



# 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

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## 2022 SESSION POSITION PAPER

**BILL NO:** SB 611

**COMMITTEE:** Health and Government Operations Committee

**POSITION:** Oppose

**TITLE:** State Board of Dental Examiners – Membership, Training, and Disciplinary Processes-Revisions

**BILL ANALYSIS:** The bill was amended in the Senate.

**1. Board membership:** With regard to the nine (9) licensed dentists who serve on the Board of Dental Examiners (the Board), the following provisions which were included in the bill as introduced have been stricken. The provision requiring that each of the business models used by dentists in the State be represented; and that at least two (2) dentists must serve patients who receive dental services through the Maryland Medical Assistance Program. With respect to the three (3) consumer members, the provision that one (1) consumer member must be receiving, or have received, dental care through the Maryland Medical Assistance Program has been stricken. The Board supports striking those provisions.

**2. Board nominations:** Each year the Board is required to hold an annual election through a third-party administrator in which licensed dentists and dental hygienists vote for candidates who wish to serve on the Board. As introduced, the bill deleted the election. Names of those candidates who were interested in serving on the Board would have been forwarded to the Governor. Each year the cost to the Board to conduct elections for dentists and dental hygienists is in excess of \$5,000, and on average, less than 300 dentists of the 5,000 licensed dentists in the State participate. In addition, the Governor is not required to appoint Board members who received the greatest number of votes.

The Board's election process was deleted as the bill was introduced, but the deletion has been stricken. In addition, the requirement that a certain number of names for each Board vacancy remains. For example, it is required that for dentist vacancies, "the number of names on the list [submitted to the Governor] for one vacancy shall be four names, for two vacancies at least three names for each vacancy, and for three or more vacancies at least two names for each vacancy." For dental hygienists, "the number of names on the list shall be AT LEAST four times the number of vacancies." It is quite challenging to recruit quality Board members, especially dental hygiene members. The requirement places an unnecessary burden on the recruitment process. The Board notes that no other health occupations board in Maryland holds an election to

determine who serves on the Board. Again, the process is time consuming, expensive, and is not binding on the Governor.

**3. Board member training:** As introduced, the bill mandates that Board members are required to undertake one (1) hour each year of documented training on the powers, duties, and procedures, including complaint and hearing procedures of the Board by an attorney, chosen in part in consultation with the Maryland State Bar Association.

The Board opposes the provision. Members of all of the state's health occupations boards are required to undergo training soon after their appointments by attorneys in the Office of the Attorney General. The additional training would be redundant and is not a requirement for members of any other health occupations board in Maryland.

**4. Final Decisions on Actions:** The Board is required to issue a final decision on an action within 120 days after the final day of a hearing. If it does not, the individual who is the subject of the action may provide written notice to the Board. If the Board does not issue a final decision within 30 days, the final decision is deemed in favor of the respondent. It is not a requirement of any other health occupations board in the State.

The Board opposes the provision. If the Board believes that an individual (a respondent) has violated one or more of the disciplinary provisions set forth in the Maryland Dentistry Act, the Board's disciplinary process formally begins with the issuance of a charging document to that respondent. If the respondent has requested a hearing on those charges and if the parties have not been able to agree on an equitable settlement of the matter, the Board can either (1) hold the hearing itself; or (2) refer the matter to the Office of Administrative Hearings (OAH) for it to hold a hearing and issue a proposed decision.

If the hearing is conducted by the Board, at the conclusion of that hearing, the Board deliberates and votes on a disposition. The matter is then forwarded to the Board's Assistant Attorney General (AAG) for the drafting of the Board's final order. When the AAG has concluded drafting the final order, that draft final order is once again reviewed by the Board to ensure that the order comports with the Board's position and intended disposition. The Board has little to no control over how long it takes for the AAG to draft the final order.

If the matter had been referred to OAH, on receipt of a proposed order from OAH, the parties may file exceptions to that proposed decision. In that event, an exceptions hearing is held before the Board. At the conclusion of the exceptions hearing, the Board deliberates and votes on whether to accept OAH's proposed decision as written or to modify it. Either way, after those deliberations and the Board's vote, the matter is referred to the Board's AAG for the drafting of the Board's final order. When the AAG has concluded drafting the final order, that draft final order is once again reviewed by the Board to ensure that the order comports with the Board's position and intended disposition. Again, the Board has little to no control over how long it takes for the AAG to draft the final order.

In either scenario, if there is a risk that the Board’s decision may affect competition generally, the Board must refer the draft order to the OAH for antitrust review. Specifically, under Md. Code Ann., Health Occ. § 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.” The Board has no control over the time that it might take OAH to conduct its antitrust review.

Therefore, it is the Board’s position that any bill that imposes disciplinary timeframes upon the Board or the OAH once a case is concluded will not be in the public’s best interest and may serve as an incentive to purposely postpone and hinder Board action. For these reasons, post-hearing time constraints are unheard of in any area of law, which includes administrative, civil, and criminal law.

**5. Summary suspension:** The Board may order the summary suspension of a license if the Board determines that there is a substantial likelihood that a licensee poses a risk of harm to the public health, safety, or welfare. The bill also provides for the issuance of a notice of intent to summarily suspend a license before executing an order of summary suspension. In addition, the bill provides that if the Board orders a summary suspension before a show cause hearing, the Board may “rescind” the order for summary suspension.

The Board opposes the provisions in part: The provisions currently exist in the Board’s regulations found in the Code of Maryland Regulations (COMAR) 10.44.07.22 - .27. In addition, on page 7, beginning on line 18, the bill states:

(2) IF THE BOARD ORDERS A SUMMARY SUSPENSION BEFORE A SHOW CAUSE HEARING UNDER SUBSECTION (B)(2) OF THIS SECTION, AT THE CONCLUSION OF A SUBSEQUENT HEARING, THE BOARD MAY VOTE TO:

- (I) (AFFIRM ITS ORDER OF SUMMARY SUSPENSION;
- (II) RESCIND THE ORDER FOR SUMMARY SUSPENSION;** (Emphasis added)
- (III) ENTER INTO AN ORDER AGREED UPON BY THE PARTIES; OR
- (IV) ENTER INTO ANY INTERIM ORDER WARRANTED BY THE CIRCUMSTANCES OF THE CASE, INCLUDING AN ORDER TO STAY THE SUMMARY SUSPENSION SUBJECT TO SPECIFIED CONDITIONS.

The Board would need definitional clarity for the word “RESCIND” Like other Maryland health occupations boards, the Dental Board will either lift or terminate its orders. The word “rescind” may be interpreted to mean that the Board must treat an order as never having existed or having to expunge the order. Again, no other health occupations board in Maryland treats an order as though it never existed.

For these reasons the Dental Board requests that SB 611 receive an unfavorable report.

I hope that this information is helpful. If you would like to discuss this further, please contact Dr. Arpana Verma, Board President at 240-498-8159, 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.

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