

COUNCIL OF THE DISTRICT OF COLUMBIA

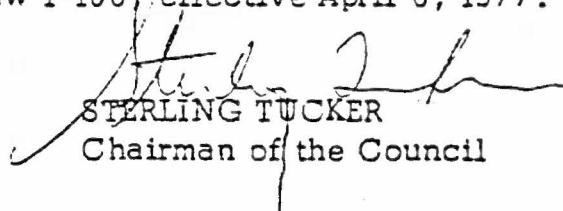
NOTICE

April 12, 1977

"Healing Arts Practice Act of 1976"

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, (PL 93-198) the Act, the Council of the District of Columbia adopted first and second readings of Bill No. 1-216 on June 29, 1976 and July 20, 1976, respectively. Subsequent to the Mayor's disapproval on August 23, 1976, the Council re-enacted Act No. 1-152 on September 15, 1976, published it in the October 22, 1976, edition of the D.C. Register, and submitted it to the President of the United States for consideration on September 21, 1976, in accordance with Section 404 (e) of the Act. Following the President's approval on October 20, 1976, this legislation was transmitted to both Houses of Congress for a 30-day review, in accordance with Section 602 (c) (1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has expired and, therefore, cites the following legislation as D.C. Law 1-106 effective April 6, 1977.


STERLING TUCKER
Chairman of the Council

(Ref. 23, D.C. Reg., 2545, October 22, 1976)

D.C. LAW

1-106

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 6, 1977

To amend the Healing Arts Practice Act, District of Columbia, 1928, to revise the composition and authority of the Commission on Licensure to Practice the Healing Art, and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
That this act may be cited as the "Healing Arts Practice
Act of 1976".

ORGANIZATION AND CONTINUATION OF COMMISSION

Sec. 2. (a) Section 4 of the Healing Arts Practice Act, District of Columbia, 1928 (hereafter in this act referred to as the "1929 Act") (D.C. Code, sec. 2-103), is amended by substitution to read:

"Sec. 4. Commission on Licensure to Practice
the Healing Art

"(a) (1) There is established a Commission on Licensure to Practice the Healing Art. The Commission shall have twelve members, ten of whom shall be appointed by the Mayor with the advice and consent of the Council as follows:

"(A) Three members shall be appointed from a panel of six physicians, licensed under this act and practicing in the District of Columbia, who are nominated by the Medical Society of the District of Columbia.

"(B) One member shall be appointed from a panel of two physicians licensed under this act, who are nominated by the Dean of the Georgetown Medical School.

"(C) One member shall be appointed from a panel of two physicians licensed under this act, who are nominated by the Dean of the George Washington University Medical School.

"(D) One member shall be appointed from a panel of two physicians licensed under this act, who are nominated by the Dean of Howard University Medical School.

"(E) One member shall be appointed from a panel of two physicians licensed under this act, who are nominated by the Medico-Chirurgical Society of the District of Columbia.

"(F) One member shall be appointed from a panel of two osteopathic physicians licensed under this act and nominated by the Association of Osteo-

pathic Physicians of the District of Columbia,
Incorporated.

"(G) Two members shall be appointed from persons who are not health care providers and who represent the consumers of health care. These two members shall have all the powers which other members have.

"(2) (A) The Director of Public Health or the lawful successor of that office shall be an ex officio member and may nominate another District employee licensed under this act to be a temporary or permanent alternate member with all the powers of other Commission members.

"(B) The Corporation Counsel shall be an ex officio member of the Commission.

"(3) A vacancy in the Commission shall be filled in the same manner as the original appointment was made.

"(b) (1) The members appointed under paragraph (a) (1) shall be appointed for a term of three years.

"(2) Of the members first appointed under paragraph (a) (1), three shall be appointed for terms of one year, three for terms of two years, and four for terms of three years, as designated by the Mayor at the time of appointment.

"(3) Any member appointed under paragraph (a) (1) to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. For a period not exceeding 90 days, a member appointed under paragraph (a) (1) may serve after the expiration of his or her term until a successor has been appointed, qualified and taken office. A member appointed under paragraph (a) (1) shall not be eligible for reappointment for a period of three years after the expiration of his or her term.

"(c) The Commission shall elect a President and Vice President from among its members. The member selected through subparagraph (a) (2) (A) shall be the Secretary of the Commission.

"(d) Seven members of the Commission shall constitute a quorum for the transaction of business at any meeting.

"(e) The Mayor may remove any member of the Commission appointed under paragraph (a) (1), for neglect of duty required by this act, incompetency, or unprofessional conduct.

"(f) Each member of the Commission appointed under paragraph (a) (1) may be paid at the rate of fifty dollars per day devoted to Commission work, and may be reimbursed

for necessary expenses not to exceed five thousand dollars in any one year.

"(g) No member shall be liable in damages to any person for any action or recommendation within the scope of the member's function.

"(h) The Commission may make and alter reasonable procedural and substantive rules in accordance with sections 5, 6 and 7 of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1-1504 to 06).

"(i) The Corporation Counsel shall be the Commission's legal advisor and representative, and if the Commission requests, shall represent the complainant's case in a proceeding before the Commission under section 27 of this act. After such a request from the Commission, the Corporation Counsel shall take no part as a Commission member in the consideration or decision of the case.

"(j) The Commission composed as required in subsection (a) is the continuation of the Commission prior to the effective date of this section. Until all members first appointed under paragraph (a) (1) take office, the members of the Commission shall continue to be appointed in the same manner as prior to the effective date of this act."

(b) Section 50 of the 1929 Act (D.C. Code, sec. 2-141) is repealed.

(c) Section 1.1(b) of the Administrative Rules for Occupational and Professional Licensing Boards (5DD DCRR 1.1(b)) is amended by striking "Commission on Licensure to Practice the Healing Art;".

COMMISSION STAFF

Sec. 3. Section 7 of the 1929 Act (D.C. Code, sec. 2-105) is amended by substitution as follows:

"Sec. 7. On or after October 1, 1977, the President of the Commission shall appoint a full-time staff director. The staff director shall appoint, with the consent of the Commission, such counsel, secretaries, investigators or other persons as are necessary to carry out the functions of the Commission. Until such staff is sufficient for all the needs of the Commission, the Department of Economic Development shall continue staff and administrative assistance to the Commission."

NATIONAL EXAMINATION AND INTERSTATE QUALIFICATION

Sec. 4. (a) Section 6 of the 1929 Act (D.C. Code, sec. 2-104) is amended by inserting after "section 25(a) of this act," in the second sentence, "or by virtue of successful completion of the examination administered by the Federation of State Medical Boards of the United States as provided in such section.", and by striking out the word "reciprocity"

wherever it appears and inserting in lieu thereof the word "endorsement".

(b) Section 11 of the 1929 Act (D.C. Code, sec. 2-108) is amended by inserting in the sixth sentence "or by virtue of successful completion of the examination administered by the Federal of State Medical Boards of the United States," after "national examining board," and by striking out the word "reciprocity" wherever it appears and inserting in lieu thereof the word "endorsement".

(c) Section 23 of the 1929 Act (D.C. Code, sec. 2-119) is amended by:

(1) inserting in the third sentence "or by virtue of successful completion of the examination administered by the Federation of State Medical Boards of the United States," after "national examining board,"

(2) inserting in the fourth sentence "or on the basis of successful completion of the examination administered by the Federation of State Medical Boards of the United States" after "national examining board," and

(3) striking out the word "reciprocity" wherever it appears in those sections and inserting in lieu thereof the word "endorsement".

(d) Section 25 of the 1929 Act (D.C. Code, sec. 2-121)
is amended by:

(1) inserting, in the first sentence immediately before "without examination", "by endorsement and", and

(2) by striking out the third and fourth sentences and inserting in lieu thereof "The Commission may issue a license by endorsement to an applicant under this section if it determines the applicant has met the requirements of this section: Provided, That an applicant who has been examined under authority of the Commission and who has failed, shall not for three years after the failure be licensed under the provisions of this section.

"A license issued to an applicant under this section shall correspond in scope as nearly as practicable to the license held by the applicant which is the basis for the issuance of a license under this section."

(e) Section 25 (a) of the 1929 Act (D.C. Code, sec. 2-121a) is amended by:

(1) striking out ": Provided, That the examination given by the national examining board" and inserting in lieu thereof "or to anyone who has successfully completed the examination administered by the Federation of State Medical Boards of the United States

if the Commission determines that the examination given by the national examining board or by such Federation, as the case may be," and

(2) inserting in the last sentence "or on the basis of successful completion of the examination administered by the Federation of State Medical Boards of the United States" immediately after "national examining board".

(f) Sections 24, 25, 25(a), 26 and 42 of the 1929 Act (D.C. Code, secs. 2-120, 121, 121a, 122 and 133) are amended by striking "twenty-one" wherever it appears and inserting in lieu thereof "eighteen".

TEMPORARY MEDICAL LICENSES

Sec. 5. A section 26A is added to the 1929 Act as follows:

"Sec. 26A. Temporary Medical Licenses.

"(a) The Commission may issue, without examination, temporary licenses to persons holding the Degree of Doctor of Medicine or Doctor of Osteopathy who wish to pursue or participate in residency or fellowship training programs in the District of Columbia. An applicant for a temporary license shall furnish to the Commission satisfactory proof that the applicant--

"(1) is of good character;

"(2) is a graduate of an accredited medical school or an accredited school of osteopathy or is otherwise qualified after examination by the Educational Council of Foreign Medical Graduates;

"(3) has completed a minimum of one year of post-graduate education accredited by the American Medical Association's Council on Medical Education and Training and has been accepted or appointed for residency or fellowship in a program accredited by the American Medical Association's Council on Medical Education and Training;

"(4) will limit his practice and training to the confines of the hospitals or other facilities within such accredited program; and

"(5) will practice only under supervision of the attending medical staff or such hospitals, facilities, or affiliated institutions within such accredited program.

"Each applicant for a license under this section must be nominated by the institution in which he is serving as a resident or fellow. An institution which nominates an applicant for a license under this section shall notify the Commission of the beginning and ending

dates of the period for which such applicant has been accepted or appointed.

"(b) A license issued under this section shall be valid for a period not to exceed one year. Such a license may be renewed upon application for a period not to exceed one year. A license issued under this section may not be renewed for periods aggregating more than seven years.

"(c) The holder of a license under this section may sign birth and death certificates, prescriptions for narcotics, barbiturates and other drugs, and other legal documents in compliance with existing laws, if the execution of such documents involves duties prescribed by or incident to his residency or fellowship program."

SANCTIONS

Sec. 6. (a) Section 27 of the 1929 Act (D.C. Code, sec. 2-123) is amended by substitution as follows:

"Sec. 27. Procedures and Standards for Imposition of Sanctions Against Licensees.

"(a) (1) Any person, organization or entity may make or assist in making a formal complaint in writing of professional misconduct or incapacity as defined in subsection (d) against a licensee under this act. The

Commission may also sua sponte institute a complaint or appropriate investigation if it deems necessary.

"The Commission may receive informal reports which are not complaints from any source at any time made in any manner. A person who makes such a report, or a complaint pursuant to the preceding paragraph, without knowing and intending it to be false, shall be immune from civil or criminal liability for the making of such report or complaint.

"The Commission may not act upon a formal complaint, or report or investigation, without further investigation thereof. The Commission may, for the purpose of accuracy, professional judgment, promptness, or economy, delegate such further investigation to a non-governmental organization, and may, in the Commission's discretion, specify the part or manner of such further investigation to be performed by any such donee. The donee, and the member or employee of the donee who is actually carrying out the investigation, shall be immune from civil or criminal liability arising from good faith performance of the investigation. A licensee formally complained against shall be informed of the complainant's identity. The findings of the investigation shall be reported in writing to the Commission.

"After review of the findings, the Commission shall determine whether a hearing is warranted. If a hearing is warranted, charges shall be prepared within fifteen days.

"(2) The charges shall state the alleged professional misconduct or incapacity and shall state concisely the material facts but not the evidence by which the charges are to be proved.

"(3) The Commission shall set the time and place of the hearing which shall not be later than seventy-five days after the date on which the charges are served. The notice of hearing shall state (a) the date, time and place of the hearing, (b) that the licensee shall file a written answer to the charges prior to the hearing, (c) that the licensee shall appear personally at the hearing and may be represented by counsel, (d) that the licensee shall have the right to produce witnesses and evidence in his or her behalf, to cross-examine witnesses including the complainant, to examine evidence produced and to have subpoenas issued in the complainant's behalf to require the production of witnesses and evidence, (e) that an electronic record of the hearing will be made, (f) the charges and (g) other information as may be considered appropriate by the Commission.

"(4) The provisions of sections 10 and 11 of the District of Columbia Administrative Procedure Act and section 742 of the District of Columbia Self-Government and Governmental Reorganization Act (D.C. Code, secs. 1-1503a, 09 and 10) apply to proceedings under this section.

"(5) The Commission may issue a subpoena requiring a person to appear and testify, or to produce books, papers, documents, or other materials, pertaining to a matter within the Commission's jurisdiction. Such subpoena shall direct such appearance, testimony, or production to be made to the Commission, or a member, agent, or delegatee thereof.

"In any investigation or proceeding by the Commission, a physician shall not be permitted to disclose any confidential information acquired in attending a patient professionally, unless the patient or the patient's legal representative makes a complaint or report under paragraph (1), or otherwise expressly consents to such disclosure.

"Prior to complying with a subpoena issued by the Commission, a person wishing to contest the subpoena shall request and obtain a hearing and decision on the subpoena by the Commission. If the refusal to comply is

validly based upon the privilege provided in the preceding paragraph, the subpoena shall be quashed.

"Except for hearings by the Commission on formal complaints (not on subpoenas), all fact-finding by the Commission or its agents or delegates with respect to particular licensees under this act shall proceed in confidence. Information obtained by such fact-finding shall not be disclosed except to the extent necessary for the proper functioning of the Commission. Any other or further disclosure, use or dissemination of such information by or to any individual, organization, agency, or other entity, by any means, except pursuant to a valid court order, is prohibited.

"The Commission may authorize a member, delegatee, or agent of the Commission to administer an oath to a witness in a matter within the Commission's jurisdiction.

"(6) The Commission may order a penalty or sanction against a licensee only if five or more, but in no event less than a majority of the Commission members present and eligible to vote, vote to approve the Commission's findings of fact and law and selection of penalty or sanction.

"(7) The penalties and sanctions which may be imposed by the Commission on a present or former licensee who has committed professional misconduct or incapacity are:

- "(A) censure and reprimand;
- "(B) a civil fine not to exceed five thousand dollars;
- "(C) suspension of license:
 - "(i) wholly or partially, and,
 - "(ii) for a fixed period of time, or until the licensee successfully completes a course, approved by the Commission, of (a) therapy or treatment; and/or, (b) retraining in the area of medicine or osteopathy to which the suspension applies;
- "(D) revocation of license;
- "(E) annulment of license;
- "(F) limitation on issuance of any further license; and
- "(G) a course of remediation, approved by the Commission, consisting of:
 - "(i) therapy or treatment and/or

"(ii) retraining in the area of the healing art to which the finding of misconduct or incapacity applies, and

"(iii) subsequent to such remediation, re-examination, at the discretion of, and in the manner prescribed by, the Commission.

"(b) A licensee may request in writing to the Commission a restriction of his or her license to practice. The Commission may grant such request for restriction and shall have authority to attach conditions and limitations to the licensee's practice, and waive the commencement or continuation of any proceeding under this section.

"(c) The Commission may restore partial or complete license privileges where these privileges have been previously affected in any way pursuant to subsections (a) or (b), but as a condition thereof may impose any disciplinary or corrective measure which it might originally have imposed.

"(d) The Commission shall impose a penalty or sanction only upon a present or former licensee whom the Commission finds has committed professional misconduct or incapacity, which means any of the following:

"(1) Use of any false, fraudulent or forged statement or document, or dishonest practice in connection with any of the licensing requirements.

"(2) Conviction for a crime which has a direct bearing on whether or not the licensee should be entrusted to serve the public as a licensed health care provider, and which is a felony under:

"(A) District of Columbia law, or

"(B) Federal law, or

"(C) The law of another jurisdiction and which, if committed within the District of Columbia, would have constituted a felony under District of Columbia law.

"(3) Abandonment of a patient whose care a physician has undertaken, or discontinuation of services to such a patient without being discharged or without giving notice to the patient, or the patient's relatives or responsible friends, long enough in advance of discontinuation to allow them to secure another medical attendant.

"(4) Addiction to or habitual use of narcotics, barbiturates, amphetamines, hallucinogens or other drugs having similar effect, habitual drunkenness or rendering professional services to a patient while intoxicated or

under the influence of such drugs, or mental illness, senility or physical incapacity, which prevents a licensee from providing health care with reasonable skill and safety to patients.

"In enforcing this paragraph, the Commission shall, upon probable cause, require a physician to submit to a mental or physical examination by physicians designated by it. Failure of a licensee to submit to such examination when directed shall constitute an admission of the allegations against the licensee under this paragraph only, unless failure is due to circumstances beyond the licensee's control. In the event of such wilful failure, a final order may be entered by the Commission without a hearing as prescribed in subsection (a). A licensee disciplined under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume a competent practice of medicine with reasonable skill and safety to patients. For the purposes of this paragraph, a person, by accepting a license under this act, shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the Commission, and to have waived all objections to the admissibility of the testimony or examination reports of

the examining physician on the ground that the testimony or reports constitute a privileged communication.

"(5) Direct promotion by a licensee of the sale of drugs, devices, appliances or goods provided for a patient in such a manner as to exploit the patient for financial gain of the physician.

"(6) Wilfully making and filing false reports or records, or wilfully omitting to make or file, obstructing the making or filing, or inducing another person to omit to make or file, medical reports or records required by law.

"(7) Wilful failure to furnish details of a patient's medical record to succeeding physicians or hospitals upon proper request, within a reasonable period of time.

"(8) Receiving compensation for referral of patients to other health care services or providers, or for medical services, appliances or medications purchased by or on behalf of a patient.

"(9) Division of fees or agreeing to split or divide the fees received for professional services with any person for bringing in or referring a patient.

"(10) Knowingly practicing medicine with an unlicensed physician except in an accredited preceptor-

ship or residency training program; or aiding or abetting such unlicensed persons in the practice of medicine. This provision shall not apply to accepted use of qualified paramedical personnel.

"(11) Refusing to provide service to a person because of such person's race, creed, color, sex, or national origin;

"(12) Practicing the healing art in violation of an effective order of the Commission.

"(13) Acts which have resulted in disciplinary action against the licensee by the proper licensing authority or court in another state, territory or country, and which, if committed in the District of Columbia, would be professional misconduct or incapacity as defined in this paragraph.

"A copy of the judgment or proceeding under the seal of the clerk of the court or of the administrative agency which entered the same shall be admissible into evidence without further authentication and shall constitute prima facie evidence of the contents thereof.

"(14) Demonstrating a wilful or careless disregard for the health, welfare or safety of a patient, in any of which cases, proof of actual injury may but need not be established.

"(15) Failure to conform to the standards of acceptable and prevailing healing arts practice in which prior actual injury to a patient may but need not be established."

(b) Section 22 of the 1929 Act (D.C. Code, sec. 2-118) is amended by striking "so long as that license is unsuspended and unrevoked" and inserting in lieu thereof "subject to any action taken under sections 27, 40, and 41 of this act".

CRIMINAL PENALTIES

Sec. 7. Section 39(b) of the 1929 Act (D.C. Code, sec. 2-130(b)) is amended to read:

"(b) Any person violating the provisions of sections 2 or 3 of this act shall be punished, for the first offense by a fine of not more than \$5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; for the second and subsequent offenses by a fine of not more than \$10,000 or by imprisonment for not more than two years, or by both such fine and imprisonment."

REPORTING LOSS OF PRIVILEGES

Sec. 8. Each health care institution licensed under the statutes codified in sections 32-301, et seq., of the District of Columbia Code, shall report in writing to the Commission on Licensure of the Healing Art any revocation,

suspension, or restriction of privileges granted to an individual health care provider to practice in the institution.

EFFECTIVE DATE

Sec. 9. This act shall be effective immediately following the period provided for Congressional review in section 602(c) (1) of the District of Columbia Self-Government and Governmental Reorganization Act.

SEVERABILITY

Sec. 10. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of this act, and the application of such provision to other persons not similarly situated or to other circumstances, shall not be affected.

Considered in Council June 29, 1976First Vote June 29, 1976**RECORD OF COUNCIL VOTE**

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
TUCKER	X				DIXON	X				SPAULDING	X			
MOORE, D.	X				HARDY	X				WILSON	X			
BARRY	X				HOBSON	X				WINTER	X			
CLARKE	X				MOORE, J.	X								
COATES				X	SHACKLETON	X								

X—Indicates Vote A. B.—Absent N. V.—Not Voting

Robert A. Williams

(Secretary of the Council)

Final Vote in Council July 20, 1976**RECORD OF COUNCIL VOTE**

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
TUCKER	X				DIXON	X				SPAULDING	X			
MOORE, D.				X	HARDY	X				WILSON	X			
BARRY	X				HOBSON	X				WINTER	X			
RKE	X				MOORE, J.	X								
ATES	X				SHACKLETON	X								

X—Indicates Vote A. B.—Absent N. V.—Not Voting

Robert A. Williams

(Secretary of the Council)

Presented to the Mayor AUG 9 1976*Robert A. Williams*

(Secretary of the Council)

Mayor's Action:Approved: /Disapproved: ✓ 23 AUG 1976*Peter Washington* 23 AUG 1

(Mayor's Signature)

acted without Mayor's Signature _____

(Secretary of the Council)

Reconsidered by Council September 15, 1976

Vote 8-3-1-1

RECORD OF COUNCIL VOTE

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
TUCKER	X				DIXON	X				SPAULDING	X			
MOORE, D.		X			HARDY		X			WILSON	X			
BARRY	X				HOBSON		X			WINTER				X
CLARKE	X				MOORE, J.	X								
COATES				X	SHACKLETON	X								

X—Indicates Vote A. B.—Absent N. V.—Not Voting

Robert A. Williams

(Secretary of the Council)

Presented to the President 9/21/76

Robert A. Williams

(Secretary of the Council)

Sustain Mayor's Veto

Gerald R. Ford

(President of the U. S.)

Not Sustain Mayor's Veto ✓ October 20, 1976

Submitted to the Congress JAN 21 1977

Robert A. Williams

(Secretary of the Council)

Senate Action _____
Resolution Number _____

House Action _____
Resolution Number _____

(Secretary of the Senate)

(Clerk of the House)

Enacted without Congressional action _____

(Secretary of the Council)