

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1193 (Delegates West and Morhaim)
Health and Government Operations

Physicians – Discipline – Procedures and Effects

This bill authorizes the State Board of Physicians (MBP) to issue a letter of admonishment as a form of disciplinary action, primarily for standard of care violations. Additionally, if either of the two required peer review reports in standard of care investigations conclude that a physician did not commit a standard of care violation, a disciplinary panel of MBP must dismiss the complaint. MBP must expunge all records of a public reprimand or probation three years after final disposition. Further, if a disciplinary panel found, between July 1, 2017, and June 30, 2018, that a licensee violated standard of care but either of the two peer review reports concluded that a violation did not occur, MBP must immediately rescind any imposed discipline and expunge all records of the charge (either after three years or immediately if the physician executes a certain document). **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: Special fund expenditures increase by an indeterminate amount beginning in FY 2019. General fund revenues decrease by an indeterminate amount in FY 2019 only.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A letter of admonishment must be used primarily for first-time standard of care violations and may not be made public. MBP must provide a summary of issued letters of admonishment in the executive director's report.

The bill also prohibits hospitals and related institutions, as well as insurance carriers and insurers, from taking adverse action against a physician based solely on the fact that the physician was placed on probation by MBP if the probation has ended.

Current Law/Background: A disciplinary panel of MBP, on the affirmative vote of a majority of the quorum of the panel, may reprimand any licensed physician, place any licensed physician on probation, or suspend or revoke a license if a licensed physician violates any 1 of 43 statutory disciplinary grounds, including failure to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State.

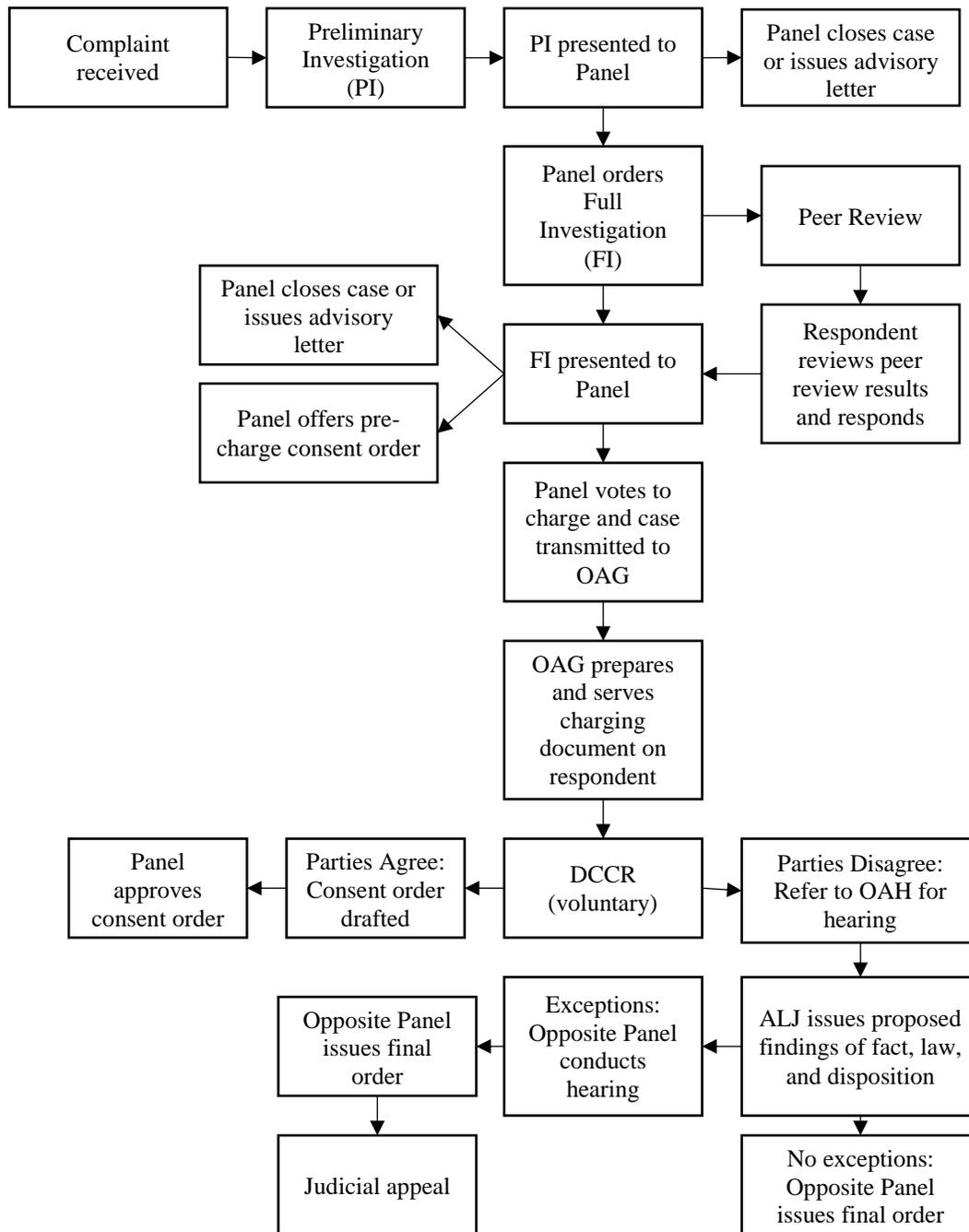
Once a complaint is received, MBP staff conduct a preliminary investigation of the complaint, which includes sending a copy of the complaint to the respondent with a request for a response. The results of the preliminary investigation are then presented to the panel, which may decide to close the case with no action, close the case with an advisory letter (informal, nonpublic action), or instruct board staff to conduct a full investigation. During the full investigation, the panel may also refer the case for peer review (through its contracted peer review entity) to solicit additional expertise; cases involving standard of care require two peer reviews. The respondent is sent a copy of the peer review results and may submit a response.

The results of the full investigation are then presented to the panel, which may (1) close the case with no action; (2) issue an advisory letter; (3) offer the respondent a pre-charge consent order if there is not a factual dispute; or (4) vote to charge the respondent. If the panel votes to charge the respondent, the case is transmitted to the Office of the Attorney General (OAG), which then prepares and serves the respondent with a charging document. Once charged, the respondent is given the option to attend a case resolution conference, referred to as the Disciplinary Committee for Case Resolution (DCCR) – a voluntary, informal, and confidential proceeding before the panel. If no agreement is reached (or if the respondent declines to participate in DCCR), the case is referred to the Office of Administrative Hearings (OAH) for a hearing before an administrative law judge (ALJ).

The hearing at OAH is conducted in accordance with the Administrative Procedure Act. The ALJ issues proposed findings of fact, law, and disposition; the board is not bound by these findings. If OAG and the respondent have no exceptions (disagreements) with the ALJ's decision, the case is referred to the opposite board panel (*i.e.*, the panel that did not originally handle the case) for a final order. If exceptions are filed, the opposite panel conducts an exceptions hearing and subsequently issues a final order. If the respondent disagrees with a panel's final order, the respondent may judicially appeal; however, the panel's order may not be stayed pending review.

Exhibit 1 shows MBP's complaint investigation process, from complaint receipt to resolution.

Exhibit 1
State Board of Physicians – Complaint Investigation Process



ALJ: administrative law judge
 DCCR: Disciplinary Committee for Case Resolution
 OAG: Office of the Attorney General
 OAH: Office of Administrative Hearings

Source: State Board of Physicians; Department of Legislative Services

According to MBP's fiscal 2017 annual report, there were 424 allegations of standard of care violations against physicians in fiscal 2017. Additionally, for physicians, MBP issued (1) 43 orders of reprimand with probation or orders of probation and (2) 4 orders of reprimand with cease and desist orders.

State Fiscal Effect: MBP advises that the bill has a minimal operational impact. Although the bill's expungement provisions result in additional responsibilities, MBP advises that such responsibilities can be handled with existing staff. MBP notes that the bill also impacts MBP's responsibilities to report disciplinary action to other entities, such as other state medical licensing boards, the National Practitioner Database, and the Federation of State Medical Boards.

The Department of Legislative Services (DLS) notes that the bill requires MBP to retroactively expunge and rescind discipline orders that are issued *in fiscal 2018* under certain circumstances, which may result in time-consuming and complex administrative and/or legal action. The extent of any increased workload depends on the total number of qualifying disciplinary orders for standard of care violations in fiscal 2018, which cannot be reliably estimated. Further, the bill requires MBP staff to expunge orders of probation and reprimands after three years, which could cause further administrative complexities. Thus, DLS advises that special fund expenditures for MBP likely increase by an indeterminate amount beginning in fiscal 2019; staff may also need to be temporarily diverted from other tasks to meet the bill's requirements.

Additionally, MBP may impose disciplinary fines against physicians in addition to, or in lieu of, certain disciplinary action. Such fines are remitted to the general fund. To the extent such fines must be refunded due to rescinded disciplinary orders under the bill, general fund revenues decrease by an indeterminate amount in fiscal 2019. Again, the extent of any decrease depends on the number of qualifying disciplinary orders in fiscal 2018, which cannot be reliably estimated.

Small Business Effect: Physicians who are placed on probation or are reprimanded may have such orders expunged from their records after three years. Thus, orders of probation and reprimands that are issued in fiscal 2019 must be expunged in fiscal 2022. Further, physicians who receive qualifying disciplinary orders in fiscal 2018 for standard of care violations may also have such orders rescinded and expunged. Finally, hospitals and related institutions, as well as insurance carriers and insurers, may not take adverse action against a physician based solely on the fact that the physician was placed on probation by MBP if the probation has ended.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Health; Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2018
mm/jc

Analysis by: Sasika Subramaniam

Direct Inquiries to:
(410) 946-5510
(301) 970-5510