

February 12, 2020

Delegate Luke Clippinger
Chair – House Judiciary Committee
House Office Building, Room 101
6 Bladen Street
Annapolis, Maryland 21401

Re: House Bill 483

Dear Delegate Clippinger and Members of the
House Judiciary Committee:

The purpose of House Bill 483 is to bring Maryland's Administrative Procedure Act into compliance with due process. Unlike Virginia and other states, Maryland's Administrative Procedure Act has no time limit on Administrative Boards such as the Board of Physicians or Board of Nursing rendering a decision following a hearing in a contested case.

The result of having no time period by which a Board must render a final appealable Order is no due process for the licensee.

The following is a real-life example of a case that was pending before the Maryland State Board of Dental Examiners (the "Dental Board").

On August 28, 2018 a Maryland licensed dentist who owned 21 offices in Maryland was summarily suspended for CDC and OSHA violations at two of the offices that he owned. The two offices were remediated by August 30, 2018 and there is no dispute that there were no longer any risks to the public at the two offices.

As a result of the summary suspension, an immediate show cause hearing was requested from the Dental Board and scheduled for October 3, 2018. On that same day, October 3, 2018, the four dentists who actually practiced at the two offices entered into Consent Agreements which reinstated their licenses and both locations were reopened to the public and deemed safe in subsequent inspections. As is referenced by the attached meeting minutes, show cause hearings before the Dental Board afford licensees no due process. *See Maryland State Board of Dental Examiners Open Session Minutes, Wednesday, August 1, 2018, attached hereto as **Exhibit 1**.*

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Even though the four dentists were reinstated and the offices reopened, the Dental Board maintained the P.C. owners' summary suspension and scheduled an evidentiary hearing for December 19, 2018.

The evidentiary hearing was concluded on January 16, 2019. By June 2019 – eight months later – the P.C. owner's license were still summarily suspended and the Dental Board had not rendered a Final Order.

On June 29, 2019, a federal due process lawsuit was filed against the Dental Board citing U.S. Supreme Court precedent that the failure to issue a Final Order violated the licensee's due process rights.

Three days later, on July 2, 2019, the Dental Board finally issued an Order lifting the suspension after being suspended for over ten months.

This undue delay by the Dental Board in issuing a Final Order had a significant impact on the P.C. owner. It caused a detriment in access to patient care in Maryland. Patient visits were down across all 21 practices. Numerous insurance companies terminated their participation with the P.C. owner, including all 21 office locations. Even a temporary loss of insurance impacts both the dentist and the patients.

House Bill 483 seeks to remedy this type of occurrence. It sets time periods under the Administrative Procedure Act for disposition of summary suspensions and for contested cases. I urge the Judiciary Committee for a favorable report on House Bill 483.

Very truly yours,

Gary Jones

Gary R. Jones

GRJ/mjr

Encl.



II. COMMITTEE REPORTS:

Legislative Committee Report Updates. Dr. Verma reported to the Board that there was a meeting attended with Secretary Robert Neall, Maryland Department of Health, Dr. Kim Lang and other staff members to discuss the initial upcoming legislative session and prepared to get started. The Committee also reviewed and discussed recommendations on the regulations of the Board's Show Cause Hearing process.

Dr. Jee explained and clarified the existing regulations on Show Cause Hearings. The process seems to have a misunderstanding that there is no resolution to sanctions with this process. The hearing is an opportunity for a licensee to come to the Board and be informed of the details why their license were sanctioned with a summarily suspension. The hearing does not aid in resolving the suspended license or any other sanctions against the license. The Board plans to advise licensees to skip the Show Cause Hearing and schedule a Case Resolution Committee (CRC) hearing to resolve the issue and allow the licensee to resume their practice earlier. The Board motion and voted on the Committee's recommendation to schedule CRCs instead of Show Cause hearings.

Motion to Approve: Dr. Verma
Responsible Party: Dr. Verma

Second: Not Required
Vote: 14-0-0

Anesthesia Committee Report - Letter Dr. Howard Katz. Dr. James Goldsmith reported from the Anesthesia Committee. He reported that the Committee has received a letter from Ms. M. Natalie McSherry with the Law Offices of Kramon & Graham, P.A. on behalf of Dr. Howard Katz. Dr. Katz has requested to speak to the Board on the request that was made in the letter. After Dr. Katz's presentation to the Board, the issue will go back to the Legislative Committee for review and discussion to make a recommendation to the full Board. Dr. Jee explained that the request involves a treating dentist and administering sedation dentist requirements to have an anesthesia permit holder related to the regulation COMAR 10.44.12.35A.

Anesthesia →

Dr. Katz spoke on the anesthesia regulations that places restrictions on anesthesia permit-holders access to mentally and physically disabled patients. The Board's regulations does not allow a licensee to administer anesthesia for a treating dentist without the treating dentist having an anesthesia permit. The regulations of the Board limits treatment of the patient unless the treating dentist have an anesthesia permit. Dr. Katz requested that the Board change the regulations to state instead of an "accredited facility" to a "State approved facility".

He stated that the amendment in the regulation would allow the public to have access for patients who are being neglected with no place to go; be provided general dentistry service to save their teeth. He would like to provide the dental services in his dental facility without the treating dentist who would need to qualify for an anesthesia permit. He recommended the following three requirements as an alternative to holding a permit in an approved facility without having to go to an accredited facility: basic life support training, advance cardiac life support training and a current course in airway management training.

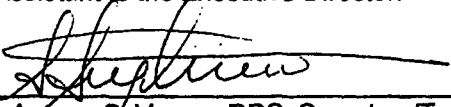
III. ISCELLANEOUS: (for information only)

Ms. Casper updated the Board on the Mission of Mercy, M.O.M. that was held July 27-28, 2018 in Waldorf, Maryland. There was two days of dental treatment and over 800 patients treated with dental care. It was a very successful event.

Mr. Gerber announced that on Monday, October 15, 2018 there will be a new Board member orientation. MSDA Chesapeake Dental Conference, Ocean City, MD, September 20-23, 2018, (registration opens June 1). Citizen Advocacy Center's annual meeting on Tuesday and Wednesday, October 16-17, 2018, at the Washington Plaza Hotel in Washington, DC.

There being no further business before the Maryland State Board of Dental Examiners, a motion for adjournment was made by Ms. Chester and seconded by Dr. DePaola. The Open Session was adjourned at 10:30 a.m. Minutes prepared by: Alexis McCamey, Administrative Assistant to the Executive Director.

Minutes Adopted: 11/21/18


Arpana S. Verma, DDS, Secretary/Treasurer

Open Session Minutes – August 1, 2018
Full Board Approval – September 5, 2018