



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

Board of Massage Therapy Examiners

4201 Patterson Avenue, Suite 301, Baltimore, Maryland 21215-2299

2020 SESSION POSITION PAPER

BILL NO: SB 297

COMMITTEE: Education, Health, and Environmental Affairs

POSITION: Oppose

TITLE: Administrative Procedure Act - Dispositions and Summary Suspensions - Time Periods

BILL ANALYSIS: The bill requires the Office of Administrative Hearings (“OAH”), and an agency of the State, such as the Board of Massage Therapy Examiners (“Board”), to dispose of a contested case within 90 days of the conclusion of the evidentiary hearing. If the agency or the Office does not dispose of the case within that period, the respondent may provide written notice to the Office or agency, and the Office or agency is then granted an additional 30 days to dispose of the case. If not so disposed, the case is deemed in favor of the respondent. In addition, the bill provides that if a unit such as the Board summarily suspends a license, the unit shall issue a final order on the summary suspension within 30 days of the summary suspension.

POSITION AND RATIONALE: The Board of Massage Therapy Examiners opposes SB 297. The 30 day language concerning summary suspension will not be beneficial for the Board, the public, or suspended licensees. Under the Administrative Procedure Act, a massage therapist’s license or registration is summarily suspended only if the Board finds that the public health, safety, or welfare of the public imperatively requires emergency action. This is a serious consequence. The Board takes this action only after a review of a patient’s complaint and an initial investigation. Licenses are not suspended for minor violations. The Board has generally summarily suspended licensees when there is evidence of sexual assault, prostitution or substance abuse. In the case of summary suspensions for alleged sexual assault or prostitution, there are typically criminal charges for the licensee to resolve. Generally, licensees do not wish to have an evidentiary hearing on the suspension of their license while there are criminal charges pending. Criminal cases can take over a year to resolve. In these cases, the suspended licensee does not want to have a hearing on their summary suspension within 30 days.

If a license is suspended, the massage therapist is given an opportunity to be heard by the Board. The hearing may be scheduled at the next regularly scheduled Board meeting, but the Board only meets once a month. It could prove difficult to hold a hearing within 30 days of the order. In the event that the matter was set for a hearing within the 30 day window, the Board would not be able to continue the matter at the request of the licensee. When a Board issues an order of summary suspension it is prepared to move forward with its case. The respondent on the other hand, is not prepared for the summary suspension. Dealing with the issues that lead to the suspension and finding counsel can take time for summarily suspended licensees. In the event that the massage therapist may wish to combine the summary suspension hearing with the hearing on the underlying charges, there are no provisions to continue the matter.

For these reasons the State Board of Massage Therapy Examiners requests that SB 297 receive an unfavorable report.

If you would like to discuss this further, please contact Paula Jilanis, Board Chair, at 240-727-7294, or paula.jilanis@maryland.gov. In addition, the Board's Executive Director, Ms. Sharon Oliver, may be reached at 410-764-5985, sharon.oliver@maryland.gov.

The opinion of the Maryland State Board of Massage Therapy Examiners expressed in this oppose position paper does not necessarily reflect that of the Department of Health or the Administration.