



Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Acting Secretary

Maryland State Board of Dental Examiners
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2021 SESSION POSITION PAPER

BILL NO: SB 836

COMMITTEE: Education, Health, and Environmental Affairs

POSITION: Oppose

TITLE: State Board of Dental Examiners-Disciplinary Action-Disclosure Requirements and Licensee Profiles

BILL ANALYSIS: The bill imposes a number of extensive requirements on the Dental Board. The bill requires the Board to disclose its records to disciplinary committees of facilities where dentists and dental hygienists practice, or an entity that employs them. Additionally, the bill requires the Board to disclose complaints to facilities or entities that employ dentists and dental hygienists if the Board determines the facility should be informed about the complaint, or the nature of the complaint suggests a reasonable possibility of an imminent threat to patient safety. The bill requires the Board to post the filing of charges on the Board's website and requires the Board to make records available to those who request them although the records would not otherwise be available. Finally, the bill requires the Board to maintain an extensive profile on its website for each licensee containing the following information: summary of any charges filed against the licensee; a description of any disciplinary action taken by the Board against the licensee within the most recent 10-year period; a description of any final disciplinary action taken by a licensing Board in any other state or jurisdiction against the licensee within the most recent 10-year period; a description of any convictions against the licensee for a crime involving moral turpitude; and background information.

POSITION AND RATIONALE: The Board opposes Senate Bill (SB) 836. The Board is willing to work with the legislature to enhance its enforcement powers to protect the public, but the bill will not accomplish that end. First, the bill requires the Board to provide "records" to a disciplinary committee of a facility or an entity where a dentist is employed. The overwhelming majority of dentists work in private offices. Dentists are generally not affiliated with facilities that have disciplinary committees. Only a relatively small percentage of oral and maxillofacial surgeons have hospital privileges. Therefore, the requirement to advise a "facility" of disciplinary matters would affect just a handful of individuals.

The Board would be required to advise all entities where a dentist or dental hygienist is employed if a complaint is filed if the Board determines, "in its discretion" that the facility or

entity should be informed and the nature of the complaint “suggests a reasonable possibility of an imminent threat to a patient’s safety.” Again, only a few facilities would be affected. Further, the Board is concerned that it must make a subjective determination of what constitutes an “imminent threat to a patient’s safety.” The Board fears that it could be subject to a lawsuit for damages by the licensee if it makes such a referral or a lawsuit for damages by the facility if it fails to make the referral and the dentist subsequently causes harm to a patient.

If a formal disciplinary order is filed against a licensee the Board must notify the facility or entity, within 10 days of the action, and must provide the facility with periodic reports as to enforcement within 10 days of the receipt of the reports. The Board has a large number of open disciplinary cases against its licensees, principally dentists, and those orders contain a number of requirements. To require the Board to make periodic reports would be a huge undertaking by manpower the Board does not have.

The Board would be required to post a copy of any disciplinary charges against a licensee, or the denial of a license application on its website. The Board is concerned that this would be unfair to its licensees. The Board receives over 200 complaints each year on average, and a number of those complaints are unfounded. It would be fundamentally unfair to post all complaints and would serve to entice individuals with a vendetta against a licensee to file even more unfounded complaints. The Board wishes to retain the requirement that only public orders appear on its website, and that only public orders are available to the public, including facilities and entities.

The Board would also be required to permit inspection of its records for which inspection would not otherwise be permitted, to a person who is engaged in a research project. Although the bill provides for safeguards that should be in place to protect a licensee’s personal identity, those safeguards are not always effective. As drafted, the Board would be required to open all of its records to anyone who states that they are engaged in a research project. Again, the Board fears that if it refuses to disclose all or a part of its records, it would be subject to a civil suit. Additionally, if a researcher fails to comply with their agreement to prevent disclosure of a licensee’s identity, there is no recourse the Board can take against the researcher.

Finally, the Board would be required to maintain a licensee profile on its website for each of its licensees. The Board has a cumulative total of 10,000 dentists and dental hygienists. The extensive information that the Board must provide in the profile in addition to background information includes a summary of all disciplinary action taken against a licensee in Maryland and outside of Maryland for the previous 10 years, a summary of any charges filed against a licensee, a description of convictions for crimes of moral turpitude, the names of facilities and entities that employ the licensee, and whether the licensee participates in certain public programs. Even though the Board collects contact information on all of its licensees, the Board does not collect information on where its licensees are employed. Although the Board has access to disciplinary action in other states, it does not maintain a separate “summary” of those actions. In short, to produce the required profile for 10,000 of its licensees would be a tremendous undertaking. The Board is understaffed and even now has a number of unfilled staff positions.

The Board appreciates the need to inform the public of disciplinary matters. However, the bill in its present form would produce a severe burden on the Board. The Board anticipates that it would require the hiring of 2 or 3 additional persons to start the work to comply with the bill, and it would not be possible to comply in just several months.

For these reasons, the Board respectfully opposes SB 836 and requests that the committee issue an unfavorable report.

I hope that this information is useful. If you would like to discuss this further, please contact Dr. James Goldsmith, Board President at 301-367-2352, jgoldsm217@comcast.net, or Dr. Arpana Verma, the Board's Legislative Committee Chair at 240-498-8159, asverma93@gmail.com. In addition, the Board's Executive Director, Mr. Frank McLaughlin, may be reached at 443-878-5253, frank.mclaughlin@maryland.gov.

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