

**MCA SB0077 Health Occupations Board RTC.pdf**

Uploaded by: Ashlie Bagwell

Position: FAV



# Maryland Chiropractic Association

2331 Rock Spring Road, Suite 1, Forest Hill, MD 21050, MD 21050 • (443) 966-3880 • Fax (443) 640-1031 • E-Mail: [info@marylandchiro.com](mailto:info@marylandchiro.com)

**January 28, 2022**

**Senator Chris West**  
**303 James Senate Office Building**  
**11 Bladen Street**  
**Annapolis, MD 21401**  
**Via Email: [chris.west@senate.state.md.us](mailto:chris.west@senate.state.md.us)**

**Re: SB0077 Health Occupations Boards – Investigations – Right to Counsel.**

Dear Senator West:

The Maryland Chiropractic Association has reviewed SB 77 which is intended to assure professional health care licensees the right to the advice and counsel with respect to all healthcare board investigations and disciplinary matters. We strongly support this bill because it will ensure that our members will have the due process right to counsel during any inquiry, investigation, or discipline procedure which might impact their professional license.

In previous sessions, the MCA and our counsel, Marc Cohen, has worked with you and several legislative committees to secure legislation providing for a fair disciplinary process for healthcare licensees. The legislative enactments coming out of this work were believed to provide basic due process rights. However, subsequently there has been growing uncertainty and reluctance by some boards on unpredictable occasions to limit due process including the right to counsel. Sometimes boards will allow the presence of counsel for certain inquiries or onsite investigations and other times they will not. On occasion a board will interview a licensee without counsel and will not even provide a transcript of the interview.

We believe that the right to advice of counsel is not only an element of basic democratic fairness but lack of access actually frustrates the role that counsel can play in guiding licensee compliance or ameliorating possible improprieties.

There is no justification for depriving healthcare practitioners of providing guidance and counsel during every step of a Board investigation or compliance hearing. Improper healthcare should be the subject of discipline, but discipline should be the result of a fair process.

The Maryland Chiropractic Association strongly urges passage of SB220. Please free to let us know if we or our counsel can provide the legislature with any additional insight with regard to the need for this legislation.

Sincerely,

**Robert W. Frieman, DC**  
President, Maryland Chiropractic Association

**Mark K. Cohen**  
Counsel, Maryland Chiropractic Association

**SB77\_AFSCME3\_FAV.pdf**

Uploaded by: Denise Gilmore

Position: FAV



190 West Ostend St., #201  
Baltimore, MD 21230  
Phone: 410.547.1515  
Fax: 410.837.5436

Patrick Moran - President

**Testimony**  
**SB – Health Occupations Boards – Investigations –**  
**Right to Counsel**  
**Education, Health, and Environmental Affairs**  
**February 1, 2022**  
**FAVORABLE**

AFSCME Council 3 supports SB 77. This legislation provides the right to counsel for investigations under the health occupation boards. A basic tenant of unionism is that employees deserve a right to due process and representation when it comes to decisions that could impact their livelihoods. SB 77 promotes due process.

Licenseses and certificate holders are already allowed counsel for hearings conducted by the health occupations board, so it make sense to extend this right to counsel to the investigation stage as we do with other matters pertaining to due process rights. Given the nature of their work, it is not uncommon for a state employee who carries a license under one of the health occupations boards to have a false accusation launched against them by a member of the public. The administrative process, which includes investigations and several rounds of hearings, can clear the employee from any wrongdoing but if the member of the public files a complaint to the health occupations board they will also investigate. Both proceedings could impact the employee's ability to maintain employment, but the employee is only entitled to full representation in one. This is both unfair and could negatively impact employees who are completely innocent but just nervous during formal questioning.

The purpose of counsel during the investigative process is not to change an individual's story or argue the facts of the case. It's simply to ensure that the employee is given a fair process and an ability to respond truthfully and in a manner that can be understood by the investigators. Often these investigations can feel very personal to the employee, and it is not always easy to maintain composure. Having counsel during these investigations also ensures that what the employee says in these proceedings is accurately reflected.

SB 77 is a good bill, and we urge the committee to provide a favorable report. Thank you.

Every AFSCME Maryland State and University contract guarantees a right to union representation.  
An employee has the right to a union representative if requested by the employee.  
800.492.1996

Find us: [afscmemd.org](http://afscmemd.org)  
Like us: [facebook.com/AFSCMEMD](https://facebook.com/AFSCMEMD)  
Follow/Tweet us: [@afscmemaryland](https://twitter.com/afscmemaryland)

# HFAM Testimony SB 77.pdf

Uploaded by: Joseph DeMattos

Position: FAV



**TESTIMONY BEFORE THE**  
**SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE**  
February 1, 2022  
Senate Bill 77: Health Occupations Boards – Investigations – Right to Counsel  
*Written Testimony Only*

**POSITION: Favorable**

On behalf of the members of the Health Facilities Association of Maryland (HFAM), we appreciate the opportunity to express our support for Senate Bill 77. HFAM represents over 170 skilled nursing centers and assisted living communities in Maryland, as well as nearly 80 associate businesses that offer products and services to healthcare providers. Our members provide services and employ individuals in nearly every jurisdiction in the state.

Senate Bill 77 authorizes licensees or certificate holders to be represented by counsel during an investigation by a health occupations board that may result in charges or sanctions. This proposed legislation would allow the licensee or certificate holder to be represented by counsel during the investigation and to have counsel present at any interview conducted by or on behalf of the health occupations board during the investigation.

With limited exceptions, individuals who are licensed or certified by a health occupations board have a right to counsel at a sanctioning hearing. A similar right to counsel is not specified in statute or regulations for a licensee or certificate holder during the investigation of a complaint.

From doctors and physician’s assistants, to nurses and nursing assistants, to therapists and beyond, there is a wide range of healthcare professionals who are licensed or certified by a health occupations board in Maryland. These health occupations boards are responsible for investigating complaints and determining whether the board should bring charges against the licensee or certificate holder.

While it is important to investigate potentially problematic situations, it is also important to ensure a fair investigation by allowing licensed and certified professionals to be represented by counsel who is versed in the often complex areas of employment and healthcare laws and regulations.

**For these reasons, we request a favorable report from the Committee on Senate Bill 77.**

*Submitted by:*

Joseph DeMattos, Jr.  
President and CEO  
(410) 290-5132

# **MATOD - SB 77 FAV - Right to Counsel.pdf**

Uploaded by: Michael Oliver

Position: FAV



## Senate Judicial Proceedings Committee

February 1, 2022

### Support of Senate Bill 77

#### Health Occupations Boards - Investigations - Right to Counsel

The Maryland Association for the Treatment of Opioid Dependence (MATOD) urges a favorable opinion on SB 77.

#### Board of Directors 2021 - 2023

##### President

*Josh Grollmes, MS*  
Serenity Health  
JGrollmes@serenityllc.net

##### Secretary

*Melissa Vail, LCPC*  
Sinai Hospital Addictions  
Recovery Program (SHARP)  
MAVail@lifebridgehealth.org

##### Treasurer

*Babak Imanoeel, D.O.*  
Northern Parkway Treatment  
Services, BH Health Services  
BabakImanoel@gmail.com

##### National AATOD Liaison

*Kenneth Stoller, MD*  
Johns Hopkins Hospital  
The Broadway Center  
KStolle@jhmi.edu

##### Immediate Past President

*Vickie Walters, LCSW-C*  
IBR/REACH Health Services  
VWalters@ibrinc.org



c/o IBR/REACH Health Services  
2104 Maryland Avenue  
Baltimore, MD 21218



(410) 752-6080



[www.matod.org](http://www.matod.org)

MATOD represents over 65 healthcare organizations across Maryland and its members include thousands of highly trained and dedicated addiction counselors, social workers, physicians, nurse practitioners, physician assistants, nurses, psychologists, peer recovery specialists and office personnel who dedicate every day to saving lives. MATOD programs serve over 35,000 Marylanders enrolled in opioid treatment programs (OTPs) receiving methadone and buprenorphine, in conjunction with counseling and other medical services.

MATOD members employ professionals in their facilities who are licensed or certified from several Health Occupation Boards. The Boards have an important role to play ensuring the public safety of the individuals we serve. Our employees also have a right to defend themselves against the accusations that a board may be investigating.

Several of the Boards already provide, through regulations, the right of a member who is under investigation to be represented by counsel – once they have been officially charged and a hearing is scheduled. There are no assurances that an individual is allowed legal counsel during the course of the investigation that can lead to charges.

I am an owner of an organization that experienced this firsthand. The Board initially refused our request to allow counsel for the member being investigated on their initial interview. How are programs to ensure that their staff are being fairly treated without counsel being allowed in the room?

The Board informed us that while an individual has right to counsel at a hearing, they do not have the right to counsel during the investigation. In our circumstance no formal charges were brought because the complaint was fraudulent. This was exposed by our counsel during the investigation period at the protest of the Board.

MATOD urges a favorable report on SB 77 to ensure that health care professionals are afforded the right to counsel throughout an investigation.

*MATOD members include community and hospital based Opioid Treatment Programs, local Health Departments, local Addiction and Behavioral Health Authorities and Maryland organizations that support evidence-based Medication Assisted Treatment. MATOD members include thousands of highly trained and dedicated addiction counselors, clinical social workers, physicians, nurse practitioners, physician assistants, nurses, peer recovery specialists and dedicated staff who work every day to save and transform lives.*



**2022 NASW SB 77 Senate Side.pdf**

Uploaded by: Scott Tiffin

Position: FAV

**Testimony before Health and Government Operations Committee  
Support with Amendment  
SB 77 – Health Occupations Boards – Investigations – Right to Counsel  
February 1, 2022**

Maryland’s Chapter of the National Association of Social Workers (NASW–MD), which represents professional social workers across the state, supports House Bill 77 – *Health Occupations Boards – Investigations – Right to Counsel*. This bill ensures that Maryland health occupation licensees are represented by counsel during Board investigations.

Although we appreciate that the Board of Social Work Examiners’ regulations already provides a right to counsel, NASW-MD still supports codifying this right into statute. Navigating the Board investigation and hearing process can be very complex for licensees and losing one’s license can mean a loss of one’s livelihood. NASW-MD does not want unethical social workers practicing in Maryland, but we also do not want individuals to wrongly lose their license. Access to an attorney ensures that a social worker’s rights are protected during an investigation and helps ensure a just outcome to disciplinary proceedings. This not only protects social workers but all Marylanders.

One small suggestion that NASW-MD has for this bill is requiring licensees to receive notification that they have a right to an attorney during Board investigations. A right to counsel is truly only effective if licensees know it exists.

We urge a favorable report on Senate Bill 77. If you have any questions, please feel free to contact Mary Beth DeMartino, LCSW-C, Executive Director, NASW MD ([mdemartino.naswmd@socialworkers.org](mailto:mdemartino.naswmd@socialworkers.org)).

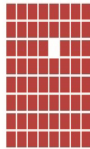
**SB0077\_FAV\_MedChi, MDACEP, LifeSpan, MNCHA\_Health**

Uploaded by: Steve Wise

Position: FAV



1211 Cathedral Street  
Baltimore, MD 21201-5585  
410-727-2237  
e-mail: [mdacep@aol.com](mailto:mdacep@aol.com)  
[www.mdacep.org](http://www.mdacep.org)



Maryland Chapter  
AMERICAN COLLEGE OF  
EMERGENCY PHYSICIANS



*The Maryland State Medical Society*  
1211 Cathedral Street  
Baltimore, MD 21201-5516  
410.539.0872  
Fax: 410.547.0915  
1.800.492.1056  
[www.medchi.org](http://www.medchi.org)

TO: The Honorable Paul G. Pinsky, Chair  
Members, Senate Education, Health, and Environmental Affairs Committee  
The Honorable Chris West

FROM: J. Steven Wise  
Pamela Metz Kasemeyer  
Danna L. Kauffman  
Christine K. Krone

DATE: February 1, 2022

RE: **SUPPORT** – Senate Bill 77 – *Health Occupations Bards – Investigations – Right to Counsel*

---

On behalf of the Maryland State Medical Society, the Maryland Chapter of the American College of Emergency Physicians, the LifeSpan Network, and the Maryland-National Capital Homecare Association, we submit this letter of **support** for Senate Bill 77.

Senate Bill 77 would clearly state in statute that any licensee who is investigated by a health occupations board, including the Board of Physicians, may be represented by counsel and have counsel present at any interview with the board. While various regulations of the Board of Physicians provide for the right to counsel at a hearing, Senate Bill 77 makes clear to the licensee that they also have a right to counsel in the proceedings leading up to the hearing, such as an interview.

The organizations listed above believe it is important that this fundamental right of a licensee be clearly stated in statute, and for this reason supports Senate Bill 77.

**For more information call:**

J. Steven Wise  
Pamela Metz Kasemeyer  
Danna L. Kauffman  
Christine K. Krone  
410-244-7000

# **SB77 Amendment.pdf**

Uploaded by: Christopher West

Position: FWA



SB0077/963826/1

AMENDMENTS  
PREPARED  
BY THE  
DEPT. OF LEGISLATIVE  
SERVICES

28 JAN 22  
09:02:09

BY: Senator West  
(To be offered in the Education, Health, and Environmental  
Affairs Committee)

AMENDMENT TO SENATE BILL 77

(First Reading File Bill)

On page 1, in line 16, before “**IF**” insert “**(A)**”; and in line 22, after “**AT**” insert “**AND PARTICIPATE IN**”.

On page 2, after line 2, insert:

**“(B) IF A LICENSEE OR CERTIFICATE HOLDER CHOOSES TO HAVE COUNSEL PRESENT AT AND PARTICIPATING IN AN INTERVIEW OF THE LICENSEE OR CERTIFICATE HOLDER, DURING THE INTERVIEW, COUNSEL MAY:**

**(1) ASK THE LICENSEE OR CERTIFICATE HOLDER QUESTIONS;**

**(2) PROVIDE ADVICE TO THE LICENSEE OR CERTIFICATE HOLDER;**

**AND**

**(3) PROVIDE INFORMATION RELEVANT TO THE INVESTIGATION ON BEHALF OF THE LICENSEE OR CERTIFICATE HOLDER.”.**

# Senator West - SB77 - Right to Counsel FWA.pdf

Uploaded by: Christopher West

Position: FWA

**CHRIS WEST**  
Legislative District 42  
Baltimore County

Judicial Proceedings Committee

Vice Chair, Baltimore County  
Senate Delegation



**THE SENATE OF MARYLAND**  
ANNAPOLIS, MARYLAND 21401

*Annapolis Office*  
James Senate Office Building  
11 Bladen Street, Room 303  
Annapolis, Maryland 21401  
410-841-3648 • 301-858-3648  
800-492-7122 Ext. 3648  
Chris.West@senate.state.md.us

*District Office*  
1134 York Road, Suite 200  
Lutherville-Timonium, MD 21093  
410-823-7087

February 1, 2022

Senate Education, Health and Environmental Affairs Committee

The Honorable Paul G. Pinsky

2 West Miller Senate Building

Annapolis, Maryland 21401

**RE: SB 77 - Health Occupations Boards – Investigations – Right to Counsel**

Dear Chairman Pinsky and Members of the Committee,

The disciplinary process for a license or certificate holder in healthcare has the potential to limit or end someone's right to practice, disparaging their reputation along the way. Some of the investigators for health occupation boards can have a rather aggressive style of interviewing, especially if they have limited healthcare experience. Restricting the right to counsel during an investigation allows these interviewers to frame biased questions, falsely implying allegations and making the license/certificate holder inadvertently give erroneous responses.

While some may argue that there is no constitutional right to counsel during interviews, there is nonetheless property right to a professional license, and therefore it is appropriate for the license holder to have counsel to protect this interest. Senate Bill 77 provides that a license or certificate holding healthcare worker under investigation by a healthcare board (that may result in charges or sanctions) is entitled to counsel during the investigation and interviews.

The right to an attorney is an integral part of the American justice system and it should be available to medical professionals in danger of being sanctioned or losing their license.

I support Senate Bill 77 with an amendment that If a licensee or certificate holder choses to have counsel present at and participating in an interview of the licensee or certificate holder, during the interview, counsel may ask their client questions, and provide advice and relevant information to the investigation.

I appreciate the Committee's consideration of Senate Bill 77 and will be happy to answer any follow up questions the Committee may have.



# **The MSDA Supports the Concept of SB 77.pdf**

Uploaded by: Daniel Doherty

Position: FWA



**The MSDA Supports the Concept of SB 77 – Health Occupation Boards – Investigations –  
Right to Counsel**

*Respectfully submitted by Daniel T. Doherty, Jr. on Behalf of the Maryland State Dental association*

The Maryland State Dental Association (“MSDA”) strongly supports the rights of dentists and all health care providers to have legal representation at key times during a disciplinary process before a health occupations board. Clearly, this would include an interrogation or other interview to discuss contemplated or pending charges. Legal representation is also essential during a disciplinary hearing. However, there are scenarios where representation should not be mandated.

An example would be when the Board has received a complaint, or has been given evidence, that illegal activity is occurring, or grossly negligent care is being provided, in a licensee’s office. The initiation of an unannounced inspection to investigate, and possibly gather evidence, should not be delayed or obstructed by a licensee demanding that the investigation be halted until her or his counsel can be present. Likewise, during an interview or other disciplinary proceeding the licensee’s attorney should not be allowed to disrupt or inappropriately interfere with the investigation or proceeding.

While the MSDA supports the intent of SB 77, it cannot support the overly broad language of SB 77 as introduced. MSDA, however, is willing to work with the sponsor and all interested parties to develop appropriate language to protect the rights of health care providers before their licensure board, while assuring that the boards may investigate in an appropriate but unhampered manner in its duty to protect the public.

Submitted by;  
Daniel T. Doherty, Jr.  
February 1, 2022

**11a - SB 77- EHEA - Dental - SWA.docx.pdf**

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

Position: FWA



# Board of Dental Examiners

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

Arpana S. Verma Board Chair – Francis X. McLaughlin, Jr., Executive Director

55 Wade Avenue/Tulip Drive Catonsville, MD 21228 Phone: 410-402-8501; Email: mdh.mddentalboard@maryland.gov

February 1, 2022

The Honorable Paul G. Pinsky  
Chair, Education, Health, and Environmental Affairs Committee  
2 West, Miller Senate Office Building  
Annapolis, Maryland 21401-1991

## **Re: SB 77 - Health Occupations Boards - Investigations - Right to Counsel - Support with Amendments**

Dear Chair Pinsky and Committee Members:

The Maryland State Board of Dental Examiners (the Dental Board) is submitting this letter of support with amendments for Senate Bill (SB) 77 - Health Occupations Boards - Investigations - Right to Counsel. The bill provides that if a health occupations board, including the Dental Board, investigates a licensee or certificate holder and the investigation may result in charges or sanctions against the licensee or certificate holder, the licensee or certificate holder may be represented by counsel during the investigation and have counsel present at any interview conducted during the investigation.

With regard to investigations conducted by the Dental Board, licensees and certificate holders have always been permitted to be represented by counsel. When the Board votes to investigate a complaint, it frequently votes to send the licensee or certificate holder a copy of the complaint and a request for a response to the complaint, as well as a request for the patient's records. Often, the licensee or certificate holder's response is accompanied by a letter from an attorney who enters their appearance on behalf of the licensee or certificate holder. The Board always recognizes the attorney's appearance.

With regard to interviews, the Dental Board, as well as other health occupations boards have permitted attorneys representing licensees or certificate holders to be present during all phases of the interview with the understanding that the attorney may not interfere or otherwise interject during the interview. The Board has experienced very few issues with that understanding. The Board notes that under the law a licensee or certificate holder does not have a right to be represented by counsel during the course of an investigation. The right to counsel arises if the licensee or certificate holder is formally charged by the Board. However, under the bill, the phrase "HAVE COUNSEL PRESENT AT ANY INTERVIEW OF THE LICENSEE OR CERTIFICATE HOLDER CONDUCTED BY OR ON BEHALF OF THE HEALTH OCCUPATIONS BOARD DURING THE INVESTIGATION" (page1 line 22 – page 2 lines 1-2)

raises concerns regarding the role of the licensee or certificate holder's attorney. It may be argued that since the attorney's presence is expressly recognized by statute, the intention is to expand their role so that they may participate in the interview and possibly interfere with a lawful Board investigation. The Dental Board therefore offers the following amendments:

AMENDMENT 1: Page 1, line 16: Before the word "IF" add:

(A)

AMENDMENT 2: Page 2, after line 2: add:

(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION:

(1) A LICENSEE OR A CERTIFICATE HOLDER MUST COOPERATE WITH A LAWFUL INVESTIGATION CONDUCTED BY A HEALTH OCCUPATIONS BOARD; AND

(2) ANY COUNSEL WHO IS PRESENT AT ANY INTERVIEW OF THE LICENSEE OR CERTIFICATE HOLDER MAY NOT CAUSE A LICENSEE OR A CERTIFICATE HOLDER TO FAIL TO COOPERATE WITH OR OTHERWISE INTERFERE IN THE PROCEEDINGS OF THAT INTERVIEW BY THE HEALTH OCCUPATIONS BOARD.

I hope that this information is helpful. If you would like to discuss this further, please contact me at 240-498-8159, [asverma93@gmail.com](mailto:asverma93@gmail.com), or Dr. Edwin Morris, the Board's Legislative Committee Chair at 410-218-4203. 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).

Sincerely,



Arpana S. Verma, D.D.S.  
Board President

**The opinion of the Board expressed in this document does not necessarily reflect that of the Department of Health or the Administration.**

# **SB77\_nmcsherry\_fav w am.pdf**

Uploaded by: Natalie McSherry

Position: FWA

LAW OFFICES  
**KRAMON & GRAHAM, P.A.**

ONE SOUTH STREET  
SUITE 2600

BALTIMORE, MARYLAND 21202-3201

TELEPHONE: (410) 752-6030  
FACSIMILE: (410) 539-1269

[www.kramonandgraham.com](http://www.kramonandgraham.com)

M. NATALIE MCSHERRY

DIRECT DIAL  
(410) 319-0515

E-MAIL  
[nmcsherry@kg-law.com](mailto:nmcsherry@kg-law.com)

DIRECT FACSIMILE  
(410) 361-8234

I write in support of SB77 with amendment. As a practitioner with over 20 years' experience in the field of representing various licenses health care providers, I have had the opportunity to represent licensees of various boards, including:

- the Board of Physicians
- the Board of Dental Examiners
- the Board of Nursing
- the Board of Examiners of Psychologists
- the Board of Pharmacy
- the Board of Occupational Therapy Practice
- the Board of Social Work Examiners
- the Board of Physical Therapy Examiners
- the Board of Professional Counselors and Therapists

Whenever a licensee of these boards is under investigation that could lead to sanctions against their license, up to and including suspension or revocation of that license, they have a basic right to representation. Unfortunately, some of the board investigators attempt to limit that right during the investigative interview. When they do so, they rely on a Memorandum from the Office of the Attorney General that states, essentially, that there is no **constitutional** right to an attorney when the licensee is interviewed by a board investigator. SB77 is intended to provide a **statutory** right to counsel during that interview.

When a licensed health provider is the subject of a complaint or investigation by his or her licensing board, the investigation may include an interview of the licensee. The boards are not uniform in this investigative process. Some may provide the licensee with a copy of the complaint being investigated. Some may not. Some boards are not uniform even within their own investigative process. For example, the Board of Physicians sometimes provides a copy of the complaint and sometimes will refuse to do so.

Similarly, the boards are not uniform with respect to the presence of counsel when the licensee is being interviewed by a board investigator. Many board investigators recognize and respect the desire of licensees to be represented but unfortunately a number of them do not, and take an antagonistic view when the licensee indicates that he or she will be accompanied to the interview by counsel. They threaten to exclude the attorney altogether or indicate that if the attorney speaks, he or she will then be excluded.

SB77 is not intended as a means for counsel to unduly interfere with or disrupt an investigative interview, just as it is assumed that the State does not intend for investigators to wrongfully

threaten or attempt to intimidate licensees in the interview. The interviews are almost always recorded, so any concern about disruptive behavior can be examined through those tapes, if necessary. But if the licensee is deprived of legal advice during the interview, the licensee is at risk of being intimidated or led to inadvertently provide inaccurate responses, through questions that are unclear at best, and biased at worst. If the overall investigation, including the interview, is aimed - as it should be - at obtaining facts in a fair and unbiased fashion, it is to the benefit of all that the licensee have the right to have counsel present to advise them during these interviews. Counsel should be allowed to participate to the extent necessary to protect their client's rights, without unduly interfering with the ability of the investigator to obtain factual information.



M. Natalie McSherry



# **MPA Testimony 2022 - Support with Amendment - SB77**

Uploaded by: Pat Savage

Position: FWA



10480 Little Patuxent Parkway, Ste 910, Columbia, MD 21044. Office 410-992-4258. Fax: 410-992-7732. [www.marylandpsychology.org](http://www.marylandpsychology.org)

**OFFICERS OF THE BOARD**

***President***

Linda McGhee, PsyD, JD

***President-elect***

Rebecca Resnik, PsyD

***Past President***

Esther Finglass, PhD

***Secretary***

Tanya Morrel, PhD

***Treasurer***

Brian Corrado, PsyD

***Representatives-at-large***

Shalena Heard, PhD

Jessica Rothstein, PsyD

***Representative to APA Council***

Peter Smith, PsyD

**COMMITTEE CHAIRS**

***Communications***

Robyn Waxman, PhD

***Diversity***

Whitney Hobson, PsyD

***Early Career Psychologist***

Meghan Mattos, PsyD

***Educational Affairs***

Laurie Friedman Donze, PhD

***Ethics***

Cindy Sandler, PhD

***Legislative***

Pat Savage, PhD

***Membership***

Linda Herbert, PhD

***Professional Practice***

Selena Snow, PhD

**PROFESSIONAL AFFAIRS**

**OFFICER**

Paul C. Berman, PhD

**EXECUTIVE DIRECTOR**

Stefanie Reeves, CAE

January 28, 2022

Senator Paul Pinsky

Chair, Education, Health, and Environmental Affairs Committee

11 Bladen Street

Annapolis, MD 21401

RE: **SB 77 Health Occupations Boards -Investigations – Right to Counsel**  
Position: **SUPPORT WITH AMENDMENTS**

Dear Senator Pinsky and Members of the Committee,

The Maryland Psychological Association, (MPA), which represents over 1,000 doctoral level psychologists throughout the state, asks the **Senate Education, Health, and Environmental Affairs Committee to amend and favorably report on Senate Bill 77.**

The Maryland Psychological Association asks that the committee vote in favor of SB 77 and amend the bill to permit the attorney to participate in the interview process. Specifically, we request the proposed amendment to SB 77: **insert “, REGISTERED” after “LICENSEE in lines 16 and 18; Insert the words “AND PARTICIPATE IN” after the word “AT” in line 22 on page 1.**

Psychologists who appear before the Board of Examiners of Psychology because of a complaint have, in fact, been allowed to have an attorney present and participate in the interview process. However, we understand that this is a decision made by our Board and that many other licensing Boards do not allow the licensee, registrant, or certificate holder to have an attorney present or do not allow the attorney to participate in the meeting. We further understand that the Maryland Attorney General and many other Boards have directly stated that the investigative process is a civil matter and that a licensed, registered, or certified health care professional does not have the legal right to counsel during the investigation phase.

The MPA, therefore urges you to amend and favorably report on SB 77 to ensure that all licensed, registered, and certified health care professionals have the right to counsel and the right to have their counsel participate in the investigation phase.

Please feel free to contact MPA's Executive Director Stefanie Reeves at [exec@marylandpsychology.org](mailto:exec@marylandpsychology.org) if we can be of assistance.

Sincerely,

*Linda McGhee*

*R. Patrick Savage, Jr.*

Linda McGhee, Psy.D., JD  
President

R. Patrick Savage, Jr., Ph.D.  
Chair, MPA Legislative Committee

cc: Richard Bloch, Esq., Counsel for Maryland Psychological Association  
Barbara Brocato & Dan Shattuck, MPA Government Affairs

**MPMA SB77 1-28-22.pdf**

Uploaded by: Richard Bloch

Position: FWA



## MARYLAND PODIATRIC MEDICAL ASSOCIATION

The Adams Building, Suite 301  
600 Baltimore Avenue  
Towson, Maryland 21204

Telephone: (410) 332-0736

Facsimile: (410) 332-0885

January 28, 2022

Senator Paul Pinsky  
Chair, Education, Health, and Environmental Affairs Committee  
11 Bladen Street  
Annapolis, MD 21401

SB 77: Health Occupations Boards -Investigations – Right to Counsel  
Position: Support with Amendment

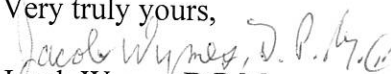
Dear Senator Pinsky and Members of the Committee,

The Maryland Podiatric Medical Association represents the podiatry profession in Maryland. MPMA asks the committee to vote in favor of SB 77 and amend the bill to permit the attorney representing the podiatrist to participate in the interview process. The proposed Amendment to SB 77: insert the words “AND PARTICIPATE IN” after the word “AT” in line 22 on page 1.

The Attorney General and the Board have stated that the licensee has no “right to counsel” during the investigation stage. That position ignores the reality of the importance of the interview for the licensee. The interview is the only opportunity for the podiatrist to explain, dispute, and defend against the allegations in a complaint before charges are considered by the Board. Moreover, the interview of the licensee is usually conducted without the opportunity to see the complaint.

The result is that a licensee is required to answer questions posed solely in the discretion of the investigator and without any knowledge of the nature of the complaint. The disciplinary process has the potential for limiting or ending the right to practice, and disparaging the reputation of the licensee, who has spent years in education and training to obtain their license. Restricting the right to counsel in the investigative process allows the Board investigator to frame questions in a manner that can be biased or imply facts and/or allegations that make the licensee make errors in response without realizing it, especially in view of the anxiety created just by being interviewed and the subject of a complaint. The presence and participation of an attorney can alleviate some of this. MPMA therefore urges you to support SB77 with the amendments proposed to include the right of the attorney to “participate in” the interview process. Thank you.

Very truly yours,

  
Jacob Wynes, D.P.M.  
President

**Pinsky SB77 1-26-22.pdf**

Uploaded by: Richard Bloch

Position: FWA

LAW OFFICES  
**SHILING, BLOCH & HIRSCH, P.A.**  
THE ADAMS BUILDING, SUITE 301  
600 BALTIMORE AVENUE  
TOWSON, MARYLAND 21204-4022

RICHARD BLOCH  
Richard@SBHPA.com

DAVID J. HIRSCH  
David@SBHPA.com

TELEPHONE (410) 332-0100  
FACSIMILE (410) 332-0885

REUBEN SHILING  
(1916 – 2008)

January 27, 2022

Senator Paul Pinsky  
Chair, Education, Health, and Environmental Affairs Committee  
11 Bladen Street  
Annapolis, MD 21401

SB 77: Health Occupations Boards -Investigations – Right to Counsel  
Position: Support with Amendment

Dear Senator Pinsky and Members of the Committee,

I am writing to ask that the committee vote in favor of SB 77 and amend the bill to permit the attorney to participate in the interview process. I have been representing the health field since becoming a member of the Bar in 1972. Since 1979, I have been General Counsel to the Maryland Psychological Association and representing mental health providers before the licensing boards. Currently, the investigative procedure before the boards is considered a civil process. The Attorney General and the Boards have stated that the licensee has no “right to counsel” during the investigation stage. That position ignores the reality of the importance of the interview for the licensee. The interview is the only opportunity for the licensee to explain, dispute, and defend against the allegations in a complaint before charges are considered by the Board. Moreover, the interview of the licensee is conducted without even the right to see the complaint. The only exception is the law requiring the Board of Examiners of Psychologists to provide a copy of the complaint within 120 days of its filing. See HO §18-206(b)(1)(i).

The result is that a licensee is required to answer questions posed solely in the discretion of the investigator and without any knowledge of the nature of the complaint. The disciplinary process has the potential for limiting or ending the right to practice, and disparaging the reputation of the licensees, all of whom having spent years in education and training to obtain their license, registration or certification. Restricting the right to counsel in the investigative process allows the Board investigator to frame questions in a manner that can be bias or imply facts and/or allegations that make the licensee make errors in response without realizing it, especially in view of the anxiety created just by being interviewed and the subject of a complaint. The presence and participation of an attorney can alleviate some of this. I therefore urge you to support SB77.

Very truly yours,

*Richard Bloch*

Richard Bloch

Proposed Amendment to SB 77: insert “, REGISTERED” after “LICENSEE in lines 16 and 18; Insert the words “AND PARTICIPATE IN” after the word “AT” in line 22 on page 1.

## **11b - SB 77 - EHEA - Morticians and various boards**

Uploaded by: Maryland Department of Health Office of Governmental Affairs

Position: UNF



# 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

4201 Patterson Avenue, Baltimore MD 21215 Phone: 410-764-4792; Email: mdh.bomfd.maryland.gov

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

The opinion of the Boards expressed in this document does not necessarily reflect that of the Department of Health or the Administration.

4201 Patterson Avenue, Baltimore, Maryland 21215 · Main 410-764-4755 · Fax 410-358-6207

· Toll Free 800-542-4964 · Maryland Relay Service 1-800-735-2258

Web Site: [health.maryland.gov/pharmacy](http://health.maryland.gov/pharmacy)



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

The opinion of the Boards expressed in this document does not necessarily reflect that of the Department of Health or the Administration.

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](mailto:christy.collins@maryland.gov) or, Lillian Reese, Legislative Coordinator for Boards & Commissions, at 443-794-4757 or [lillian.reese@maryland.gov](mailto:lillian.reese@maryland.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Bailey', written in a cursive style.

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

The opinion of the Boards expressed in this document does not necessarily reflect that of the Department of Health or the Administration.

**11c - SB 77 - EHEA - BOP & BON & OT Board - LOO.do**

Uploaded by: Maryland Department of Health Office of Governmental Affairs

Position: UNF



# Board of Physicians

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

Damean W.E. Freas Board Chair – Christine Farrelly, Executive Director

4201 Patterson Avenue, Baltimore MD 21215 Phone: 410-764-4777; Email: mbpmail.rcn.com

## 2022 SESSION POSITION PAPER

**BILL NO.:** SB 77 – Health Occupations Boards – Investigations – Right to Counsel  
**COMMITTEE:** Education, Health, and Environmental Affairs  
**POSITION:** Letter of Opposition

---

**TITLE:** Health Occupations Boards – Investigations – Right to Counsel

**BILL ANALYSIS:** Provides that licensees or certificate holders under investigation by a health occupations board may be represented by counsel during the investigation, and have counsel present at any interview of the licensee or certificate holder by or on behalf of the health occupations board during the investigation.

### **POSITION & RATIONALE:**

The Maryland Board of Physicians, the Maryland Board of Nursing and the Maryland Board of Occupational Therapy Practice (the Boards) are respectfully submitting this letter of opposition for Senate Bill 77 – Health Occupations Boards – Investigations – Right to Counsel. SB 77 permits licensees or certificate holders to have counsel present at any interview of the licensee or certificate holder conducted by a health occupations board during an investigation. The Boards support the ability of their licensees and certificate holders to use private counsel during an investigation and have always permitted licensees and certificate holders to be accompanied by counsel during interviews. However, SB 77 is overly broad and has the potential to hamper the Boards from completing their core duty of protecting the public through lawful investigation of complaints, in a timely fashion.

Investigation of complaints is the primary means by which the Boards safeguard public health. The Boards' licensees and certificate holders are statutorily required to cooperate with these investigations pursuant to the Maryland Annotated Code's Health Occupations Article § 14-404(a)(33), § 8-316(a)(20), § 8-6A-10(a)(24), § 8-6B-18(a)(27), § 8-6C-20(a)(18), and § 8-6D-10(a)(18). Throughout this process, licensees and certificate holders are provided numerous opportunities to participate in the investigative process, and licensees and certificate holders have always been allowed to be represented by counsel at every stage of this process, including during interviews.

SB 77 allows licensees and certificate holders to be represented by counsel during any investigation that “may result in charges or sanctions against the licensee,” but provides no clarification regarding what that representation would entail. Every complaint filed with the Boards could potentially result in charges, but the vast majority of complaints are closed during the preliminary investigation and do not reach the interview stage. There is no prohibition on consulting with counsel when responding to the Boards’ subpoenas or other inquiries, and many licensees and certificate holders choose to retain counsel during these preliminary stages. The Maryland Board of Physicians has also promulgated regulations that state that a respondent may be represented by counsel in any matter before a disciplinary panel and during any stage of the disciplinary proceedings<sup>1</sup>. Meanwhile, the Maryland Board of Nursing’s regulations provide that a party appearing at a formal hearing before the Board of Nursing has the right to be accompanied, represented, and advised by counsel, so long as they are authorized to practice law in the State of Maryland<sup>2</sup>. The Boards are unclear as to how this legislation will change the Boards’ current investigative process and why this change is necessary.

Furthermore, SB 77 contains no provision for addressing counsel who become disruptive or who otherwise interfere with the investigative process. Board staff’s investigative interviews support the Boards’ fact-finding missions and allow the Boards to properly investigate complaints and determine whether further action by the Boards 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. However, these interviews are a vital part of the Boards’ investigative process, and therefore cannot be impeded without jeopardizing the health of Maryland’s citizens. The Boards have shared concerns that retained counsel will use the language in SB 77 to dictate when and how the Boards can conduct their interviews. The Boards’ investigative interviews are not depositions and there is no legal process for a court to rule on objections in an interview, as in a deposition. While the Boards have always allowed counsel to be present during these interviews, this cannot come at the cost of allowing these interviews to be disrupted without recourse.

Finally, SB 77 includes no definition or clarification as to what constitutes an interview of the licensee or certificate holder. During the course of an investigation, the Boards’ investigators typically communicate with a licensee or certificate holder on numerous occasions, from providing initial notice that a complaint has been filed to performing unscheduled site inspections. If SB 77 passes, the Boards are concerned that some licensees or certificate holders will attempt to delay or halt the investigative process by claiming that any such communication constitutes an interview and refuse to talk to the Boards without the presence of counsel.

The Boards support efforts to ensure that the investigative process is fair and allows for all licensees and certificate holders to consult with private counsel, and the Boards would be happy to work with bill sponsors and advocates to this end. However, the Boards’ primary duty is to protect the public, and they do so by thoroughly investigating any complaints that allege a licensee or certificate holder violated the Medical Practice Act, Nurse Practice Act or Occupational Therapy Practice Act in a timely manner. As such, the Boards cannot support any

---

<sup>1</sup> Code of Maryland Regulations 10.32.02.03F(1).

<sup>2</sup> Code of Maryland Regulations 10.27.02.02.

legislation that could potentially impede the investigative process. For the reasons stated, the Boards must respectfully oppose SB 77.

For more information, please contact Matthew Dudzic, Health Policy Analyst, Maryland Board of Physicians, 410-764-5042, Iman Farid, Health Policy Analyst, Maryland Board of Nursing, 410-585-1536 and Lillian Reese, Legislative and Regulations Coordinator, Maryland Board of Occupational Therapy Practice, 410-764-5978.

**The opinion of the Boards expressed in this document does not necessarily reflect that of the Maryland Department of Health or the Administration.**