

SENATE BILL 151

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EMERGENCY BILL

7lr1884
CF HB 70

By: **Senators Nathan–Pulliam, Benson, Guzzone, Kagan, Kelley, Klausmeier, Lee, Manno, Mathias, McFadden, Robinson, Rosapepe, Smith, Young, and Zucker**

Introduced and read first time: January 16, 2017

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Nursing – Disciplinary Process and Authority – Revisions**

3 FOR the purpose of authorizing a disciplinary committee of the State Board of Nursing to
4 grant and deny licenses and certificates and take certain disciplinary action against
5 certain licensees and certificate holders; requiring, except under certain
6 circumstances, a disciplinary committee to give certain individuals and certain
7 persons an opportunity for a hearing before taking any action under certain
8 provisions of law; authorizing the Board to establish one or more disciplinary
9 committees to conduct certain disciplinary hearings and issue final decisions or
10 orders under certain provisions of law; providing that each disciplinary committee
11 must consist of at least a certain number of Board members appointed by the Board;
12 authorizing the Board to delegate authority to conduct a hearing and issue a final
13 decision or order to a disciplinary committee; requiring a disciplinary committee,
14 under certain circumstances, to conduct a certain evidentiary hearing and prepare
15 and issue a final decision or order within a certain period of time in accordance with
16 certain provisions of law; requiring a disciplinary committee, under certain
17 circumstances, to state in a final decision or order the reason for a certain delay;
18 requiring a disciplinary committee to report to the Board certain information and
19 provide the Board with copies of certain final decisions and orders at certain Board
20 meetings; authorizing a disciplinary committee to require certain licensees to comply
21 with terms and conditions determined by the disciplinary committee; authorizing a
22 disciplinary committee to impose certain monetary penalties under certain
23 circumstances; authorizing certain individuals aggrieved by a final decision of a
24 disciplinary committee in a contested case to petition for judicial review as allowed
25 by certain provisions of law; requiring a disciplinary committee to give notice and
26 hold hearings in accordance with certain provisions of law; prohibiting an individual
27 aggrieved by a final decision of a disciplinary committee under a certain provision of
28 law from appealing to the Secretary of Health and Mental Hygiene; authorizing an
29 individual aggrieved by a final decision of a disciplinary committee under a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



provision of law to take a direct judicial appeal as provided in certain provisions of law; repealing the authority of the Board to immediately suspend, under certain circumstances, the license of a registered nurse or licensed practical nurse or the certificate of a nursing assistant or medication technician who is expelled from a rehabilitation program; defining a certain term; making stylistic, clarifying, and conforming changes; making this Act an emergency measure; and generally relating to the disciplinary process and authority of the State Board of Nursing.

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section 8–101(a)
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

BY adding to
Article – Health Occupations
Section 8–101(d–1) and 8–503.1
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 8–316 through 8–318, 8–6A–10(a) and (b), 8–6A–10.1, 8–6A–11, and
8–6B–18 through 8–6B–21
Annotated Code of Maryland
(2014 Replacement Volume and 2016 Supplement)

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

Article – Health Occupations

8–101.

(a) In this title the following words have the meanings indicated.

**(D–1) “DISCIPLINARY COMMITTEE” MEANS A DISCIPLINARY
COMMITTEE ESTABLISHED BY THE BOARD UNDER § 8–503.1 OF THIS TITLE.**

8–316.

(a) Subject to the hearing provisions of § 8–317 of this subtitle, the Board **OR A DISCIPLINARY COMMITTEE** may deny a license or grant a license, including a license subject to a reprimand, probation, or suspension, to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke the license of a licensee if the applicant or licensee:

1 (1) Fraudulently or deceptively obtains or attempts to obtain a license for
2 the applicant or for another;

3 (2) Fraudulently or deceptively uses a license;

4 (3) Is disciplined by a licensing, military, or disciplinary authority in this
5 State or in any other state or country or convicted or disciplined by a court in this State or
6 in any other state or country for an act that would be grounds for disciplinary action under
7 the Board's disciplinary statutes;

8 (4) Is convicted of or pleads guilty or nolo contendere to a felony or to a
9 crime involving moral turpitude, whether or not any appeal or other proceeding is pending
10 to have the conviction or plea set aside;

11 (5) Willfully and knowingly:

12 (i) Files a false report or record of an individual under the licensee's
13 care;

14 (ii) Gives any false or misleading information about a material
15 matter in an employment application;

16 (iii) Fails to file or record any health record that is required by law;

17 (iv) Obstructs the filing or recording of any health record as required
18 by law; or

19 (v) Induces another person to fail to file or record any health record
20 as required by law;

21 (6) Knowingly does any act that has been determined by the Board, in its
22 rules and regulations, to exceed the scope of practice authorized to the individual under
23 this title;

24 (7) Provides professional services while:

25 (i) Under the influence of alcohol; or

26 (ii) Using any narcotic or controlled dangerous substance, as defined
27 in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic
28 amounts or without valid medical indication;

29 (8) Does an act that is inconsistent with generally accepted professional
30 standards in the practice of registered nursing or licensed practical nursing;

31 (9) Is grossly negligent in the practice of registered nursing or licensed
32 practical nursing;

(10) Has violated any provision of this title;

(11) Submits a false statement to collect a fee;

(12) Is physically or mentally incompetent;

(13) Knowingly fails to report suspected child abuse in violation of § 5–704 of the Family Law Article;

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

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

(16) Is in independent practice and fails to display the notice required under § 8–506 of this title;

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

(18) Is habitually intoxicated;

(19) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in § 5–101 of the Criminal Law Article;

(20) Fails to cooperate with a lawful investigation conducted by the Board;

(21) Is expelled from the rehabilitation program established pursuant to § 8–208 of this title for failure to comply with the conditions of the program;

(22) Delegates nursing acts or responsibilities to an individual that the applicant or licensee knows or has reason to know lacks the ability or knowledge to perform;

(23) Delegates to an unlicensed individual nursing acts or responsibilities the applicant or licensee knows or has reason to know are to be performed only by a registered nurse or licensed practical nurse;

(24) Fails to properly supervise individuals to whom nursing acts or responsibilities have been delegated;

(25) Engages in conduct that violates the professional code of ethics;

(26) Is professionally incompetent;

(27) Practices registered nursing or licensed practical nursing without a license before obtaining or renewing a license, including any period when practicing registered nursing or licensed practical nursing on an expired license or a lapsed license;

(28) When holding an expired license or a lapsed license or after a temporary license has expired in accordance with § 8–315(d) of this subtitle, commits any act that would be grounds for disciplinary action under this section;

(29) Practices registered nursing or licensed practical nursing on a nonrenewed license for a period of 16 months or longer;

(30) Violates regulations adopted by the Board or an order from the Board **OR A DISCIPLINARY COMMITTEE**;

(31) Performs an act that is beyond the licensee's knowledge and skills;

(32) Fails to submit to a criminal history records check in accordance with § 8–303 of this subtitle;

(33) When acting in a supervisory position, directs another nurse to perform an act that is beyond the nurse's knowledge and skills;

(34) When acting in a supervisory position, directs another nurse to delegate a nursing task to an individual when that nurse reasonably believes:

(i) The individual lacks the knowledge and skills to perform the task; or

(ii) The patient's condition does not allow delegation of the nursing task; or

(35) Has misappropriated the property of a patient or a facility.

(b) If, after a hearing under § 8–317 of this subtitle, the Board **OR A DISCIPLINARY COMMITTEE** finds that there are grounds under subsection (a) of this section to suspend or revoke a license to practice registered nursing or licensed practical nursing, to reprimand a licensee, or place a licensee on probation, the Board **OR THE DISCIPLINARY COMMITTEE** may impose a penalty not exceeding \$5,000 instead of or in addition to suspending or revoking the license, reprimanding the licensee, or placing the licensee on probation.

(c) In addition to any sanction authorized under this section, the Board **OR A DISCIPLINARY COMMITTEE** may require a licensee to comply with specified terms and conditions determined by the Board **OR THE DISCIPLINARY COMMITTEE**.

1 8–317.

2 (a) **(1)** Except as otherwise provided in the Administrative Procedure Act [and
3 in subsection (g) of this section], before the Board takes any action under § 8–312 [or
4 § 8–316] of this subtitle or § 8–404 [or § 8–6C–20] of this title, it shall give the [person]
5 **INDIVIDUAL** against whom the action is contemplated an opportunity for a hearing before
6 the Board.

7 **(2) EXCEPT AS OTHERWISE PROVIDED IN THE ADMINISTRATIVE**
8 **PROCEDURE ACT, BEFORE THE BOARD OR A DISCIPLINARY COMMITTEE TAKES ANY**
9 **ACTION UNDER § 8–316 OF THIS SUBTITLE OR § 8–6B–18 OR § 8–6C–20 OF THIS**
10 **TITLE, IT SHALL GIVE THE INDIVIDUAL AGAINST WHOM THE ACTION IS**
11 **CONTEMPLATED AN OPPORTUNITY FOR A HEARING BEFORE THE BOARD OR THE**
12 **DISCIPLINARY COMMITTEE.**

13 (b) The Board **OR THE DISCIPLINARY COMMITTEE** shall give notice and hold
14 the hearing in accordance with the Administrative Procedure Act.

15 (c) The hearing notice to be given to the [person] **INDIVIDUAL** shall be sent by
16 certified mail, return receipt requested, to the last known address of the person at least 30
17 days before the hearing.

18 (d) The [person] **INDIVIDUAL** may be represented at the hearing by counsel.

19 (e) [If after due notice] **REGARDLESS OF WHETHER** the individual against
20 whom the action is contemplated fails or refuses to appear **AFTER DUE NOTICE**,
21 [nevertheless] the Board **OR THE DISCIPLINARY COMMITTEE** may hear and determine
22 the matter.

23 (f) (1) Over the signature of the president, the executive director, or the
24 deputy director as authorized by the executive director of the Board, the Board may issue
25 subpoenas and administer oaths in connection with any investigation under this title and
26 any hearings or proceedings before it.

27 (2) If [a person] **AN INDIVIDUAL**, without lawful excuse, disobeys a
28 subpoena from the Board or an order by the Board to take an oath, testify, or answer
29 questions, on petition of the Board a court of competent jurisdiction may compel compliance
30 with the subpoena and hold the individual in contempt of court.

31 [(g) The Board may immediately suspend the license of a registered nurse or
32 licensed practical nurse who is expelled from the rehabilitation program under § 8–208 of
33 this title for noncompliance with the nurse’s agreement if:

(1) Prior to suspending the license, the Board provides the licensee with an opportunity to show cause by written communication or nontestimonial presentation as to why the suspension should not occur; and

(2) The Board provides the licensee with an opportunity for a hearing, which:

(i) Shall occur within 30 days of written request by the licensee; and

(ii) Shall impose on the licensee the burden of proving by a preponderance of the evidence that the licensee is not addicted to drugs or alcohol.]

[(h)] (G) (1) After the Board conducts an investigation under this title, the Board may issue an advisory letter to the licensee or holder of a multistate licensing privilege.

(2) The Board may disclose an advisory letter issued under this subsection to the public.

(3) The issuance of an advisory letter under this subsection may not:

(i) Be considered a disciplinary action under § 8–316 of this subtitle; and

(ii) Be reported to any licensing entity, employer, or insurance company as a disciplinary action.

8–318.

(a) Except as provided in this section for an action under § 8–316 of this subtitle, **[any person] AN INDIVIDUAL** aggrieved by a final decision of the Board **OR A DISCIPLINARY COMMITTEE** in a contested case, as defined in the Administrative Procedure Act, may petition for judicial review as allowed by the Administrative Procedure Act.

(b) **[Any person] AN INDIVIDUAL** aggrieved by a final decision of the Board **OR A DISCIPLINARY COMMITTEE** under § 8–316 of this subtitle may not appeal to the Secretary but may take a direct judicial appeal as provided in the Administrative Procedure Act.

(c) A **[Board] decision OF THE BOARD OR A DISCIPLINARY COMMITTEE** may not be stayed while judicial review is pending.

8–503.1.

(A) (1) THE BOARD MAY ESTABLISH ONE OR MORE DISCIPLINARY COMMITTEES TO CONDUCT HEARINGS AND ISSUE FINAL DECISIONS OR ORDERS UNDER §§ 8-316, 8-6B-18, AND 8-6C-20 OF THIS TITLE.

(2) EACH DISCIPLINARY COMMITTEE SHALL CONSIST OF AT LEAST THREE BOARD MEMBERS, APPOINTED BY THE BOARD.

(B) THE BOARD MAY DELEGATE AUTHORITY TO CONDUCT A HEARING AND ISSUE A FINAL DECISION OR ORDER AS PROVIDED UNDER SUBSECTION (A) OF THIS SECTION TO A DISCIPLINARY COMMITTEE.

(C) (1) IF AUTHORITY TO CONDUCT A HEARING AND ISSUE A FINAL DECISION OR ORDER IS DELEGATED TO A DISCIPLINARY COMMITTEE, THE DISCIPLINARY COMMITTEE SHALL:

(I) HOLD AN EVIDENTIARY HEARING IN ACCORDANCE WITH § 10-213 OF THE STATE GOVERNMENT ARTICLE; AND

(II) WITHIN 120 DAYS AFTER THE CONCLUSION OF THE HEARING, ISSUE A FINAL DECISION OR ORDER IN ACCORDANCE WITH § 10-221 OF THE STATE GOVERNMENT ARTICLE.

(2) IF THE DISCIPLINARY COMMITTEE IS UNABLE TO ISSUE A FINAL DECISION OR ORDER WITHIN 120 DAYS AFTER THE CONCLUSION OF A HEARING, THE DISCIPLINARY COMMITTEE SHALL STATE THE REASONS FOR THE DELAY IN ISSUING THE FINAL DECISION OR ORDER.

(D) DURING EACH REGULARLY SCHEDULED MEETING OF THE BOARD, EACH DISCIPLINARY COMMITTEE SHALL:

(1) REPORT TO THE BOARD:

(I) THE NUMBER OF HEARINGS HELD BY THE DISCIPLINARY COMMITTEE AND THE DATE AND LENGTH OF EACH HEARING; AND

(II) THE NAMES OF THE DISCIPLINARY COMMITTEE MEMBERS, BOARD STAFF, BOARD COUNSEL, AND ADMINISTRATIVE PROSECUTORS WHO WERE PRESENT AT EACH HEARING; AND

(2) PROVIDE TO THE BOARD COPIES OF EACH FINAL DECISION OR ORDER ISSUED BY THE DISCIPLINARY COMMITTEE.

8-6A-10.

1 (a) Subject to the hearing provisions of § 8–317 of this title and § 8–6A–10.1 of
2 this subtitle, the Board **OR A DISCIPLINARY COMMITTEE** may deny a certificate or grant
3 a certificate, including a certificate subject to a reprimand, probation, or suspension, to any
4 applicant, reprimand any certificate holder, place any certificate holder on probation, or
5 suspend or revoke the certificate of a certificate holder, if the applicant or certificate holder:

6 (1) Fraudulently or deceptively obtains or attempts to obtain a certificate
7 for the applicant or for another;

8 (2) Fraudulently or deceptively uses a certificate;

9 (3) Is disciplined by a licensing, military, or disciplinary authority in this
10 State or in any other state or country or convicted or disciplined by a court in this State or
11 in any other state or country for an act that would be grounds for disciplinary action under
12 the Board's disciplinary statutes;

13 (4) Is convicted of or pleads guilty or nolo contendere to a felony or to a
14 crime involving moral turpitude, whether or not any appeal or other proceeding is pending
15 to have the conviction or plea set aside;

16 (5) Files a false report or record of an individual under the certificate
17 holder's care;

18 (6) Gives any false or misleading information about a material matter in
19 an employment application;

20 (7) Fails to file or record any health record that is required by law;

21 (8) Induces another person to fail to file or record any health record that is
22 required by law;

23 (9) Has violated any order, rule, or regulation of the Board **OR A**
24 **DISCIPLINARY COMMITTEE** relating to the practice or certification of a nursing assistant
25 or medication technician;

26 (10) Provides services as a nursing assistant or medication technician while:

27 (i) Under the influence of alcohol; or

28 (ii) Using any narcotic or controlled dangerous substance, as defined
29 in § 5–101 of the Criminal Law Article, or other drug that is in excess of therapeutic
30 amounts or without valid medical indication;

31 (11) Is habitually intoxicated;

32 (12) Is addicted to, or habitually abuses, any narcotic or controlled
33 dangerous substance as defined in § 5–101 of the Criminal Law Article;

1 (13) Has acted in a manner inconsistent with the health or safety of a person
2 under the applicant or certificate holder's care;

3 (14) Has practiced as a nursing assistant or medication technician in a
4 manner which fails to meet generally accepted standards for the practice of a nursing
5 assistant or medication technician;

6 (15) Has physically, verbally, or psychologically abused, neglected, or
7 otherwise harmed a person under the applicant or certificate holder's care;

8 (16) Has a physical or mental condition which renders the applicant or
9 certificate holder unable to practice as a certified nursing assistant or certified medication
10 technician with reasonable skill and safety to the patients and which may endanger the
11 health or safety of persons under the care of the applicant or certificate holder;

12 (17) Has violated the confidentiality of information or knowledge as
13 prescribed by law concerning any patient;

14 (18) Has misappropriated patient or facility property;

15 (19) Performs certified nursing assistant or certified medication technician
16 functions incompetently;

17 (20) Has violated any provision of this title or has aided or knowingly
18 permitted any person to violate any provision of this title;

19 (21) Submits a false statement to collect a fee;

20 (22) Refuses, withholds from, denies, or discriminates against an individual
21 with regard to the provision of professional services for which the applicant or certificate
22 holder is certified and qualified to render because the individual is HIV positive;

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

26 (24) Fails to cooperate with a lawful investigation conducted by the Board;

27 (25) Fails to comply with instructions and directions of the supervising
28 registered nurse or licensed practical nurse;

29 (26) When holding an expired certificate or a lapsed certificate, commits any
30 act that would be grounds for disciplinary action under this section;

(27) Practices as a nursing assistant or medication technician before obtaining or renewing the certificate, including any time period when practicing as a nursing assistant or medication technician on an expired certificate or a lapsed certificate;

(28) Impersonates another individual:

(i) Licensed under the provisions of this title; or

(ii) Who holds a certificate issued under the provisions of this title;

(29) Engages in conduct that violates the code of ethics;

(30) Performs activities that exceed the education and training of the certified nursing assistant or certified medication technician;

(31) Is expelled from the rehabilitation program established pursuant to § 8–208 of this title for failure to comply with the conditions of the program;

(32) Fails to submit to a criminal history records check in accordance with § 8–303 of this title as required under § 8–6A–05(c)(2) of this subtitle;

(33) Abandons a patient; or

(34) Is a director of nursing, or acts in the capacity of a director of nursing and knowingly employs an individual who is not authorized to perform delegated nursing duties under this subtitle.

(b) If, after a hearing under § 8–317 of this title and § 8–6A–10.1 of this subtitle, the Board **OR THE DISCIPLINARY COMMITTEE** finds that there are grounds under subsection (a) of this section to suspend or revoke a certificate to practice as a certified nursing assistant or certified medication technician, to reprimand a certificate holder, or place a certificate holder on probation, the Board **OR THE DISCIPLINARY COMMITTEE** may impose a penalty not exceeding \$500 instead of or in addition to suspending or revoking the certificate, reprimanding the certificate holder, or placing the certificate holder on probation.

8–6A–10.1.

(a) Except as otherwise provided in the Administrative Procedure Act [and in subsection (g) of this section], before the Board **OR A DISCIPLINARY COMMITTEE** takes any action under § 8–6A–10 of this subtitle, the Board **OR THE DISCIPLINARY COMMITTEE** shall give the individual against whom the action is contemplated an opportunity for a hearing before the Board **OR THE DISCIPLINARY COMMITTEE**.

(b) The Board **OR THE DISCIPLINARY COMMITTEE** shall give notice and hold the hearing in accordance with the Administrative Procedure Act.

(c) The hearing notice to be given to the individual shall be sent by certified mail, return receipt requested, to the last known address of the individual at least 30 days before the hearing.

(d) The individual may be represented at the hearing by counsel.

(e) [If, after due notice,] **REGARDLESS OF WHETHER** the individual against whom the action is contemplated fails or refuses to appear **AFTER DUE NOTICE**, the Board **OR THE DISCIPLINARY COMMITTEE** may hear and determine the matter.

(f) (1) Over the signature of the president, the executive director, or the deputy director as authorized by the executive director of the Board, the Board may issue subpoenas and administer oaths in connection with any investigation under this subtitle and any hearings or proceedings before the Board.

(2) If an individual, without lawful excuse, disobeys a subpoena from the Board or an order by the Board to take an oath, testify, or answer questions, on petition of the Board a court of competent jurisdiction may compel compliance with the subpoena and hold the individual in contempt of court.

[(g) The Board immediately may suspend the certificate of a nursing assistant or medication technician who is expelled from the rehabilitation program under § 8-208 of this title for noncompliance with the certificate holder's agreement if:

(1) Before suspending the certificate, the Board provides the certificate holder with an opportunity to show cause by written communication or nontestimonial presentation as to why the suspension should not occur; and

(2) The Board provides the certificate holder with an opportunity for a hearing that shall:

(i) Occur within 30 days after written request by the certificate holder; and

(ii) Impose on the certificate holder the burden of proving by a preponderance of the evidence that the certificate holder is not addicted to drugs or alcohol.]

[(h)](G) (1) After the Board conducts an investigation under this subtitle, the Board may issue an advisory letter to the certificate holder.

(2) The Board may disclose an advisory letter issued under this subsection to the public.

(3) The issuance of an advisory letter under this subsection:

(i) May not be considered a disciplinary action under § 8–6A–10 of this subtitle; and

(ii) May not be reported to any certifying entity, employer, or insurance company as a disciplinary action.

8–6A–11.

(a) Any [person] **INDIVIDUAL** aggrieved by a final decision of the Board **OR A DISCIPLINARY COMMITTEE** under § 8–6A–10 of this subtitle may only take a direct judicial appeal as allowed by the Administrative Procedure Act.

(b) A [Board] decision **OF THE BOARD OR A DISCIPLINARY COMMITTEE** may not be stayed while judicial review is pending.

8–6B–18.

(a) Subject to the hearing provisions of § 8–317 of this title and § 8–6B–19 of this subtitle, the Board **OR A DISCIPLINARY COMMITTEE** may deny a license to an applicant, grant a license, including a license subject to a reprimand, probation, or suspension, to an applicant, reprimand a licensee, place a licensee on probation, or suspend or revoke a license if the applicant or licensee:

(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

(2) Fraudulently or deceptively uses a license;

(3) As part of the practice of electrology, knowingly does an act that exceeds the scope of the practice of electrology;

(4) Is grossly negligent in practicing or teaching an electrology education program;

(5) Acts in a manner inconsistent with generally accepted standards for the practice of electrology;

(6) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

(7) Is disciplined by a licensing or disciplinary authority of any state or country, convicted or disciplined by a court of any state or country, or disciplined by any branch of the United States uniformed services or the Veterans Administration for an act that would be grounds for disciplinary action under the Board's disciplinary statutes;

(8) Provides professional services while:

- 1 (i) Under the influence of alcohol; or
- 2 (ii) Using any narcotic or controlled dangerous substance, as defined
3 in § 5–101 of the Criminal Law Article, or other drug that is in excess of therapeutic
4 amounts or without valid medical indication;
- 5 (9) Uses types of instruments or procedures in the practice of electrology
6 that are not approved by the Board;
- 7 (10) Advertises in a manner that violates this subtitle;
- 8 (11) Uses a title not authorized by § 8–6B–23 of this subtitle;
- 9 (12) Is currently adjudicated as being a disabled individual under Title 13
10 of the Estates and Trusts Article;
- 11 (13) Practices electrology with an unauthorized individual or supervises or
12 aids an unauthorized individual in the practice of electrology;
- 13 (14) Willfully makes or files a false report or record in the practice of
14 electrology;
- 15 (15) Willfully fails to file or record any report as required by law, willfully
16 impedes or obstructs the filing or recording of the report, or induces another to fail to file
17 or record the report;
- 18 (16) Submits a false statement to collect a fee;
- 19 (17) Violates a provision of this subtitle or a rule or regulation adopted by
20 the Board;
- 21 (18) Uses or promotes or causes the use of a misleading, deceiving, or
22 untruthful advertising matter, promotional literature, or testimonial;
- 23 (19) Is professionally, physically, or mentally incompetent;
- 24 (20) Promotes the sale of devices, appliances, or goods to a patient so as to
25 exploit the patient for financial gain;
- 26 (21) Behaves immorally in the practice of electrology;
- 27 (22) Commits an act of unprofessional conduct in the practice of electrology;
- 28 (23) Refuses, withholds from, denies, or discriminates against an individual
29 with regard to the provision of professional services for which the licensee is licensed and
30 qualified to render because the individual is HIV positive;

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

(25) Fails to display the notice required under § 8-6B-26 of this subtitle;

(26) Fails to submit to a criminal history records check in accordance with § 8-303 of this title;

(27) Fails to allow an inspection under § 8-6B-06(10) and (11) of this subtitle;

(28) Fails to cooperate with a lawful investigation conducted by the Board;

(29) Practices electrology without a license before obtaining or renewing a license, including any period when practicing electrology on an expired license or a lapsed license; or

(30) After failing to renew a license, commits any act that would be grounds for disciplinary action under this section.

(b) In addition to any sanction authorized under this section, the Board **OR A DISCIPLINARY COMMITTEE** may require a licensee to comply with specified terms and conditions determined by the Board **OR THE DISCIPLINARY COMMITTEE**.

8-6B-19.

(a) Except as otherwise provided in the Administrative Procedure Act, before the Board takes any action under § 8-6B-17 or **THE BOARD OR A DISCIPLINARY COMMITTEE TAKES ANY ACTION UNDER** § 8-6B-18 of this subtitle, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Board **OR THE DISCIPLINARY COMMITTEE**.

(b) The Board **OR THE DISCIPLINARY COMMITTEE** shall give notice and hold the hearing in accordance with the Administrative Procedure Act.

(c) The hearing notice to be given to the person shall be sent by certified mail, return receipt requested, to the last known address of the person at least 30 days before the hearing.

(d) The person may be represented at the hearing by counsel.

(e) (1) The Board may issue subpoenas and administer oaths in connection with a proceeding under this section.

(2) If, without lawful excuse, a person disobeys a subpoena from the Board or an order by the Board to take an oath, testify, or answer a question, then on petition of the Board, a court of competent jurisdiction:

(i) Shall compel compliance with the subpoena; and

(ii) May hold the person in contempt of court.

(f) [If after due notice] **REGARDLESS OF WHETHER** the person against whom the action is contemplated fails or refuses to appear **AFTER DUE NOTICE**, nevertheless the Board **OR THE DISCIPLINARY COMMITTEE** may hear and determine the matter.

(g) The hearing of charges may not be stayed or challenged by procedural defects alleged to have occurred prior to the filing of charges.

(h) (1) After the Board conducts an investigation under this subtitle, the Board may issue an advisory letter to the licensee.

(2) The Board may disclose an advisory letter issued under this subsection to the public.

(3) The issuance of an advisory letter under this subsection may not:

(i) Be considered a disciplinary action under § 8–6B–18 of this subtitle; and

(ii) Be reported to any licensing entity, employer, or insurance company as a disciplinary action.

8–6B–20.

(a) If after a hearing under § 8–6B–19 of this subtitle the Board **OR A DISCIPLINARY COMMITTEE** finds that there are grounds under that section to suspend or revoke a license, the Board **OR THE DISCIPLINARY COMMITTEE** may impose a penalty not exceeding \$5,000:

(1) Instead of suspending the license; or

(2) In addition to suspending or revoking the license.

(b) The Board shall adopt rules and regulations to set standards for the imposition of penalties under this section.

(c) The Board shall pay a penalty collected under this section into the General Fund of the State.

1 8–6B–21.

2 (a) Except as provided in subsection (b) of this section, a person aggrieved by a
3 final decision of the Board **OR A DISCIPLINARY COMMITTEE** in a contested case, as
4 defined in the Administrative Procedure Act, may petition for judicial review as allowed by
5 the Administrative Procedure Act.

6 (b) A person aggrieved by a final decision of the Board **OR A DISCIPLINARY**
7 **COMMITTEE** pursuant to § 8–6B–19 of this subtitle may not appeal to the Secretary but
8 may take a direct judicial appeal as provided in the Administrative Procedure Act.

9 (c) An order of the Board **OR A DISCIPLINARY COMMITTEE** may not be stayed
10 pending review.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
12 measure, is necessary for the immediate preservation of the public health or safety, has
13 been passed by a ye and nay vote supported by three–fifths of all the members elected to
14 each of the two Houses of the General Assembly, and shall take effect from the date it is
15 enacted.