

SENATE BILL 103

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(PRE-FILED)

0lr0982
CF 0lr0983

By: **Senators Eckardt and Klausmeier**

Requested: October 21, 2019

Introduced and read first time: January 8, 2020

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Health Occupations – Diagnostic Evaluation and Treatment of Patients –**
3 **Disciplinary Actions**
4 **(The Patient’s Access to Integrative Healthcare Act of 2020)**

5 FOR the purpose of prohibiting a health occupations board from disciplining a certain
6 health care practitioner under certain circumstances because of the health care
7 practitioner’s use of a certain diagnostic evaluation or treatment of a patient;
8 authorizing a health occupations board to discipline a certain health care
9 practitioner if the board makes a certain determination; prohibiting a health
10 occupations board from using the use of a certain drug, device, biological product, or
11 method as the basis for disciplining a certain health care practitioner; prohibiting a
12 health occupations board, under certain circumstances, from finding that a certain
13 health care practitioner violated any record-keeping, billing, or other regulatory
14 requirements for acts or omissions that arise from professional differences of opinion;
15 prohibiting certain standards for coordination of care or referral to a medical
16 specialist, or other standards of managing patient care, from being higher for a
17 certain health care practitioner than for any other health care practitioner;
18 prohibiting an official, employee, or agent of the State from blocking or attempting
19 to block a patient’s access to certain diagnostic or treatment methods under certain
20 circumstances; requiring, except under certain circumstances, that a certain panel
21 of peer reviewers include at least one reviewer with certain training, competence,
22 and experience in certain methods; requiring that a certain panel of peer reviewers
23 in certain cases include, under certain circumstances, at least one reviewer with
24 certain training, competence, and experience in integrative medicine; prohibiting a
25 certain board from disciplining a licensee or certificate holder in a certain standard
26 of care case except under certain circumstances; defining a certain term; and
27 generally relating to disciplinary actions for diagnostic evaluation and treatment of
28 patients.

29 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Health Occupations
Section 1–225
Annotated Code of Maryland
(2014 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 1–604
Annotated Code of Maryland
(2014 Replacement Volume and 2019 Supplement)

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

Article – Health Occupations

1–225.

(A) IN THIS SECTION, “DISCIPLINE” INCLUDES:

(1) REPRIMANDING A HEALTH CARE PRACTITIONER;

(2) REVOKING, FAILING TO RENEW, OR SUSPENDING A HEALTH CARE
PRACTITIONER’S LICENSE; AND

(3) TAKING ACTION AGAINST A HEALTH CARE PRACTITIONER’S
MEDICARE OR MEDICAID CERTIFICATION.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A
HEALTH OCCUPATIONS BOARD UNDER THIS ARTICLE MAY NOT DISCIPLINE A
HEALTH CARE PRACTITIONER LICENSED UNDER THIS ARTICLE BECAUSE OF THE
HEALTH CARE PRACTITIONER’S USE OF A DIAGNOSTIC EVALUATION OR TREATMENT
OF A PATIENT THAT IS INTEGRATIVE, COMPLEMENTARY, ALTERNATIVE, OR
NONCONVENTIONAL IF:

(I) THE HEALTH CARE PRACTITIONER DISCLOSES TO THE
PATIENT THE NATURE OF THE DIAGNOSTIC EVALUATION OR TREATMENT,
INCLUDING THAT THE DIAGNOSTIC EVALUATION OR TREATMENT IS:

1. INTEGRATIVE;
2. COMPLEMENTARY;
3. ALTERNATIVE; OR

4. NONCONVENTIONAL; AND

(II) THE HEALTH CARE PRACTITIONER OBTAINS WRITTEN CONSENT FROM THE PATIENT OR, IF THE PATIENT IS UNABLE TO CONSENT BECAUSE THE PATIENT IS A MINOR OR OTHERWISE UNABLE TO CONSENT, THE PATIENT'S PARENT, GUARDIAN, OR LEGAL REPRESENTATIVE, BEFORE PERFORMING THE DIAGNOSTIC EVALUATION OR TREATMENT.

(2) A HEALTH OCCUPATIONS BOARD UNDER THIS ARTICLE MAY DISCIPLINE A HEALTH CARE PRACTITIONER WHO WOULD BE EXEMPT FROM DISCIPLINE UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE HEALTH OCCUPATIONS BOARD DETERMINES:

(i) 1. THAT THE DIAGNOSTIC EVALUATION, TESTING, OR TREATMENT HAS A SIGNIFICANT SAFETY RISK GREATER THAN THE CONVENTIONAL METHODS; AND

**2. THAT THE RISK IS NOT OUTWEIGHED BY THE
POTENTIAL BENEFITS OF THE EVALUATION, TESTING, OR TREATMENT; OR**

(II) BY CLEAR AND CONVINCING EVIDENCE, THAT THE HEALTH CARE PRACTITIONER KNEW THAT THE DIAGNOSTIC OR TREATMENT METHOD DID NOT HAVE A REASONABLE BASIS AND WAS INTENDED TO DEFRAUD THE PATIENT.

(C) A HEALTH OCCUPATIONS BOARD UNDER THIS ARTICLE MAY NOT USE THE USE OF A DRUG, DEVICE, BIOLOGICAL PRODUCT, OR METHOD THAT HAS NOT BEEN APPROVED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION AS A BASIS FOR DISCIPLINING A HEALTH CARE PRACTITIONER WHO IS EXEMPT FROM DISCIPLINE UNDER SUBSECTION (B)(1) OF THIS SECTION.

(D) A HEALTH OCCUPATIONS BOARD UNDER THIS ARTICLE MAY NOT FIND THAT A HEALTH CARE PRACTITIONER WHO IS EXEMPT FROM DISCIPLINE UNDER SUBSECTION (B)(1) OF THIS SECTION VIOLATED ANY RECORD-KEEPING, BILLING, OR OTHER REGULATORY REQUIREMENTS FOR ACTS OR OMISSIONS THAT ARISE FROM PROFESSIONAL DIFFERENCES OF OPINION IF THE HEALTH CARE PRACTITIONER:

(1) HAS ACTED IN GOOD FAITH TO COMPLY WITH THE INTENT OF THE REQUIREMENTS; AND

(2) HAS NOT ACTED IN A WAY THAT IS FALSE OR MISLEADING.

(E) ANY STANDARDS FOR COORDINATION OF CARE OR REFERRAL TO A

MEDICAL SPECIALIST, OR OTHER STANDARDS OF MANAGING PATIENT CARE, MAY NOT BE HIGHER FOR A HEALTH CARE PRACTITIONER DELIVERING A DIAGNOSTIC EVALUATION OR TREATMENT DESCRIBED UNDER SUBSECTION (B) OF THIS SECTION THAN FOR ANY OTHER HEALTH CARE PRACTITIONER.

(F) AN OFFICIAL, EMPLOYEE, OR AGENT OF THE STATE MAY NOT BLOCK OR ATTEMPT TO BLOCK A PATIENT'S ACCESS TO A DIAGNOSTIC OR TREATMENT METHOD DESCRIBED UNDER SUBSECTION (B)(1)(I) OF THIS SECTION IF THE HEALTH CARE PRACTITIONER WOULD BE EXEMPT FROM DISCIPLINE UNDER THIS SECTION.

1-604.

(a) If a statute authorizes a health occupations board to use a system of peer review in standard of care cases and the peer reviewer or peer reviewers determine that there has been a violation of a standard of care, the board shall provide the licensee or certificate holder under investigation with an opportunity to review the final peer review report and provide the board with a written response within 10 business days after the report was sent to the licensee or certificate holder.

(b) If a health occupations board receives a written response to a final peer review report, the board shall consider both the report and response before taking any action.

(C) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION, IF A STATUTE AUTHORIZES A HEALTH OCCUPATIONS BOARD TO USE A SYSTEM OF PEER REVIEW IN STANDARD OF CARE CASES AND THE BOARD USES A PANEL OF PEER REVIEWERS TO DETERMINE WHETHER A LICENSEE OR CERTIFICATE HOLDER HAS VIOLATED THE STANDARD OF CARE IN THE TREATMENT OF A PATIENT, THE PANEL SHALL INCLUDE:

(I) AT LEAST ONE REVIEWER WITH DEMONSTRATED TRAINING, COMPETENCE, AND EXPERIENCE IN THE SAME METHODS USED BY THE LICENSEE OR CERTIFICATE HOLDER UNDER REVIEW; OR

(II) IN A STANDARD OF CARE CASE INVOLVING THE USE OF A DIAGNOSTIC EVALUATION OR TREATMENT THAT IS INTEGRATIVE, COMPLEMENTARY, ALTERNATIVE, OR NONCONVENTIONAL, IF THE REQUIREMENT OF ITEM (I) OF THIS PARAGRAPH DOES NOT APPLY OR THERE IS NO PEER REVIEWER AVAILABLE WHO SATISFIES THE REQUIREMENTS OF ITEM (I) OF THIS PARAGRAPH, AT LEAST ONE REVIEWER WITH DEMONSTRATED TRAINING, COMPETENCE, AND EXPERIENCE IN INTEGRATIVE MEDICINE.

(2) THE REQUIREMENT UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION DOES NOT APPLY IF, AFTER A GOOD FAITH INQUIRY, THE HEALTH OCCUPATIONS BOARD FINDS THAT THE METHODS OF THE LICENSEE OR

1 CERTIFICATE HOLDER UNDER REVIEW HAVE NOT BEEN:

2 (I) ADOPTED BY ANY PROFESSIONAL ORGANIZATION;

3 (II) TAUGHT IN A CATEGORY 1 CONTINUING MEDICAL
4 EDUCATION PROGRAM;

5 (III) THE SUBJECT OF A FAVORABLE PEER-REVIEWED
6 PUBLICATION; OR

7 (IV) ADOPTED BY ANY MINORITY COMMUNITY OF PHYSICIANS.

8 (3) A HEALTH OCCUPATIONS BOARD MAY NOT DISCIPLINE A
9 LICENSEE OR CERTIFICATE HOLDER IN A STANDARD OF CARE CASE INVOLVING THE
10 USE OF A DIAGNOSTIC EVALUATION OR TREATMENT THAT IS INTEGRATIVE,
11 COMPLEMENTARY, ALTERNATIVE, OR NONCONVENTIONAL IN WHICH THE BOARD
12 CONVENED A PANEL OF PEER REVIEWERS UNDER THIS SUBSECTION UNLESS THE
13 PEER REVIEWERS UNANIMOUSLY AGREE THAT THE LICENSEE OR CERTIFICATE
14 HOLDER VIOLATED THE STANDARD OF CARE.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
16 1, 2020.