



Board of Physicians

Wes Moore, Governor · Aruna Miller, Lt. Governor · Harbhajan Ajrawat, M.D., Chair

2024 SESSION POSITION PAPER

BILL NO.: SB 506 – State Board of Physicians – Administrative Expungement
COMMITTEE: Finance
POSITION: Unfavorable

TITLE: State Board of Physicians – Administrative Expungement

POSITION & RATIONALE:

The Maryland Board of Physicians (the Board) is respectfully submitting this letter of opposition for Senate Bill 506 – State Board of Physicians – Administrative Expungement (SB 506). SB 506 would authorize the Board to establish regulations allowing for the expungement of administrative actions and offenses for which a period of probation was imposed on a licensed physician.

The Board has serious concerns regarding the proposed language in SB 506 allowing expungement of offenses for which a period of probation was imposed on a licensed physician. Probation is a disciplinary offense, not an administrative action. By including probation in the list of expungable Board actions, SB 506 would allow for the potential expungement of serious offenses ranging from overprescribing to sexual misconduct. Probation is the primary means by which the Board places terms and conditions upon a licensee to correct deficiencies and rehabilitate or re-educate licensees on essential components of medical care integral to the goal of preventing patient harm. Common probationary conditions include requiring monitoring of patient interactions or placing restrictions on the prescribing or dispensing of controlled dangerous substances. Allowing these cases to be expunged would represent a significant step backwards for patient transparency, safety, and welfare in Maryland.

In addition to concerns regarding patient transparency, allowing for the expungement of disciplinary actions would have an adverse impact on other entities. The Board’s practitioner profile system is currently used as a first party data source for private, state, and federal entities including hospitals, other state licensing entities, Medicaid, the Maryland Cannabis Commission, the Federation of State Medical Boards, and more. Furthermore, this would put the Board’s practitioner profile system out of sync with the National Practitioner Data Bank (NPDB). The Board is required under federal law to report all disciplinary actions to the NPDB, with no exception for expunged disciplinary actions. In a letter to the Board dated January 31, 2024, Dr. Robert Oshel, retired associate director for the NPDB, stated that “probation reports would not be expunged from the NPDB and would continue to be disclosed to authorized queries. If Data Bank queriers think they need more information, they are told by the NPDB to ask the reporting entity. This could lead to hospitals, other licensing boards, etc., requesting information from the Board, but the Board’s records would have been expunged.”

Regarding the expungement of certain administrative actions, the Board is open to establishing a process for the expungement of certain non-disciplinary orders, but does not believe that legislation is necessary to authorize the Board to draft regulations to this effect. In fact, the Board has already developed regulations to

address this issue. On March 24, 2021, the Board voted to approve regulations to allow for expungement of certain administrative actions. These regulations would establish an application process where licensees could apply to remove certain administrative actions, defined as orders issued by the Board for reasons other than the disciplinary grounds under Health Occupations Article § 14-404, Annotated Code of Maryland, from a public profile after a period of three years or more had elapsed. The draft regulations were posted to the Board's website to solicit public comment before being submitted to the Maryland Department of Health (the Department) for promulgation and approval. The Board is confident that these regulations will be reviewed in all due course as the Department works through its regulatory proposals.

Given the concerns regarding expungement of disciplinary actions resulting in probation and the fact that legislation is not necessary to authorize the Board to develop regulations for the expungement of administrative actions, the Board recommends an unfavorable report on SB 506.

Thank you for your consideration. For more information, please contact Matthew Dudzic, Manager, Policy and Regulations, Maryland Board of Physicians, (410) 764-5042.

Sincerely,

A handwritten signature in black ink that reads "Ingh Ajrawat". The signature is written in a cursive style.

Harbhajan Ajrawat, M.D.
Chair, Maryland Board of Physicians

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

Attachments:

- Excerpt from Maryland Board of Physicians Board Open Meeting Minutes, March 24, 2021
- Letter from Robert Oshel, Ph.D. to the Maryland Board of Physicians dated January 31, 2024

ATTACHMENT 1

Excerpt from Maryland Board of
Physicians Board Open Meeting
Minutes, March 24, 2021

APPROVAL OF MINUTES

- February 24, 2021

*On a motion made by Mr. Dills, and seconded by Dr. Boursiquot, the Board voted to unanimously **APPROVE** the full Board and closed minutes.*

POLICY/LEGISLATION

Updating COMAR 10.32.02.10 (Sanctioning Guidelines)

Ms. Van Horn presented a draft of an update to Code of Maryland Regulations (COMAR) 10.32.02.10 (“Sanctioning Guidelines for Physicians”). Due to various legislation, certain disciplinary grounds were added to statute. The draft of regulations adds language related to those grounds, plus suggestions for minimum and maximum sanctions and fines. Other draft changes include the addition of a new category under COMAR 10.32.02.10B(3), a revision to the minimum sanction in COMAR 10.32.02.10B(9), and changes of “Board” to “disciplinary panel” as needed. The plan is to post a draft of the revisions on the Board’s Website to invite informal comments.

*On a motion made by Dr. Plavner, and seconded by Dr. Boursiquot, the Board voted to unanimously **APPROVE** to post the proposed draft regulations revisions on the website for informal comments.*

Proposed Regulations – Administrative Expungement

Mr. Dudzic presented the Board with a draft of regulations to allow for expungement of certain administrative disciplinary actions. These regulations would allow licensees to apply to remove certain administrative actions from a public profile after a period of three years or more had elapsed, provided no disqualifying events occurred during that three-year period. The actions that could be expunged under these proposed regulations included failure to pay taxes, failure to complete continuing medical education, failure to renew a license, and delinquent child support. Administrative expungement would not be permitted for any disciplinary action taken pursuant to H.O. §14-404.

*On a motion made by Dr. Plavner, and seconded by Dr. Freas, the Board voted to unanimously **APPROVE** the proposed draft regulations, and to post on the website for public comments.*

Update MLARP Workgroup

Mr. Dudzic provided the Board with an update on the Maryland Loan Assistance Repayment Program for Physicians and Physician Assistants, (MLARP) Workgroup. The Maryland Loan Assistance Repayment Program for Physicians and Physician Assistants, (MLARP) incentivizes health care providers to practice in health professional shortage areas and medically underserved areas in the State by providing eligible physicians, physician assistants, and medical residents in their last year of residency an opportunity to practice in a designated Health Professional Shortage Area (HPSA) while receiving funds towards their student loans. In 2020, Senate Bill 501

ATTACHMENT 2

Letter from Robert Oshel, Ph.D. to the
Maryland Board of Physician, dated
January 31, 2024

Wed, Jan 31, 2024

Matt,

Thanks for forwarding Senate Bill 506 which would allow for expungement of certain board actions three years after imposition, and Senate Bill 54 / House Bill 175, which concerns Board consideration of criminal histories. I hope my comments, which follow, are helpful. Feel free to use them in any way you think would be beneficial. Also feel free to give my email address to anyone who might be interested in more information from me.

Concerning Senate Bill 506, I am particularly concerned about section (D)(4) which would allow expungement of probations, which are disciplinary actions, not administrative actions. I believe this section would be a significant step backward in terms of the Board's ability to carry out its stated mission: "to assure quality health care in Maryland, through the efficient licensure and effective discipline of health providers under its jurisdiction, by protecting and educating the clients/customers and stakeholders, and enforcing the Maryland Medical Practice Act."

The provision would also put the Board into an awkward position in relation to National Practitioner Data Bank (NPDB) reports. Expungement of records is not the same as reversal of actions, so the expungement would have no effect on the reports the Board had made of its probation actions to the NPDB in compliance with the Health Care Quality Improvement Act of 1986, 42 U.S.C. 11101 et seq. Probation reports would not be expunged from the NPDB and would continue to be disclosed to authorized queries, including hospitals, other health care entities, and state licensure boards. If Data Bank queriers think they need more information, they are told by the NPDB to ask the reporting entity. This could lead to hospitals, other licensing boards, etc., requesting information from the Board, but the Board's records would have been expunged.

In addition, starting the three year period after which expungement can be requested at the date of imposition of a probation is particularly troublesome. If probation was imposed for a two year period, for example, this would mean that the record could be expunged as soon as just over a year after the probationary period ended. That could significantly reduce the ability of the Board to identify repeat infractions which might require more significant disciplinary action to protect the public health. Indeed, if a physician repeated an infraction only slightly more than three years after being put on probation -- and potentially only a few months after the end of the probationary period -- the Board could be unable to determine that this is a repeated problem and more stringent disciplinary action might be warranted. Patterns of repeated violations are important when determining the need for or the severity of disciplinary action. Expungement of probation records -- potentially only a short time after a probation had ended -- would make it difficult for the Board to discover and evaluate patterns of repeated violations -- unless, of course, the Board queried the NPDB to find

out what it had done previously! Surely the Board shouldn't need to query the Data Bank to find out what it had itself done in the past.

The expungement from the Board's records but not from the Data Bank could also lead to unintended consequences for physicians. A physician whose probation has been expunged from the Board's records might think he or she no longer needed to reveal the matter on applications for clinical privileges or even licensure in other states. But when the entity being applied to queries the NPDB, they would find out about the matter and could conclude the applicant had submitted an incomplete application or even lied on the application. This could lead to substantial problems for the applicant. If the entity denied the application because of omission of the expunged information, that would lead to another report to the Data Bank. Even in the best of circumstances for the physician, the failure to disclose an expunged probation is likely to delay consideration of an application once information is received from the Data Bank. In balance, I think expungement of probation actions might do more harm to physicians than it would benefit them.

Bob

Robert E. Oshel, Ph.D

Retired Associate Director for Research and Dispute Resolution, Division of Practitioner Data Banks, HRSA, US Dept. of Health and Human Services