



Board of Physicians

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

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 an agency such as the Maryland Board of Physicians (the “Board”), the Maryland Board of Chiropractic Examiners, or the Office of Administrative Hearings (OAH) to dispose of a contested case within 90 days after the date of any evidentiary hearing; authorizes a named party in the contested case to provide written notice to the agency or OAH that a decision is due; establishes that if the agency or OAH does not dispose of a case within 30 days after receipt of a notice the decision shall be deemed in favor of the named party; and requires a unit to issue a final appealable order within 30 days from the date of the summary suspension.

POSITION AND RATIONALE: The Boards oppose SB 297. First, the bill is unclear as to whether the 90-day timeframe for disposing of cases after an evidentiary hearing would apply to just the OAH portion of the contested case proceeding and the issuance of the proposed decision or to the disposition of the entire case at the agency level. The Boards do not conduct their own evidentiary hearings. When disciplinary charges are not resolved through the settlement process, the Boards are required to refer cases to OAH for an evidentiary hearing and proposed decision. After the Boards receive a proposed decision from OAH, the State and the Respondent have the opportunity to file written exceptions and appear before a Board disciplinary panel for an oral exceptions hearing prior to the issuance of a final decision and order in the case, which is then appealable to the circuit court.

If the 90-day timeframe is intended to cover the time period from the conclusion of the evidentiary hearing at OAH through the issuance of a Board’s final decision on the matter, then this would not provide nearly enough time for the parties to file exceptions and a Board to conduct a meaningful and thorough review of any issues identified in the proposed decision prior to issuing a final decision in the case. If the 90-day timeframe is only intended to apply to the issuance of the proposed decision from OAH, the Boards still have concerns because of the potential threat to public safety if a disciplinary case decision is based on a technicality and not on the merits.

Further, in requiring a case to be disposed of in 90 days without any exceptions, the bill does not take into account the complexity of the case, length of the hearing, number of witnesses, volume of the record, or any other extenuating circumstances such as medical or family emergencies. The outcome of a disciplinary case should not be decided based on the length of time it takes for a

decision to be issued. This could result in practitioners, who have committed serious standard of care violations or sexual misconduct violations, avoiding discipline, and therefore, being able to harm more patients, just because of the length of time it took for the decision to be issued. The Boards are not aware of any court or any other decision-making body where a decision is automatically decided in favor of one party, regardless of the merits of the case, based on the length of time it takes for a decision to be issued.

Second, regarding the 30-day timeframe for issuing a final appealable order after a summary suspension, the time frame is also insufficient and does not take into account due process protections for Respondents that are provided for in the Board of Physicians' regulations. The Board's regulations currently provide for a post-deprivation hearing to be held within 15 days of the Order for Summary Suspension. After this hearing, the Board decides whether to reaffirm or rescind the summary suspension. If the summary suspension is affirmed, the Respondent is given the opportunity to demand a full evidentiary hearing at the OAH within 10 days and the hearing is required to be held within 30 days. The Respondent then has the opportunity to file exceptions to the OAH decision and appear before the disciplinary panel for an exceptions hearing prior to the issuance of the final appealable order. Requiring the final appealable order to be issued within 30 days would eliminate significant due process opportunities for licensees and completely alter the Board's long-standing hearing procedures. The 30 day time period would essentially force the Board to conduct its own evidentiary hearing without referral to OAH and would require additional time at Board meetings and resources to train Board members on how to conduct evidentiary hearings. The Board would be required to completely change its regulations and hearing procedures, which would also be time-consuming and incur additional staff time and resources.

Finally, the Board of Physicians regularly receives requests for postponements of the post-deprivation hearing from Respondents for a variety of reasons. The Board is also aware that there have been instances where Respondents will request that the summary suspension hearing be consolidated with the hearing on the disciplinary charges at OAH. If the Board is required to issue a final appealable order within 30 days of the summary suspension, the Board would not be able to grant any requests for postponements and the summary suspension would not be able to be consolidated with the hearing on the charges. This would be to the detriment of Respondents, not to their benefit.

The timeframe in SB 297 imposes unmanageable deadlines, reduces due process for Respondents, and could seriously impact patient safety if a dangerous practitioner is allowed to continue practicing without discipline all because of the amount of time it took for a decision to be issued.

For these reasons, the Maryland Board of Physicians and the Maryland Board of Chiropractic Examiners opposes SB 297 and urges an unfavorable report.

For more information, please contact Wynnee 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.