



Board of Physicians

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Robert R. Neall, Secretary

2020 SESSION POSITION PAPER

BILL NO: HB 483
COMMITTEE: Judiciary
POSITION: Oppose

TITLE: Administrative Procedure Act - Dispositions and Summary Suspensions - Time Periods

BILL ANALYSIS: The bill requires an agency such as the Maryland Board of Physicians (the “Board”), the Maryland Board of Chiropractic Examiners, or the Office of Administrative Hearings (OAH) to dispose of a contested case within 90 days after the date of any evidentiary hearing; authorizes a named party in the contested case to provide written notice to the agency or OAH that a decision is due; establishes that if the agency or OAH does not dispose of a case within 30 days after receipt of a notice the decision shall be deemed in favor of the named party; and requires a unit to issue a final appealable order within 30 days from the date of the summary suspension.

POSITION AND RATIONALE: As explained in more detail below, the Boards oppose HB 483 because of the negative impact on due process for licensees; the significant conflict with the Board’s regulations that detail the entire disciplinary process, including timeframes; and the ambiguity in the bill that either party could be the “named party”; and there is no distinction between proposed and final decisions. Furthermore, existing language in the Health Occupations Article (H.O.) §1-608 addresses the timeliness of complaint resolution and requires the establishment of goals for complaint resolution for all boards.

First, the bill is unclear as to whether the 90-day timeframe for disposing of cases after an evidentiary hearing applies to the OAH issuance of the proposed decision or to the disposition of the entire case at the agency level. The Board does not conduct its own evidentiary hearings. When disciplinary charges are not resolved through the settlement process, the Board is required to refer cases to OAH for an evidentiary hearing and proposed decision. After the Board receives a proposed decision from OAH, the parties have the opportunity to file written exceptions and appear before a Board disciplinary panel for an oral exceptions hearing prior to the issuance of a final decision and order in the case, which is then appealable to the circuit court.

If the 90-day timeframe is intended to cover the time period from the conclusion of the evidentiary hearing at OAH through the issuance of a Board’s final decision on the matter, then this would not provide sufficient time for the parties to file exceptions and a Board to conduct a meaningful and thorough review of any issues identified in the proposed decision prior to issuing a final decision in

the case. Pursuant to the Administrative Procedure Act, OAH currently has 90 days from the date of the evidentiary hearing to issue a proposed decision. See State Government Article §10-205(e)(ii). Depending on when the Board received the proposed decision during the 90 day timeframe, this would not leave the Board with any time for the exceptions process or the drafting of the final Board Order, which can only begin after the exceptions hearing has concluded. The Board's regulations currently require a final decision and order to be issued within 90 days from the exceptions hearing or other formal disciplinary panel proceeding. COMAR 10.32.02.05C(1). Therefore, the 90-day timeframe is far too short if it is intended to include both the proposed OAH decision and final Board decision.

If the 90-day timeframe is only intended to apply to the issuance of the proposed decision from OAH, the Boards still have concerns because of the potential threat to public safety if a disciplinary case decision is based on a technicality and not on the merits. Further, in requiring a case to be disposed of in 90 days without any exceptions, the bill does not take into account the complexity of the case, length of the hearing, number of witnesses, volume of the record, or any other extenuating circumstances such as medical or family emergencies. The outcome of a disciplinary case should not be decided based on the length of time it takes for a decision to be issued. This could result in practitioners, who have committed serious standard of care violations or sexual misconduct violations, avoiding discipline, and therefore, being able to harm more patients, just because of the length of time it took for the decision to be issued. The Boards are not aware of any court or any other decision-making body where a decision is automatically decided in favor of one party, regardless of the merits of the case, based on the length of time it takes for a decision to be issued.

Second, it appears that the 30-day timeframe for issuing a final appealable order after a summary suspension starts running immediately, before the Respondent asks for a hearing. The lack of clarity adds to the insufficient timeframe that does not take into account due process protections for Respondents that are provided for in the Board of Physicians' regulations. The Board's regulations currently provide for a post-deprivation hearing to be held within 15 days of the Order for Summary Suspension. After this hearing, the Board decides whether to reaffirm or rescind the summary suspension. If the summary suspension is affirmed, the Respondent is given the opportunity to demand a full evidentiary hearing at the OAH within 10 days and the hearing is required to be held within 30 days. The Respondent then has the opportunity to file exceptions to the OAH decision and appear before the disciplinary panel for an exceptions hearing prior to the issuance of the final appealable order. Requiring the final appealable order to be issued within 30 days would eliminate significant due process opportunities for licensees and completely alter the Board's long-standing hearing procedures. The 30 day time period would essentially force the Board to conduct its own evidentiary hearing without referral to OAH and would require additional time at Board meetings and resources to train Board members on how to conduct evidentiary hearings. The Board would be required to completely change its regulations and hearing procedures, which would also be time-consuming and incur additional staff time and resources. See the Boards hearing regulations in COMAR 10.32.02 for specific timeframes for each stage of a complaint investigation for the Board of Physicians. Also, Managing for Results (MFR) is a performance measurement that emphasizes measurable results, accountability, efficiency, and continuous improvement in State government programs. See the most recent MFR data (relevant pages attached) for Complaint and preliminary investigations data for the Health Professional Boards and Commissions.

Finally, the Board of Physicians regularly receives requests for postponements of the post-deprivation hearing from Respondents for a variety of reasons. The Board is also aware that there have been instances where Respondents will request that the summary suspension hearing be consolidated with the hearing on the disciplinary charges at OAH. If the Board is required to issue a final appealable order within 30 days of the summary suspension, the Board would not be able to grant any requests for postponements and the summary suspension would not be able to be consolidated with the hearing on the charges. This would be to the detriment of Respondents, not to their benefit.

The timeframe in HB 483 imposes unmanageable deadlines, reduces due process for Respondents, and could seriously impact patient safety if a dangerous practitioner is allowed to continue practicing without discipline all because of the amount of time it took for a decision to be issued.

For these reasons, the Maryland Board of Physicians and the Maryland Board of Chiropractic Examiners opposes HB 483 and urges an unfavorable report.

For more information, please contact Wynnee Hawk, Manager, Policy and Legislation, Maryland Board of Physicians, 410-764-3786.

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

MDH - Regulatory Services - Health Professional Boards and Commissions

Goal 2. To protect the public and promote quality healthcare by maintaining an effective and efficient disciplinary system for healthcare professionals regulated by the State.

Obj. 2.1 By July 1, 2020, improve the percent of complaint investigations completed by the Board of Physicians to 90 percent within 540 days, by the Board of Nursing to 90 percent within 270 days, and by all other boards and commissions to 100 percent within 180 days.

Board/ Commission	2015 Act.		2016 Act.		2017 Act.		2018 Act.	
	Complaints Invest.	% Obj	Complaints Invest.	% Obj	Complaints Invest.	% Obj	Complaints Invest.	% Obj
Acupuncture	4	100%	9	100%	3	100%	12	100%
Audiologists	92	100%	161	99%	112	96%	91	88%
Chiropractic	95	100%	48	100%	23	100%	33	100%
Dental	274	99%	208	99%	198	74%	218	80%
Dietetic	13	100%	5	100%	8	100%	8	100%
Environmental Health	4	100%	3	100%	2	100%	4	100%
Kidney Disease	25	100%	32	100%	19	100%	34	100%
Massage Therapy	N/A	N/A	51	100%	49	100%	41	100%
Medical Cannabis	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Morticians	126	100%	177	97%	182	87%	91	82%
Nursing	1,880	86%	1,033	67%	1,004	24%	803	49%
Nursing Home Admin	6	100%	2	100%	7	100%	7	100%
Occupational Therapy	17	100%	9	100%	5	100%	6	100%
Optometry	13	100%	21	100%	24	100%	10	100%
Pharmacy	323	90%	350	90%	419	100%	389	100%
Physical Therapy	76	100%	47	80%	40	100%	34	100%
Physicians and Allied Health	1,180	99%	1,073	100%	1,067	99%	1,204	100%
Podiatric	38	100%	38	100%	31	100%	22	100%
Prof. Counselors/Therapists	93	100%	80	100%	60	50%	51	49%
Psychologists	17	100%	21	100%	17	100%	7	100%
Residential Child Care	0	100%	0	100%	0	100%	2	100%
Social Work	63	95%	34	50%	87	34%	140	39%

* % Objective column is the percent of licenses issued that meet the timeliness standards outlined in Objective 2.1

MDH - Regulatory Services - Health Professional Boards and Commissions

Obj. 2.2 By June 30, 2020, the Board of Physicians will resolve 95 percent of preliminary investigations within 150 days.

Performance Measures	2014 Act.	2015 Act.	2016 Act.	2017 Act.	2018 Act.	2019 Est.	2020 Est.
Physicians/ Allied Health new complaints received within 150 days	1,018	932	1,073	1,067	1,204	1,100	1,100
Percent of preliminary investigations resolved within target timeframe	99%	97%	99%	97%	98%	97%	97%