



Board of Physicians

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

2020 SESSION POSITION PAPER

BILL NO: SB 395
COMMITTEE: Education, Health, and Environmental Affairs
POSITION: Support with Amendments

TITLE: State Board of Physicians and Allied Health Advisory Committees - Sunset Extension and Program Evaluation

BILL ANALYSIS: SB 395 is a result of Chapter 419 of 2019, which advanced the termination dates of the Maryland Board of Physicians (the “Board”) and the related allied health advisory committees, and required an evaluation by the Department of Legislative Services (DLS) pursuant to the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), better known as “sunset review”. DLS completed its full evaluation of the Board in the 2019 interim, and offered recommendations related to licensing, complaints and discipline, criminal history records checks (CHRC), and other administrative issues. DLS recommends continuing the State Board of Physicians and the related allied health advisory committees to July 1, 2030.

POSITION & RATIONALE: The Board supports SB 395 with amendments. During the 2019 Sunset evaluation, the Board embraced the opportunity to conduct its own internal assessment, work collaboratively with DLS to identify issues, address inconsistencies across practitioners, enhance operational efficiency, and fix additional long-standing issues in the Board statute. The Board generally agrees with the Sunset recommendations and bill language; however, the Board is proposing additional amendments for the legislature’s consideration to provide further clarification and consistency.

We urge a favorable vote on SB 395 with the attached Board amendments.

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.

AMENDMENTS OFFERED BY THE MARYLAND BOARD OF PHYSICIANS

Amendment 1: Page 8 line 7, insert a bracket before the (i) through line 14 “Board;” and INSERT:

- (I) THE NUMBER OF NEW COMPLAINTS INVESTIGATED FOR PHYSICIANS, ALLIED HEALTH PRACTITIONERS, AND UNLICENSED INDIVIDUALS;
 - (II) THE NUMBER OF COMPLAINTS THAT REMAIN OPEN AS OF JUNE 30TH AT THE BOARD AND THE OFFICE OF THE ATTORNEY GENERAL;
 - (III) THE THREE MOST COMMON GROUNDS FOR COMPLAINTS;
 - (IV) THE THREE MOST COMMON SOURCES OF THE COMPLAINTS RECEIVED;
 - (V) THE NUMBER OF CASES NOT COMPLETED WITHIN 18 MONTHS BY THE BOARD AND THE REASONS FOR THE FAILURE TO COMPLETE THE CASES IN 18 MONTHS;
 - (VI) THE NUMBER AND TYPES OF DISCIPLINARY ACTIONS TAKEN BY THE BOARD;
 - (VII) THE NUMBER OF CASES REFERRED TO PEER REVIEW;
 - (VIII) THE NUMBER OF PEER REVIEW CASES THAT RESULTED IN CHARGES BEING ISSUED;
 - (IX) THE NUMBER OF PEER REVIEW CASES THAT RESULTED IN CLOSURE OR CLOSURE WITH AN ADVISORY LETTER;
- (2) FOR BOTH PHYSICIANS AND ALLIED HEALTH PRACTITIONERS:
- (I) THE TOTAL NUMBER OF ALL LICENSEES;
 - (II) THE NUMBER OF INITIAL, RENEWAL AND REINSTATEMENT LICENSES ISSUED;
 - (III) THE NUMBER OF POSITIVE AND NEGATIVE CRIMINAL HISTORY RECORDS CHECKS RESULTS RECEIVED;
 - (IV) THE NUMBER OF INDIVIDUALS DENIED INITIAL OR RENEWAL LICENSURE DUE TO POSITIVE CRIMINAL HISTORY RECORDS CHECKS RESULTS; AND
 - (V) THE NUMBER OF INDIVIDUALS DENIED INITIAL, REINSTATEMENT, OR RENEWAL LICENSURE DUE TO REASONS OTHER THAN A POSITIVE CRIMINAL HISTORY RECORDS CHECK.

Rationale: The Board is requesting standardized annual report requirements. The Board reviewed the Annual Reporting requirements for each of the Health Occupation Boards. Many smaller Boards have no reporting requirements while some of the other larger Boards have little or no reporting requirements. The Board is recommending that all prior Annual Report language be deleted (including the uncodified language) and that the Board's Annual Reporting

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requirements be similar to those of the Board of Nursing. These requirements will assist the legislature by consistently tracking the work of the Board.

Amendment 2: Page 10, line 22, after the word “PROCEDURE”, strike the language through “YEAR” and insert “IS LIMITED TO A PERIOD OF TIME NOT TO EXCEED 14 DAYS WITHIN A CALENDAR YEAR;”

Rationale: Clarifying. Applications for approval of this exception will no longer be sent to the Board so clarification is necessary to avoid misinterpretation that any number of procedures can be performed, so long as each procedure does not exceed 14 consecutive days instead of the intended effect of limiting the exception to 14 days within a calendar year.

Amendment 3: Page 20, STRIKE lines 11 and 12; Line 13 renumber (3) to (2).

Rationale: This language is unnecessary, a “disciplinary panel” is a disciplinary panel of the Board and there is no reason for the disciplinary panel to notify the other disciplinary panel of the reinstatement. This same language, although not in the Sunset Bill is also in all of allied health and should be struck. See H.O. 14-5A-19(b), 14-5B-16(b), etc.

Amendment 4: Page 22, STRIKE lines 9 through 25.

Rationale: This language is obsolete and unnecessary and relates to past practices when the Board did primary source verifications and referred investigations of standard of care allegations to MedChi for peer review. The Board has not done primary source verifications since 1996 and MedChi is no longer involved in peer review for the Board.

Amendment 5: Page 23, line 16. After “patient”, insert “NOT TO EXCEED A TOTAL OF 14 CALENDAR DAYS PER YEAR.”

Rationale: Clarifying and consistency. All other exceptions to licensure are time-limited in fairness to those who are required to obtain a license to practice in the State. If a Respiratory Care Practitioner is coming into the State on a regular basis, the individual should be required to obtain a Maryland license. The surrounding States that include this exception have time-limitations. The Board’s Respiratory Care Professional Standards Committee supports this timeframe.

Amendment 6: Page 33, line 14. Strike “SUBMIT A COPY OF the” and INSERT “SUBMIT AN ORIGINAL SIGNED”.

Rationale: The Board should have the original on file. This is consistent with other allied health practitioner requirements.

Amendment 7: Page 33, lines 16-30. Strike 16-30 and INSERT:

(e) In the event of a sudden departure, incapacity, change of licensure status or death of a supervising physician:

(1) AN ATHLETIC TRAINER WHO DOES NOT HAVE AN A DESIGNATED ALTERNATE SUPERVISING PHYSICIAN MUST CEASE PRACTICE;

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(2) AN ATHLETIC TRAINER WHO HAS A DESIGNATED ALTERNATE SUPERVISING PHYSICIAN WHO ASSUMES THE ROLE OF SUPERVISING PHYSICIAN MAY PRACTICE FOR A PERIOD OF 15 DAYS FOLLOWING THE EVENT.

(3) IN EITHER EVENT, A NEW EVALUATION AND TREATMENT PROTOCOL MUST BE SUBMITTED TO THE BOARD FOR APPROVAL FOR THE ATHLETIC TRAINER TO CONTINUE PRACTICE;

(f) THE BOARD MAY TERMINATE AN EVALUATION AND TREATMENT PROTOCOL IF EITHER THE ATHLETIC TRAINER OR SUPERVISING PHYSICIAN HAS A CHANGE IN LICENSURE STATUS THAT RESULTS IN THE PRIMARY SUPERVISING PHYSICIAN OR ATHLETIC TRAINER BEING UNABLE TO LEGALLY PRACTICE MEDICINE.

Rationale: Clarifying. An AT cannot practice if there is not an alternate supervising physician willing to accept the role of supervising physician. A new Evaluation and Treatment protocol must be submitted to the Board in any instance where there has been a sudden event or change in licensure status of the supervising physician.

Amendment 8: Page 43, line 31, after “REASON”, INSERT “WITHIN 10 DAYS OF THE TERMINATION.”

Rationale: Clarifying and consistency. There is a timeframe for reporting in other areas of the statute.

Amendment 9: Page 53, line 11, STRIKE “2020” and INSERT “2021”.

Rationale: The Board may not have a final report by 2020 and would request additional time to research this recommendation and then discuss it with the respective Committees and the full Board.

Amendment 10: Page 53, after line 4, INSERT new language “Section 5. AND BE IT FURTHER ENACTED, That, the Board where appropriate, draft statutory general provisions in one location common to all practitioners to improve consistency and eliminate redundancy between practitioners regulated by the Board. The draft will be submitted for consideration by the legislature prior to December 1, 2020.” STRIKE Section 5 and INSERT Section 6.

Amendment 11: Amendments to change Board to “PANEL”.

1) 14-306(f)(3) - RCIS - "The Board may impose a civil penalty" should be changed to "A DISCIPLINARY PANEL" may impose a civil penalty".

2) 14-413(e)(1); 14-414(e)(1); 14-5A-18(g)(1); 14-5B-15(g)(1); 14-5C-18(g)(1); 14-5E-18(g)(1); 15-103(i)(1) In all of these sections regarding hospital employment, “Board” should be changed to A DISCIPLINARY PANEL under (1). The reference to Board in (2) can remain ("The Board shall remit any penalty collected...").

3) 14-5D-11.1(c); 15-402.1(c): Imposing a fine for employing unlicensed individuals; “Board” should be struck and insert “A DISCIPLINARY PANEL”. The sunset bill

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includes the change from Board to Panel for 14-5A-22.1(c), 14-5B-18.1(c), and 14-5C-22.1(c), but missed changing Board to Panel for ATs and PAs.

Rationale: Consistency. Board should be changed to Panel throughout the Medical Practice Act for consistency.

Amendment 12: Page 9, line 1, after “PUBLIC” insert “BY TITLE”;
Also, after line 3, INSERT:

(3) REPRESENTING TO THE PUBLIC BY TITLE, DESCRIPTION OF SERVICES, METHODS, PROCEDURES OR OTHERWISE, THAT THE INDIVIDUAL IS LICENSED BY THE BOARD TO PRACTICE:

- (I) RESPIRATORY CARE IN THIS STATE, IN VIOLATION OF §14-5A-21;
- (II) RADIATION THERAPY, RADIOGRAPHY, NUCLEAR MEDICINE TECHNOLOGY, OR RADIATION ASSISTANCE IN THIS STATE, IN VIOLATION OF §14-5B-18;
- (III) POLYSOMNOGRAPHY IN THIS STATE, IN VIOLATION OF §14-5C-21;
- (IV) ATHLETIC TRAINING IN THIS STATE, IN VIOLATION OF §14-5D-17;
- (V) PERFUSION IN THIS STATE, IN VIOLATION OF §14-5E-21;
- (VI) NATUROPATHIC MEDICINE IN THIS STATE, IN VIOLATION OF §14-5F-30; OR
- (VII) AS A PHYSICIAN ASSISTANT IN THIS STATE, IN VIOLATION OF §15-402.

Line 4, STRIKE (3) and insert (4)

Rationale: This language is in every licensee’s practice act and for consistency should be added into the cease and desist language.

Amendment 13: Consistency amendments in the following sections: 14-316(d)(6); 14-5A-13(d)(2); 14-5B-12(d)(2); 14-5D-12(g); 15-307(f). The ability to pay a fine in lieu of discipline for CME is also missing from 5C, 5E, and 5F (Polysomnographers, Perfusionists, and Naturopaths).

Rationale: Consistency. Imposition of a fine in lieu of discipline for failure to complete CME is missing from certain practitioner statutes which results in inconsistent discipline.