

DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

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December 1, 2022

The Honorable Joseline A. Peña-Melnyk
Chair, House Health and Government Operations Committee
241 House Office Building
Annapolis, Maryland 21401

The Honorable Ariana B. Kelly
Vice Chair, House Health and Government Operations Committee
241 House Office Building
Annapolis, Maryland 21401

Dear Chair Peña-Melnyk and Vice Chair Kelly:

This letter is in response to your request for a review of the Maryland Board of Nursing (MBON), specifically with regard to certain questions relating to staffing and internal organization, funding, and licensing and complaint activities.

This response will address the following issues: (1) the organizational structure of MBON; (2) how board staffing compares to that of other health occupations boards, the grades and qualifications for senior management staff and program staff, the number of contractual staff, and how many contractual staff were retained with federal grant money; (3) vacancy rates by board function, the length of such vacancies, and how vacancy rates compare to other health occupations boards; (4) whether MBON has any current requests for new positions or position upgrades; (5) how MBON's fund balance compares to other health occupations boards; (6) whether the board continues to be impacted by the Maryland Department of Health (MDH) cybersecurity hack; (7) the average length of time for processing applications compared with other health occupations boards; (8) the average length of time for investigating and resolving complaints compared with other health occupations boards, the number of disciplinary complaints received per year by credential type, the current number of open complaints, and whether any such complaints involve an imminent threat to public safety; (9) how licenses are processed; (10) the process for posting

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meeting agendas, minutes, and other materials to the board website and MBON's use of video conferencing technology; (11) whether the board has constituent services staff; and (12) whether any other states provide general fund support to a board of nursing.

Background

All 50 states, the District of Columbia, and five U.S. territories have a regulatory board that oversees the practice of nursing. MBON's mission is to advance safe, quality care in Maryland through licensure, certification, education, and accountability for public protection. MBON is by far the largest of the health occupations boards in terms of the number of individuals who fall under its regulatory purview, issuing 241,215 licenses or certificates in fiscal 2022 to registered nurses (RN), licensed practical nurses (LPN), advanced practice nurses, nursing assistants (CNA), dialysis technicians, medication technicians, and electrologists.

Prior to Chapters 510 and 511 of 2019, the Maryland Program Evaluation Act (MPEA) was used by the General Assembly as a mechanism to monitor and evaluate regulatory boards, commissions, and other agencies of the Executive Branch of State government. The MPEA required the Department of Legislative Services (DLS) to periodically undertake evaluations according to a statutorily based schedule. These evaluations were more commonly known as "sunset reviews" because the agencies subject to review were usually also subject to termination (sunset) unless legislation was enacted to reauthorize them. Chapters 510 and 511 eliminated the evaluations required under the MPEA and instead required DLS to conduct evaluations of an entity when directed by the Legislative Policy Committee, the Joint Audit and Evaluation Committee, the Executive Director of DLS, the Director of the Office of Policy Analysis of DLS, or the Director of the Office of Program Evaluation and Government Accountability of DLS.

MBON last underwent a full sunset evaluation by DLS during the 2011 interim. At that time, the termination date for the board was extended to July 1, 2023.

Organizational Structure and Staffing

What is the organizational structure of the board? Is there an organizational chart that describes function?

MBON operates in a hierarchical structure by function. A copy of the organizational chart is attached as **Appendix 1**. MBON has 14 board members who are appointed by and serve at the discretion of the Governor for a term of four years. Nine board members must be RNs, 3 must be LPNs, and 2 members are consumers. The board relies on an executive director to oversee MBON employees and relay information as needed. Day-to-day operations are completed by employees spread out across seven divisions: Executive; Legislative; Accountability; Exams and Education; Licensure and Certification; Operations; and Legal. Four divisions are further divided into departments.

Exhibit 1 outlines the total number of full-time staff by division and department as provided by MBON. While MBON has a total of 91 full-time positions (including contractual positions), as of August 2022, the board reported that only 59 positions were filled. The departments assigned the greatest number of staff are Licensure (under the Licensure and Certification division), Fiscal (under the Operations division), and Investigations (under the Accountability division), with 12, 12, and 11 full-time positions, respectively. However, due to the substantial number of staff vacancies, these divisions are currently functioning with only 8, 7, and 4 employees, respectively. These positions and vacancies are outlined in the board's organizational chart in Appendix 1.

Exhibit 1
Total Full-time Employees of the Maryland Board of Nursing
by Division and Department
August 2022

<u>Division</u>	<u>Department</u>	<u>Filled</u>	<u>Vacant</u>	<u>Total</u>
Executive	Executive	4	2	6
Legislative	Legislative	1	1	2
Accountability	Complaints	1	2	3
	Investigations	4	7	11
	Discipline	2	0	2
	Compliance	2	2	4
	Safe Practice	1	1	2
Exams and Education	Exams	1	1	2
	Education	4	1	5
	Criminal History Records Check	6	3	9
Licensure and Certification	Licensure	8	4	12
	Certification	10	0	10
Operations	Information Technology	5	2	7
	Fiscal	7	5	12
	Human Resources	0	1	1
Legal	Legal	3	0	3
Total		59	32	91

Source: Maryland Board of Nursing; Department of Legislative Services

MBON structure differs from other health occupations boards in at least two ways. First, statute requires that the board's executive director be an RN, while the other largest boards do not have a similar requirement for their respective fields. Second, MBON hires nurse investigators to follow up on complaints and investigators recuse themselves if a conflict of interest arises. To our knowledge, other health occupations boards do not hire practitioners as investigators. At least one board sends cases involving scope of practice issues to be peer reviewed rather than investigated in-house.

How does the board's staffing level and structure compare to other health occupations boards? What are the grades and qualifications for senior management and program staff? How many staff are contractual? How many contractual staff were retained with federal grant money, and what was the term length of such staff?

To compare MBON staffing to that of other health occupations boards of similar size and scope, comparisons will be made against the four boards with the next largest number of regulated practitioners: the State Board of Dental Examiners (BDE); the State Board of Pharmacy; the State Board of Social Work Examiners; and the Maryland Board of Physicians (MBP). MBON's staffing level and structure is comparable to these boards, whose organizational charts can be found attached to this response as **Appendix 2**.

Exhibit 2 shows the estimated number of licensure personnel and the ratio of regulated practitioners to net licensure personnel by board based on fiscal 2021 data. While other large boards have fewer licensing staff, MBON has significantly less staff relative to the number of practitioners that the board regulates. Although MBON licenses and certifies more than five times as many individuals as MBP, MBON has only 6 net licensure personnel compared to MBP's 23. While the State Board of Pharmacy has the least number of licensure personnel with only 2 filled positions (5 positions with 3 vacancies), MBON has the highest ratio at 46,990 regulated practitioners per licensure personnel.

Exhibit 2
Ratio of Licensing Personnel to Regulated Practitioners Per Board

<u>Board</u>	<u>Licensure Personnel</u>	<u>Vacant Licensure Personnel</u>	<u>Net Licensure Personnel</u>	<u>Regulated Practitioners</u>	<u>Ratio of Regulated Practitioners to Net Licensure Personnel</u>
Nursing	7	1	6	281,940	46,990:1
Physicians	28	5	23	48,079	2,090:1
Pharmacy	5	3	2	32,800	16,400:1
Social Work	6	0	6	16,795	2,799:1
Dental	5	0	5	17,250	3,450:1

Note: Licensure personnel numbers are estimates.

Source: Maryland Board of Nursing; Maryland Department of Health; Department of Legislative Services

Most State employees are paid under the Standard Salary Schedule, which has 22 grades (grades 1 through 4 were eliminated in 2006) and 22 steps. Each grade is linked to title, job responsibilities, education, and experience, while each grade consists of several steps used to provide incentives for length of service in the position. Across the five largest health occupations boards, the grades and qualifications for personnel vary slightly. MBON has the lowest average grade and step at 15.2 and 7.5, respectively. This is 1.1 grades lower than MBP, which has the highest average grade at 16.3. Further, MBON is on average 3.0 steps behind the State Board of Social Work Examiners, which has an average step of 10.5. **Exhibit 3** shows each board's average grade and step across their personnel.

Exhibit 3
Average Grade and Step Per Health Occupations Board

<u>Board</u>	<u>Average Grade</u>	<u>Average Step</u>
Nursing	15.2	7.5
Physicians	16.3	10.0
Pharmacy	15.3	8.2
Social Work Examiners	15.5	10.5
Dental Examiners	15.4	9.8

Source: Maryland Board of Nursing; Maryland Department of Health; Department of Legislative Services

Lastly, MBON was provided 20 contractual positions in the fiscal 2023 budget. These positions were not retained using federal funds. As of November 21, 2022, MBON reported that they had filled 12 full-time contractual positions with titles including Administrator, Health Policy Analyst, Nursing Program Consultant, and Office Clerk.

**What are the vacancy rates by board function? What is the length of those vacancies?
How do those vacancy rates compare to other health boards?**

As noted previously, MBON has a total of 91 full-time positions, including both merit and contractual employees; however, as of August 2022, only 59 positions were filled, with 32 vacant. This equates to a vacancy rate of approximately 35%.

Exhibit 4 displays vacant full-time merit positions at MBON as of November 2022 based on data from the Department of Budget and Management (DBM), including the classification, function, scale, date vacant, and salary of each vacant position as of October 2022. These figures do not include vacant contractual positions. The oldest vacancy is from January 18, 2019 – a grade 9 position. The most recent vacancy is from September 28, 2022 – a grade 12 position. The average salary of a vacant position at MBON is \$58,743.

Exhibit 4
Maryland Board of Nursing Vacancies, Merit Positions
As of November 2022

<u>Classification</u>	<u>Scale</u>	<u>Date Vacant</u>	<u>Salary</u>
Administrative Officer I	13	5/17/2022	\$55,938
Administrative Officer III	15	6/15/2022	60,466
	15	10/8/2021	48,525
Management Associate	13	7/13/2022	55,254
Health Occupations Investigator II	13	6/10/2022	58,887
Health Facilities Surveyor Nurse I	19	7/26/2022	62,493
Administrative Program Manager II	20	9/9/2022	88,630
Administrative Specialist II	11	6/3/2022	43,223
	11	8/10/2022	47,871
	11	11/9/2021	42,029

<u>Classification</u>	<u>Scale</u>	<u>Date Vacant</u>	<u>Salary</u>
Administrative Specialist III	12	4/30/2022	45,986
	12	9/28/2022	47,366
IT Systems Technical Specialist	19	6/12/2020	94,298
Nursing Program Consultant/Administrator I	21	12/31/2021	73,929
Nursing Program Consultant/Administrator II	22	12/31/2019	93,364
	22	11/5/2021	94,298
Office Secretary II	9	1/18/2019	33,626
Paralegal II	12	9/30/2021	46,752

IT: information technology

Note: Salary data as of October 2022.

Source: Department of Budget and Management; Department of Legislative Services

Each of the other four largest boards have fewer merit vacancies in total and average shorter vacancy periods than MBON. **Exhibit 5** shows the vacancies across the next four largest boards.

Exhibit 5
Vacant Merit Positions at Other Large Health Occupations Boards
As of October 2022

<u>Board</u>	<u>Classification</u>	<u>Grade</u>	<u>Date Vacant</u>	<u>Salary</u>
Dental	Dentist II	25	6/28/2022	\$116,719
Dental	Health Occupations Investigator II	13	2/24/2021	72,323
Dental	Administrator I	16	8/22/2022	62,108
Pharmacy	Health Occupations Investigator II	13	7/27/2022	57,328
Pharmacy	Administrative Specialist III	12	4/26/2022	49,466

<u>Board</u>	<u>Classification</u>	<u>Grade</u>	<u>Date Vacant</u>	<u>Salary</u>
Social Work	Administrative Specialist III	12	4/30/2022	48,567
Social Work	Administrative Specialist III	12	3/23/2022	51,649
Social Work	Social Work Supervisor Health Services	18	11/15/2021	71,958
Physicians	Health Policy Analyst II	17	2/23/2022	87,926
Physicians	Administrative Specialist III	12	1/28/2022	45,986
Physicians	Fiscal Services Administrator I	19	8/23/2022	79,902
Physicians	Compliance Analyst Senior, Investigations	17	7/29/2022	83,280
Physicians	Health Policy Analyst II	17	9/6/2022	63,796
Physicians	Administrative Specialist II	11	9/7/2022	40,717
Physicians	Health Policy Analyst II	17	2/23/2022	87,926
Physicians	Licensure Analyst Associate	13	6/15/2022	57,328

Note: Dentist II position is the Chief Dental Officer, who reports to the executive director and oversees the compliance team.

Source: Department of Budget and Management; Department of Legislative Services

The oldest vacancy is held by BDE for a grade 13 position vacated on February 24, 2021. The most recent vacancy is within MBP from September 7, 2022, for a grade 11 position. The highest average salary of a vacant position at these four health occupation boards is \$83,717 at BDE. This average salary is slightly higher as one vacancy is for the Chief Dental Officer, whose salary is expected to be \$116,719. The lowest average salary is \$53,397 at the State Board of Pharmacy.

Does MBON have any current requests to MDH or DBM for new positions and upgrades?

MBON has 16 requests for positions, representing MBON's highest priority vacancies, in various stages of recruitment as of November 22, 2022. These positions have been approved by the MDH Office of Human Resources and are awaiting action from MBON. For 8 of the positions, MDH is waiting for request to appoint paperwork from MBON, 3 have been sent to recruitment for posting, 3 have been posted and the recruitment is now closed with applicants sent to MBON, 1 is awaiting a reclassification packet from MBON, and 1 is awaiting a resignation of the current

employee. MBON's remaining vacancies are prioritized at a lower level of recruitment that it hopes to fill after the high priority positions are addressed.

Fund Balance

How does the board's fund balance compare to other health occupations boards?

MBON has the second highest estimated fiscal 2021 fund balance, \$29 million, as shown in **Exhibit 6**. MBP has the highest fund balance at \$57 million, while the State Board of Social Work Examiners has the lowest fund balance at \$8.3 million. MBON regulated 281,940 practitioners in fiscal 2021, making their practitioner to fund ratio the lowest across the largest health occupation boards at \$103 per regulated practitioner. The highest ratio is held by MBP at \$1,185 per practitioner.

Exhibit 6
Board Fund Balance and Regulated Practitioner Ratio
Fiscal 2021

<u>Board</u>	<u>Fund Balance</u>	<u>Regulated Practitioners</u>	<u>Fund Balance Per Practitioner</u>
Nursing	\$29,029,799	281,940	\$103
Physicians	56,955,920	48,079	1,185
Pharmacy	23,439,630	32,800	715
Dental Examiners	10,817,761	17,250	627
Social Work Examiners	8,317,942	16,795	495

Note: Nursing practitioners provided by the Maryland Board of Nursing. Total practitioners for remaining boards from *Managing For Results* data.

Source: Maryland Department of Health; Department of Legislative Services

Impact of the Cybersecurity Hack

Does MBON continue to be impacted by the MDH cybersecurity hack? If so, how does this impact compare to that of other health occupations boards?

By its own account, MBON has been impacted by the MDH cybersecurity hack more severely than any other health occupations board. In response to an inquiry posed by the House Health and Government Operations (HGO) committee in June 2022, MBP reported that it remained operational, immediately implementing workarounds for processes impacted by the hack that allowed it to return to issuing and renewing licenses on its usual timeline within 48 hours of the incident and leaving no disruption in services to constituents. MBP noted that it is fortunate to have its own information technology (IT) staff who undoubtedly played a critical role in maintaining this functionality.

Responding to the same inquiry, the State Board of Social Work Examiners reported that its licensing management system remained fully operational and the factors in any licensing delays were unrelated to the network issues but instead resulted from staff vacancies as well as the increased volume in license applicants due to the increased use of telehealth. The State Board of Social Work Examiners also noted the on-premises IT staff for those health occupations boards located at 4201 Patterson Avenue who helped the boards navigate the circumstances. (Note, while this is the same building occupied by MBP, MBP maintains its own IT staff).

While BDE and the State Board of Pharmacy were not included in the inquiry made by HGO, they were contacted for an account of their experience as a result of the cybersecurity hack as part of this review. BDE reported that in the immediate aftermath of the hack, complaint processing was limited to the use of email and paper files for several weeks, but that board staff were able to return to normal complaint processing timelines by June 2022. BDE also noted that the vendor overseeing its migration to a paperless process intercepted the hack and was able to set board staff up with virtual private network service four weeks after the hack. Because BDE was in the process of migrating case information to a new system when the hack occurred, BDE staff were able to rely on data previously migrated to that system within a month of the outage. BDE's licensing unit was able to implement a workaround to access the Internet to conduct initial licensing and renewals. This allowed the licensing unit to immediately resume licensing activities and the unit did not experience any loss of data.

The State Board of Pharmacy was immediately impacted by the cybersecurity hack because staff were unable to access licensing software only accessible through a specific network connection that was shut off, impacting both the input of paper applications and online renewal applications. The board reports that it was unable to issue licenses for three months. Moreover, the inability to access a server containing documents needed for investigations of complaints and disciplinary actions caused delays in those units as well. Workarounds implemented at the State Board of Pharmacy have been costly and remain inadequate because they limit the number of staff

who can work at one time and necessitate inefficiently switching between computer logins to conduct normal business. The board expressed frustration with the lack of communication and leadership on this issue and noted that plans for network reconnection through the Department of Information Technology (DoIT) are still in process.

MBON reported both to HGO in its inquiry and to DLS staff during the course of this review that it continues to be significantly impacted by the MDH cybersecurity hack. Immediate countermeasures to isolate each MDH unit left MBON staff unable to access or process license and certification applications that had been submitted electronically. The electronic application systems regained partial functionality on January 28, 2022, allowing staff to access the applications that had been received. The board reports that it was able to eliminate the application backlog by February 11, 2022. The board also noted that MDH reassigned temporary staff to the board to assist with application processing and constituent inquiries. This staff reassignment expired in June.

Despite these efforts, MBON reported that the limitations due to the intermediate network connection and lack of sufficient equipment leave the board at reduced functionality with an increase in the time necessary to complete tasks as compared to before the cybersecurity hack. The board has dedicated IT staff who work with counterparts at MDH and DoIT to service and maintain the hardware and software used by the board.

The four large boards and MBON all selected DoIT services to provide network connection, noting that the DoIT option allowed board IT staff the ability to maintain local administrative privileges. Since that time, MDH and DoIT have expressed concerns about obstacles facing MBON in its efforts to reconnect using the DoIT platform, to which the board has responded in a letter to HGO. DLS does not have the technical expertise to evaluate the network connectivity options presented to the health occupations boards, the obstacles outlined by DoIT, and whether those obstacles are indeed unique to the board or would be faced by any health occupations board and its IT staff. Any further evaluation of MBON could seek to include a technical analysis of this issue and recommend solutions. For additional discussion of topics for further evaluation, see the closing section of this letter.

Licensing and Renewal

What is the average length of time for processing initial and renewal licensure and certification applications, and how do these compare to other health occupations boards?

MDH establishes goals for all health occupations boards to issue new licenses or process license renewals. These goals are set at 10 and 5 business days of receiving the last qualifying document, respectively. MDH aims to have each health occupations board meet that standard for

95% of licensees each year for both initial licensing and renewals, but for board renewals the goal is to renew licenses of only 90% of qualified applicants within 5 days.

While MBON has consistently met or exceeded MDH’s initial licensing performance goals, outperforming several other similarly sized boards, MBON has not met its reduced renewal goal over the course of the previous five years. Moreover, these data reflect license processing timelines only for RNs and LPNs and do not reflect the timelines experienced by other practitioner types. MBON is aware of the limited value of these data and plan to report licensing performance for all practitioner types beginning with fiscal 2023. When these data are available, comparisons to other health occupations boards will be more feasible.

Exhibit 7 shows data on the issuance of new licenses and the processing of renewals for the five largest health occupations boards in the State. It is important to note that MBON processed both the highest number of new licenses and license renewals each year during the last five years and is among the top three boards for timeliness of issuing licenses. All five boards follow a biennial renewal cycle.

Exhibit 7
Licensing Performance Goals for Selected Maryland Health Occupations Boards
Fiscal 2017-2021

<u>Board</u>	<u>Measure</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Nursing	Total new licenses issued	5,983	5,694	6,005	5,295	6,121
	<i>% of new licenses issued in 10 days or fewer</i>	99%	104%*	99%	99%	91%
	Total number of licenses renewed	45,298	44,950	43,768	41,768	47,748
	<i>% of renewals processed in 5 days or fewer</i>	80%	79%	83%	89%	89%
Physicians (Including Allied Health)	Total new licenses issued	2,815	3,047	2,930	3,042	3,270
	<i>% of new licenses issued in 10 days or fewer</i>	98%	99%	98%	100%	100%

<u>Board</u>	<u>Measure</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
	Total number of licenses renewed	25,215	16,307	25,549	17,060	29,759
	<i>% of renewals processed in 5 days or fewer</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>
Pharmacy	Total new licenses issued	2,805	3,412	3,531	2,993	3,456
	<i>% of new licenses issued in 10 days or fewer</i>	<i>100%</i>	<i>100%</i>	<i>54%</i>	<i>52%</i>	<i>58%</i>
	Total number of licenses renewed	9,092	11,974	10,335	13,482	12,683
	<i>% of renewals processed in 5 days or fewer</i>	<i>100%</i>	<i>100%</i>	<i>89%</i>	<i>84%</i>	<i>83%</i>
Social Work	Total new licenses issued	1,495	1,398	1,524	1,414	2,045
	<i>% of new licenses issued in 10 days or fewer</i>	<i>100%</i>	<i>100%</i>	<i>89%</i>	<i>74%</i>	<i>91%</i>
	Total number of licenses renewed	5,786	6,433	5,149	6,142	6,453
	<i>% of renewals processed in 5 days or fewer</i>	<i>100%</i>	<i>100%</i>	<i>98%</i>	<i>97%</i>	<i>95%</i>
Dental	Total new licenses issued	466	1,109	910	774	843
	<i>% of new licenses issued in 10 days or fewer</i>	<i>84%</i>	<i>45%</i>	<i>29%</i>	<i>3%</i>	<i>13%</i>
	Total number of licenses renewed	4,746	5,626	7,346	3,999	4,249
	<i>% of renewals processed in 5 days or fewer</i>	<i>62%</i>	<i>10%</i>	<i>5%</i>	<i>3%</i>	<i>3%</i>

*The Maryland Board of Nursing achieved 104% of new licenses issued in five days or fewer in fiscal 2018 due to licenses being issued in the fiscal year following the fiscal year in which the application was submitted.

Source: Governor's Budget Books

Complaint Investigation and Resolution

What is the average length of time for investigating and resolving complaints and how does that compare to other health occupations boards? How many disciplinary complaints are received each year by credential type? How many complaints are open? How many of the open complaints involve an imminent threat to public safety?

Similar to the performance measures for licensing timeframes, MDH has also established goals for the timely processing of complaints against health care professionals. Broadly, this goal is to have 100% of complaints processed within 180 days. For MBP, the goal is to complete 90% of investigations within 540 days, while for MBON, the goal is to complete 90% of investigations within 270 days.

Exhibit 8 shows complaint statistics for the five largest health occupations boards. Though the licensing statistics discussed above related to a limited number of nursing practitioners, MBON advises that the complaint data applies to all practitioners regulated by the board.

Exhibit 8
Complaint Processing Performance Goals for Select Maryland Health
Occupations Boards
Fiscal 2018-2021

<u>Year</u>	<u>Complaint Measure</u>	<u>Nursing</u>	<u>Physicians</u>	<u>Pharmacy</u>	<u>Social Work</u>	<u>Dental</u>
2018	Investigated	803	1,204	389	140	218
	Completed ¹	N/A	N/A	N/A	N/A	N/A
	% Completed Timeframe	49%	100%	100%	39%	80%
2019	Investigated	570	1,190	406	71	299
	Completed	125	1,190	348	97	228
	% Completed Timeframe	4%	93%	80%	75%	63%
2020	Investigated	556	864	491	95	174
	Completed	420	1,176	455	87	72
	% Completed Timeframe	32%	100%	88%	65%	26%

<u>Year</u>	<u>Complaint Measure</u>	<u>Nursing</u>	<u>Physicians</u>	<u>Pharmacy</u>	<u>Social Work</u>	<u>Dental</u>
2021	Investigated	114	728	298	59	112
	Completed	422	897	205	114	166
	% Completed Timeframe	68%	100%	88%	92%	37%

¹ Data on complaints completed was not required until fiscal 2019.

Source: Governor's Budget Books

Of the large boards, only MBP has consistently met its performance goal for complaint processing, with the remaining large boards falling far short of their respective goals. Moreover, while MBON oversees the largest number of practitioners of any of the health occupations boards, MBP processes far more complaints than MBON. In both fiscal 2020 and 2021, MBP handled more than twice the number of complaints as MBON, while in fiscal 2021, MBP conducted more than six times the number of investigations. Of the smaller health occupations boards that met their complaint processing timeframe goals in fiscal 2021, none exceeded 36 complaints completed that year.

MBON's complaint processing unit cites staff shortages as the primary reason for these extended timelines. Despite this, the unit has worked to address a large backlog in "cold cases" (cases originating prior to 2017), closing more than 5,000 of these cases (by the board's estimate) over the course of several years. Board staff estimated during an interview for this review that the board still has 2,800 cold cases and another 2,700 current cases in process. While MBON categorizes complaints for priority in processing, including a category for those complaints that present an imminent threat to public safety, the board does not maintain data on how many open complaints fall within this category.

In addition to staff shortages impacting complaint processing, the Complaints division also devotes significant staff time to broader issues that are not specific to a complaint against a particular practitioner and therefore are not reflected in the complaint processing data above. For example, staff have recently spent a significant amount of time working with federal authorities to investigate alleged schemes to sell fake nursing degrees to people who had not completed the required courses or clinical training. These activities are operating at a national level and impact Maryland both through local practitioners and those who may be licensed in another state and gain access to treat Maryland patients through the Nurse Licensure Compact.

Complaint processing has been further impacted by the effects of the cybersecurity hack, which resulted in lost or limited access to documentary evidence and electronic recordings of

interviews. These losses have resulted in the need to duplicate some work. Board staff have implemented new protocols to address these issues, including backing up materials to external hard drives, but these measures are inherently only forward looking and can only prevent a similar loss in the future.

While MBON categorizes complaints by credential type, the categories are broad and do not distinguish between all credentials. These categories are licensed direct entry midwives, electrologists, medication technicians, CNAs, and nursing general (including advanced practice RNs, RNs, and LPNs). **Exhibit 9** shows the number of complaints received by category for the prior five fiscal years; however, this data is incomplete due to inability of the board staff to access all prior year data.

Exhibit 9
Complaints Received by Practitioner Type
Fiscal 2018-2022

<u>Practitioner Type</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>
Licensed Direct Entry Midwives	1	1	3	3	4
Electrologists	0	0	1	0	0
Medication Technicians	166	124	103	66	114
Certified Nursing Assistants ¹	—	—	—	—	127
Nursing General	340	354	417	325	617

¹ Data on complaints against certified nursing assistants was not provided for fiscal 2018 through 2021.

Source: Maryland Board of Nursing

Processing of Licenses

Are all licenses being processed electronically? If not, what determines whether a license is processed electronically or via paper copy?

MBON staff advises that the majority of initial licenses and license renewals are processed electronically. Certain categories of applicants are automatically redirected to file paper applications. These include:

- Licensing by endorsement for practitioners who hold a license in another state who answer on their application that they have been disciplined in another state. This triggers an automatic manual review of the application and associated disciplinary action.
- Renewal of a license for a practitioner who participates in the Safe Practice Program. These practitioners are practicing under some sort of limitation imposed by the board as a result of a prior disciplinary action.
- Any application that requires additional documentation. MBON staff advises that the licensing system does not have a feature allowing applicants to upload documentation. This capability is on the board's wish list for the new licensing system.
- An application for renewal that is submitted more than 365 days after expiration of the credential.

In the course of this review, DLS staff heard anecdotal accounts of delays in both initial and renewal license processing. While the board's license performance data (reported only for certain license types as discussed earlier in this response) suggests that these delays are the exception and not the rule, delays remain and seem to most often result from complicated applications that require additional documentation and review by board staff. The limitations on the board's licensing system and staff shortages exacerbate these issues.

Transparency

What is the process for posting meeting agendas, minutes, and other materials to the board website? Does the board meet using video conferencing technology that is accessible by the public?

As a public body created by statute, most board meetings are subject to the Open Meetings Act (OMA). To comply with certain OMA provisions, public bodies must take detailed meeting minutes and, to the extent practicable, post the minutes online. In place of conventional, written meeting minutes, covered entities may post recordings of meetings. Public bodies must keep a copy of the minutes, written or recorded, for at least five years. Currently, the board does not have any meeting minutes or recordings of meetings held in 2022 or 2021 available on its website. The most recent meeting with accompanying minutes posted was held in September 2020.

The minutes backlog predates the COVID-19 pandemic and the 2020 MDH cybersecurity incident. To address this backlog, the board has tasked some staff with posting minutes from past meetings. The board utilizes a court reporter who takes minutes for the meetings. Despite the changes, meeting minutes have not been promptly posted to the board's website after meetings for years.

Bodies subject to OMA rules can post video or audio recordings of the meetings in place of posting written minutes. This option can be convenient for meetings hosted on modern video meeting platforms, which typically have built-in recording and posting features. MBON staff doubt that the board has the technology necessary to record and post video of meetings, despite using WebEx to stream its regular meetings. There was a plan to obtain modern video-recording software, but that plan met complications when the board decided to switch its information technology support services to DoIT.

Constituent Services

Does the board have constituent services staff to support applicants and license/certificate holders with questions about the licensure and application process?

MBON communicates with interested applicants to help them understand the application process. The website directs applicants to one of nine email addresses made specifically to handle distinct categories of questions. These categories are divided by the types of licensure or certification and by steps in the application or renewal process. For example, there is an email address to field questions about the CNA renewal process and another email address dedicated to initial CNA applications and verification questions. This categorization of emails can be detrimental to applicants, as having too many choices that do not cover every circumstance results in applicants being unsure where to send their inquiries. Many applicants believe fewer email addresses or a single address would be easier to navigate.

As an alternative to the email addresses, applicants can call MBON or visit in-person to address questions. Nearly the full process for a renewal application can be completed while visiting the board office. An initial application has other requirements that cannot be met in the office, such as testing, but much of the process can be done during a visit to the board office.

General Funding of Boards of Nursing

Do any states provide general fund support to a board of nursing?

Some states, such as Louisiana, provide general fund support to their respective boards of nursing. There is no national standard or prevailing convention that suggests how states should fund nursing boards. The National Council on State Boards of Nursing does not prescribe a particular approach in its model act.

Topics for Additional Study

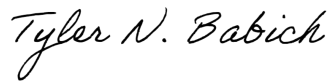
During the course of this review, issues arose that were either beyond the scope of this inquiry or beyond DLS's capacity to include in this review. As such, we suggest that any further review of MBON in the future consider the following questions:

- MBON has expressed that staff shortages are the most pressing concern for the board and its work, and the high staff vacancy rate supports this. Overwhelmed with the number of vacancies, the board is not undergoing recruitment efforts for all vacancies but has instead chosen to prioritize the most needed positions. A more in-depth review of MBON could examine the board's recruitment program, including any impediments to filling positions more quickly.
- MBON licensing performance data currently reported does not include all practitioners credentialed by the board. Further review should evaluate licensing performance data for all practice types and compare these figures to the performance data of other large health occupations boards.
- MBON is currently out of compliance with OMA requirements to promptly post minutes or recordings of board meetings and to archive the minutes or recordings for a minimum of five years. DLS has raised this issue to the board in the course of this review, and a more detailed review should examine whether the board has addressed the missing minutes from prior years and begun to post meeting minutes promptly.
- MBON maintains nine separate email addresses for constituent services. Further review should analyze the resources saved or expended to maintain these separate email addresses and whether another approach may be more efficient.
- There are several advisory committees that focus on specific credential types regulated by the board. Given MBON's lack of staff resources to handle complaints, there may be an opportunity for these advisory committees to play a larger role in complaint processing, including by offering knowledge and understanding of scope of practice.
- MBON has reported challenges in meeting the needs of a growing profession due to an inadequate fee schedule, noting that fees charged by the board have not been changed since fiscal 2008. However, the board maintains a healthy fund balance. A more detailed evaluation of MBON could examine the adequacy of these funds, the frequency with which other Maryland health occupations boards have updated their fee schedules, and conduct a comparison of nursing fees charged in neighboring states to examine how Maryland's fee structure compares to other jurisdictions.

The Honorable Joseline A. Peña-Melnyk
The Honorable Ariana B. Kelly
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We hope this information is useful to you. If you or your staff have additional questions, please let us know.

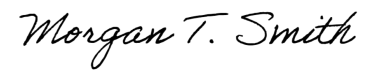
Sincerely,



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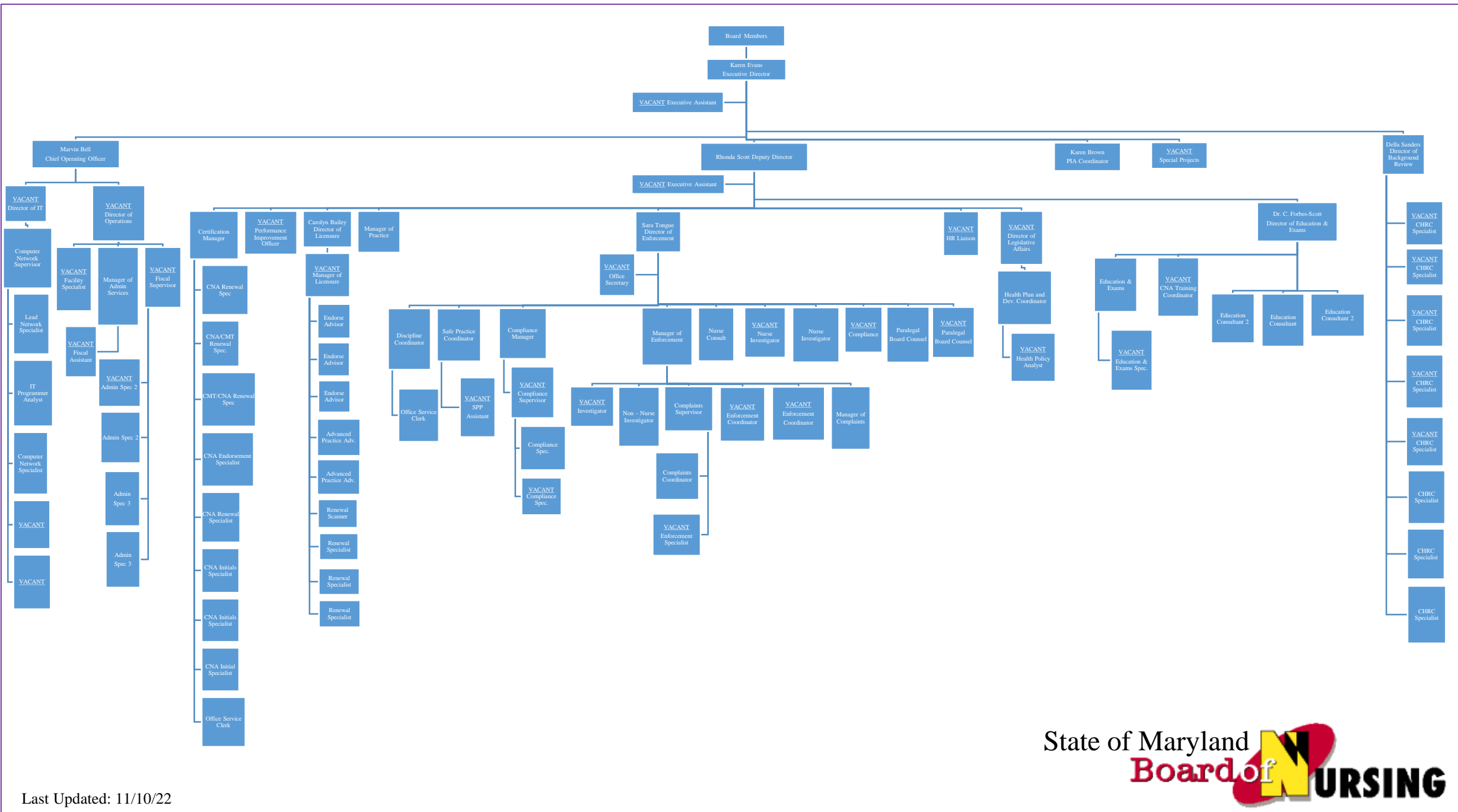


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TNB:LAR:MTS/mhr

cc: Karen Evans, Executive Director, Maryland Board of Nursing

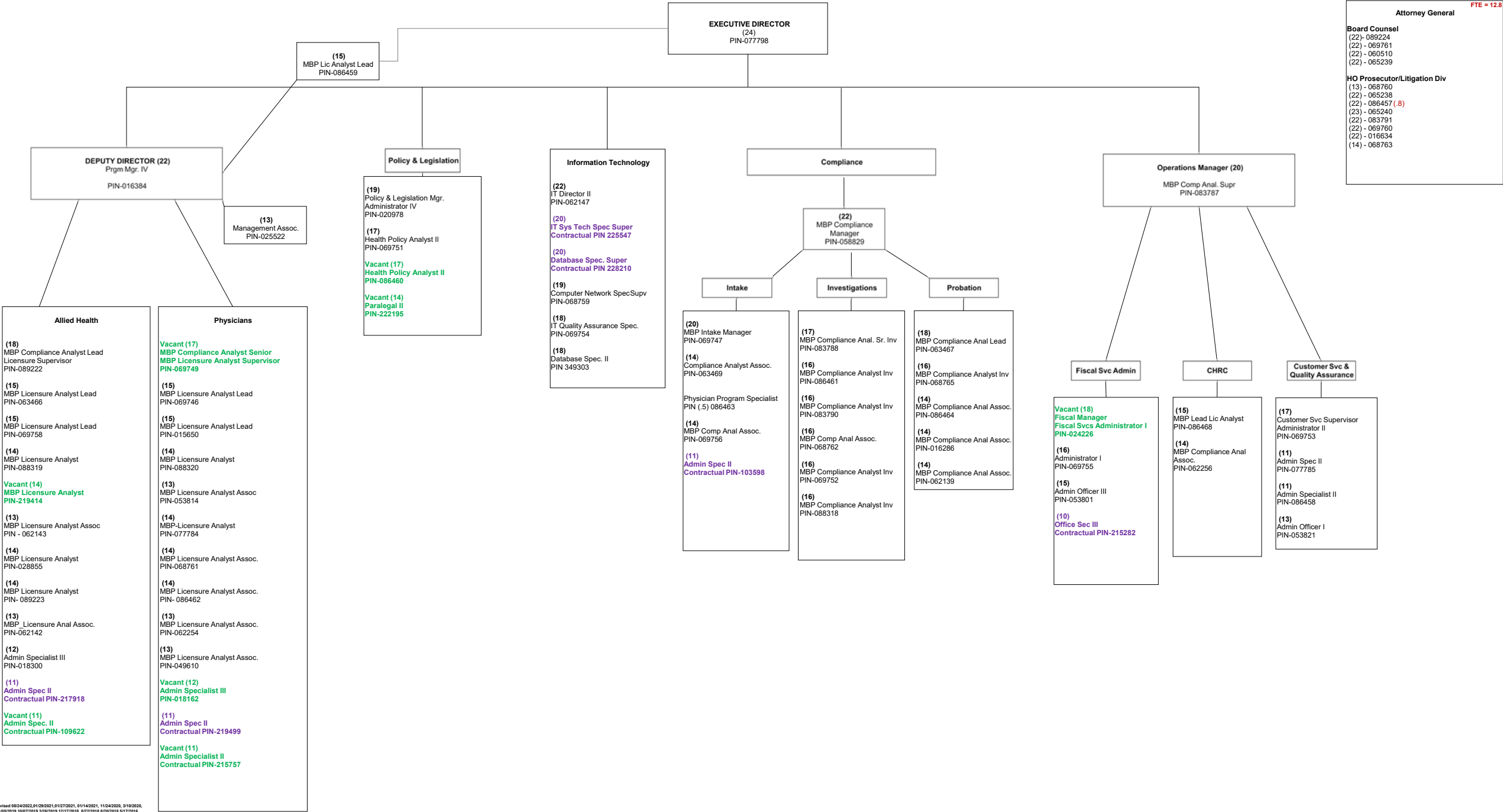
Appendix 1
Maryland Board of Nursing Organizational Chart



Appendix 2
Organizational Charts
Maryland Board of Physicians
Maryland Board of Pharmacy
Maryland State Board of Dental Examiners
Maryland State Board of Social Work Examiners

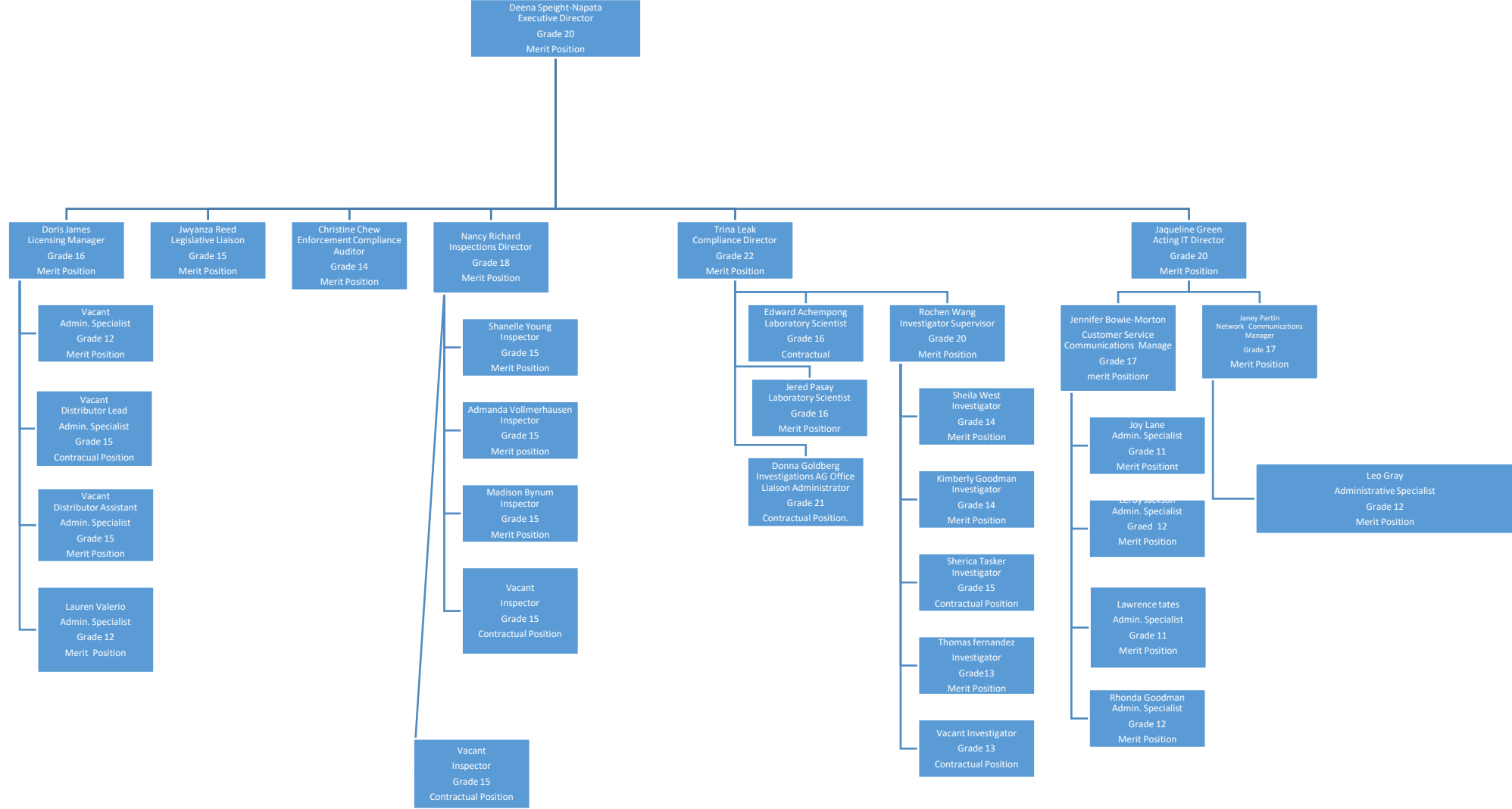
Maryland Board of Physicians

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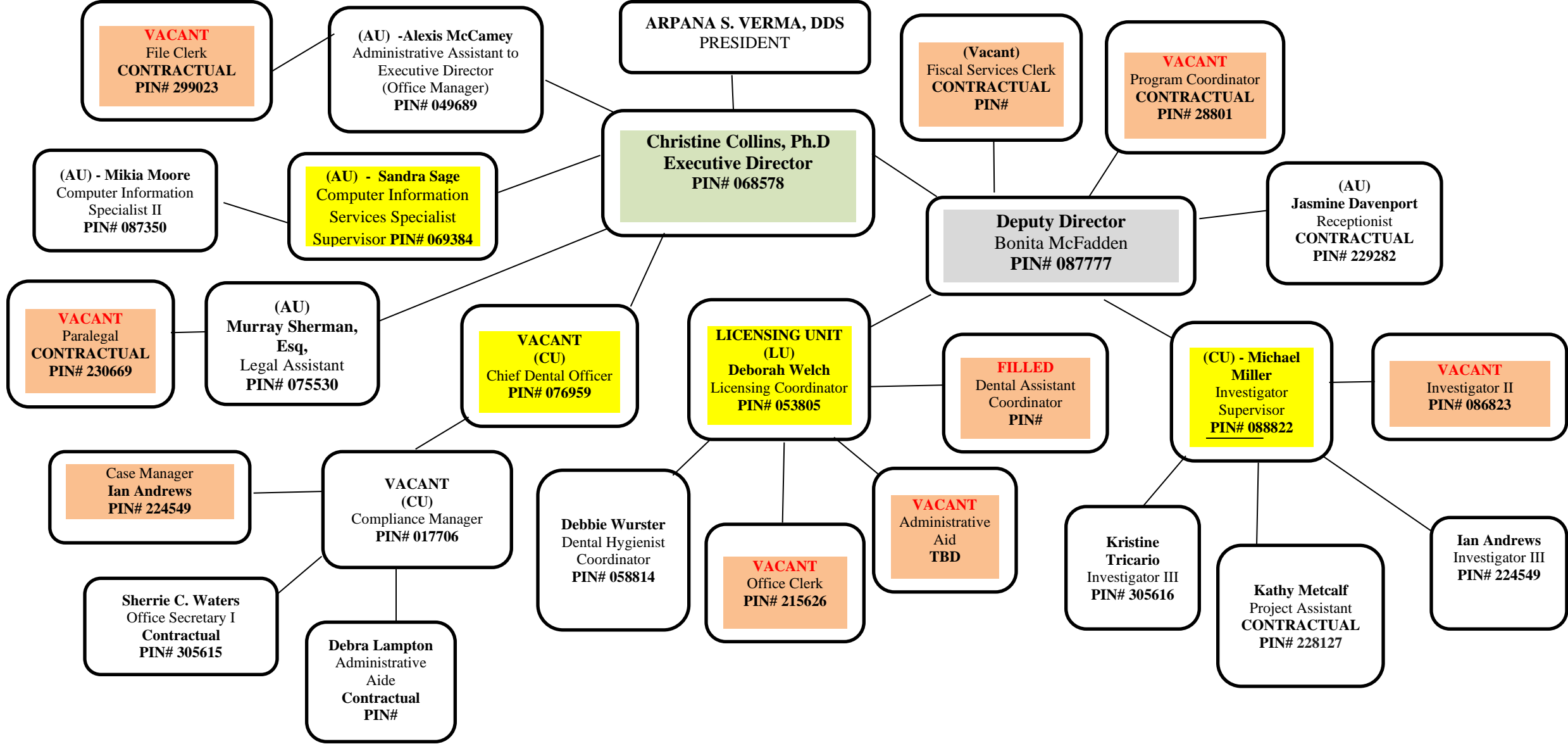


MARYLAND BOARD OF PHARMACY

ORGANIZATION CHART



MARYLAND STATE BOARD OF DENTAL EXAMINERS
“2022” ORGANIZATIONAL CHART



Board of Social Work Examiners

