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Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Damean W. E. Freas, D.O., Chair

2021 SESSION POSITION PAPER

BILL NO: HB 1153
COMMITTEE: Judicial Proceedings
POSITION: Support

TITLE: Names of Entities with Physician Membership-Approval Requirement-Exemption

BILL ANALYSIS: HB 1153 creates an exception to the requirement that the Maryland Board of Physicians (the "Board") and the State Medical Society (MedChi) approve a professional corporate (PC) name.

POSITION AND RATIONALE: Under current law, unless a PC conducting business in the State consists of a majority of stockholders licensed, certified, or otherwise authorized to practice a health occupation under the Health Occupation Article, the PC is required to have the corporate name approved by the appropriate licensing unit, in this case, the Board. Upon receipt of the required application and fee, the Board must consult with and obtain the approval of the professional organization, if one exists, to which a majority of individuals in the State rendering the professional service belong, in this case, MedChi. In review of the proposed corporate name, MedChi must consider the profession's established ethical standards, rules, and regulations. If the Board and MedChi approve of the proposed corporate name, the Board is required to issue a certificate of authorization for use of a corporate name.

The Board has received very few requests to approve corporate names for PCs under the current law. To date, only two applications were received in Fiscal Year (FY) 20, and thus far in FY 21 the Board has approved only six applications. Other than the requirement for MedChi to review established ethical standards, rules, and regulations, there is no criteria, qualification, or standards for the Board's review, disqualification, or denial.

The process outlined in HB 1153 allows the Board to appropriately utilize the existing disciplinary process and options in the event the Board receives an allegation of the use of an improper or misleading name. The Board licenses individual licensees, not entities, thus the approval of a PC entity name is not in the Board's mission. The State Department of Assessments and Taxation (SDAT) is the entity that maintains a database of PCs available for review in the course of an organization researching the ability to use a potential name. As the entity that would have the most current information on PCs, SDAT is the more appropriate entity to be responsible for approval of PC names with the Board able to act, when appropriate.

The Board supports HB 1153 and requests a favorable 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.

Del. Adams-Amendment HB1153 -Names of Entities wit

Uploaded by: Adams, Delegate Chris

Position: FWA



HB1153/173324/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

29 MAR 21
14:15:46

BY: Delegate Adams

(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO HOUSE BILL 1153

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 7, strike “the State Board of Physicians and”; in line 8, strike “the State Board of Physicians and”; and in line 9, strike “notice” and substitute “application”.

AMENDMENT NO. 2

On page 3, in line 11, after “ENTITY” insert “THAT IS NOT EXEMPT UNDER § 5–107(A)(1) OF THIS SUBTITLE AND”; in line 13, strike “THE STATE BOARD OF PHYSICIANS AND”; strike beginning with “ON” in line 15 down through “(4)” in line 24; in line 24, strike “THE NOTICE REQUIRED” and substitute “AN APPLICATION FROM AN ENTITY DESCRIBED”; in the same line, strike “(1)” and substitute “(2)”; in line 26, after the semicolon insert “OR”; strike beginning with “REFER” in line 27 down through “(III)” in line 29; and strike beginning with “VIOLATES” in line 30 down through “ACTION” in line 32 and substitute “IS DECEPTIVE OR MISLEADING, REFER THE APPLICATION TO THE DEPARTMENT OF HEALTH”.

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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

March 31, 2021

To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: The Office of the Attorney General's Consumer Protection Division

Re: House Bill 1153 (Names of Entities With Physician Membership –
Approval Requirement – Exemption): Favorable with Amendments

The Office of the Attorney General's Consumer Protection Division ("Division") supports House Bill 1153 with the amendments proposed by the sponsor. As amended, the bill would permit MedChi, the state medical society, to refer a non-exempt professional corporation's name application to the Department of Health instead of the Division if there is reason to believe the name is deceptive or misleading. We thank the sponsor for addressing the Division's concern that the original bill might have required the Division to render advisory opinions in advance of potential enforcement actions, a practice the Division strives to avoid.

We ask for a favorable report on the amended bill from the Committee.

cc: Sponsor

HB1153 - SENATE - SWA- MedChi- Names of Entities W

Uploaded by: Ransom, Gene

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The Maryland State Medical Society

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TO: The Honorable William C. Smith, Jr., Chair
Members, Senate Judicial Proceedings Committee
The Honorable Christopher T. Adams

FROM: Gene M. Ransom III
J. Steven Wise
Pamela Metz Kasemeyer
Danna L. Kauffman
410-244-7000

DATE: March 31, 2021

RE: **SUPPORT WITH AMENDMENT** – House Bill 1153 – *Names of Entities With Physician Membership – Approval Requirement – Exemption*

The Maryland State Medical Society (MedChi), the largest physician organization in Maryland, **supports with amendment** House Bill 1153.

Under current law, professional corporations must file an application with the State Department of Assessments and Taxation (SDAT) for use of a corporate name, if the name does not include the surname of its owners. Professional corporations include architects, engineers, physicians, and others. SDAT is required to send these applications to the licensing board which regulates that profession for approval, and the licensing board must send it to the association related to that profession for its approval. This bill only applies to professional corporations comprised of physicians.

This process is outdated and poses antitrust issues under the Supreme Court's decision in North Carolina State Dental Board v. FTC, 135 S.Ct. 1101 (2015), because it asks physicians to approve of names proposed by other physician groups. Neither the Board of Physicians ("Board") nor MedChi are denying names anymore out of concern that they could be sued for restraint of trade, so House Bill 1153 serves to address this issue but also preserve the consumer protections offered by the statute.

House Bill 1153 removes MedChi and the Board from the role of *approving* applications for the names of physician professional corporations. Under the sponsor's amendments MedChi will still *review* the name and either take no action or refer it to the Department of Health if the proposed name is deceptive or misleading. It is important to note that there are very few such applications each year (2 in FY 2020, and 6 thus far in FY 2021, per Fiscal Note) so the workload is not heavy, but the legal exposure is substantial.

This legislation addresses an important legal issue, and we ask for your support of House Bill 1153 with the sponsor's amendments.