

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 98 (Delegate Pendergrass)
Health and Government Operations

State Board of Morticians and Funeral Directors - Orders of Summary
Suspension - Prohibition on Stays

This bill prohibits an order of summary suspension by the State Board of Morticians and Funeral Directors from being stayed.

Fiscal Summary

State Effect: None. The changes are procedural in nature and do not directly affect governmental finances.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: Before the board takes disciplinary action, it must give the individual against whom the action is contemplated an opportunity for a hearing. The board must give notice and hold the hearing in accordance with the Administrative Procedure Act (APA). Any party may seek an appeal from a decision of the board. The decision of the board must be governed by APA. A person aggrieved by a final decision of the board may petition for direct judicial review as allowed by APA. Both an order of suspension and an order of revocation by the board are stayed if a person notes an appeal.

A summary of prohibitions on stays for the health occupations boards can be found in **Appendix 1**.

Additional Comments: In recent years, several bills have been proposed that would have established similar prohibitions for stays across other health occupations boards. Senate Bill 837/House Bill 1290 of 2013 would have standardized provisions of law for most health occupations boards regarding (1) prohibitions on stays pending judicial review and (2) prohibitions against a hearing of charges filed by boards from being stayed or challenged by procedural defect alleged to have occurred prior to the filing of charges. Senate Bill 50/House Bill 232 of 2015 would prohibit stays for procedural defects and stays pending judicial review for the State Acupuncture Board.

Additional Information

Prior Introductions: None.

Cross File: SB 70 (Senator Conway) - Education, Health, and Environmental Affairs.

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

Fiscal Note History: First Reader - March 2, 2015
min/jc

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Appendix 1 – Health Occupations Boards’ Prohibitions on Stays

<u>Title</u>	<u>Board</u>	<u>Current Law</u>	<u>Prohibits Stays for Procedural Defects</u>	<u>Prohibits Stays Pending Judicial Review</u>
1A	Acupuncture			
2	Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists	An order of the board may not be stayed pending review.		CL
3	Chiropractic and Massage Therapy			
4	Dental			
5	Dietetic Practice	An order of the board may not be stayed pending review.		CL
7	Morticians and Funeral Directors	If a person notes an appeal from an order of suspension or revocation by the board, the order is stayed.		
8	Nursing		CL (electrologists only)	CL
9	Nursing Home Administrators	An order of the board may not be stayed pending review.		CL
10	Occupational Therapy			
11	Optometry	If an optometrist seeks judicial review of an order of suspension or revocation by the board, the order must be stayed until the optometrist’s judicial remedies are exhausted.		

<u>Title</u>	<u>Board</u>	<u>Current Law</u>	<u>Prohibits Stays for Procedural Defects</u>	<u>Prohibits Stays Pending Judicial Review</u>
12	Pharmacy	Regarding pharmacy permits, if an appeal is taken, the board <i>may</i> stay its order of suspension or revocation pending the decision of the court.	CL	
13	Physical Therapy			
14	Physicians	An order of the board may not be stayed pending review.	CL	CL
15	Physician Assistants			CL
16	Podiatric			
17	Professional Counselors and Therapists			CL
18	Psychologists	A decision of the board to deny a license or registration, enforce a suspension of a license or registration for more than one year, or revoke a license or registration may not be stayed pending judicial review.	CL	CL
19	Social Work			
20	Residential Child Care Program Professionals			
21	Environmental Health Specialists			

Notes: CL = prohibition under current law. As introduced, this bill and its cross file would, for the State Board of Morticians and Funeral Directors, prohibit stays from an order of summary suspension by the board.

Source: Laws of Maryland, Department of Legislative Services