOARD RECEIVES THE INITIAL COMPLAINT  
13 MORE THAN 6 YEARS AFTER:

14 (1) THE DAY THE COMPLAINANT ACTUALLY DISCOVERED THE  
15 FACTS THAT FORM THE BASIS OF THE COMPLAINT; OR

16 (2) THE DAY WHEN A REASONABLE PERSON EXERCISING DUE  
17 DILIGENCE SHOULD HAVE DISCOVERED THE FACTS THAT FORM THE BASIS OF  
18 THE COMPLAINT.

19 (B) THIS SECTION DOES NOT APPLY TO A COMPLAINT BASED ON:

20 (1) CRIMINAL CONVICTIONS OR SEXUAL MISCONDUCT OR OTHER  
21 SIMILAR BOUNDARY VIOLATIONS;

22 (2) RECIPROCAL DISCIPLINE MATTERS;

23 (3) ONGOING SUBSTANCE ABUSE;

24 (4) FRAUDULENT CONCEALMENT OF MATERIAL INFORMATION;

25 (5) ACTS THAT WERE PART OF A PATIENT'S REPRESSED MEMORY;

26 OR

27 (6) ACTS THAT OCCUR WHILE A PATIENT IS A MINOR.

28 **1-605.**

1           (A)    **EACH HEALTH OCCUPATIONS BOARD THAT USES PEER REVIEW IN**  
2 **STANDARD OF CARE INVESTIGATIONS SHALL PROVIDE THE LICENSEE OR**  
3 **CERTIFICATE HOLDER UNDER INVESTIGATION THE OPPORTUNITY TO REVIEW A**  
4 **PRELIMINARY REPORT AND RESPOND TO QUESTIONS OR CONCERNS EXPRESSED**  
5 **BY THE PEER REVIEWER BEFORE THE FINAL PEER REVIEW REPORT IS SENT TO**  
6 **THE HEALTH OCCUPATIONS BOARD.**

7           (B)    **THE MEANS OF COMMUNICATION BETWEEN A PEER REVIEWER AND**  
8 **LICENSEE OR CERTIFICATE HOLDER UNDER THIS SECTION SHALL BE**  
9 **DETERMINED BY EACH HEALTH OCCUPATIONS BOARD AND MAY INCLUDE:**

10                   (1)    **AN IN-PERSON MEETING;**

11                   (2)    **A TELEPHONE CONFERENCE; OR**

12                   (3)    **WRITTEN DOCUMENTATION.**

13           (C)    **A MEETING CONDUCTED UNDER THIS SECTION MAY NOT INCLUDE**  
14 **MEMBERS OF THE HEALTH OCCUPATIONS BOARD OR COUNSEL FOR THE**  
15 **LICENSEE OR CERTIFICATE HOLDER.**

16   **1-606.**

17           (A)    **AS AN ALTERNATIVE TO A FORMAL HEARING, EACH HEALTH**  
18 **OCCUPATIONS BOARD MAY ESTABLISH A PROGRAM FOR LICENSEES OR**  
19 **CERTIFICATE HOLDERS WHO COMMIT A SINGLE STANDARD OF CARE VIOLATION.**

20           (B)    **A PROGRAM ESTABLISHED UNDER THIS SECTION SHALL PROVIDE**  
21 **TRAINING, MENTORING, OR OTHER FORMS OF REMEDIATION AS DETERMINED**  
22 **BY THE HEALTH OCCUPATIONS BOARD.**

23   **1-607.**

24           (A)    **EACH HEALTH OCCUPATIONS BOARD SHALL ADOPT SPECIFIC**  
25 **SANCTIONING GUIDELINES, INCLUDING:**

26                   (1)    **A RANGE OF SANCTIONS THAT IS BASED ON HISTORICAL DATA**  
27 **OR A NORMATIVE PROCESS FOR EACH TYPE OF VIOLATION; AND**

28                   (2)    **A LIST OF MITIGATING AND AGGRAVATING CIRCUMSTANCES**  
29 **THAT MAY BE USED TO DECIDE IF A SANCTION FALLS WITHIN OR OUTSIDE THE**  
30 **ESTABLISHED RANGE OF SANCTIONS.**

31           (B)    **SANCTIONING GUIDELINES ADOPTED UNDER THIS SECTION SHALL:**

1           (1) CONFORM TO A GENERAL FRAMEWORK OR INCORPORATE A  
2 COMMON SET OF ELEMENTS; AND

3           (2) BE USED AS A GUIDE FOR SANCTIONING LICENSEES AND  
4 CERTIFICATE HOLDERS IN FORMAL AND INFORMAL PROCEEDINGS.

5           (C) TO THE EXTENT A HEALTH OCCUPATIONS BOARD DEPARTS FROM  
6 THE SANCTIONING GUIDELINES ADOPTED UNDER THIS SECTION, THE BOARD  
7 SHALL STATE ITS REASONS IN DETAIL.

8 **1-608.**

9           (A) ON OR AFTER OCTOBER 1, 2009, EACH HEALTH OCCUPATIONS  
10 BOARD SHALL POST EACH FINAL ORDER FOR A DISCIPLINARY SANCTION ISSUED  
11 TO A LICENSEE OR CERTIFICATE HOLDER ON THE BOARD'S WEBSITE.

12           (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
13 SUBSECTION, A HEALTH OCCUPATIONS BOARD SHALL REMOVE A POSTING IF  
14 WITHIN 6 YEARS AFTER THE DATE OF THE FINAL ORDER, THE LICENSEE OR  
15 CERTIFICATE HOLDER CITED IN THE POSTING:

16                       (I) HAS COMPLIED WITH ALL OF THE CONDITIONS IN THE  
17 FINAL ORDER;

18                       (II) HAS NOT BEEN SUBJECT TO ANY FURTHER  
19 DISCIPLINARY ACTION; AND

20                       (III) IS PRACTICING IN FULL COMPLIANCE WITH THE  
21 APPLICABLE STANDARD OF CARE.

22           (2) THIS SECTION DOES NOT APPLY TO A FINAL ORDER  
23 CONCERNING A CRIMINAL CONVICTION OR SEXUAL MISCONDUCT OR OTHER  
24 SIMILAR BOUNDARY VIOLATION.

25           (3) WHEN A HEALTH OCCUPATIONS BOARD REMOVES A POSTING  
26 UNDER THIS SUBSECTION, THE BOARD SHALL NOTIFY THE NATIONAL  
27 PRACTITIONER DATA BANK.

28 **1-609.**

29           (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, NO  
30 RECORDS RELATED TO A DISCIPLINARY SANCTION MAY BE CONSIDERED IN A  
31 LEGAL PROCEEDING OTHER THAN A SUBSEQUENT DISCIPLINARY MATTER IF

1 WITHIN 6 YEARS AFTER THE DATE OF A FINAL ORDER, THE LICENSEE OR  
2 CERTIFICATE HOLDER CITED IN THE POSTING:

3 (1) HAS COMPLIED WITH ALL OF THE CONDITIONS IN THE FINAL  
4 ORDER;

5 (2) HAS NOT BEEN SUBJECT TO ANY FURTHER DISCIPLINARY  
6 ACTION; AND

7 (3) IS PRACTICING IN FULL COMPLIANCE WITH THE APPLICABLE  
8 STANDARD OF CARE.

9 (B) THIS SECTION DOES NOT APPLY TO A FINAL ORDER CONCERNING A  
10 CRIMINAL CONVICTION OR SEXUAL MISCONDUCT OR OTHER SIMILAR  
11 BOUNDARY VIOLATION.

12 **1-610.**

13 (A) THE SECRETARY SHALL ESTABLISH GOALS FOR THE TIMELINESS OF  
14 COMPLAINT RESOLUTION, INCLUDING:

15 (1) THE COMPLETION OF AN INVESTIGATION AND  
16 DETERMINATION OF WHETHER TO CHARGE WITHIN 18 MONTHS AFTER THE  
17 DATE THE COMPLAINT IS FILED WITH THE BOARD;

18 (2) THE ISSUANCE OF CHARGES WITHIN 90 DAYS AFTER A  
19 DETERMINATION TO CHARGE IS MADE;

20 (3) THE SCHEDULING OF A HEARING BETWEEN 90 DAYS AND 6  
21 MONTHS AFTER THE ISSUANCE OF CHARGES; AND

22 (4) UNLESS GOOD CAUSE IS SHOWN, A FINAL DECISION BY THE  
23 HEALTH OCCUPATIONS BOARD WITHIN THE LATER OF 90 DAYS AFTER:

24 (I) RECEIPT OF AN OPINION FROM THE OFFICE OF  
25 ADMINISTRATIVE HEARINGS; OR

26 (II) THE FINAL DAY OF ANY HEARING BEFORE THE HEALTH  
27 OCCUPATIONS BOARD.

28 (B) (1) THE SECRETARY SHALL MONITOR THE HEALTH  
29 OCCUPATIONS BOARDS' COMPLIANCE WITH THE GUIDELINES ESTABLISHED IN  
30 ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION AND MAKE

1 RECOMMENDATIONS ON UNIFORM TIME FRAMES FOR ALL OF THE BOARDS, A  
2 GROUP OF BOARDS, OR A SPECIFIC BOARD.

3 (2) ON OR BEFORE OCTOBER 1, 2011, THE SECRETARY SHALL  
4 REPORT TO THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS  
5 COMMITTEE AND THE HOUSE HEALTH AND GOVERNMENT OPERATIONS  
6 COMMITTEE, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT  
7 ARTICLE, ON THE RECOMMENDATIONS REQUIRED BY PARAGRAPH (1) OF THIS  
8 SUBSECTION.

9 SUBTITLE 7. ROLE OF ASSISTANT ATTORNEYS GENERAL.

10 1-701.

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
12 INDICATED.

13 (B) "ADJUDICATORY PROCEEDING" MEANS ANY PROCEEDING BY A  
14 HEALTH OCCUPATIONS BOARD ESTABLISHED TO DETERMINE A SPECIFIC  
15 PARTY'S RIGHTS, DUTIES, STATUTORY ENTITLEMENT, OR PRIVILEGES, BY USE  
16 OF AN ADJUDICATORY HEARING REGARDLESS OF WHETHER THE PROCEEDING  
17 IS A CONTESTED CASE UNDER THE MARYLAND ADMINISTRATIVE PROCEDURE  
18 ACT.

19 (C) "ADVISOR" MEANS AN ASSISTANT ATTORNEY GENERAL WHO  
20 RENDERS LEGAL ADVICE TO A HEALTH OCCUPATIONS BOARD REGARDING ANY  
21 MATTER PERTAINING TO A SPECIFIC CASE CONSIDERED BY THAT BOARD.

22 (D) "ADVOCATE" MEANS AN ASSISTANT ATTORNEY GENERAL WHO  
23 PRESENTS OR PROSECUTES A CASE BEFORE A HEALTH OCCUPATIONS BOARD OR  
24 WHO ADVISES SOMEONE WHO PRESENTS OR PROSECUTES A CASE BEFORE A  
25 BOARD.

26 (E) "HEALTH OCCUPATIONS BOARD" MEANS A BOARD AUTHORIZED TO  
27 ISSUE A LICENSE OR CERTIFICATE UNDER THIS ARTICLE.

28 1-702.

29 (A) THE OFFICE OF THE ATTORNEY GENERAL SHALL ESTABLISH  
30 GUIDELINES THAT SEPARATE THE FUNCTIONS OF THE ADVISOR AND THE  
31 ADVOCATE IN ADJUDICATORY PROCEEDINGS.



1           **(B) THE OFFICE OF THE ATTORNEY GENERAL SHALL POST ON THE**  
2 **OFFICE OF THE ATTORNEY GENERAL'S WEBSITE THE GUIDELINES**  
3 **ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION.**

4           **(C) EACH HEALTH OCCUPATIONS BOARD SHALL POST ON THE BOARD'S**  
5 **WEBSITE THE GUIDELINES ESTABLISHED UNDER SUBSECTION (A) OF THIS**  
6 **SECTION OR A LINK TO THE GUIDELINES ON THE OFFICE OF THE ATTORNEY**  
7 **GENERAL'S WEBSITE.**

8 **1-703.**

9           **(A) NOTWITHSTANDING ANY OTHER LAW, THE OFFICE OF THE**  
10 **ATTORNEY GENERAL MAY:**

11                   **(1) ESTABLISH A POOL OF ALL ADVOCATES FOR THE HEALTH**  
12 **OCCUPATIONS BOARDS; AND**

13                   **(2) ASSIGN AN ADVOCATE TO A HEALTH OCCUPATIONS BOARD ON**  
14 **A CASE-BY-CASE BASIS.**

15           **(B) THE OFFICE OF THE ATTORNEY GENERAL MAY MAKE**  
16 **ASSIGNMENTS UNDER THIS SECTION BASED ON THE RESOURCES ALLOCATED BY**  
17 **EACH HEALTH OCCUPATIONS BOARD.**

18                   **SUBTITLE 8. AUTHORITY TO CREATE STAFF POSITIONS.**

19 **1-801.**

20           **(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH HEALTH**  
21 **OCCUPATIONS BOARD MAY CREATE ANY POSITION TO THE EXTENT THAT THE**  
22 **COST OF THE POSITION, INCLUDING ANY FRINGE BENEFIT COSTS, IS FUNDED**  
23 **FROM EXISTING FUNDS.**

24           **(B) NOTHING IN THIS SECTION MAY BE CONSTRUED TO REQUIRE ANY**  
25 **ADDITIONAL STATE GENERAL FUND SUPPORT.**

26 **1-802.**

27           **(A) EACH BOARD SHALL COLLABORATE WITH THE SECRETARY AND THE**  
28 **DEPARTMENT OF BUDGET AND MANAGEMENT TO DEVELOP AND ADOPT**  
29 **REGULATIONS TO IMPLEMENT THIS SUBTITLE.**

30           **(B) ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE DEPARTMENT**  
31 **SHALL SUBMIT AN ANNUAL POSITION ACCOUNTABILITY REPORT TO THE**

1 **DEPARTMENT OF BUDGET AND MANAGEMENT AND THE DEPARTMENT OF**  
2 **LEGISLATIVE SERVICES THAT REPORTS THE TOTAL NUMBER OF POSITIONS**  
3 **CREATED AND THE COST AND THE FUNDING SOURCE FOR EACH POSITION**  
4 **CREATED BY EACH HEALTH OCCUPATIONS BOARD IN THE PREVIOUS FISCAL**  
5 **YEAR.**

6           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 October 1, 2009.