

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1296

(Delegates Cullison and Frank)

Health and Government Operations

Education, Health, and Environmental Affairs

State Board of Physicians - Quasi-Judicial Powers and the Board of Review -
Revisions

This bill authorizes the State Board of Physicians (MBP) to issue a cease and desist order or obtain injunctive relief against an individual for taking any action (1) for which MBP determines there is a preponderance of the evidence of grounds for discipline under the Medical Practice Act and (2) that poses a serious risk to the health, safety, and welfare of a patient. MBP must adopt regulations to carry out the provisions of the bill, including hearing procedures and sanctions for noncompliance with a cease and desist order.

The bill also repeals the authority for a physician or respiratory care practitioner to appeal a final decision of MBP in specified contested cases to the Board of Review and then take any further appeal allowed by the Administrative Procedure Act (APA). Instead, a physician or respiratory care practitioner may take a direct judicial appeal when aggrieved by a final decision of MBP in any contested case.

Fiscal Summary

State Effect: Since it is assumed that this bill will apply in a limited number of cases, State finances are not materially affected.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law/Background: The mission of MBP is to assure quality health care in Maryland through the efficient licensure and effective discipline of health providers under its jurisdiction, by protecting and educating clients/customers and stakeholders and enforcing the Maryland Medical Practice Act. The board has regulatory authority over physicians, physician assistants, radiographers, radiation therapists, nuclear medicine technologists, radiologist assistants, respiratory care practitioners, polysomnographic technologists, athletic trainers, and perfusionists.

The board may issue a cease and desist order or obtain injunctive relief for practicing medicine without a license. Thus, the board has authority only to stop unlicensed practitioners. According to MBP, the bill authorizes the board to order a licensee to cease performing a specific act or acts (*i.e.*, prescribing controlled dangerous substances) when the facts and circumstances of a particular case warrant such action rather than summarily suspending the entire license. In appropriate circumstances, a cease and desist order allows a licensee to continue a limited practice, while still protecting the public from dangerous practices.

Generally, individuals regulated by MBP (including physicians and most allied health professionals) who are aggrieved by a final decision of the board may not appeal to the Secretary of Health and Mental Hygiene or the Board of Review. Instead, they may take a direct judicial appeal.

An applicant for a physician assistant license aggrieved by a final decision to deny a license or to reject or modify a delegation agreement or advanced duty may appeal that decision to the Board of Review and then take any further appeal allowed under APA. Polysomnographic technologists do not have specified appeals rights under the Maryland Polysomnography Act.

With the exception of certain cases, physicians and respiratory care practitioners may appeal a final decision of MBP in a contested case to the Board of Review and then take any further appeal allowed under APA. MBP indicates that all initial denials of licensure, fines for practicing a regulated profession without a license, cease and desist orders, and summary suspensions issued by MBP initially go to the Board of Review, after which an individual may take any further judicial appeal.

Additional Information

Prior Introductions: None.

Cross File: SB 981 (Senator Montgomery) – Education, Health, and Environmental Affairs.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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