



**Maryland Health Occupations Boards**

4201 Patterson Avenue

Baltimore, MD 21215

**Maryland Board of Dental Examiners**

Spring Grove Hospital Center

55 Wade Avenue, Benjamin Rush Bldg.  
Baltimore, MD 21228

**Maryland Board of Occupational Therapy Practice**

Spring Grove Hospital Center

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Baltimore, MD 21228

March 29, 2022

The Honorable Shane E. Pendergrass

Chair, House Health and Government Operations Committee

Room 241, House Building

Annapolis, MD 21401-1991

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

Dear Chair Pendergrass and Committee Members:

The State Acupuncture Board; the State Board of Examiners for Audiologists, Hearing Aid Dispensers, Speech-Language Pathologists and Music Therapists; the State Board for the Certification of Residential Child Care Program Professionals; the State Board of Chiropractic Examiners; the State Board of Dental Examiners; the State Board of Environmental Health Specialists; the State Board of Massage Therapy Examiners; the State Board of Examiners of Nursing Home Administrators; the State Board of Occupational Therapy Practice; the State Board of Examiners in Optometry; the State Board of Pharmacy; the State Board of Physical Therapy Examiners; the State Board of Podiatric Medical Examiners; the State Board of Professional Counselors and Therapists; the State Board of Examiners of Psychologists; and the State Board of Social Work Examiners (the Boards) are submitting this Letter of Concern for Senate Bill (SB) 77 – Health Occupations Boards – Investigations – Right to Counsel.

While the bill has the positive intent of allowing licensees to use private counsel during the course of an investigation into possible violations of each Boards' Practice Act, there are the following concerns that encompass legal, administrative, and public protection matters:

**1. On page 1, lines 16-19 and continuing on page 2, lines 1-2: Providing for representation by counsel of a licensee, or certificate holder, or registration holder during an investigation that may result in charges or sanctions.**

First, what is the definition of “counsel”? The Boards feel that this term is ambiguous and it should be defined as “legal” counsel (see amendments 1–4, and 6 at the end of this letter).

Additionally, the Boards believe that the bill is overly broad and has the potential to impede the Boards’ completion of their 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. This is evidenced by the fact that the Boards already have statutory and regulatory provisions for licensees to be represented by counsel at the hearing regarding disciplinary action. Every complaint filed with the Board could potentially result in charges, but the vast majority of complaints are closed during the preliminary investigation and do not reach the interview stage.

The Boards are also concerned that the bill contains no provision for addressing counsel who become disruptive, obstructive, or who otherwise interfere with the investigative process. Would the lack of clarity regarding the process of handling a dispute incentivize counsel to behave in a manner that interferes with the interview? Board interviews support the Boards’ fact-finding missions and allow a 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 Boards’ 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 a Board as to when and how a Board can conduct its interviews. Board 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. Board investigators are not licensed attorneys nor are they experts in the rules of professional conduct governing the practice of law in Maryland.

**2. On page 2, lines 5-29 regarding § 1-610(A)(2) and (B): 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, certificate holder, or registration holder. During the course of an investigation, Board investigators typically communicate with a licensee on numerous occasions, from providing initial notice that a complaint has been filed. The Boards are concerned that some licensees will attempt to delay or halt the investigative process by claiming that any communication from a Board constitutes an interview and then refuse to talk to the Board 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.

Finally, regarding the amendments added in the Senate on page 2, lines 23-29 (see amendment 8 below), the bill lacks clarity on, among other things, the following:

- (1) "Substantial" interference is not defined
- (2) "Prejudicial" in the "administration of justice" is not defined
- (3) Who determines what is substantial or prejudicial?
- (4) What would be the process for handling a dispute?

For all of these reasons, the Boards 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. Notwithstanding this position, if the Committee does not agree, the Boards would encourage the Committee to consider the following amendments:

**Amendment 1**

Page 2, line 3: Insert "**LEGAL**" before "**COUNSEL**"

**Amendment 2**

Page 2, line 5: Insert "**LEGAL**" before "**COUNSEL**"; strike "**AND PARTICIPATE IN**"

**Amendment 3**

Page 2, line 11: Insert "**LEGAL**" before "**COUNSEL**"; strike "**AND PARTICIPATING IN**"

**Amendment 4**

Page 2, line 13: Insert "**LEGAL**" before "**COUNSEL**"; after "**MAY**" insert: "**ONLY PARTICIPATE BY:**"

**Amendment 5**

Page 2, lines 14 and 16: Substitute "**ASK**" with "**ASKING**"

**Amendment 6**

Page 2, lines 17 and 19: Substitute "**PROVIDE**" with "**PROVIDING**"

**Amendment 7**

Page 2, line 21: Insert "**LEGAL**" before "**COUNSEL**"

**Amendment 8**

Page 2, lines 23–29: Strike “**IF THE BOARD OR AGENT...**” through “**...ADMINISTRATION OF JUSTICE**”; after “**JUSTICE**” insert “**FOR CONDUCT AUTHORIZED IN SUBSECTION B.**”

For more information, please contact Lillian Reese, Legislative Liaison for Health Occupations Boards & Commissions, at 443-794-4757 or [lillian.reese@maryland.gov](mailto:lillian.reese@maryland.gov).

Respectfully,

The State Acupuncture Board  
The State Board of Examiners for Audiologists, Hearing Aid Dispensers, Speech-Language Pathologists and Music Therapists  
The State Board for the Certification of Residential Child Care Program Professionals  
The State Board of Chiropractic Examiners  
The State Board of Dental Examiners  
The State Board of Environmental Health Specialists  
The State Board of Massage Therapy Examiners  
The State Board of Examiners of Nursing Home Administrators  
The State Board of Occupational Therapy Practice  
The State Board of Examiners in Optometry  
The State Board of Pharmacy  
The State Board of Physical Therapy Examiners  
The State Board of Podiatric Medical Examiners  
The State Board of Professional Counselors and Therapists  
The State Board of Examiners of Psychologists  
The State Board of Social Work Examiners

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