



SPONSOR: Sen. Walsh & Rep. Bolden  
Sens. Hansen, Sokola, Pettyjohn, Richardson; Reps.  
Brady, Bennett, Dukes, Spiegelman

DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL NO. 39

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF MEDICAL  
LICENSURE AND DISCIPLINE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 1710, Title 24 of the Delaware Code by making deletions as shown by strike through and  
2     insertions as shown by underline as follows:

3           § 1710. Composition.

4           (j) ~~A member of the Board is eligible to be reimbursed for travel to and from each meeting. However, a member~~  
5 ~~may receive not more than \$50 for each meeting attended, and not more than a total of \$500 for meetings attended in any~~  
6 ~~calendar year. Each member of the Board shall be compensated at an appropriate and reasonable level as determined by the~~  
7 Division of Professional Regulation not more than \$100 for each meeting attended, and not more than a total of \$1,500 for  
8 meetings attended in a calendar year, and may be reimbursed for all expenses involved in each meeting, including travel,  
9 according to Division policy.

10          Section 2. Amend § 1713, Title 24 of the Delaware Code by making deletions as shown by strike through and  
11     insertions as shown by underline as follows:

12          § 1713. Powers and duties of the Board.

13          (a) The Board has the following powers and duties, in addition to other powers and duties set forth elsewhere in  
14     this chapter:

15                 (18) To utilize licensed medical professionals who are not Board members as co-investigators when a  
16 complaint's allegations implicate unique subject matters. The co-investigator who is not a Board member must possess  
17 particular expertise in the unique subject matter that is at issue when a co-investigator is needed under this paragraph.

18          (e) The Board shall promulgate regulations specifically identifying those crimes which are substantially related to  
19     the practice of medicine, the work of a physician assistant, ~~or~~ the practice of respiratory care, the practice of acupuncture,  
20 the work of a genetic counselor, the practice of polysomnography, or midwifery.

Section 3. Amend § 1720, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1720. Certification requirements to practice medicine.

(j) The Board may issue an administrative medicine license to a physician who meets all qualifications for licensure, including payment of a fee set by the Division of Professional Regulation, except that an applicant for an administrative medicine license shall not be required to show that the applicant has been engaged in the active practice of medicine, as defined in the Board's regulations. Administrative medicine licensees may not provide medical or clinical services to or for patients and shall attest to understanding this on the application.

Section 4. Amend § 1733, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 1733. Complaints; notice of hearing.~~

~~(a)(1) Any member of the public or of the Board, or the Executive Director may file with the Board a complaint concerning any aspect of the practice of medicine against a person to whom a certificate to practice medicine in this State has been issued or any other person with a duty imposed by this chapter.~~

~~(2) The Executive Director shall advise the complainant of the progress of the case at least every 90 days until the case is resolved.~~

~~(3) The Executive Director shall communicate with the Delaware Department of Justice, at least monthly, regarding the status of complaints filed by law enforcement, and shall report the case status to the Board only if the case is no longer subject to suspension pursuant to § 1732(e) of this title.~~

~~(b) The Executive Director shall investigate in accord with the procedures set forth in § 1732 of this title each complaint which appears to be valid and well-founded.~~

~~(c) The Executive Director may maintain the confidentiality of the complaining party or the respondent from the Board. In the absence of an Executive Director or acting Executive Director, the Secretary of State may exercise that discretion.~~

~~(d) After investigation, if the Executive Director elects to file a formal written complaint against a respondent, the person must be served personally or by certified mail, return receipt requested, with a copy of the complaint not less than 20 days nor more than 60 days prior to a hearing on the complaint. A formal written complaint under this subsection must describe in detail the allegations upon which the complaint is based.~~

~~(e) A notice of hearing must inform the person of the date, time, and place of the hearing; state the statute or regulation allegedly violated and the statutory or regulatory authority which gives the Board authority to act; state that the~~

51 person has a right to be represented by counsel at the hearing and to present evidence on the person's own behalf; and  
52 inform the person that the Board must base its decision solely upon evidence received at the hearing. The person is entitled  
53 to file with the Board a written response to the complaint within 20 days of service or of receipt by certified mail of the  
54 complaint.

55 (f) A complaint of the unauthorized practice of medicine must be reported immediately to the Attorney General. A  
56 person who files a complaint with or provides information to the Board concerning a violation of this chapter is not liable in  
57 any cause of action arising out of the filing of the complaint or the providing of information, provided that the person does  
58 so in good faith and without gross or wanton negligence.

59 (g) The Office of the Attorney General shall provide legal services to the Board, its committees, and the Executive  
60 Director.

61 Section 5. Amend § 1734, Title 24 of the Delaware Code by making deletions as shown by strike through and  
62 insertions as shown by underline as follows and by redesignating accordingly:

63 § 1734. Hearings.

64 (a) *Procedure.* —

65 (1) Upon the mailing of a formal complaint by the Executive Director pursuant to this chapter, the Executive  
66 Director shall appoint an examiner pursuant to § 1713 of this title or a hearing panel composed of 3 unbiased members  
67 of the Board, the 3 members being 2 physician members and 1 public member if practical, who shall hear the evidence  
68 concerning the alleged charges. The hearing panel shall convene to hear the evidence no more than 90 days after the  
69 Board accepts a formal complaint unless the hearing panel, in its discretion, grants a continuance of the hearing date.  
70 All evidence at the hearing must be taken under oath or affirmation, but technical rules of evidence do not apply. After  
71 the evidence has been heard by the hearing panel, the panel may convene in executive session for consideration of the  
72 evidence presented at the hearing and for purposes permitted by § 10004 of Title 29, and shall make written findings of  
73 fact, conclusions of law, and a recommendation for a proper disciplinary action, if 1 is warranted. Only evidence  
74 presented at the hearing may be considered by the hearing panel in reaching its findings of fact and conclusions of law.  
75 The findings of fact made by the hearing panel are binding on the parties appearing before it and on the Board. If the  
76 hearing panel finds that the allegations made in the complaint are not supported by the evidence, it shall so indicate to  
77 the Board, together with its recommendation that no further action be taken and that the person complained about be  
78 exonerated of all charges. If a majority of the members of the Board who consider the matter, excluding members who  
79 participated in the investigation of the complaint and members on the hearing panel and members who are otherwise  
80 biased, vote to accept the hearing panel's conclusions of law and recommendation, no further proceedings may be held

81 before the Board. However, if a majority of the members of the Board who consider the matter, excluding any  
82 members who participated in the investigation of the complaint and members on the hearing panel and members who  
83 are otherwise biased, vote to reject the hearing panel's conclusions of law and recommendation, a formal hearing must  
84 be held before the Board to enable the Board to make its own conclusions of law and determine what discipline, if any,  
85 should be imposed. In such a case, the hearing panel's findings of fact are binding upon the Board.

86 (2) If the hearing panel finds that any of the factual allegations made in the complaint are supported by the  
87 evidence it has considered, the Board, excluding members who participated in the investigation of the complaint and  
88 members on the hearing panel and members who are otherwise biased, will consider the findings of fact and  
89 conclusions of law made by the hearing panel at a formal hearing.

90 (3) A formal hearing must be held within 90 days after the issuance of the written findings of facts and  
91 conclusions of law of the hearing panel pursuant to this subsection; provided, however, that if the hearing panel finds  
92 that the person complained about presents a clear and imminent danger to the public health by that person's continued  
93 practice of medicine, then the full Board may meet for the formal hearing as soon as possible, but only upon 3 days'  
94 written notice of the formal hearing being provided to the person or to that person's attorney. No less than 7 affirmative  
95 votes are necessary in order for disciplinary action to be taken by the Board. Upon reaching its conclusions of law and  
96 determining the appropriate disciplinary action, if any, the Board shall issue a written decision and order in accordance  
97 with § 10128 of Title 29. The decision and order must be signed by the Board's President, or, if the President is not  
98 available, by another officer of the Board.

99 (c) *Transcript of proceedings.* — A stenographic transcript must be made of the formal hearings of the Board and  
100 of the hearings of the Board's hearing panels or examiner. The person complained about is entitled, upon that person's own  
101 request, to obtain a copy of the transcript at the person's own expense.

102 (d) *Rights of respondent.* — The person complained about is entitled to be represented by counsel before a  
103 hearing panel or examiner and before the Board. The person complained about also has the right to cross-examine witnesses  
104 against the person, the right to present that person's own witnesses, and the right to introduce evidence at the hearing. In  
105 addition, the person complained about has the right to compel the issuance of a subpoena for the attendance of witnesses to  
106 appear and testify or for the production of books, records, or other documents at the hearing.

107 (e) *Conduct of hearing before the hearing panel.* — An attorney from the Office of the Attorney General shall  
108 present evidence in support of the allegations contained in the formal complaint. The attorney may call witnesses and cross-  
109 examine any witnesses called on behalf of the person complained about. A member of the Board who participated in the  
110 investigation of the complaint under consideration or a member who is biased may not sit on the hearing panel or take part

111 in the deliberations or decisions of the hearing panel. To find that a fact or allegation is supported by evidence, the panel  
112 members must unanimously agree. The hearing panel shall make its findings of fact and conclusions of law based solely  
113 upon the evidence presented to it at the hearing.

114 ~~(f) Conduct of hearing before the examiner. — An attorney from the Office of the Attorney General shall present~~  
115 ~~evidence in support of the allegations contained in the formal complaint. The attorney may call witnesses and cross-~~  
116 ~~examine any witnesses called on behalf of the person complained about. The examiner may administer oaths, examine~~  
117 ~~witnesses and receive evidence in any locality. The testimony or evidence so taken or received shall have the same force~~  
118 ~~and effect as if taken or received by the Board, or by a hearing panel pursuant to §§ 1713(a)(15) and 1734 of this title. Upon~~  
119 ~~completion of such hearing or the taking of such testimony and evidence, the examiner shall submit to the Board the~~  
120 ~~examiner's findings and recommendations thereon, which findings and recommendations shall be considered by the Board~~  
121 ~~and such action taken with respect thereto by the Board as it decides to be proper.~~

122 ~~(g) Conduct of formal hearing before the Board. — The findings of fact made by a hearing panel on a complaint~~  
123 ~~are binding upon the Board at a formal hearing on the same complaint. At a formal hearing, the Board may not consider~~  
124 ~~additional evidence. The Board shall deliberate and reach its own conclusions of law based upon the findings of fact made~~  
125 ~~by the hearing panel. The Board shall consider the hearing panel's conclusions of law, but is not bound by them. To adopt~~  
126 ~~conclusions of law, 7 Board members must vote in favor of them. After adopting its conclusions of law, the Board shall~~  
127 ~~determine what disciplinary action, if any, against the person complained about is appropriate, based solely upon the record~~  
128 ~~before it. To impose disciplinary action, affirmative votes by the majority of the Board members who considered the matter,~~  
129 ~~but in every case no less than 7 affirmative votes are necessary. The Executive Director, Board members who participated~~  
130 ~~in the investigation of the complaint under consideration, the members of the hearing panel, and any Board members who~~  
131 ~~are otherwise biased may not participate in the deliberations of the Board concerning a complaint investigated by the~~  
132 ~~Executive Director.~~

133 ~~(h) Written decision and order. — Upon reaching its conclusion of law and determining the appropriate~~  
134 ~~disciplinary action, if any, the Board shall issue a written decision and order in accordance with § 10128 of Title 29. The~~  
135 ~~order must restate the factual findings of the hearing panel, but need not summarize the evidence presented. However,~~  
136 ~~notwithstanding the provisions of § 10128(e) of Title 29, the decision and order may be issued over the signature of only~~  
137 ~~the President or other officer of the Board. The decision and order must be sent by certified mail, return receipt requested,~~  
138 ~~to the person complained about, with a copy to the Executive Director.~~

(i) Hearings shall be conducted pursuant to the Administrative Procedures Act. Upon receiving a decision and order pursuant to subsection (h) of this section, the Executive Director shall file the required disciplinary action reports to data banks.

Section 6. Amend § 1761A, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1761A. Appointment of a custodian of patient records.

(a) If the Board receives a formal or informal complaint concerning access to patient records as a result of a physician's physical or mental incapacity, or abandonment or involuntary discontinuation of a medical-practice business in this State, the Board may temporarily or permanently appoint a person or entity as custodian of the physician's patient records, in accordance with the procedures set forth in §§ ~~1732-1734~~ § 1732 of this title.

Section 7. Amend § 1770, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1770. The Regulatory Council for Physician Assistants.

(b) Each Council member shall be appointed for a term of 3 years and may succeed himself or herself for 1 additional 3-year term; ~~provided, however, that if a member is initially appointed to fill a vacancy, that member may succeed himself or herself for only 1 additional 3-year term.~~ A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a member whose term of office has expired remains eligible to serve until replaced by the Board. A person who has never served on the Council may be appointed for 2 consecutive terms, but that person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has twice been appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed until an interim period of at least 1 year has expired since the person last served. The members of the Council are to be compensated at an appropriate and reasonable level as determined by the Division of Professional Regulation and may be reimbursed for meeting-related travel expenses at the State's approved rate. A member serving on the Council may not be an elected officer or a member of the board of directors of any professional association of physician assistants.

(c) The Regulatory Council for Physicians Assistants, by the affirmative vote of 4 of its members and with the approval of the Board within 30 days of the vote, may waive the quarterly meeting requirements of this subchapter.

Section 8. Amend § 1773, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1773. Regulation of physician assistants.

(b)(2)a. If the Board or the Regulatory Council for Physician Assistants receives a formal or informal complaint concerning the activity of a physician assistant and the Regulatory Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Regulatory Council, ~~with the approval of the Board, Council~~ may issue an order temporarily suspending the physician assistant's license to practice pending a hearing upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Council Chair or the Chair's designee. An order temporarily suspending a license to practice may not be issued by the ~~Council, with the approval of the Board, Council~~ unless the physician assistant or the physician assistant's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the physician assistant or the physician assistant's attorney can be heard in opposition to the proposed ~~suspension, and unless at least 4 members of the Council and 7 members of the Board vote in favor of the temporary suspension~~ suspension. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended physician assistant requests a continuance of the hearing date. If the physician assistant requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

d. As soon as possible after the issuance of an order temporarily suspending a physician assistant's license to practice pending a hearing, the Executive Director shall appoint a 3-member hearing panel. After notice to the physician assistant pursuant to subsection (b) of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the physician assistant requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing ~~in accordance with the procedures set forth in § 1734 of this title~~ and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the ~~Board, pursuant to § 1734(g) of this title, Board~~ deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended physician

196 assistant requests an extension of the order pending a final decision of the Board. Upon the final decision of the  
197 Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if  
198 any, ordered by the Board.

199 Section 9. Amend § 1774, Title 24 of the Delaware Code by making deletions as shown by strike through and  
200 insertions as shown by underline as follows:

201 § 1774. Temporary licensing of physician assistants.

202 (a) Notwithstanding any provision of this subchapter to the contrary, the Executive Director, with the approval of  
203 a ~~physician Council member of the Board~~, may grant a temporary license to an individual who has graduated from a  
204 physician or surgeon assistant program which has been accredited by the Accreditation Review Commission on Education  
205 for the Physician Assistant (ARC-PA) or, prior to 2001, by the Committee on Allied Health Education and Accreditation  
206 (CAHEA) of the American Medical Association (AMA) or a successor agency and who otherwise meets the qualifications  
207 for licensure but who has not yet taken a national certifying examination, provided that the individual is registered to take  
208 and takes the next scheduled national certifying examination. A temporary license granted pursuant to this subsection is  
209 valid until the results of the examination are available from the certifying agency. If the individual fails to pass the national  
210 certifying examination, the temporary license granted pursuant to this subsection must be immediately rescinded until the  
211 individual successfully qualifies for licensure pursuant to this subchapter.

212 Section 10. Amend § 1775, Title 24 of the Delaware Code by making deletions as shown by strike through and  
213 insertions as shown by underline as follows:

214 § 1775. Respiratory Care Advisory Council.

215 (b) Each Council member is appointed by the Board for a term of 3 years, and may succeed himself or herself for  
216 ~~1 additional 3-year term; provided, however, that if a member is initially appointed to fill a vacancy, the member may~~  
217 ~~succeed himself or herself for only 1 additional 3-year term.~~ A person appointed to fill a vacancy on the Council is entitled  
218 to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date  
219 specified in the appointment; however, a Council member whose term of office has expired remains eligible to participate  
220 in Council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the  
221 Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter  
222 provided. A person who has been twice appointed to the Council or who has served on the Board for 6 years within any 9-  
223 year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person  
224 last served. A member serving on the Council may not be an elected officer or a member of the board of directors of any  
225 professional association of respiratory care practitioners.

Section 11. Amend § 1777, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1777. Licensure.

(d) Temporary license. — The Executive Director of the Board, with the approval of a ~~physician~~ member of the ~~Board~~ Council, may issue a temporary permit to an applicant for licensure who has presented a completed application to the Board. A temporary permit issued under this paragraph is valid for a period of not more than 90 days and may not be renewed. Only 1 temporary permit may be issued under this paragraph.

(e) License suspension, revocation, or nonrenewal. —

(2)a. If the Board or the Respiratory Care Advisory Council receives a formal or informal complaint concerning the activity of a respiratory care practitioner and the Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Council may issue an order temporarily suspending the respiratory care practitioner's license to practice pending a hearing upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of this Council Chair or the Chair's designee. An order temporarily suspending a license to practice may not be issued by the ~~Council, with the approval of the Board, Council~~ unless the respiratory care practitioner or the respiratory care practitioner's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the respiratory care practitioner or the respiratory care practitioner's attorney can be heard in opposition to the proposed suspension, ~~and unless at least 4 members of the Council and 7 members of the Board vote in favor of the temporary~~ suspension. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended respiratory care practitioner requests a continuance of the hearing date. If the respiratory care practitioner requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

d. As soon as possible after the issuance of an order temporarily suspending a respiratory care practitioner's license to practice pending a hearing, the Council President shall appoint a 3-member hearing panel. After notice to the respiratory care practitioner pursuant to paragraph (e)(2)b. of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the respiratory care practitioner requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing ~~in accordance with the procedures set forth in § 1734 of this title~~ and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the ~~Board,~~ pursuant to ~~§ 1734(g) of this title,~~ Board deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended respiratory care practitioner requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

Section 12. Amend Subchapter VII, Chapter 17, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1779A. Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other health-care provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other health-care provider's licensing statute.

(b) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other health-care provider may be unable to practice with reasonable skill and safety to the public by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive abuse of drugs, including alcohol.

(c) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation any information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to clients by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(d) All reports required under subsections (a), (b) and (c) of this section must be filed within 30 days of becoming aware of such information. A person reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted

in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

Section 13. Amend § 1796, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1796. Acupuncture Advisory Council.

(b) Each Council member is appointed by the Board of Medical Licensure and Discipline for a term of 3 years, and may succeed himself or herself for 1 additional 3-year term; ~~provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year term.~~ A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a Council member whose term of office has expired remains eligible to participate in Council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has been twice appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person last served. A member, other than the ex officio member, serving on the Council may not be an elected officer or a member of the board of directors of any professional association of acupuncture practitioners. The members of the Council are compensated at an appropriate and reasonable level as determined by the Division and may be reimbursed for meeting-related travel expenses at the State's current approved rate.

Section 14. Amend § 1798, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1798. Licensure.

(d) Temporary license. — The Executive Director of the Board, with the approval of a ~~physician~~ Council member ~~of the Board~~, may issue a temporary permit to an applicant for licensure who has presented a completed application to the Board. A temporary permit issued under this subsection is valid for a period of not more than 90 days and may not be renewed. Only 1 temporary permit may be issued under this subsection.

(e) License suspension, revocation, or nonrenewal. —

(2)a. If the Board or the Acupuncture Advisory Council receives a formal or informal complaint concerning the activity of an acupuncture practitioner and the Board or Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Council ~~may recommend that the Board~~ issue an order temporarily suspending the acupuncture practitioner's license to practice pending a hearing upon the written order of

316 the Secretary of State or the Secretary's designee, with the concurrence of the Council Chair or the Chair's designee.

317 An order temporarily suspending a license to practice may not be issued by the Board, unless the acupuncture  
318 practitioner or the acupuncture practitioner's attorney received at least 24 hours' written or oral notice prior to the  
319 temporary suspension so that the acupuncture practitioner or the acupuncture practitioner's attorney can be heard in  
320 opposition to the proposed suspension, ~~and unless at least 3 members of the Council and 7 members of the Board vote~~  
321 ~~in favor of the temporary~~ suspension. An order of temporary suspension pending a hearing may remain in effect for no  
322 longer than 60 days from the date of the issuance of the order unless the temporarily suspended acupuncture  
323 practitioner requests a continuance of the hearing date. If the acupuncture practitioner requests a continuance, the order  
324 of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

325 d. As soon as possible after the issuance of an order temporarily suspending an acupuncture practitioner's  
326 license to practice pending a hearing, the Council Chair shall appoint a 3-member hearing panel consisting of 3  
327 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the  
328 Acupuncture Advisory Council; and if no conflict exists, 1 of the 2 Acupuncture Advisory Council members shall  
329 be the Chair of the Acupuncture Advisory Council. The Chair of the hearing panel shall be 1 of the Council panel  
330 members. After notice to the acupuncture practitioner pursuant to paragraph (e)(2)b. of this section, the hearing  
331 panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the  
332 evidence regarding the matters alleged in the complaint. If an acupuncture practitioner requests in a timely manner  
333 an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council.  
334 The 3-member panel shall proceed to a hearing ~~in accordance with the procedures set forth in § 1734 of this title~~  
335 and shall render a decision within 30 days of the hearing.

336 e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found  
337 by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found  
338 constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect  
339 until the ~~Board, pursuant to § 1734(g) of this title,~~ Board deliberates and reaches conclusions of law based upon  
340 the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for  
341 longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended acupuncture  
342 practitioner requests an extension of the order pending a final decision of the Board. Upon the final decision of the  
343 Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if  
344 any, ordered by the Board.

Section 15. Amend § 1799I, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1799I. Genetic Counselor Advisory Council.

(b) Each Council member is appointed by the Board of Medical Licensure and Discipline for a term of 3 years, and may succeed himself or herself for 1 additional 3-year ~~term; provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year~~ term. A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a Council member whose term of office has expired remains eligible to participate in Council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has been twice appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person last served. The members of the Council are to be compensated at an appropriate and reasonable level as determined by the Division of Professional Regulation and may be reimbursed for meeting-related travel expenses at the State's current approved rate. A member serving on the Council may not be an elected officer or a member of the board of directors of any professional association of genetic counselors.

(e) License suspension, revocation, or nonrenewal. —

(2)a. If the Board or the Council receives a formal or informal complaint concerning the activity of a genetic counselor and the Board or Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Council may ~~recommend that the Board~~ issue an order temporarily suspending the genetic counselor's license to practice, pending a hearing upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Council Chair or the Chair's designee. An order temporarily suspending a license to practice may not be issued by the Board, unless the genetic counselor or the genetic counselor's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the genetic counselor or the genetic counselor's attorney can be heard in opposition to the proposed ~~suspension, and unless at least 3 members of the Council and 7 members of the Board vote in favor of the temporary~~ suspension. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended genetic counselor requests a continuance of the hearing date. If the genetic counselor requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

d. As soon as possible after the issuance of an order temporarily suspending a genetic counselor's license to practice pending a hearing, the Council Chair shall appoint a 3-member hearing panel consisting of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the Council; and if no conflict exists, 1 of the 2 Council members shall be the Chair of the Council. The Chair of the hearing panel shall be 1 of the Council panel members. After notice to the genetic counselor pursuant to paragraph (e)(2)b. of this section, the hearing panel shall convene within 60 days of the date of issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If a genetic counselor requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing ~~in accordance with the procedures set forth in § 1734 of this title~~ and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the ~~Board, pursuant to § 1734(g) of this title,~~ Board deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended genetic counselor requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

(g) The Genetic Counselor Advisory Council, by the affirmative vote of 3 of its members and with the approval of the Board within 30 days of the vote, may waive the quarterly meeting requirements of this title.

Section 16. Amend § 1799W, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1799W. Polysomnography Advisory Council.

(b) Each council member is appointed by the Board for a term of 3 years, and may succeed himself or herself for 1 additional 3-year term; ~~provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year term.~~ A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a council member whose term of office has expired remains eligible to participate in council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the

Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has been twice appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person last served. The members of the Council are to be compensated at an appropriate and reasonable level as determined by the Division of Professional Regulation and may be reimbursed for meeting-related travel expenses at the State's current approved rate. A member serving on the Council may not be an elected officer or a member of the board of directors of any professional association of polysomnographers.

(e) License suspension, revocation, or nonrenewal. —

(2)a. In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, the ~~Board~~ Council may temporarily suspend the person's license, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the ~~Board Chair~~ Council Chair or the ~~Board~~ Chair's designee. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporary suspended person requests a continuance of the hearing date. If the temporary suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. The Board shall schedule the hearing on an expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the person received notification of the decision to temporarily suspend the person's license.

#### SYNOPSIS

This Act is the result of the recommendation made by the Joint Legislative Oversight and Sunset Committee in its review of the Board of Medical Licensure and Discipline ("the Board") that the Division of Professional Regulation amend applicable statutes that are outdated and unnecessary, to provide for consistency with § 8735, Title 29 of the Delaware Code, relating to administrative procedures.

Specifically, this Act permits the Board to utilize non-board member medical licensees as coinvestigators when specialties are required to opine on the disciplinary cases, as long as the co-investigator is licensed in the specialty at issue; creates administrative licensure for medical professionals who do not wish to practice medicine but serve as administrators in the state to applicants who meet all qualifications for licensure except active practice hours; removes antiquated language from Title 17 regarding hearing procedures and instead reiterates hearings are conducted pursuant to the Administrative Procedures Act; and deletes references to the removed language.

Finally, this Act makes minor modifications to each of the sub-councils organized under the Board, to standardize procedures across each of the five councils. Specifically, the Act add a duty to report unprofessional conduct to Respiratory

Care Practitioners, permits the Genetic Counselor Advisory Council and the Regulatory Council for Physician Assistants to waive their quarterly meeting requirement with the approval of the Board; clarifies that temporary licenses may be granted by each of the councils under the signature of the Executive Director and the council chair; and permits council members appointed to fill vacancies to serve out those vacancies, along with two three-year terms.

The language submitted for this Act has not been corrected to conform the Act to the standards of the Delaware Legislative Drafting Manual.

Author: Senator Walsh