



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: HB 708  
COMMITTEE: Health and Government Operations  
POSITION: Oppose**

**TITLE: State Board of Dental Examiners -Dispositions and Summary Suspensions-Time Periods**

**BILL ANALYSIS:** The bill requires the Dental Board to dispose of a matter regarding the discipline of a licensee within 90 days after the date of any hearing. If the Board does not dispose of the case within that period, the respondent may provide written notice to the Board that the decision is due, and the Board is then granted an additional 30 days to dispose of the case. If the Board does not dispose of the case within the 30-day period, the case is deemed to be in favor of the respondent. In addition, the bill provides that if the Dental Board summarily suspends a license, the Board shall issue a final appealable order on the summary suspension within 30 days after the date of the summary suspension.

**POSITION AND RATIONALE:** The Dental Board opposes HB 708. With regard to the requirement that the Board dispose of a matter within 90 days after the date of “any hearing” held under the Annotated Code of Maryland, Health Occupations Article, (“HO”) § 4-318, the Board would be prejudiced if the hearing took place over multiple days. For example, if a hearing was scheduled for more than one day, the language is unclear whether the 90-day clock begins to run after the conclusion of the first day’s hearing, or at the conclusion of the final day of the hearing. Occasionally hearings may take 2 to 3 days and may be scheduled over a several month period, thereby precluding the Board from disposing of the matter within 90 days. Additionally, the requirement would make it more difficult for the Board to issue a final order within the prescribed time if the parties file written post-hearing motions or closing statements.

The bill is unclear as to whether the 90-day timeframe for disposing of cases after a hearing applies to the Office of Administrative Hearings (“OAH”) issuance of the proposed decision or to the disposition of the entire case at the agency level. The Board does not always conduct its own evidentiary hearings. When disciplinary charges are not resolved through the settlement process, the Board can refer cases to OAH for an evidentiary hearing and proposed decision. After the Board receives a proposed decision from OAH, the parties 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 sufficient time for the parties to file exceptions and allow the 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. Pursuant to the Administrative Procedure Act, OAH currently has 90 days from the date of the evidentiary hearing to issue a proposed decision. State Government Article §10- 205(e)(ii). Depending on when the Board received the proposed decision during the 90-day timeframe, this would not leave the Board with any time for the exceptions process or the drafting of the final Board Order, which can only begin after the exceptions hearing has concluded. Therefore, the 90-day timeframe is far too short if it is intended to include both the proposed OAH decision and final Board decision.

The 90-day timeframe also applies to cases the Board sends to OAH for antitrust review after a hearing. In accordance with HO § 1-203(c), the Board may refer a proposed decision after conducting its own hearings to OAH for review to "prevent unreasonable anticompetitive actions by the board or commission; and [d]etermine whether the actions of the board or commission further a clearly articulated State policy to displace competition in the regulated market." Cases are sent to OAH for antitrust review after hearings are held before the Board. Therefore, the time that it takes for OAH to review the matter would count against the time that the Board is required to issue its order. It would be very difficult for the Board to comply with this timeframe for cases where antitrust review is required or requested.

The 30-day language concerning summary suspension is also troublesome. A dentist's license is summarily suspended only if the Board finds that the public health, safety, or welfare of the public imperatively requires emergency action. In the majority of cases, a license is summarily suspended if a dentist is guilty of serious violations of the Centers for Disease Control and Prevention's guidelines thus placing the dentist's patients at a substantial risk for contraction of disease. This action is not taken lightly by the Board and comes only after a review of a patient's complaint and a thorough review of an inspector's report. Licenses are not suspended for trivial violations. In addition, licensees are summarily suspended when there is substantial evidence of sexual assault, child abuse, or substance abuse.

If a license is suspended, the dentist is given an opportunity to be heard by the Board. The hearing may be scheduled at the next regularly scheduled Board meeting, but not to exceed 30 days from the date of the request. If a dentist does not request a hearing for several days after suspension, the hearing may be held several weeks after the suspension, thus providing the Board with little time to draft, review, and issue a final order. If the dentist's request for a hearing comes later than 30 days after the suspension, the Board is in immediate violation of the law through no fault of its own. The respondent's timing of a request for hearing could therefore be used as a tool against the Board and ultimately the public which it serves.

Additionally, when the Board issues a subpoena to a respondent, another dentist, health care practitioner or hospital which may possess relevant records, the subpoenas are sometimes ignored, responded to late, or the Board receives only a partial response. The Board must then

forward additional correspondence to the offending party and advise them of the ramifications of not providing the requested records. Some custodians of large dental practices to whom the subpoenas are forwarded are not dentists and they do not readily have access to records, thereby expanding the response time still further. Also, there are no contingencies made for emergencies, such as the COVID-19 crisis, however long, which may interfere and lengthen the response time.

Alternatively, the Board could prejudice the due process rights of the respondent if a final order must be issued within 30 days of the summary suspension. 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, and in the vast majority of cases, must take corrective measures, some of them substantial, in order to come into compliance and regain their license. The process of lifting the summary suspension when there are CDC violations includes scheduling and conducting a physical re-inspection of the dental office. If the summary suspension hearing is set in at the next regularly scheduled Board meeting, the dentist may not be provided with sufficient time to prepare. There are no opportunities to request a continuance. On occasion the respondent wishes to combine the summary suspension hearing with the hearing on the underlying charges. Even a 30-day period for the respondent to cure the violations, prepare for a hearing, including conducting discovery, and having the Board conduct the hearing and issuing a final order will prove insufficient.

For these reasons, the State Board of Dental Examiners requests that HB 708 receive 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](mailto:jgoldsm217@comcast.net), or Dr. Arpana Verma, the Board's Legislative Committee Chair at 240-498-8159, [asverma93@gmail.com](mailto:asverma93@gmail.com). In addition, the Board's Executive Director, Mr. Frank McLaughlin, may be reached at 443-878-5253, [frank.mclaughlin@maryland.gov](mailto:frank.mclaughlin@maryland.gov).

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