

# HOUSE BILL 1469

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EMERGENCY BILL

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By: **Chair, Health and Government Operations Committee (By Request –  
Departmental – Health and Mental Hygiene)**

Introduced and read first time: March 2, 2009

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Nursing – Discipline – Hearing Committee**

3 FOR the purpose of authorizing the establishment of a certain committee of members  
4 of the State Board of Nursing to conduct disciplinary hearings; authorizing the  
5 president of the Board to appoint Board members to the hearing committee;  
6 specifying the minimum number of hearing committee members; requiring the  
7 hearing committee to report their recommended decision to the Board within a  
8 certain period of time; authorizing a member of the hearing committee to be a  
9 part of the Board quorum while considering the recommendation; requiring the  
10 Board to give a certain notice; requiring a certain written response to be filed  
11 within a certain period of time; making this Act an emergency measure; and  
12 generally relating to the State Board of Nursing and disciplinary hearings.

13 BY repealing and reenacting, with amendments,  
14 Article – Health Occupations  
15 Section 8–317  
16 Annotated Code of Maryland  
17 (2005 Replacement Volume and 2008 Supplement)

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

20 **Article – Health Occupations**

21 8–317.

22 (a) Except as otherwise provided in the Administrative Procedure Act and in  
23 subsection [(g)] (O) of this section, before the Board takes any action under § 8–312 or  
24 § 8–316 of this subtitle or § 8–404 or § 8–6A–10 of this title, it shall give the [person]

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **INDIVIDUAL** against whom the action is contemplated an opportunity for a hearing  
2 before the Board.

3 (B) **EACH HEARING SHALL BE HELD BEFORE:**

4 (1) **A QUORUM OF THE BOARD; OR**

5 (2) **A HEARING COMMITTEE ESTABLISHED UNDER SUBSECTION**  
6 **(D) OF THIS SECTION.**

7 (C) **THE PRESIDENT OF THE BOARD OR THE PRESIDENT'S DESIGNEE**  
8 **SHALL BE THE PRESIDING OFFICER.**

9 (D) **THE PRESIDENT OF THE BOARD MAY DELEGATE AUTHORITY TO**  
10 **CONDUCT A HEARING TO A HEARING COMMITTEE OF THREE OR MORE BOARD**  
11 **MEMBERS.**

12 (E) **THE HEARING COMMITTEE SHALL:**

13 (1) **HOLD AN EVIDENTIARY HEARING; AND**

14 (2) **PREPARE A RECOMMENDED DECISION FOR CONSIDERATION**  
15 **BY A QUORUM OF THE BOARD WITHIN 90 DAYS OF THE CONCLUSION OF THE**  
16 **HEARING.**

17 (F) **THE QUORUM MAY INCLUDE MEMBERS OF THE HEARING**  
18 **COMMITTEE.**

19 (G) (1) **AFTER HOLDING A HEARING, THE HEARING COMMITTEE**  
20 **SHALL PREPARE FOR CONSIDERATION BY A QUORUM OF THE BOARD A**  
21 **RECOMMENDED DECISION THAT CONTAINS:**

22 (I) **PROPOSED FINDINGS OF FACT;**

23 (II) **PROPOSED CONCLUSIONS OF LAW; AND**

24 (III) **A PROPOSED DISPOSITION.**

25 (2) **THE BOARD SHALL NOTIFY THE PARTIES OF THE RIGHT TO:**

26 (I) **FILE WRITTEN EXCEPTIONS TO THE RECOMMENDED**  
27 **DECISION ISSUED BY THE HEARING COMMITTEE WITHIN 21 DAYS OF RECEIPT OF**  
28 **THE RECOMMENDED DECISION; AND**

1                                   **(II) PRESENT ORAL ARGUMENT TO THE BOARD.**

2           **(H) THE OPPOSING PARTY TO THE EXCEPTIONS IN SUBSECTION**  
3 **(G)(2)(I) OF THIS SECTION HAS 15 DAYS TO FILE A WRITTEN RESPONSE.**

4           **(I) THE BOARD MAY REFUSE TO CONSIDER EXCEPTIONS OR**  
5 **RESPONSES FILED UNDER SUBSECTIONS (G)(2)(I) AND (H) OF THIS SECTION**  
6 **AFTER THE DEADLINES HAVE PASSED.**

7           **[(b)] (J)**       The Board shall give notice and hold the hearing in accordance  
8 with the Administrative Procedure Act.

9           **[(c)] (K)**       The hearing notice to be given to the [person] **INDIVIDUAL** shall  
10 be sent by certified mail, return receipt requested, bearing a postmark from the  
11 United States Postal Service, to the last known address of the person at least 30 days  
12 before the hearing.

13           **[(d)] (L)**       The [person] **INDIVIDUAL** may be represented at the hearing by  
14 counsel.

15           **[(e)] (M)**       If after due notice the individual against whom the action is  
16 contemplated fails or refuses to appear, [nevertheless] the Board may hear and  
17 determine the matter.

18           **[(f)] (N)**       (1)     Over the signature of the president, the executive director,  
19 or the deputy director as authorized by the executive director of the Board, the Board  
20 may issue subpoenas and administer oaths in connection with any investigation under  
21 this title and any hearings or proceedings before it.

22                           (2)     If [a person] **AN INDIVIDUAL**, without lawful excuse, disobeys a  
23 subpoena from the Board or an order by the Board to take an oath, testify, or answer  
24 questions, on petition of the Board a court of competent jurisdiction may compel  
25 compliance with the subpoena and hold the individual in contempt of court.

26           **[(g)] (O)**       The Board may immediately suspend the license of a registered  
27 nurse or licensed practical nurse who is expelled from the rehabilitation program  
28 under § 8–208 of this title for noncompliance with the nurse’s agreement if:

29                           (1)     Prior to suspending the license, the Board provides the nurse with  
30 an opportunity to show cause by written communication or nontestimonial  
31 presentation as to why the suspension should not occur; and

32                           (2)     The Board provides the nurse with an opportunity for a hearing,  
33 which:

1 (i) Shall occur within 30 days of written request by the nurse;  
2 and

3 (ii) Shall impose on the licensee the burden of proving by a  
4 preponderance of the evidence that the licensee is not addicted to drugs or alcohol.

5 **[(h)] (P)** (1) After the Board conducts an investigation under this title,  
6 the Board may issue an advisory letter to the licensee or certificate holder.

7 (2) The Board may disclose an advisory letter issued under this  
8 subsection to the public.

9 (3) The issuance of an advisory letter under this subsection may not:

10 (i) Be considered a disciplinary action under §§ 8-316 and  
11 8-6A-10 of this title; and

12 (ii) Be reported to any licensing entity, employer, or insurance  
13 company as a disciplinary action.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
15 measure, is necessary for the immediate preservation of the public health or safety,  
16 has been passed by a ye and nay vote supported by three-fifths of all the members  
17 elected to each of the two Houses of the General Assembly, and shall take effect from  
18 the date it is enacted.