



Board of Physicians

Wes Moore, Governor · Aruna Miller, Lt. Governor · Harbhajan Ajrawat, M.D., Chair

2024 SESSION POSITION PAPER

BILL NO.: SB 54 – Occupational Licensing and Certification – Criminal History – Prohibited Disclosures and Predetermination Review Process
COMMITTEE: Finance / Education, Energy, and the Environment
POSITION: Letter of Opposition

TITLE: Occupational Licensing and Certification – Criminal History – Prohibited Disclosures and Predetermination Review Process

POSITION & RATIONALE:

The Maryland Board of Physicians, State Board of Dental Examiners, State Board of Pharmacy, State Acupuncture Board, State Board of Chiropractic Examiners, State Board of Massage Therapy Examiners, State Board of Morticians and Funeral Directors, State Board of Examiners in Optometry, State Board of Occupational Therapy Practice, State Board of Podiatric Medical Examiners, State Board of Professional Counselors and Therapists, State Board of Examiners of Psychologists, and State Board of Social Work Examiners (the Boards) are respectfully submitting this letter of opposition for Senate Bill 54 – Occupational Licensing and Certification – Criminal History – Prohibited Disclosures and Predetermination Review Process (SB 54). While the intent of SB 54 is positive, the Boards are concerned that in practice, SB 54 would limit the ability of the Boards to thoroughly verify that applicants meet all licensure standards and could potentially place even more burdens on applicants with criminal convictions.

Under current law, applicants must submit a criminal history record check (CHRC) and/or disclose information regarding criminal history to obtain a health occupations license issued by the Boards. The Boards thoroughly review each applicant’s criminal history and use the balancing factors outlined in Criminal Procedures Article §1-209, Maryland Annotated Code, when making determinations about licensure. It is exceedingly rare that the Boards deny an application based solely on the grounds of a criminal conviction. For example, in fiscal year 2023, the Maryland Board of Physicians processed 7,100 CHRCs, including 118 with positive results, but did not deny a single application due to criminal history.

While denial of licensure is rare, properly investigating prior criminal history is essential to the Boards’ mission of safeguarding the public through the licensure of its health professionals. SB 54 would remove the requirement that applicants disclose certain criminal history, particularly for non-violent offenses and crimes that did not result in imprisonment. However, many offenses that would fall under this umbrella must by necessity still be treated extremely seriously by the Boards when licensing physicians, pharmacists, dentists, and other health care practitioners. For example, crimes of fraudulent conduct or non-violent crimes involving inappropriate sexual contact typically require a thorough investigation even when they do not result in terms of imprisonment. As healthcare providers have a particular place of trust within their communities and frequently deal with the most vulnerable members of the public, these investigations are necessary parts of the licensure process. Removing the disclosure requirements would hamper the ability of the Boards to fully investigate before issuing a license.

Furthermore, creating a predetermination review process for criminal convictions, while well intended, could have a deleterious effect on applicants. As referenced earlier, denials of licensure for reasons of criminal conviction are exceedingly rare and only occur after a thorough investigation and review of the context and circumstances surrounding the conviction. However, absent the full context and circumstances surrounding the conviction, in the interest of public safety, the Boards may be forced to err on the side of rejecting applications due to convictions that could potentially result in a denial of licensure but that might otherwise have been approved. The Boards would then need to establish an appeals process, which could be costly both for the Boards and the applicants and could potentially discourage applicants from ever submitting a full application following an initial rejection.

A predetermination process would also fail to encompass scenarios where a board approves issuing a license with conditions. For example, if a physician's criminal history seems to indicate a history of drug or alcohol abuse, the Maryland Board of Physicians may choose to issue the license but require, as a condition of licensure, that the applicant participate in the Maryland Physician Rehabilitation Program for monitoring and counseling. Scenarios such as these are far more common than outright denials of licensure but would not be possible as part of the predetermination review outlined in SB 54.

The Boards strongly believe that the application process should never place undue burdens on the applicant and have developed procedures to allow applicants with prior criminal convictions to be treated fairly, respectfully, and without unnecessary delays. Given the rarity of cases where a license was denied due to a previous criminal conviction, the Boards believe that these procedures have been demonstrably effective in ensuring that a criminal conviction is not a barrier to licensure. However, SB 54 would restrict the Boards' ability to properly protect the public. Therefore, the Boards would urge the Committee to submit an unfavorable report unless SB 54 is amended to remove the health occupations boards.

Thank you for your consideration. For more information, please contact:

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