



Board of Dental Examiners

Larry Hogan, Governor · Boyd K. Rutherford, Lt. Governor · Dennis R. Schrader, Secretary

Arpana S. Verma Board Chair – Francis X. McLaughlin, Jr., Executive Director

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2022 SESSION POSITION PAPER

BILL NO: House Bill 969

COMMITTEE: Health and Government Operations

POSITION: Oppose

TITLE: State Board of Dental Examiners – Membership, Training, and Disciplinary Processes - Revisions

BILL ANALYSIS: The bill alters the following provisions in the Dental Practice Act.

1. Board membership: Of the nine licensed dentists who serve on the Board of Dental Examiners (the Board), each of the business models used by dentists in the State must be represented. At least two must serve patients who receive dental services through the Maryland Medical Assistance Program. Of the three consumer members, to the extent practicable, one must be receiving, or have received, dental care through the Maryland Medical Assistance Program.

The Board opposes the provision which requires that each “business model” used by dentists in the State be represented on the Board. There are numerous business models such as corporate ownership, professional associations (PA), professional corporations, (PC), limited liability companies (LLC), sole proprietorship ownership, those in academia, and those who conduct research, etc. The nine members of the Board would be chosen solely on how they run a business or profession, rather than their dental expertise. The Board should seek the best dentists and dental hygienists who are available. All dentists from any background have an opportunity to apply for appointment to the Board. The Board welcomes providers with different specialty experience to assist with various cases. In addition, with regard to the requirement that at least two dentists serve patients who receive dental services through the Maryland Medical Assistance Program, the majority of the dentists who serve on the Board already serve Medicaid patients. With respect to a consumer member who may be receiving or who has received dental care through the Maryland Medical Assistance Program, there is no adult Medical Assistance currently in Maryland. Therefore, the Board would be required to request information as to whether an applicant received treatment as a child. Either way this would require the Board to request personal information that is inappropriate and would influence how the Board member is perceived.

2. Board nominations: The Board’s nomination process is deleted but the requirement that a certain number of names for each Board vacancy remains. The Board would be required to send notice of Board vacancies to “Any other professional dental organization that represents at least 25 licensed dentists” and “Any other dental hygienist organization that represents at least 25 licensed dental hygienists.”

The Board opposes the provision. Although the balloting process which requires the Board to hold an election through a third-party administrator at significant cost is deleted from the existing law, the requirement that there be a certain number of candidates for each Board vacancy remains. For example, it is required that for dentist vacancies, “the number of names on the list [submitted to the Governor] for one vacancy shall be four names, for two vacancies at least three names for each vacancy, and for three or more vacancies at least two names for each vacancy.” For dental hygienists, “the number of names on the list shall be at least four times the number of vacancies.” It is quite challenging to recruit quality Board members, especially dental hygiene members. The requirement places an unnecessary burden on the recruitment process.

3. Board member training: Board members are required to undertake one hour each year of documented training on the powers, duties, and procedures, including complaint and hearing procedures of the Board by an attorney, chosen in part in consultation with the Maryland State Bar Association.

The Board opposes the provision. Members of all of the state’s health occupations boards are required to undergo training soon after their appointments by attorneys in the Office of the Attorney General. The additional training would be redundant and is not a requirement for members of any other health occupations board in Maryland.

4. Final Decisions on Actions: The Board is required to issue a final decision on an action within 120 days after the final day of a hearing. If it does not, the individual who is the subject of the action may provide written notice to the Board. If the Board does not issue a final decision within 30 days, the final decision is deemed in favor of the respondent. It is not a requirement of any other health occupations board in the State.

The Board opposes the provision. If the Board believes that an individual (a respondent) has violated one or more of the disciplinary provisions set forth in the Maryland Dentistry Act, the Board’s disciplinary process formally begins with the issuance of a charging document to that respondent. If the respondent has requested a hearing on those charges and if the parties have not been able to agree on an equitable settlement of the matter, the Board can either (1) hold the hearing itself; or (2) refer the matter to the Office of Administrative Hearings (OAH) for it to hold a hearing and issue a proposed decision.

If the hearing is conducted by the Board, at the conclusion of that hearing, the Board deliberates and votes on a disposition. The matter is then forwarded to the Board’s Assistant Attorney General (AAG) for the drafting of the Board’s final order. When the AAG has concluded drafting the final order, that draft final order is once again reviewed by the Board to ensure that the order comports with the Board’s position and intended disposition. The Board has little to no control over how long it takes for the AAG to draft the final order.

If the matter had been referred to OAH, on receipt of a proposed order from OAH, the parties may file exceptions to that proposed decision. In that event, an exceptions hearing is held before the Board. At the conclusion of the exceptions hearing, the Board deliberates and votes on whether to accept OAH’s proposed decision as written or to modify it. Either way, after those deliberations and the Board’s vote, the matter is referred to the Board’s AAG for the drafting of the Board’s final order. When the AAG has concluded drafting the final order, that draft final

order is once again reviewed by the Board to ensure that the order comports with the Board's position and intended disposition. Again, the Board has little to no control over how long it takes for the AAG to draft the final order.

In either scenario, if there is a risk that the Board's decision may affect competition generally, the Board must refer the draft order to the OAH for antitrust review. Specifically, under Md. Code Ann., Health Occ. § 1-203(c), the Board may refer a proposed decision after conducting its own hearings to OAH for review to "prevent unreasonable anticompetitive actions by the board or commission; and [d]etermine whether the actions of the board or commission further a clearly articulated State policy to displace competition in the regulated market." The Board has no control over the time that it might take OAH to conduct its antitrust review.

Therefore, it is the Board's position that any bill that imposes disciplinary timeframes upon the Board or the OAH once a case is concluded will not be in the public's best interest and may serve as an incentive to purposely postpone and hinder Board action. For these reasons, post-hearing time constraints are unheard of in any area of law, which includes administrative, civil, and criminal law.

5. Summary suspension: The Board may order the summary suspension of a license if the Board determines that there is a substantial likelihood that a licensee poses a risk of harm to the public health, safety, or welfare. The bill also provides for the issuance of a notice of intent to summarily suspend a license before executing an order of summary suspension. In addition, the bill provides that if the Board orders a summary suspension before a show cause hearing, the Board may "rescind" the order for summary suspension.

The Board opposes the provisions in part: The provisions currently exist in the Board's regulations found in the Code of Maryland Regulations (COMAR) 10.44.07.22 - .27. In addition, on page 7, beginning on line 9, the bill states:

(2) IF THE BOARD ORDERS A SUMMARY SUSPENSION BEFORE A SHOW CAUSE HEARING UNDER SUBSECTION (B)(2) OF THIS SECTION, AT THE CONCLUSION OF A SUBSEQUENT HEARING, THE BOARD MAY VOTE TO:

(I) (AFFIRM ITS ORDER OF SUMMARY SUSPENSION;
(II) RESCIND THE ORDER FOR SUMMARY SUSPENSION; (Emphasis added)
(III) ENTER INTO AN ORDER AGREED UPON BY THE PARTIES; OR
(IV) ENTER INTO ANY INTERIM ORDER WARRANTED BY THE
CIRCUMSTANCES OF THE CASE, INCLUDING AN ORDER TO STAY THE SUMMARY
SUSPENSION SUBJECT TO SPECIFIED CONDITIONS.

The Board would need definitional clarity for the word "RESCIND" Like other Maryland health occupations boards, the Dental Board will either lift or terminate its orders. The word "rescind" may be interpreted to mean that the Board must treat an order as never having existed or having to expunge the order. Again, no other health occupations board in Maryland treats an order as though it never existed.

For these reasons the Dental Board requests that HB 969 receive an unfavorable report.

I hope that this information is helpful. If you would like to discuss this further, please contact Dr. Arpana Verma, Board President at 240-498-8159, asverma93@gmail.com, or Dr. Edwin Morris, the Board's Legislative Committee Chair at 410-218-4203. In addition, the Board's Executive Director, Mr. Frank McLaughlin may be reached at 443-878-5253, frank.mclaughlin@maryland.gov.

The opinion of the Maryland State Board of Dental Examiners expressed in this Oppose Position does not necessarily reflect that of the Department of Health or the Administration.