



STATE OF MARYLAND

DHMH

Board of Dietetic Practice

Maryland Department of Health and Mental Hygiene

4201 Patterson Avenue • Baltimore, Maryland 21215-2299

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

October 1, 2013

The Honorable Joan Carter Conway, Chair
Senate Education, Health & Environmental Affairs Committee
2 West Wing, Miller Senate Office Building
11 Bladen Street
Annapolis, MD 21401-1991

The Honorable Peter A. Hammen, Chair
House Health & Government Operations Committee
241 House Office Building
6 Bladen Street
Annapolis, MD 21401-1992

RE: SB237 - Health Occupations - Sunset Extension and Program Evaluation,
Chapter 211 (2013)

Dear Chairmen Conway and Hammen:

During the 2013 Session of the Maryland General Assembly, SB237 - Health Occupations - Sunset Extension and Program Evaluation, Chapter 211 (2013) passed. This legislation requires the Board of Dietetic Practice to report to the Senate Education, Health & Environmental Affairs Committee and the House Health and Government Operations Committee any recommendations for any legislative changes to clarify the practice of dietetics and any additional authority the Board needs to address complaints alleging the unlicensed practice of dietetics. Attached is the required report.

If you have any questions or concerns about the report, please contact me at 410-764-4741.

Sincerely,

Marie M. Savage
Director

Enclosure

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**Board of Dietetic Practice
Sunset Extension and Evaluation Report
October 1, 2013**

Senate Bill 237-Health Occupations - Sunset Extension and Program Evaluation, Chapter 211 (2013) requires the Board of Dietetic Practice ("Board") to report to the Senate Education, Health & Environmental Affairs Committee and the House Health and Government Operations Committee recommendations for any legislative changes to clarify the practice of dietetics and any additional authority the Board needs to address complaints alleging the unlicensed practice of dietetics.

Maryland Health Occ. Code Ann. ("HO") § 5-301, the Dietitian-Nutritionists Practice Act provides the following: "Except as otherwise provided in this subtitle, an individual shall be licensed by the Board before the individual may practice dietetics in the State."

"Practice dietetics" is defined in HO § 5-101(h) as follows:

(1) "Practice dietetics" means to apply the principles derived from integrating knowledge of food, biochemistry, physiology, management science, behavioral science, and social science to human nutrition.

(2) "Practice dietetics" includes:

(i) Assessing individual and community food practices and nutritional status using anthropometric, biochemical, clinical, dietary, and demographic data, for clinical, research, and program planning purposes;

(ii) Developing, establishing, and evaluating nutritional care plans that establish priorities, goals, and objectives for meeting nutrient needs for individuals or groups;

(iii) Nutrition counseling and education as a part of preventive or restorative health care throughout the life cycle;

(iv) Determining, applying, and evaluating standards for food and nutrition services; and

(v) Applying scientific research to the role of food in the maintenance of health and the treatment of disease.

There are certain exceptions for licensure for "nonmedical nutrition." "Nonmedical nutrition" is defined in the Board's regulations. Code of Maryland Regulations ("COMAR") 10.56.01.02B(14) provides, "'Nonmedical nutrition' means the application of basic principles of nutrition to food selection for the purpose of maintaining health."

The exceptions are provided in HO § 5-103,

(a) This title does not limit the right of an individual to practice a health occupation that the individual is authorized to practice under this article.

(b) This title does not limit the right of an individual or group to provide services and information related to nonmedical nutrition while:

(1) Employed by or operating a health, weight loss, or fitness program;

(2) Employed by or operating a health food store;

(3) Employed by or operating a business that sells health products including dietary supplements, food, or food materials, or provides nonmedical nutritional information or distributes nutritional literature; or

(4) Conducting classes or disseminating information related to nonmedical nutrition.

(c) This title does not limit the right of an individual to provide services related only to the purchasing, preparation, and service of food to groups of people.

(d) This title does not limit the right of an individual to provide nonmedical nutritional information or to distribute nutritional literature.

Although there are exceptions for nonmedical nutrition, the law clearly states that an individual must be licensed to practice dietetics and medical nutrition in Maryland.

The Department of Legislative Services Preliminary Evaluation of the State Board of Dietetic Practice Report noted, "Historically, the board has struggled with unlicensed individuals practicing dietetics." Since the last sunset evaluation, the Board has seen an increase in the number of complaints involving the unauthorized practice of dietetics. The majority of these complaints involve websites that mislead the public to believe a person is authorized to practice dietetics in Maryland. Currently, the Board's only option is to send a letter to the unlicensed individual citing the law.

The Board's statutory authority regarding the unauthorized practice of dietetics includes HO § 5-401, "Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice dietetics in the State unless licensed by the Board." In addition, HO § 5-403 provides, "A person who violates HO § 5-401 or § 5-402 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1000 or imprisonment not exceeding 1 year or both."

Therefore, the Board has the authority to refer a complaint to the Office of the Attorney General for criminal prosecution. However, the Board's cases do not rise to the level of the criminal court system.

The Board needs additional statutory authority to address the unauthorized practice of dietetics in Maryland. The Department of Legislative Services Preliminary Evaluation of the State Board of Dietetic Practice Report noted, "The Board may wish to amend its statute to include specific authority to issue cease and desist letters or to seek injunctive relief, as is authorized in the Health Occupations Article for other health occupation Boards."

Recommendation #1

Amend HO § 5-403 to include a civil fine for practicing without a license.

HO § 5-403

A. A person who violates HO § 5-401 or § 5-402 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1000 or imprisonment not exceeding 1 year or both.

B. (1) ANY PERSON WHO VIOLATES HO § 5-401 or § 5-402 OF THIS SUBTITLE IS SUBJECT TO A CIVIL FINE OF NOT MORE THAN \$50,000 TO BE ASSESSED BY THE BOARD.

(2) THE BOARD SHALL PAY ANY PENALTY COLLECTED UNDER THIS SUBSECTION INTO THE STATE BOARD OF DIETETIC PRACTICE FUND.

Several health occupation boards, including the Board of Pharmacy, Board of Examiners of Psychologists, Board of Physical Therapy Examiners, and the Board of Physicians have civil fine authority. In addition, the Board of Podiatric Medical Examiners has civil penalty authority; however, the fine goes to the General Fund.

Recommendation #2

Amend HO § 5-205 to authorize cease and desist orders or obtain injunctive relief for practicing without a license.

HO § 5-205

(a) In addition to the powers set forth elsewhere in this subtitle, the Board may:

(1) Adopt regulations to carry out the provisions of this subtitle;

(2) Sue to enforce any provision of this subtitle by injunction; and

(3) Issue subpoenas, summon witnesses, administer oaths, take affidavits, and take testimony about matters that relate to the jurisdiction of the Board.

(4) ISSUE A CEASE AND DESIST ORDER OR OBTAIN INJUNCTIVE RELIEF FOR PRACTICING MEDICINE WITHOUT A LICENSE.

Several health occupation boards, including the Board of Nursing Home Administrators and the Board of Physicians have cease and desist or injunctive relief authority.