The Honorable Joan Carter Conway  
Chair  
Education, Health, and Environmental Affairs Committee  
Miller Senate Office Building, 2 West Wing  
11 Bladen Street  
Annapolis, Maryland 21401-1991

The Honorable Peter A. Hammen  
Chair  
Health and Government Operations Committee  
House Office Building, Room 241  
6 Bladen Street  
Annapolis, Maryland 21401-1991

Dear Chairman Carter-Conway and Chairman Hammen:

The Maryland State Board of Dental Examiners ("the board") is required to submit a report under Section 2, Senate Bill 325, Chapter 542, Laws of Maryland 2010, and in accordance with §2-1246 of the State Government Article, to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Affairs Committee on the implementation of the recommendations of the Department of Legislative Services contained in the sunset evaluation report dated October 2009. The board’s report follows.

**Sunset Review October 2009**

**Recommendation 1:** Statute should be amended to allow the entire nomination process to be conducted electronically. This would allow board staff to send an e-mail alert to licensees and certificate holders, place the nomination form online, and retain the authority to conduct the voting process online, thus enhancing participation in the selection of new board members.

**Response:** The recommendation has been implemented. Ann. Code of Maryland, Health Occupations Article, (HO) §4-202, presently provides that the board shall notify its licensees of board vacancies by electronic or regular mail. The board notifies its licensees by both e-mail and regular mail since 8% to 10% of licensees...
either do not maintain an e-mail address, or have chosen not to provide the board with the address.

Under the present statute there is no longer in-person balloting. Licensees may either cast ballots on-line or they may request a paper ballot. The results of the elections are then forwarded to the Governor.

The board has submitted proposed amendments for consideration in the upcoming 2012 legislative session that, in part, delete the requirement that the board conduct annual balloting. The board would continue to send notice of board vacancies to all licensed dentists and dental hygienists. Anyone seeking board appointment would continue to file a nomination petition form with the required number of petitioners as they have done for the previous 3 years. Then, in lieu of holding an election, the board would forward the names of the qualified candidates directly to the Governor. There would be no election since the election results have not been used in the Governor’s selection process, and therefore serves no useful purpose. The Board would not itself nominate candidates. Only licensed dentists and dental hygienists would nominate candidates.

Recommendation 2: The board should amend regulations on the recusal policy to include the dental compliance officer.

Response: The recommendation has been implemented. Amendments to COMAR 10.44.07.30, which now include the dental compliance officer in the board’s recusal policy, have previously been forwarded to the Department for approval.

Recommendation 3: Statute should be amended to clarify that the Dental Hygienist Well-being Committee provides assistance to dental radiation technologists and dental assistants in addition to dental hygienists.

Response: The recommendation has been implemented. Senate Bill 325, Chapter 542, Laws of Maryland 2010, effective June 1, 2010, amended HO §4-508 to provide that the Dental Hygienist Well-Being Committee provides assistance to any dental hygienist, dental radiation technologist, or dental assistant in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, or mental condition.

Recommendation 4: Statute should be amended to remove the term "rehabilitation" and replace it with "well-being" for both committees to make it consistent with regulations and practice.

Response: The recommendation has been implemented. Senate Bill 325, Chapter 542, Laws of Maryland 2010, effective June 1, 2010, amended HO §§ 4-501.1 and 4-508 and substituted “Dental Well-Being Committee” for “Dentist Rehabilitation Committee” and “Dental Hygienist-Well Being Committee” for “Dental Hygienist Rehabilitation Committee.”
Recommendation 5: The staff should carry out all final actions taken by the board. Thus, board staff should send the 39 respondents the sanctioning letters that the board had previously voted to send. These letters should be sent by December 1, 2010.

Response: The board carried out the final recommendation of the board on the 39 cases at issue. After the board initially voted to send advisory letters or letters of education, the board’s Backlog Work Group reviewed these cases and with board approval, closed them. Therefore the board’s final decision on these old cases which date back several years, was to close them. Accordingly, the board issued closure letters and not advisory or educational letters to the respondents.

Recommendation 6: The board should institute a policy that all letters of education and advisory letters be completed within 30 to 45 days following the board’s final vote.

Response: The board has reduced the timeline for completing letters of education and advisory letters. These letters are drafted to address very specific problems and infractions. They require a review of each subpoenaed patient record in order to appropriately advise the respondent regarding identified deficiencies. Board counsel reviews each letter for legal sufficiency prior to signature by a board officer. Due to the limitations of the computer tracking system, these case files are housed separately from other open case files to more readily identify them. The board will be better able to implement these letters within an ideal time frame when fully staffed and when an adequate tracking mechanism is in place.

Recommendation 7: The prosecuting Office of the Attorney General should send a representative to serve as an advisor in all Discipline Review Committee meetings.

Response: A prosecutor from the Office of the Attorney General has been assigned to the board.

Recommendation 8: Statute should be amended to include the failure to comply with an investigation of BDE as grounds for discipline of dentists and dental hygienists.

Response: The recommendation has been implemented. Senate Bill 325, Chapter 542, Laws of Maryland 2010, effective June 1, 2010, amended HO §4-315 to make it a violation of the dental laws if a dentist or a dental hygienist “Willfully and without legal justification, fails to cooperate with a lawful investigation conducted by the Board.”

Recommendation 9: The board should consider ways to secure expert witnesses more efficiently, such as keeping a list of professionals that have served as witnesses in the past, soliciting the help of universities and professional organizations, offering continuing education credits to those willing to serve, contracting with an independent organization that can provide the board with an expert witness on an as-needed basis, or modifying its compensation rules as necessary to accomplish its purpose.

Response: The board has been successful in its quest to secure expert witnesses.
In April 2010, the executive director and dental compliance officer met with a third-party monitoring company to discuss their services. The board’s Summer 2010 Newsletter contained an article soliciting board experts, and in July 2011, the board sent a mailing to Maryland dentists notifying them of the availability of board expert and practice reviewer positions. Additionally, the board includes information regarding the need for board experts in many of their outreach efforts. Because of these actions, the board has numerous, interested experts.

Parenthetically the board respectfully disagrees that it should offer continuing education credits in exchange for expert testimony. Such work does not fall within the traditional definition of continuing education and may further be used to question the credibility and motives for a dentist who testifies for the board at a contested hearing.

Recommendation 10: The board should meet its obligation to adopt new, specified regulations for the rules of procedure for the disciplinary process, collect race and ethnicity information on all licensees during the application process, and meet the law’s data manipulation requirements.

Response: New regulations and amendments to COMAR 10.44.07 Rules of Procedure for the Disciplinary Process have been approved by the Board and forwarded to the Department for approval. In addition, for over 2 years the board has been collecting race and ethnicity data for all licensees on its initial application and renewal forms. Due to limitations of the present computer operating system, the Board utilizes a “Compliance Tracking” spreadsheet that is independent of the database to track the status of cases. Presently, the software does not analyze this complaint data. The Board is in the process of seeking bids to replace or improve the present computer operating system.

Recommendation 11: After other administrative issues are addressed, the board should explore the costs and benefits of switching to a rolling year-round renewal cycle for licenses and certificates.

Response: The board has explored the possibility of switching to a rolling-year round renewal cycle. However it believes that it is much more efficient for licensees to renew once a year on or before June 30th rather than throughout the year. The Board mails reminders before each licensure period on or about May 30th to remind licensees that it is time to renew their license. The Board believes that posting these reminders is more efficient than year round mailings to licensees who would have differing license expiration and late renewal dates.

Recommendation 12: Board staff should ensure that the data entered into License 2000 is accurate and that it matches what is recorded in the paper file.

Response: A recent audit of 18 randomly selected case files indicated a 94.5% correlation between the data in the paper file and the data in the License 2000 operating system. Only one case file was not accurately updated. A contributing factor may have been the new staff member’s lack of familiarity with the system. It is the Board’s goal to accurately update information in all stages of all cases.
**Recommendation 13:** Board staff should ensure that, moving forward, hard copy files have a consistent organizational structure to ensure that key documents can be located.

**Response:** Beginning in Fiscal Year 2009 all case files have maintained a consistent organizational structure so that key documents may be located. In addition, a checklist has been added to each file to aid in ensuring proper organization.

**Recommendation 14:** The executive director should institute a policy for regular staff performance evaluations for all staff members.

**Response:** All supervisors and staff members are given timely performance evaluations every 6 months. In addition, performance evaluations are provided to new probationary staff after their first third and sixth months of employment.

**Recommendation 15:** The executive director should institute a policy to cross train staff members, both within and across units, so that key functions continue to be accomplished in the event of a sudden departure or temporary absence of a particular staff member. Board staff should also develop procedure manuals that explain the responsibilities of each unit – licensing, administration, and compliance – and the steps needed to accomplish each responsibility.

**Response:** The Office Procedure Manual is maintained by the Administration Unit. The manual outlines procedures for preparing and processing information required for day to day tasks, and contains forms utilized by the Administration, Licensing and Compliance Unit. The information is updated as necessary. The periodic reviewing process requires communication by the three units to ensure that the most recent information is maintained. Further, many staff have been cross trained so that they can assume other duties.

**Recommendation 16:** The executive director should reassess the current distribution of staff to determine if the proper balance exists between the functions of the office. Staff resources should be distributed according to the workload of each function.

**Response:** The staff’s workload was assessed and the following changes were made:
- An IT contractual position was developed. This person will ease the staff workload by analyzing data, making changes to the Board’s website and helping offset some of the problems with License 2000.
- Based upon their skill, some staff were assigned different duties.
- Several staff position descriptions changed to accurately reflect current duties.

**Recommendation 17:** Board staff should upload a list of public orders to the web site at least quarterly.

**Response:** The recommendation has been implemented. Public orders are now posted on the Board’s website within two business days.
**Recommendation 18:** Board staff should ensure that all forms are updated regularly.

**Response:** Board forms are updated regularly to ensure that they reflect statutory and regulatory changes.

**Recommendation 19:** Board staff should publish the newsletter at least twice a year.

**Response:** As a cost saving measure the board now publishes its newsletter online. The Board will strive to publish the newsletter bi-annually. However this may prove to be a difficult task. The newsletter, often a 10-12 page document, is labor intensive with board members and staff spending a considerable amount of time composing and editing each issue. Notwithstanding, the board will continue to strive to publish the newsletter at least twice a year.

The board communicates to its licensees in other significant ways. The board sends periodic e-mail notices, letters, and post cards of significant news. The Board’s website is updated regularly whenever the board wishes to communicate with its licensees or the public.

**Recommendation 20:** The board should continue to reduce its fund balance to a more reasonable level, while being cognizant of future expenses necessitated by issuance of new permits and upgrades to software systems in order not to overcorrect and result in having an inadequate fund balance.

**Response:** In 2008 the board decreased its revenue by lowering licensure renewal fees. Concurrently, the Inspector General’s 2007 Audit and the October 2009 Sunset Review recommended that the board increase staffing to meet the board’s increasing needs. Because of the combination of increased expenditures and decreased revenue, the board’s fund balance became unacceptably low. For Fiscal Year 2012, the board projected a deficit. As a result, license renewal fees were increased in FY11, helping to insure that the board’s fund balance will remain within acceptable levels.

**Recommendation 21:** The board should consult with the administrators of the License 2000 system to determine whether the system can be upgraded to perform specified tasks described in the report. The board should also explore other licensing and compliance tracking systems that may better assist the board in meeting its obligations if modifications to License 2000 prove to be too costly or are unable to satisfy the board’s needs.

**Response:** The board believes that its current tracking system cannot effectively meet its requirements. Consequently, after discussion and review, the board mandated a review of tracking systems available in the market. As a result, the board has spoken to numerous providers, including System Automation (License 2000), to determine what the board can expect from an upgraded licensing and compliance tracking system. After a discussion with providers, the board wrote a Request For Proposal which is out for bid. The board will carefully review all the bids to determine which system best suits its needs.
**Recommendation 22:** Legislation should be enacted to extend the termination date for the board by 10 years to July 1, 2021. Additionally, uncodified language should be adopted to require the board to report, by October 1, 2011, to the Senate Education, Health, and Environmental Affairs and House Health and Government Operations Committees on the implementation status of nonstatutory recommendations made in this report. [October 2009 Sunset Review].

**Response:** The recommendation has been implemented. Senate Bill 325, Chapter 542, Laws of Maryland 2010, effective June 1, 2010, extended the termination date for the board to July 1, 2021. In addition the chapter requires the board to report, by October 1, 2011, to the Senate Education, Health and Environmental Affairs and House Health and Government Operations Committees on the implementation status of recommendations of the Department of Legislative Services contained in the sunset evaluation report dated October 2009. The board notes that this report responds to both statutory and nonstatutory recommendations as required by Senate Bill 325.

Sincerely,

T. Earl Flanagan, Jr., D.D.S.
President
Maryland State Board of Dental Examiners

cc: Joshua Sharfstein, M.D.
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