

SB836BeidleTestimony.pdf

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Position: FAV

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

March 2, 2021

SB 836

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

Chairman Pinsky, Vice Chair Kagan and Members of the Committee;

Thank you for the opportunity to present SB 836, State Board of Dental Examiners – Disciplinary Action – Disclosure Requirements and Licensee Profiles.

As you know, many of our bills are drafted because of an issue that we hear from our constituents. This is certainly true of Senate Bill 836. Anne Arundel County had a local dentist that since 2009, received complaints about his inadequate dental work. Finally in 2020, he surrendered his dental license. The many patients he injured had little recourse, they either had to depend on the State Board of Dental Examiners to protect them or file a civil suit as the dentist did not carry dental malpractice insurance in recent years.

Fortunately for some patients, several local dentists have stepped up and are doing pro-bono work for patients that had already paid for the dental work that was either never completed or was so poorly done that the prosthetist or implants had to be removed and redone. These are the lucky ones. Most of the patients owe loans for large amounts, often \$15,000 or more, for work that was not completed or dental work that needed to be redone and they are still paying back the original loan. Now the patients are paying again for this work to be completed. The State Board of Dental Examiners is prohibited from hearing cases about fees that are paid and in many of the cases I am describing, patients paid up front for dental work that was never completed,

The State Board of Dental Examiners confirmed with me, in writing, that this one dentist had official complaints in September 2009, 2012, 2013, 2016, two cases in 2017 and two cases in 2019 regarding the local dentist. Also, there is a Facebook page with **295** members that were either injured by this dentist or were employed by the dentist and left because of the lack of quality of his work.

In December, Senator Elfreth, my cosponsor, and I spoke with Mr. McLaughlin, Executive Director of the State Board of Dental Examiners, he shared with me how difficult it is to complete the process of disciplining a dentist. The process requires a patient to file a formal accusation against a licensed, dental professional complete with a signature alleging a violation of professional standards, another difficulty is that other dentists or healthcare providers who see the substandard dental work by an identifiable area dentists are prohibited from filing a complaint. SB 836 is modeled after the process in use by the Board of Physicians, the discipline process for physicians and does not take eleven years.

One of the complaints I heard from the State Board of Dental Examiners, is that they do not want the disciplined dentists listed publicly on the State Board of Dental Examiners website. I would like to point out that physicians that are disciplined are listed on Maryland Board of Physicians website. Physical Therapists, Occupational Therapists and other providers are listed on the Maryland Health Department website and nurses are listed with the Board of Nurses. Attorneys that are disciplined are listed publicly on the Maryland Courts website. Why shouldn't the Board of Dental Examiners notify the public when a dentist is disciplined? Why are dentists treated differently? The Maryland Judiciary shows 186 entries on the case search for this one dentist and he is the defendant in 35 cases going back to 1996.

The mission of the Board of Dental Examiners is to protect the citizens of Maryland and to promote quality health care in the field of dentistry. There must be a better way to provide for discipline and oversight of the dentists in the State of Maryland. It is my understanding the State Board of Dental Examiners will be opposing the bill, or they may ask for an interim study. I accept that this bill is now in the jurisdiction of this committee, but I ask, "Can we wait another year and how many more patients must be injured by dentists that should not be practicing in Maryland."

Thank you for your consideration of SB836 and this testimony and I respectfully request a favorable report on Senate Bill 836.

SB836_SenElfreth_FAV.pdf

Uploaded by: Elfreth, Sarah

Position: FAV

SENATOR SARAH ELFRETH
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Subcommittees

Education, Business and Administration

Chair, Pensions

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Joint Committee on Administrative,
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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

March 2, 2021

Testimony in Favor of SB836
State Board of Dental Examiners - Disciplinary Action - Disclosure Requirements and Licensee Profiles

Chairman Pinsky, Vice-Chair Kagan, and members of the Education, Health, and Environmental Affairs Committee:

I am proud to submit this additional letter of support for Senator Beidle's Senate Bill 836. This commonsense legislation is in direct response to horrific events that were allowed to occur in Anne Arundel County over the past 10 years.

The General Assembly entrusts the safety of dentals practices and Marylanders to the Board of Dental Examiners. It is their job to efficiently and responsibly investigate, address, and resolve complaints to ensure quality dental care. As we have seen recently in Anne Arundel County and outlined by Senator Beidle, this trust was broken and Marylanders suffered needlessly.

After reading about the case in Anne Arundel County, Senator Beidle and I met with the Board's staff to discuss this bill and the actions we felt needed to be taken to help the Board do their job. It was a productive meeting - that is why it is disappointing, and frankly unacceptable, for the Board to now say there is nothing appealing about this bill. I don't think Marylanders would or should accept that position or the status quo.

I look forward to continuing to work with Senator Beidle and this Committee to find a solution and protect Marylanders. I wholeheartedly support the legislation put forward to ensure the safety of our residents and urge a favorable report.

Sincerely,

A handwritten signature in black ink that reads "Sarah Elfreth". The signature is written in a cursive, flowing style.

Sarah Elfreth

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Uploaded by: Bennardi, Maryland Department of Health /Office of Governmen

Position: UNF



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

Maryland State Board of Dental Examiners
Spring Grove Hospital Center • Benjamin Rush Building
55 Wade Avenue/Tulip Drive • Catonsville, Maryland 21228

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.

Concerns SB 836-SBDE-Disciplinary Action - Disclos

Uploaded by: Doherty, Daniel

Position: INFO



SB 836-State Board of Dental Examiners-Disciplinary Action - Disclosure Requirements and Licensee Profiles

The Maryland State Dental Association understands and respects the Sponsors' motivation for introducing SB 836. There was an egregious case in Anne Arundel County involving a dentist providing incompetent dental care to a number of patients over the course of several years. Many of his patients were harmed physically, emotionally and financially. The reasons why this dentist did not lose his license more promptly can be addressed by the State Board, but it is clear that SB 836 is an effort to assure that in the future such grossly incompetent practitioners are made known to Maryland dental patients. However, a balance always has to be maintained between a patient's right to know and a provider's rights of due process. It is in trying to strike this balance that some provisions of SB 836 raise concerns

Several sections may require disclosure of information at a point where it appears that no conclusive determinations have been made whether disciplinary action is warranted. In many instances MSDA suggests that disclosure is only appropriate when a final order has been issued. SB 836 requires disclosure of ANY Information contained in a record to a facility or entity where a licensee practices, regardless of whether the information is relevant or credible. The requirement should be limited to disclosure of all relevant information concerning an order issued by the Board. Notification of a complaint to facilities where the licensee practices should require both that the Board determine that the facility should be informed AND that the nature of the complaint suggests a reasonable possibility of an imminent threat to patient safety. SB 836 requires disclosure if either criterium is met. The notices of charges to be placed on the Board's website should be limited to formal charges by the Board so as not to allow an inference that this provision includes complaint allegations by a 3rd party. Finally, the provisions of 4-322 (L), which provide for disclosure of information to a person engaged in a research project, should be deleted.

§4-323 requires the inclusion of some information in an individual's profile that may be inappropriate, and requires other information that will change frequently causing the need to constantly update the profile. Also, the education and practice information required to be included in a licensee's profile should be deleted except for the number of dental malpractice judgments and arbitration awards against the licensee within the past 10 years.

A significant part of MSDA's concerns relate to the fact that the bill drafters tried to model this bill after provisions in the Maryland Medical Practice Act, Title 13 of the Health Occupations Article. This approach is at best difficult. Dentistry has fewer licensees, a smaller number of dentists practice in facilities, many work in multiple practices and their practice affiliations change with more frequency. The Board of Dental Examiners has a much smaller

staff than the State Board of Physicians, and a budget of about 20% of the Physicians Board's budget. Maintaining the accuracy of educational and practice profile information is both difficult and expensive. It requires sufficient staff and an adequate budget. In short, the provisions relating to the licensee profiles need to be closely scrutinized and substantially revised, and not merely copy the Maryland Medical Practice Act.

The Maryland State Dental Association respectfully requests that in its deliberations the Committee give due consideration to these concerns.

Respectfully submitted for MSDA by:
Daniel T. Doherty, Jr.
March 2, 2021

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Uploaded by: O'Connor, Patricia

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March 2, 2021

To: The Honorable Paul G. Pinsky
Chair, Education, Health, and Environmental Affairs Committee

From: The Office of the Attorney General, Health Education and Advocacy Unit

Re: Senate Bill 836 (State Board of Dental Examiners - Disciplinary Action - Disclosure Requirements and Licensee Profiles): Letter of Information

The Office of the Attorney General's Health Education and Advocacy Unit (HEAU) submits this letter of information relating to patient privacy rights in the context of Senate Bill 836, which would increase the transparency and thus public awareness of a dentist's disciplinary history, goals we consider vitally important to patient safety. We thank the sponsors for their efforts to enhance patient protections. The HEAU assists patients who have been physically and financially injured as the result of substandard dental care, billing irregularities, or otherwise unprofessional conduct. Sometimes that harm could have been avoided if patients had been able to avoid dentists with troubling disciplinary histories. We acknowledge the balancing act required to preserve the best aspects of the medical review privilege inherent to investigatory and disciplinary processes, and increased transparency for the public's benefit.

In seeking that balance, we ask the Committee to expressly protect patient privacy rights that could be at risk with the required and permitted disclosures by the Board in this bill. Virtually all Board reviews involve patient dental records that are protected under federal and state privacy laws. This bill, as drafted, seemingly permits disclosures that could compromise patient privacy if the receiving party does not have adequate confidentiality rules. For instance, section 4-322 (D) provides that the Board shall disclose any information in the Board's disciplinary file ("record") to a facility disciplinary committee/employer of the licensee if requested and other criteria are met, and section 4-322 E (2) provides that the Board shall disclose its "competency-related" disciplinary

review records to a facility disciplinary committee/employer of the licensee, if requested and other criteria are met.

More concerning is section 4-322 (I), which authorizes the Board to disclose records to any person the licensee requests. We would also ask the Committee to consider clearly defining, and perhaps restricting, the persons to whom a licensee may request disclosure by the Board of any information in the licensee's disciplinary review committee file, to prevent an aggrieved licensee from being able to weaponize private information against a patient.

Notably, 4-322(O) bill does provide that any personally identifiable information contained in records disclosed to the Governor, Secretary, or the Legislative Auditor in accordance with the State Government Article may not be redisclosed.

Finally, the process set forth in section 4-322 (L) is not adequate to protect patient privacy and does not meet HIPAA standards for research. The section allows inspection of records which necessarily include patient records for a research project if the Executive Director permits it. We respectfully submit that the Board's Executive Director does not have the expertise to qualify as a substitute privacy board.

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/research/index.html>

Thank you for considering our concerns.

cc: Sponsors