



Board of Nursing

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

2020 SESSION POSITION PAPER

BILL NO: Senate Bill 297

COMMITTEE: Education, Health, and Environmental Affairs

POSITION: Oppose

TITLE: Administrative Procedure Act – Dispositions and Summary Suspensions – Time Periods

BILL ANALYSIS: The bill requires the Office of Administrative Hearings (“OAH”), and an agency of the State, such as the Board of Nursing (“the Board”), to dispose of a contested case within 90 days of the conclusion of the evidentiary hearing. If the agency or the Office does not dispose of the case within that period, the respondent may provide written notice to the Office or agency, and the Office or agency is then granted an additional 30 days to dispose of the case. If not so disposed, the case is deemed in favor of the respondent. In addition, the bill provides that if a unit such as the Board summarily suspends a license, the unit shall issue a final order on the summary suspension within 30 days of the summary suspension.

POSITION AND RATIONALE: The Board of Nursing opposes SB0297. The amendment to section 10-226 proposed in this bill is not necessary to protect the public or the rights of licensees. Over the past few years, the Board of Nursing has utilized more “pre-deprivation” summary suspensions (which allow the Respondent to address the Board at a show cause hearing **before** the summary suspension is imposed) and expedited evidentiary hearings on summary suspension cases (generally evidentiary hearings are scheduled within 2-3 months from the date the summary suspension is imposed). The final order is issued less than 90 days after the evidentiary hearing.

Due Process Implications

This bill seriously jeopardizes Respondents’ due process rights. If the bill passes, Respondents would have significantly less than 30 days notice to prepare for the evidentiary hearing which includes retaining representation and obtaining documents to prepare their case. Specific notice requirements are set forth in Health Occupations Article § 8-317(c), and in the Code of Maryland Regulations (“COMAR”), 10.27.02.01-1A. The Board is required to send written notice of a formal hearing to all interested parties at least 30 days before the hearing.

Fiscal and Operational Impact

SB0297 poses both an operational and fiscal impact on the Board of Nursing. The bill would require the Board to issue a final, appealable order within 30 days after the summary suspension order is issued. Practically speaking, this means that the Board would need to (1) schedule an evidentiary hearing on the summary suspension, (2) send notice of that evidentiary hearing, (3) hold the evidentiary hearing and (4) issue a final, appealable decision on the summary suspension; all within 30 days from the date the summary suspension is issued.

The Board will be forced to convene an impromptu meeting to hold the evidentiary hearing and pay for a same-day expedited transcript. Board Counsel would then have to stop all other duties at that time to draft the final order so that it can be issued within 30 days from the date the summary suspension was issued. From a practical perspective, complying with the 30-day timeline would be nearly impossible.

The Board would incur the cost of transcription fees and per diem Board members for the impromptu meetings as well as lost productivity from Board Counsel. The Board would have to hire at least 2 merit PIN employees: 1 Administrative Specialist for the Discipline Department which schedules and tracks the hearings and sends out the notices; 1 paralegal to gather transcripts, board materials and case files for the advising attorneys' preparation and final review of hearing orders.

Conclusion

For the reasons stated above, the Board opposes SB0297 and the Board urges an unfavorable report on this bill.

Thank you for your consideration of the Board's position.

For more information, please contact Rhonda Scott, Deputy Director, at (410) – 585 – 1953 (rhonda.scott2@maryland.gov) or Karen E. B. Evans, Executive Director, at (410) – 585 – 1914 (karene.evans@maryland.gov).

The opinion of the Board expressed in this document does not necessarily reflect that of the Department of Health or the Administration.