

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 379

(Senator Conway)

Education, Health, and Environmental Affairs

Health and Government Operations

State Acupuncture Board and State Board of Dietetic Practice - Action and Penalties for Violations of Practice Acts and Supervisory Authority of Acupuncturists

This bill authorizes the State Acupuncture Board and the State Board of Dietetic Practice to issue a cease and desist order or obtain injunctive relief against an individual who is practicing acupuncture or dietetics without a license or violating specified prohibitions against misrepresentation to the public that an individual is authorized to practice acupuncture or dietetics. Practicing acupuncture or dietetics without a license or misrepresenting to the public that an individual is authorized to practice acupuncture or dietetics are both subject to a new civil fine of up to \$50,000. Fines will be assessed by the respective board and paid to the general fund.

If, after a hearing, the State Acupuncture Board finds that there are grounds to discipline a licensed acupuncturist, the board may impose a civil penalty of up to \$5,000 *instead of or in addition to* placing a licensee on probation, reprimanding the licensee, or suspending or revoking the license. The State Acupuncture Board must adopt regulations for the imposition of such penalties, and all these penalties must be paid into the general fund.

The bill also authorizes a licensed acupuncturist to provide supervision to a licensed clinical professional counselor performing auricular detoxification.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from penalties imposed by the State Acupuncture Board and the authority of both boards to issue civil fines. Negligible special fund revenue increase for the State Acupuncture Board from auricular detoxification specialist registration fees. Any additional workload can be handled with existing resources.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: For the State Board of Dietetic Practice, an action may be maintained in the name of the State or the board to enjoin the unauthorized practice of dietetics or conduct that is a ground for disciplinary action by the board. Such an action may be brought by the board (in its own name) or the Attorney General or a State's Attorney (in the name of the State). An action must be brought in the county where the defendant resides or engages in the act sought to be enjoined. Proof of actual damage or that any person will sustain any damage is not required. An action is *in addition to and not instead of* criminal prosecution for the unauthorized practice of dietetics or a disciplinary action under the Maryland Licensed Dietician-Nutritionists Act.

Current Law:

State Acupuncture Board

Subject to hearing provisions, the State Acupuncture Board may deny a license to practice acupuncture, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee violates any of the 18 grounds for disciplinary action. The board does not have the authority to assess a penalty or fine instead of or in addition to other disciplinary action.

Unless licensed by the board or otherwise permitted to do so under the Maryland Acupuncture Act, a person may not (1) practice, attempt to practice, or offer to practice acupuncture; (2) represent to the public, by description of services, methods, procedures, or otherwise, that the person is authorized to practice acupuncture; or (3) use the words or terms "acupuncturist," "licensed acupuncturist," or "L.Ac." unless the person is authorized to practice acupuncture. A violator is guilty of a misdemeanor and subject to a fine of up to \$5,000 or imprisonment for up to three years, or both.

Auricular detoxification is an acupuncture technique involving the needling of the external auricle of the human ear for the purpose of assisting a person who is undergoing detoxification to remove addictive substances from the body and restore health.

An acupuncturist licensed by the board may provide supervision to as many individuals performing auricular detoxification as permitted by the board if each individual (1) is an

alcohol, substance abuse, or chemical dependency counselor who is a certified professional counselor-alcohol and drug, certified associate counselor-alcohol and drug, certified supervised counselor-alcohol and drug; licensed to practice clinical alcohol and drug counseling; a licensed nurse; or a licensed psychologist or certified social worker-clinical who works with alcohol- or drug-addicted clients at a chemical dependency program; (2) provides documentation to the board of the successful completion of a training program in acupuncture for the treatment of alcoholism, substance abuse, or chemical dependency that is approved by the board and meets or exceeds the standards of the National Acupuncture Detoxification Association; (3) does not represent to the public that the individual is authorized to practice acupuncture; (4) agrees to be subject to the board for disciplinary action; and (5) performs auricular detoxification only within the context of a clinical substance abuse program in a hospital, prison, outpatient clinic, or other setting approved by the board.

State Board of Dietetic Practice

Subject to hearing provisions, the State Board of Dietetic Practice may deny a license to practice dietetics, reprimand any licensee, or suspend or revoke a license if the licensee violates any of the 18 grounds for disciplinary action. Unless licensed by the board or otherwise permitted to do so under the Maryland Licensed Dietician-Nutritionists Act, a person may not (1) practice, attempt to practice, or offer to practice dietetics; (2) represent or imply to the public by use of the title “licensed dietician-nutritionist,” by other title, description of services, methods, or procedures that the person is authorized to practice dietetics; or (3) use the words or terms “dietician-nutritionist,” “licensed dietician-nutritionist,” “LDN,” “dietician,” “licensed dietician,” “D,” “LD,” “nutritionist,” “licensed nutritionist,” or “LN” unless the person is authorized to practice dietetics. A violator is guilty of a misdemeanor and subject to a fine of up to \$1,000 or imprisonment for up to one year, or both.

Background: Five health occupations boards (pharmacy, physical therapy, physicians, podiatry, and psychologists) are authorized to assess a civil fine of up to \$50,000 for practicing without a license. In all instances other than podiatry, such fines are payable to each board’s respective special fund.

Two health occupations boards (nursing home administrators and physicians) are authorized to issue cease and desist orders.

Twelve health occupations boards (audiology, chiropractic and massage therapy, dentistry, dietetic practice, morticians and funeral directors, nursing, optometry, pharmacy, physical therapy, podiatric, professional counselors and therapists, and psychologists) are authorized to impose *penalties* instead of or in addition to disciplinary action. The maximum amount of such penalties is generally \$5,000, but it ranges from a

low of \$500 (for certified nursing assistants and medication technicians under the State Board of Nursing) to \$10,000 (for licensed pharmacists and pharmacy permit holders under the State Board of Pharmacy and licensed psychologists under the State Board of Examiners of Psychologists). Three health occupations boards are authorized to impose *fin*es instead of or in addition to disciplinary action. The State Board of Nursing Home Administrators may impose a *fine* of up to \$1,000 for a first offense and \$5,000 for any subsequent offense of the same provision instead of suspending or revoking the license or in addition to placing the licensee on probation or suspending or revoking the license. The State Board of Physicians is authorized to impose a *fine*, subject to board regulations, instead of suspending a license or in addition to suspending or revoking a license or reprimanding a licensee. The State Board of Social Work Examiners is authorized to impose a *fine* of up to \$10,000 on a licensee instead of or in addition to disciplinary action. All penalties and fines accrue to the general fund.

Most complaints received by the State Board of Dietetic Practice concern unlicensed individuals. Frequently, the complaints refer to websites that mislead the public to believe a person is authorized to practice dietetics and provide medical nutrition. Typically, the board closes complaints concerning the unlicensed practice of dietetics by sending letters of law or cease and desist letters. A letter of law informs an unlicensed individual that statute prohibits an individual from practicing dietetics without being licensed by the board and includes the statutory provisions for title protection and criminal sanctions. A cease and desist letter states that the unlicensed individual must immediately stop a specific action. In 2012, the board stopped sending cease and desist letters in response to an opinion issued by the Federal Trade Commission concerning antitrust implications on the interaction between health occupations boards and unlicensed individuals. In the 2012 preliminary sunset evaluation of the State Board of Dietetic Practice, the Department of Legislative Services recommended that the board may wish to have its statute amended to include specific authority to issue cease and desist letters or to seek injunctive relief, as is authorized in the Health Occupations Article for other health occupations boards.

State Revenues: General fund revenues may increase minimally as a result of the State Acupuncture Board's authority to impose a penalty of up to \$5,000 *instead of or in addition to* other disciplinary action and the State Acupuncture Board's and the State Board of Dietetic Practice's authority to assess a civil fine of up to \$50,000. Actual revenues depend on the number of penalties, violations, and the actual civil fines imposed. Special fund revenues for the State Acupuncture Board increase by a negligible amount from fees paid by licensed clinical professional counselors seeking an auricular detoxification specialist registration. Given the small number of anticipated applicants at a fee of \$50, revenues will be negligible.

Additional Information: In response to ongoing challenges among the health occupations boards in addressing unlicensed practitioners, several bills have been introduced in the 2014 legislative session that authorize various boards to issue cease and desist orders, seek injunctive relief, and/or impose fines or penalties:

- **SB 380/HB 302** – State Board of Podiatric Medical Examiners – Cease and Desist Orders and Fines;
- **SB 448/HB 112** – State Board of Professional Counselors and Therapists – Cease and Desist Orders and Penalties for Misrepresentation and Practicing Without a License;
- **SB 453/HB 403** – State Board of Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists – Cease and Desist Orders and Injunctive Relief; and
- **SB 587/HB 791** – State Board of Examiners in Optometry – Cease and Desist Orders, Injunctive Relief, and Penalties.

Additional Information

Prior Introductions: None.

Cross File: HB 304 (Delegate Reznik) - Health and Government Operations.

Information Source(s): Administrative Office of the Courts, Department of Health and Mental Hygiene, Department of Legislative Services

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