

HOUSE BILL 1469

J2

EMERGENCY BILL

9lr0011

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

Re-referred to: Health and Government Operations, March 9, 2009

Committee Report: Favorable

House action: Adopted

Read second time: April 2, 2009

CHAPTER _____

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**

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.



1 8-317.

2 (a) Except as otherwise provided in the Administrative Procedure Act and in
3 subsection [(g)] (O) of this section, before the Board takes any action under § 8-312 or
4 § 8-316 of this subtitle or § 8-404 or § 8-6A-10 of this title, it shall give the [person]
5 **INDIVIDUAL** against whom the action is contemplated an opportunity for a hearing
6 before the Board.

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

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

9 (2) **A HEARING COMMITTEE ESTABLISHED UNDER SUBSECTION**
10 **(D) OF THIS SECTION.**

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

13 (D) **THE PRESIDENT OF THE BOARD MAY DELEGATE AUTHORITY TO**
14 **CONDUCT A HEARING TO A HEARING COMMITTEE OF THREE OR MORE BOARD**
15 **MEMBERS.**

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

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

18 (2) **PREPARE A RECOMMENDED DECISION FOR CONSIDERATION**
19 **BY A QUORUM OF THE BOARD WITHIN 90 DAYS OF THE CONCLUSION OF THE**
20 **HEARING.**

21 (F) **THE QUORUM MAY INCLUDE MEMBERS OF THE HEARING**
22 **COMMITTEE.**

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

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

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

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

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

1 **(I) FILE WRITTEN EXCEPTIONS TO THE RECOMMENDED**
2 **DECISION ISSUED BY THE HEARING COMMITTEE WITHIN 21 DAYS OF RECEIPT OF**
3 **THE RECOMMENDED DECISION; AND**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (i) Be considered a disciplinary action under §§ 8–316 and
13 8–6A–10 of this title; and

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.