

DOUGLAS F. GANSLER
ATTORNEY GENERAL

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



DAN FRIEDMAN
Counsel to the General Assembly

SANDRA BENSON BRANTLEY
BONNIE A. KIRKLAND
KATHRYN M. ROWE
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 29, 2013

The Honorable Martin O'Malley
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401-1991

Re: House Bills 1096, 1296, and 1348 and Senate Bills 672 and 981.

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 1096 and Senate Bill 672, identical bills entitled "State Board of Physicians and Allied Health Advisory Committees - Sunset Extension and Program Evaluation," House Bill 1296 and Senate Bill 981, identical bills entitled "State Board of Physicians - Quasi-Judicial Powers and the Board of Review - Revisions," and House Bill 1348, "Maryland Program Evaluation Act - Revisions and Clarifications." We write to point out a minor title issue with House Bill 1096 and Senate Bill 672 and to discuss the interaction of those bills with House Bill 1296 and Senate Bill 981 and with House Bill 1348 and to recommend that House Bill 1096 and Senate Bill 672 be signed prior to the other bills approved in this letter.

House Bill 1096 and Senate Bill 672 are the result of the sunset review of the State Board of Physicians. The bills alter the disciplinary and enforcement powers and responsibilities of the Board and make other changes. They specifically provide that most disciplinary matters, but not license denials, may be heard by a disciplinary panel made up of Board members rather than by the entire Board. The title to the bills reflects that the bills "requir[e] the Board, in consultation with certain interested parties, to adopt regulations to define certain circumstances under which certain reporting is required by hospitals, related institutions, and alternative health systems." House Bill 1096, page 3, lines 34-36. The referenced provisions, at House Bill 1096, page 30, line 31 to page 31,

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line 2, and at House Bill 1096, page 32, lines 25-30, however, permit, but do not require, the Board to adopt the described regulations. It is our view that this difference does not render the title unconstitutionally invalid.

House Bill 1096 and Senate Bill 672 make amendments throughout Title 14, Subtitle 4 to reflect the creation of disciplinary panels and their ability to handle disciplinary matters in the place of the entire Board. Among the sections affected is § 14-408, which relates to appeals from a final action of the Board include appeals from a disciplinary panel. House Bill 1296 and Senate Bill 981 amend that section to eliminate all appeals to the Board of Review and to make direct judicial appeal available in all contested cases. The provisions are not inconsistent and can all be given effect; but it may be advisable to sign House Bill 1096 and Senate Bill 672 first to ensure that the repeal of subsection (a) is given effect.

House Bill 1096 and Senate Bill 672 amend State Government Article, § 8-403(b) to reset the dates for the next sunset review of the Athletic Training Advisory Committee, the Perfusion Advisory Committee, the Physician Assistant Advisory Committee, the State Board of Physicians, the Polysomnography Professional Standards Committee, the Radiation Oncology/Therapy Technologists, Radiation Technologists, and Nuclear Medicine Technologists Advisory Committee, and the Respiratory Care Professional Standards Advisory Committee. Each of these dates is set for Sunday, October 30, 2016, rather than the traditional ten years after review. House Bill 1348 makes revisions and clarifications to the Maryland Program Evaluation Act, also known as sunset review. It amends § 8-403(b) to provide that most of the units listed in that subsection will be subject to a preliminary evaluation two years earlier than the date for which the full review is currently set. A new § 8-403(c) sets out the required contents of a preliminary review, including a recommendation as to whether a full evaluation is necessary. The final determination of which units will receive final evaluations is to be made by the Legislative Policy Committee. New § 8-405 lists the units that are always to receive a full evaluation, including the State Board of Physicians and the allied health advisory committees included in the evaluation that is implemented by House Bill 1096 and Senate Bill 672. Each of those units is listed with a review date of 2011.

It is clear that the intent of the changes to § 8-403 in House Bill 1096 and Senate Bill 672 is to set an early date for the next full evaluation of the State Board of Physicians and related committees. It is equally clear that the intent of House Bill 1348 is primarily to ensure that the Board and related committees continue to receive full evaluations by moving them to the new § 8-405, and not to maintain the now obsolete review date of

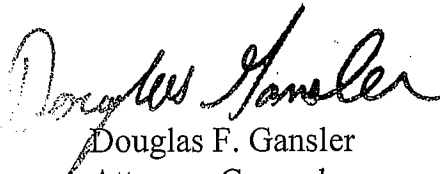
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2011. It is our view that this can best be accomplished by signing House Bill 1096 and Senate Bill 672 before House Bill 1348.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Douglas F. Gansler".

Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable John P. McDonough
Stacy Mayer
Karl Aro