

HOUSE BILL 1193

J2, J1, C4

8lr2321

By: **Delegates West and Morhaim**

Introduced and read first time: February 8, 2018

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Physicians – Discipline – Procedures and Effects**

3 FOR the purpose of requiring a disciplinary panel to dismiss certain complaints against
4 licensed physicians if either of two peer review reports makes a certain finding;
5 authorizing a disciplinary panel of the State Board of Physicians to issue a letter of
6 admonishment to certain licensees under certain circumstances; requiring that a
7 letter of admonishment be primarily used in certain circumstances; prohibiting a
8 letter of admonishment from being made public; requiring the Board to provide a
9 summary of the letters of admonishment issued by the disciplinary panels in a
10 certain report; requiring the Board to expunge all records of a public reprimand or
11 probation after a certain amount of time; prohibiting hospitals and related
12 institutions, certain insurers, and certain carriers from taking adverse action, under
13 certain circumstances, against certain physicians based solely on the fact that the
14 physician was placed on probation; requiring the Board to immediately rescind
15 certain discipline imposed against certain licensees and expunge certain records
16 under certain circumstances; prohibiting the Board and the disciplinary panels from
17 taking certain actions under certain circumstances; and generally relating to the
18 discipline of licensed physicians.

19 BY adding to

20 Article – Health – General

21 Section 19–360.1

22 Annotated Code of Maryland

23 (2015 Replacement Volume and 2017 Supplement)

24 BY repealing and reenacting, without amendments,

25 Article – Health Occupations

26 Section 14–401.1(a) and (c)(1)

27 Annotated Code of Maryland

28 (2014 Replacement Volume and 2017 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Health Occupations
3 Section 14–401.1(c)(2) and 14–404
4 Annotated Code of Maryland
5 (2014 Replacement Volume and 2017 Supplement)

6 BY adding to
7 Article – Health Occupations
8 Section 14–407.1
9 Annotated Code of Maryland
10 (2014 Replacement Volume and 2017 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article – Insurance
13 Section 15–112(a)(1), (4), (14), and (15)
14 Annotated Code of Maryland
15 (2017 Replacement Volume)

16 BY adding to
17 Article – Insurance
18 Section 15–112(x)
19 Annotated Code of Maryland
20 (2017 Replacement Volume)

21 BY repealing and reenacting, with amendments,
22 Article – Insurance
23 Section 19–104
24 Annotated Code of Maryland
25 (2017 Replacement Volume)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
27 That the Laws of Maryland read as follows:

28 **Article – Health – General**

29 **19–360.1.**

30 **A HOSPITAL OR RELATED INSTITUTION MAY NOT TAKE ADVERSE ACTION**
31 **AGAINST A PHYSICIAN BASED SOLELY ON THE FACT THAT THE PHYSICIAN WAS**
32 **PLACED ON PROBATION FOR A VIOLATION OF A GROUND FOR DISCIPLINE UNDER §**
33 **14–404(A) OF THE HEALTH OCCUPATIONS ARTICLE, IF THE PROBATION HAS**
34 **ENDED.**

35 **Article – Health Occupations**

36 14–401.1.

1 (a) (1) The Board shall perform any necessary preliminary investigation
2 regarding an allegation of grounds for disciplinary or other action brought to the Board's
3 attention before the allegation is assigned to a disciplinary panel.

4 (2) (i) After the completion of any necessary preliminary investigation
5 under paragraph (1) of this subsection, a complaint shall be assigned to a disciplinary panel.

6 (ii) Subject to the provisions of this section, a disciplinary panel:

7 1. Shall determine the final disposition of a complaint
8 against a physician or an allied health professional; and

9 2. Has the independent authority to make a determination
10 regarding the final disposition of a complaint.

11 (iii) The Board may not vote to approve or disapprove any action
12 taken by a disciplinary panel, including the final disposition of a complaint.

13 (3) A disciplinary panel that is assigned a complaint under paragraph (2)(i)
14 of this subsection may:

15 (i) Conduct any additional investigation into a complaint that is
16 deemed necessary to determine whether a violation of this title or Title 15 of this article
17 has occurred; and

18 (ii) Enter into a consent order with a physician or an allied health
19 professional after conducting a meeting between the disciplinary panel and the physician
20 or allied health professional to discuss any proposed disposition of the complaint.

21 (4) A disciplinary panel that is assigned a complaint against an allied
22 health professional under paragraph (2)(i) of this subsection shall consult with the chair of
23 the appropriate allied health advisory committee, or the chair's designee, before taking
24 disciplinary action against the allied health professional.

25 (5) (i) If a complaint proceeds to a hearing under § 14-405 of this
26 subtitle, § 14-5A-17, § 14-5B-14, § 14-5C-17, § 14-5D-15, § 14-5E-16, or § 14-5F-21 of
27 this title, or § 15-315 of this article, the chair of the disciplinary panel that was assigned
28 the complaint under paragraph (2)(i) of this subsection shall refer the complaint to the other
29 disciplinary panel.

30 (ii) If the complaint proceeds to a hearing and is referred to the other
31 disciplinary panel under subparagraph (i) of this paragraph, the disciplinary panel that
32 was assigned the complaint under paragraph (2)(i) of this subsection, or any of its members,
33 may not:

34 1. Continue to handle the complaint;

- 1 (i) Immoral conduct in the practice of medicine; or
- 2 (ii) Unprofessional conduct in the practice of medicine;
- 3 (4) Is professionally, physically, or mentally incompetent;
- 4 (5) Solicits or advertises in violation of § 14–503 of this title;
- 5 (6) Abandons a patient;
- 6 (7) Habitually is intoxicated;
- 7 (8) Is addicted to, or habitually abuses, any narcotic or controlled
8 dangerous substance as defined in § 5–101 of the Criminal Law Article;
- 9 (9) Provides professional services:
- 10 (i) While under the influence of alcohol; or
- 11 (ii) While using any narcotic or controlled dangerous substance, as
12 defined in § 5–101 of the Criminal Law Article, or other drug that is in excess of therapeutic
13 amounts or without valid medical indication;
- 14 (10) Promotes the sale of drugs, devices, appliances, or goods to a patient so
15 as to exploit the patient for financial gain;
- 16 (11) Willfully makes or files a false report or record in the practice of
17 medicine;
- 18 (12) Willfully fails to file or record any medical report as required under law,
19 willfully impedes or obstructs the filing or recording of the report, or induces another to fail
20 to file or record the report;
- 21 (13) On proper request, and in accordance with the provisions of Title 4,
22 Subtitle 3 of the Health – General Article, fails to provide details of a patient’s medical
23 record to the patient, another physician, or hospital;
- 24 (14) Solicits professional patronage through an agent or other person or
25 profits from the acts of a person who is represented as an agent of the physician;
- 26 (15) Pays or agrees to pay any sum to any person for bringing or referring a
27 patient or accepts or agrees to accept any sum from any person for bringing or referring a
28 patient;
- 29 (16) Agrees with a clinical or bioanalytical laboratory to make payments to
30 the laboratory for a test or test series for a patient, unless the licensed physician discloses

1 on the bill to the patient or third-party payor:

2 (i) The name of the laboratory;

3 (ii) The amount paid to the laboratory for the test or test series; and

4 (iii) The amount of procurement or processing charge of the licensed
5 physician, if any, for each specimen taken;

6 (17) Makes a willful misrepresentation in treatment;

7 (18) Practices medicine with an unauthorized person or aids an
8 unauthorized person in the practice of medicine;

9 (19) Grossly overutilizes health care services;

10 (20) Offers, undertakes, or agrees to cure or treat disease by a secret
11 method, treatment, or medicine;

12 (21) Is disciplined by a licensing or disciplinary authority or convicted or
13 disciplined by a court of any state or country or disciplined by any branch of the United
14 States uniformed services or the Veterans' Administration for an act that would be grounds
15 for disciplinary action under this section;

16 (22) Fails to meet appropriate standards as determined by appropriate peer
17 review for the delivery of quality medical and surgical care performed in an outpatient
18 surgical facility, office, hospital, or any other location in this State;

19 (23) Willfully submits false statements to collect fees for which services are
20 not provided;

21 (24) Was subject to investigation or disciplinary action by a licensing or
22 disciplinary authority or by a court of any state or country for an act that would be grounds
23 for disciplinary action under this section and the licensee:

24 (i) Surrendered the license issued by the state or country to the
25 state or country; or

26 (ii) Allowed the license issued by the state or country to expire or
27 lapse;

28 (25) Knowingly fails to report suspected child abuse in violation of § 5-704
29 of the Family Law Article;

30 (26) Fails to educate a patient being treated for breast cancer of alternative
31 methods of treatment as required by § 20-113 of the Health – General Article;

1 (27) Sells, prescribes, gives away, or administers drugs for illegal or
2 illegitimate medical purposes;

3 (28) Fails to comply with the provisions of § 12–102 of this article;

4 (29) Refuses, withholds from, denies, or discriminates against an individual
5 with regard to the provision of professional services for which the licensee is licensed and
6 qualified to render because the individual is HIV positive;

7 (30) Except as to an association that has remained in continuous existence
8 since July 1, 1963:

9 (i) Associates with a pharmacist as a partner or co-owner of a
10 pharmacy for the purpose of operating a pharmacy;

11 (ii) Employs a pharmacist for the purpose of operating a pharmacy;
12 or

13 (iii) Contracts with a pharmacist for the purpose of operating a
14 pharmacy;

15 (31) Except in an emergency life-threatening situation where it is not
16 feasible or practicable, fails to comply with the Centers for Disease Control and
17 Prevention's guidelines on universal precautions;

18 (32) Fails to display the notice required under § 14–415 of this subtitle;

19 (33) Fails to cooperate with a lawful investigation conducted by the Board
20 or a disciplinary panel;

21 (34) Is convicted of insurance fraud as defined in § 27–801 of the Insurance
22 Article;

23 (35) Is in breach of a service obligation resulting from the applicant's or
24 licensee's receipt of State or federal funding for the licensee's medical education;

25 (36) Willfully makes a false representation when seeking or making
26 application for licensure or any other application related to the practice of medicine;

27 (37) By corrupt means, threats, or force, intimidates or influences, or
28 attempts to intimidate or influence, for the purpose of causing any person to withhold or
29 change testimony in hearings or proceedings before the Board or a disciplinary panel or
30 those otherwise delegated to the Office of Administrative Hearings;

31 (38) By corrupt means, threats, or force, hinders, prevents, or otherwise
32 delays any person from making information available to the Board or a disciplinary panel
33 in furtherance of any investigation of the Board or a disciplinary panel;

1 (39) Intentionally misrepresents credentials for the purpose of testifying or
2 rendering an expert opinion in hearings or proceedings before the Board or a disciplinary
3 panel or those otherwise delegated to the Office of Administrative Hearings;

4 (40) Fails to keep adequate medical records as determined by appropriate
5 peer review;

6 (41) Performs a cosmetic surgical procedure in an office or a facility that is
7 not:

8 (i) Accredited by:

9 1. The American Association for Accreditation of Ambulatory
10 Surgical Facilities;

11 2. The Accreditation Association for Ambulatory Health
12 Care; or

13 3. The Joint Commission on the Accreditation of Healthcare
14 Organizations; or

15 (ii) Certified to participate in the Medicare program, as enacted by
16 Title XVIII of the Social Security Act;

17 (42) Fails to submit to a criminal history records check under § 14–308.1 of
18 this title; or

19 (43) Fails to comply with § 1–223 of this article.

20 (b) (1) On the filing of certified docket entries with the Board by the Office of
21 the Attorney General, a disciplinary panel shall order the suspension of a license if the
22 licensee is convicted of or pleads guilty or nolo contendere with respect to a crime involving
23 moral turpitude, whether or not any appeal or other proceeding is pending to have the
24 conviction or plea set aside.

25 (2) After completion of the appellate process if the conviction has not been
26 reversed or the plea has not been set aside with respect to a crime involving moral
27 turpitude, a disciplinary panel shall order the revocation of a license on the certification by
28 the Office of the Attorney General.

29 (c) (1) Except as provided in paragraph (2) of this subsection, a disciplinary
30 panel may not **ISSUE A LETTER OF ADMONISHMENT**, reprimand, place on probation, or
31 suspend or revoke a license of a licensee for providing a patient with a written statement,
32 medical records, or testimony that, in the licensee's professional opinion, the patient is
33 likely to receive therapeutic or palliative relief from marijuana.

1 (2) Nothing in this subsection shall be deemed to release a licensee from
2 the duty to exercise a professional standard of care when evaluating a patient’s medical
3 condition.

4 (D) (1) A LETTER OF ADMONISHMENT ISSUED BY A DISCIPLINARY PANEL
5 UNDER SUBSECTION (A) OF THIS SECTION:

6 (I) SHALL BE USED PRIMARILY IN THE EVENT OF A FIRST-TIME
7 VIOLATION OF SUBSECTION (A)(22) OF THIS SECTION; AND

8 (II) MAY NOT BE MADE PUBLIC.

9 (2) THE BOARD SHALL PROVIDE A SUMMARY OF THE LETTERS OF
10 ADMONISHMENT ISSUED BY EACH DISCIPLINARY PANEL IN THE EXECUTIVE
11 DIRECTOR’S REPORT OF BOARD ACTIVITIES.

12 14-407.1.

13 THE BOARD SHALL EXPUNGE ALL RECORDS OF A PUBLIC REPRIMAND OR
14 PROBATION ISSUED UNDER § 14-404 OF THIS SUBTITLE 3 YEARS AFTER THE FINAL
15 DISPOSITION OF THE CASE.

16 Article – Insurance

17 15-112.

18 (a) (1) In this section the following words have the meanings indicated.

19 (4) (i) “Carrier” means:

20 1. an insurer;

21 2. a nonprofit health service plan;

22 3. a health maintenance organization;

23 4. a dental plan organization; or

24 5. any other person that provides health benefit plans
25 subject to regulation by the State.

26 (ii) “Carrier” includes an entity that arranges a provider panel for a
27 carrier.

28 (14) “Provider” means a health care practitioner or group of health care
29 practitioners licensed, certified, or otherwise authorized by law to provide health care

1 services.

2 (15) (i) "Provider panel" means the providers that contract either
3 directly or through a subcontracting entity with a carrier to provide health care services to
4 the carrier's enrollees under the carrier's health benefit plan.

5 (ii) "Provider panel" does not include an arrangement in which any
6 provider may participate solely by contracting with the carrier to provide health care
7 services at a discounted fee-for-service rate.

8 **(X) A CARRIER MAY NOT TAKE ANY ADVERSE ACTION, INCLUDING DENYING**
9 **AN APPLICATION FOR PARTICIPATION OR TERMINATING PARTICIPATION IN A**
10 **PROVIDER PANEL, AGAINST A PROVIDER BASED SOLELY ON THE FACT THAT THE**
11 **PROVIDER WAS PLACED ON PROBATION UNDER § 14-404 OF THE HEALTH**
12 **OCCUPATIONS ARTICLE, IF THE PROBATION HAS ENDED.**

13 19-104.

14 (a) Each policy that insures a health care provider against damages due to
15 medical injury arising from providing or failing to provide health care shall contain
16 provisions that:

17 (1) are consistent with the requirements of Title 3, Subtitle 2A of the
18 Courts Article; and

19 (2) authorize the insurer, without restriction, to negotiate and effect a
20 compromise of claims within the limits of the insurer's liability, if the entire amount settled
21 on is to be paid by the insurer.

22 (b) (1) An insurer may make payments to or on behalf of claimants for
23 reasonable hospital and medical costs, loss of wages, and expenses for rehabilitation
24 services and treatment, within the limits of the insurer's liability, before a final disposition
25 of the claim.

26 (2) A payment made under this subsection:

27 (i) is not an admission of liability to or of damages sustained by a
28 claimant; and

29 (ii) does not prejudice the insurer or any other party with respect to
30 any right, claim, or defense.

31 (c) (1) A policy issued or delivered under subsection (a) of this section may
32 include coverage for the defense of a health care provider in a disciplinary hearing arising
33 out of the practice of the health care provider profession if the cost of the included coverage
34 is:

1 (i) itemized in the billing statement, invoice, or declarations page
2 for the policy; and

3 (ii) reported to the Commissioner in a form and manner required by
4 the Commissioner.

5 (2) A policy providing coverage for the defense of a health care provider in
6 a disciplinary hearing arising out of the practice of the health care provider's profession
7 may be offered and priced separately from a policy issued or delivered under subsection (a)
8 of this section.

9 **(D) AN INSURER THAT ISSUES INSURANCE GOVERNED BY THIS SECTION**
10 **MAY NOT TAKE ANY ADVERSE ACTION, INCLUDING DENYING INSURANCE COVERAGE**
11 **OR RAISING PREMIUM RATES, AGAINST A PHYSICIAN BASED SOLELY ON THE FACT**
12 **THAT THE PHYSICIAN WAS PLACED ON PROBATION UNDER § 14-404 OF THE HEALTH**
13 **OCCUPATIONS ARTICLE, IF THE PROBATION HAS ENDED.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That:

15 (a) If a disciplinary panel found, from July 1, 2017, to June 30, 2018, both
16 inclusive, that a licensee violated § 14-404(a)(22) of the Health – General Article and either
17 of the two reports obtained under § 14-401.1(c)(2)(ii) of the Health – General Article
18 concluded that a violation of § 14-404(a)(22) did not occur, the State Board of Physicians:

19 (1) immediately shall rescind any discipline imposed on the licensee; and

20 (2) shall expunge all records of the charge:

21 (i) 3 years after the discipline was imposed; or

22 (ii) immediately, if the physician executes a document releasing the
23 Board from any liability related to the charges.

24 (b) If the State Board of Physicians is required to rescind discipline and expunge
25 records under subsection (a) of this section, the Board and the disciplinary panels may not
26 take any further action against the licensee based on the alleged violation of § 14-404(a)(22)
27 involved in the prior case.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
29 1, 2018.