



Board of Morticians and Funeral Directors

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

Dr. Mark E. Bailey, Board President · Christy Collins, Executive Director

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February 1, 2022

The Honorable Paul G. Pinsky
Chair, Education, Health, and Environmental Affairs Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

RE: SB 77 - Health Occupations Boards – Investigations – Right to Counsel – Letter of Concern

Dear Chair Pinsky and Committee Members:

The Maryland State Board of Morticians and Funeral Directors and thirteen other health occupation boards (the Boards) are submitting this Letter of Concern for Senate Bill (SB) 77 – Health Occupations Boards – Investigations – Right to Counsel.

While the bill does have the positive intent to allow licensees to use private counsel during the course of an investigation into possible violations of the Maryland Morticians and Funeral Directors Act, Md. Code Ann., Health Occ. § 7-101, *et seq.*, there are the following concerns from several health occupations boards that encompass legal, administrative, and public protection matters:

1. On page 1, lines 16-20 regarding § 1-610(1): Providing for representation by counsel of a licensee or certificate holder during an investigation that may result in charges or sanctions.

The Boards are concerned that the bill applies only to licensees and certificate holders. Health occupations boards also issue registrations and permits.

The Boards are also concerned that the bill is overly broad and has the potential to impede the Board's completion of its statutory duty to protect the public through lawful investigation of complaints. The Boards support the opportunity for licensees to engage and consult with their own counsel during all stages of an investigation and permits licensees to have their counsel accompany them during interviews. The bill does not clarify what representation during an investigation would involve. Every complaint filed with the Boards could potentially result in charges, but the vast majority of complaints are closed during the preliminary investigation and

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do not reach the interview stage. The Boards already have a statutory provision for a licensee to be represented by counsel at the hearing regarding disciplinary action. Md. Code Ann., Health Occ. § 7-319(c). The Boards' regulations also provide that "[a]ll parties [appearing at formal hearings] shall have the right to be accompanied, represented and advised by counsel." COMAR 10.29.01.03. This bill would expand that right to investigations that "may result in charges or sanctions."

The Boards are concerned that the bill contains no provision for addressing counsel who become disruptive or obstructive or who otherwise interfere with the investigative process. Board interviews support the Board's fact-finding missions and allow the Board to properly investigate complaints and determine whether further action by the Board is necessary. Interviews occur prior to any charges being filed, and in the majority of cases, no charges are filed as a result of these investigations. These interviews, however, are a vital part of the Board's investigative process, so disrupting, obstructing, or interfering with that process could jeopardize the health, safety, and welfare of Maryland's citizens.

The Boards have concerns that retained counsel will use the language in the bill to dictate to the Boards as to when and how the Boards can conduct its interviews. Boards interviews are not depositions and there is no legal process for a court to rule on counsel's objections in an interview, as in a deposition.

2. On page 1, line 22, continued to page 2, lines 1-2 regarding § 1-610(2): Providing for attendance by counsel at any interview of a licensee by or on behalf of a board during an investigation.

The Boards are concerned that there is no definition or clarification as to what constitutes an interview of the licensee or certificate holder. During the course of an investigation, Boards investigators typically communicate with a licensee on numerous occasions, from providing initial notice that a complaint has been filed to performing unscheduled site inspections. The Boards are concerned that some licensees will attempt to delay or halt the investigative process by claiming that any communication from the Boards constitute an interview and then refuse to talk to the Boards without the presence of counsel.

To clarify the intended scope of this bill and avoid unintended consequences, it is imperative that the bill exclude the Boards' statutorily-authorized inspection program. Such inspections are generally routine, but may arguably result in charges depending on the severity of violations at the establishment. The Boards must perform on-site inspections as a key component to ensuring the safe operation of establishments in providing healthcare services. If a licensee is able to stall or thwart an inspection because an attorney is not available to appear onsite, the Boards' inspection program will be severely undermined at the expense of public safety.

For these reasons, the Maryland State Board of Morticians and Funeral Directors; the State Board of Social Work Examiners; the State Board of Examiners in Optometry; the State Board

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for the Certification of Residential Child Care Program Professionals; the State Board of Massage Therapy Examiners; the State Board of Chiropractic Examiners; the State Board of Physical Therapy Examiners; the State Board of Pharmacy; the State Acupuncture Board; the State Board of Examiners for Audiologists, Hearing Aid Dispensers, Speech-Language Pathologists and Music Therapists; the State Board of Examiners of Psychologists; the State Board of Examiners of Nursing Home Administrators; the State Board of Podiatric Medical Examiners; and the State Board of Environmental Health Specialists respectfully ask that you strongly consider this information and agree that the processes currently in place are more than sufficient to address the issues in the bill. Therefore, the boards urge an unfavorable report on SB 77.

For more information, please contact Christy Collins, Executive Director, Board State Board of Morticians and Funeral Directors at (410) 764-4714 or christy.collins@maryland.gov or, Lillian Reese, Legislative Coordinator for Boards & Commissions, at 443-794-4757 or lillian.reese@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Bailey', with a stylized, cursive script.

Mark Bailey, Ed.D
Board Chair
Maryland Board Morticians and Funeral Directors

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