Maryland
DEPARTMENT OF HEALTH

Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

2020 SESSION
POSITION PAPER

BILL NO:	**SB 103 – Health Occupations – Diagnostic Evaluation and Treatment of Patients – Disciplinary Actions**
COMMITTEE:	**Senate Education, Health and Environmental Affairs**
POSITION:	**Oppose**

TITLE: **Health Occupations – Diagnostic Evaluation and Treatment of Patients – Disciplinary Actions (The Patient's Access to Integrative Healthcare Act of 2020)**

BILL ANALYSIS: This bill prohibits the Maryland Board of Physicians ("the Board") from disciplining a health care practitioner for use of evaluations or treatments that are integrative, complementary, alternative or nonconventional unless such treatments pose a significant risk as compared to conventional methods. This bill further prohibits the Board from finding that alternative medicine practitioners have violated any record-keeping or billing requirements provided that the practitioner has acted in good faith to comply with the intent of the requirements. SB 103 also requires that in cases referred for peer review involving alternative medicine, at least one peer reviewer be trained in integrative medicine, and requires unanimous agreement from all peer reviewers before the Board may discipline an alternative medicine practitioner. The bill takes effect July 1, 2020.

POSITION AND RATIONALE:

The Board opposes SB 103. The Board believes that the proponents' concerns can be resolved without legislation.

The Board would like to emphasize that it is not opposed to the practice of integrative, complementary, alternative or nonconventional medicine. In fact, disciplinary actions involving alternative medicine are exceedingly rare.

However, this bill grants alternative medicine practitioners several additional rights that conventional practitioners do not have. The bill creates a separate but not equal disciplinary process for alternative medicine practitioners.

Overall, SB 103 places significant burdens on the Board with regard to investigating, reviewing and disciplining alternative medicine practitioners for allegations of failure to meet appropriate

standard of care. In addition, the lack of any definition of integrative, complementary, alternative or nonconventional diagnostic evaluations or treatments presents notable difficulties in enforcement.

As referenced above, the Board has also met with several proponents of SB 103 and agreed to work with them to find non-legislative solutions. For example, the Board has reached out to one of the proponents of SB 103 to obtain a list of integrative specialists trained in peer review in order to expand its current pool of peer reviewers, and we have invited the proponents to present before the Board at its next full meeting.

Standard of Care and the Disciplinary Process

The Board does not set accepted medical practices or standards, and its role is not to determine the safety or risks of a given procedure or to weigh said risks against potential benefits. It is beyond the scope and purpose of the Board and its investigators to make such determinations, and requiring that it does so presents a significant burden to the Board and will unduly delay the disciplinary process. The proposed language in SB 103 would effectively allow alternative medicine practitioners to ignore the typical standard of care requirements that all other practitioners were required to abide by unless and until significant safety risks were proven for their alternative treatment or diagnosis.

The Board opposes the disciplinary language on page 2, lines 20 through 31, and page 3, lines 1 through 18 and lines 24 through 32, of SB 103. As written, this language would create a separate disciplinary track that provides additional rights to practitioners of integrative or complementary medicine that are not afforded to conventional practitioners.

Board investigations are entirely complaint-driven, the majority of which come from patients or their representatives. Upon receipt of a complaint alleging that there was a failure to meet appropriate standard of care, the practitioner is notified and given a copy of the complaint and an opportunity to respond. Meanwhile, the Board conducts a preliminary investigation, which is reviewed by its internal staff physician. The results of this preliminary investigation, including the practitioner's response, are then brought before a Board disciplinary panel. If the panel finds that the practitioner may have failed to meet the standards of quality medical care, the case is then referred to at least two physicians within the involved medical specialty for physician peer review. If one or both of the peer reviewers concludes that a violation of the standard of care has occurred, the practitioner is provided with a copy of the final report and given another opportunity to respond. The disciplinary panel then considers both the final report and any written response in determining whether there is reasonable cause to charge a practitioner with failure to meet appropriate standards of quality care.

With the proposed language in SB 103, in any cases involving nonconventional medicine, the Board would need to either demonstrate that such a treatment or diagnosis poses a significant safety risk as weighed against potential benefits, or present "clear and convincing" evidence that the health care practitioner intended to defraud the patient and was aware that the treatment method did not have a reasonable basis. It is worth noting that the "clear and convincing" requirement presents a higher evidentiary standard than any other review required by a disciplinary panel, which ordinarily must only demonstrate reasonable cause before charging.

In addition, the language in SB 103 would also create an exemption from the typical requirements for medical record-keeping unless the Board had proof of ill intent. This protection

is not available for practitioners of conventional medicine; if such a practitioner was found to have failed to keep adequate medical records, the Board would not be required to consider their intent or demonstrate that they were acting in a false or misleading manner.

Finally, SB 103 offers no guidance or consideration regarding the definition of integrative, complementary, alternative or nonconventional medicine. Without any such definitions, any health care practitioner could bypass the ordinary disciplinary process by claiming that they were using a nonconventional method or approach. The burden would then fall upon the Board to demonstrate that said approach posed a significant risk or to provide clear and convincing evidence that the method was intended to defraud the patient.

Peer Review

The Board also opposes the peer review language on page 4, lines 18 through 36, and page 5, lines 1 through 14, of SB 103. Much of this language is duplicative and unnecessary, as the Board is already statutorily required to locate peer reviewers within the involved medical specialty. (See H.O. §14-401.1(e)(2); physician peer reviewers must be Board certified and have special qualifications to judge the matter at hand.)

Physician peer reviewers also must be trained in peer review, have no formal actions against their license, and whenever practicable, must be licensed and engaged in the practice of medicine in Maryland. As part of its 2019 Sunset Review, DLS noted that "while the complaint process generally moves quickly, finding reviewers and conducting peer reviews can be time-consuming and expensive for the board." The language proposed in SB 103 would require all standard of care cases involving the use of alternative medicine to use at least one peer reviewer with training and experience in the same methods used by the practitioner in question or otherwise trained in integrative medicine. As the Board is already statutorily required to utilize peer reviewers within the involved medical specialty and to have special qualifications to judge the matter at hand, this language only serves to further reduce the available pool of peer reviewers, further extending an already time-consuming and costly process.

Conclusion

The Board is opposing SB 103 for all the reasons stated above, and the Board urges an unfavorable report on this bill.

For more information, please contact Wynee Hawk, Manager, Policy and Legislation, Maryland Board of Physicians, 410-764-3786.

The opinion of the Board expressed in this document does not necessarily reflect that of the Maryland Department of Health or the Administration.