

Stated from the other perspective, the subsection states that a health occupation board may not arbitrarily deny an otherwise qualified applicant an opportunity to take the license examination. This requirement of the present law becomes clearer in the context of the revised form used in the "Examinations" sections of this article. In any event, this provision reflects the requirements of the due process clause of the 14th Amendment of the U.S. Constitution. See Schwartz v. Board of Bar Examiners, 353 U.S. 232 (1957); and Douglas v. Noble, 261 U.S. 165 (1923).

The Commission notes that the majority of the titles of this article do not include mental incompetence as a ground for suspension or revocation of a license. The General Assembly may wish to consider adding such a provision to those titles, because the absence of such a provision deprives a health occupation board of a valuable mechanism by which to protect the public against a fundamental danger -- a health practitioner who is mentally disabled.

The Commission also calls the attention of the General Assembly to the fact that parts of this article seem to conflict, at least in principle, with the Administrative Procedure Act as it relates to a stay of a board's order of suspension or revocation pending judicial review. The Administrative Procedure Act provides that the filing of a petition for review "does not itself stay enforcement" of the order, but allows for "a stay upon appropriate terms" unless "otherwise provided by law". See Art. 41, § 255(c) of the Code. The present law includes express provisions that relate to stays of orders by some health occupation boards governed by this article, and, as a result, some sections of this article that relate to administrative and judicial review contain such provisions. These provisions vary significantly: some -- see, §§ 6-317(c), 10-317(c), and 15-315(c) -- provide for an automatic stay; and others -- see, §§ 7-314(c) and 14-508(c) -- prohibit stays pending review. The Administrative Procedure Act represents the procedure that the General Assembly intends should apply to most, if not all, review of administrative orders in this State. See Section 3 of Ch. 94, Acts of 1957. Therefore, it is possible that some of these unique stay provisions do not represent the procedure that the General Assembly would now favor.

The attention of the General Assembly is also called to the fact that Ch. 702, Acts of 1980 added additional members to most of the boards governed by this article, and, in so doing, may have worked some unintended changes in the law. For example, present Art. 43, § 483 states, in part, that a license to practice podiatry may be issued only when "at least three members of the Board vote in favor of granting the license" -- a requirement that now appears in § 15-306 of this article. Before Ch. 702, Acts of 1980 became law, three affirmative votes corresponded to a majority of the full authorized membership of the Board of Podiatry Examiners. However, Ch. 702, Acts of 1980 added one member