Sunset Review: Evaluation of the State Board of Dental Examiners

Department of Legislative Services
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Office of Policy Analysis
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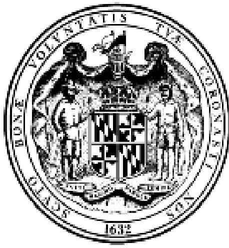

DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Karl S. Aro
Executive Director

Warren G. Deschenaux
Director

October 30, 2009

The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
Honorable Members of the General Assembly

Ladies and Gentlemen:

The Department of Legislative Services (DLS) has completed its evaluation of the State Board of Dental Examiners as required by the Maryland Program Evaluation Act. This evaluation process is more commonly known as "sunset review" because the agencies subject to evaluation are usually subject to termination; typically, legislative action must be taken to reauthorize them. This report was prepared to assist the committees designated to review the board – the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee – in making their recommendations to the full General Assembly. The board is scheduled to terminate on July 1, 2011.

DLS finds that there is a continued need for regulation of the dental industry and that the board generally complies with its statutory and regulatory mandate. In the midst of scrutiny over the past two years from both the Legislative and Executive Branches, the board has taken proactive steps to address many problems. DLS recognizes the positive changes implemented to date; however, many areas could benefit from additional improvements, particularly the complaint resolution and disciplinary processes.

This evaluation identified specific issues that appear to delay the complaint resolution process. Consequently, we make a series of recommendations intended to enhance the board's efficiency and accountability to the public, including recommending that board staff carry out final actions taken by the board in a timely manner, that the board adopt regulations for the rules of procedure for the disciplinary process, that the board collect race and ethnicity information on *all* licensees during the application process, and that the board meet the data manipulation requirements mandated under statute.

To further improve board operations, we also make recommendations in the areas of board nominations, recusal policy, the well-being committees, personnel and staffing issues, and the availability of information to licensees and the public. We recommend that the board pursue

a past sunset evaluation recommendation to implement a rolling licensure renewal period; continue to reduce its fund balance to a more reasonable level, while being cognizant of future expenses; and improve its software system for tracking licensees and disciplinary cases. In total, DLS offers 22 recommendations, including recommending that the board's termination date be extended by 10 years to July 1, 2021. Draft legislation to implement the recommended statutory changes is included as an appendix to the report.

We would like to acknowledge the cooperation and assistance provided by the board, its staff, and many licensees and stakeholders throughout the review process. The board was provided a draft copy of the report for factual review and comment prior to its publication; its written comments are included as an appendix to this report.

Sincerely,

Warren G. Deschenaux
Director

WGD/JBC/mlm

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Executive Summary

Pursuant to the Maryland Program Evaluation Act, the Department of Legislative Services (DLS) has evaluated the State Board of Dental Examiners (BDE), which is scheduled to terminate July 1, 2011. DLS finds that there is a continued need for regulation of the dental industry by the State but has identified areas in which the board could strengthen its authority and improve its service to dental professionals and the public.

In the midst of scrutiny over the past two years from both the Legislative and Executive Branches, BDE has taken proactive steps to address problems, including improving its licensing and complaint resolution processes. DLS recognizes the positive changes BDE has implemented thus far; however, many areas in need of improvement still exist, particularly as they relate to fulfilling requirements involving the disciplinary process. The findings and 21 recommendations of this evaluation are summarized below.

While BDE generally complies with its statutory and regulatory mandate, DLS found instances where BDE's statute and regulations could be amended to facilitate operations. For instance, the new nomination process resulting from 2008 legislation has proved cumbersome to implement. Also, the recusal policy for board members and investigators does not apply to the dental compliance officer. Furthermore, existing statute is unclear as to which entity should provide assistance to dental radiation technologists and dental assistants in need of rehabilitation services; it is also inconsistent with the terminology in regulations and practice used to reference the committees. DLS makes the following recommendations based on these findings:

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.

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

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.

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.

The board has taken steps to expedite its complaint resolution process. However, DLS identified other areas where the board could improve efficiency and ensure accountability to the public with respect to

the complaint resolution process. For example, DLS found that board staff failed to carry out board-approved sanctions in some cases. In addition, specific issues delay the complaint resolution process, including difficulty securing expert witnesses, the absence of the "failure to comply with an investigation of the board" as a grounds for discipline for dentists or dental hygienists, and failure of the board to revise disciplinary guidelines to comply with recent legislation. DLS makes the following recommendations concerning the complaint resolution and disciplinary processes:

Recommendation 5: Board 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.

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.

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

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.

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.

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.

While BDE has implemented some administrative changes that have improved board operations, DLS found that several areas in need of improvement remain. Although recommended in the 2004 sunset evaluation, the board has not yet pursued changing its licensure renewal period to a rolling renewal process to create a more efficient system. Furthermore, chronic turnover in the executive director position has led to deficiencies in staff evaluations, cross training, an equitable distribution of staff resources, and accurate recordkeeping. DLS offers the following recommendations to further improve board operations:

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.

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.

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.

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

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.

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.

The board provides a valuable service to the public and the professionals it regulates and generally fulfills its obligation successfully. However, the board could improve the availability of information for licensees and the public by implementing the following recommendations:

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

Recommendation 18: Board staff should ensure that all forms are updated regularly.

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

The 2004 sunset evaluation found that the board's fund balance was excessive and recommended spending down the balance to come into line with the Department of Health and Mental Hygiene's recommended fund balance target of 20% of annual expenditures. BDE has proactively taken steps to lower its annual fund balance. However, future costs could push expenditures beyond the revenue that sustains the board. Thus, DLS makes the following recommendation:

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.

BDE's software system, License 2000 tracks licensees regulated by the board as well as disciplinary cases. Unfortunately, BDE has experienced many problems with the system since its purchase in 2000, particularly as it relates to the tracking of complaints against regulated professionals. Both the 2004 full sunset evaluation and the 2008 preliminary evaluation of BDE cited ongoing problems with License 2000 – yet

the board has not updated the system or purchased a new one. DLS therefore makes the following recommendation:

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.

The board is highly cognizant that it has been an object of great criticism in recent years and has taken many steps to address concerns raised. With a highly capable administrative staff and new executive director, DLS believes that prospects for improving board operations are generally good. The compliance unit in particular has made a number of recent administrative changes that should improve the complaint resolution process. However, these and other changes recommended by DLS will take time to implement and yield results.

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.

Chapter 1. Introduction

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-400 *et seq.* of the State Government Article), which establishes a process also known as "sunset review." Enacted in 1978, the Maryland Program Evaluation Act requires the Department of Legislative Services (DLS) to periodically evaluate certain State agencies according to a statutory schedule. Most agencies subject to review are automatically terminated unless legislative action is taken to reauthorize them. The State Board of Dental Examiners (BDE) is one of about 70 entities currently subject to evaluation. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency must be enacted. Otherwise, a full evaluation of the organization is completed the subsequent year.

The State Board of Dental Examiners last underwent a full evaluation as part of sunset review in 2004. The 2004 full evaluation determined that the board and its staff had made significant progress in implementing recommendations of the 1998 full sunset evaluation. As a result, DLS recommended an extension of the board's termination date to July 1, 2011. Chapter 373 of 2005 extended the termination date to July 1, 2011, and required the board to report on its progress in implementing recommendations of the 2004 evaluation.

In advance of the July 1, 2011 termination date, a preliminary sunset evaluation was conducted to assist LPC in deciding whether to waive BDE from a full evaluation. The 2008 preliminary sunset evaluation determined that BDE is necessary and beneficial to protecting Maryland citizens but identified issues concerning BDE's complaint resolution process, annual fund balance, and customer service. As a result, DLS recommended that a full sunset evaluation be conducted before the board's authority is extended.

The Practice of Dentistry in Maryland

The State Board of Dental Examiners' mission is to protect the public's health through the licensing and regulation of the dental industry. Dental care is typically provided by dentists, dental hygienists, and dental assistants. The board is authorized to regulate all of these practitioners as well as the practice of dentistry itself. In fiscal 2009, almost 18,000 licenses, certificates, and permits were held by dentists, dental hygienists, dental radiation technologists, and other dental professionals. **Exhibit 1.1** shows the distribution of licensees by dental profession category.

Exhibit 1.1
Regulated Dental Professionals
Fiscal 2006-2009

	FY 2006	FY 2007	FY 2008	FY 2009
Dentists	5,205	5,392	5,637	5,668
Dental Hygienists	2,819	2,916	3,068	3,134
Dental Radiation Technologists	4,595	4,802	5,285	5,381
Dental Assistants	3,045	3,268	3,527	3,755
Total	**15,664**	**16,378**	**17,517**	**17,938**

Note: Dentists include dental teachers, limited dental licensees, volunteer licensees, and retired volunteer licensees.

Source: State Board of Dental Examiners

Dentists are the proprietors of a dental practice who diagnose, treat, and perform dental services both within and between the teeth. Dentists typically hold a Doctor of Dental Surgery (DDS) or Doctor of Dental Medicine (DMD) degree from a four-year, post-baccalaureate dental school.

Dental hygienists clean and polish teeth and perform preliminary dental examinations and other functions. Dental hygienists have, at a minimum, graduated from a two-year dental hygiene school. Recent legislation expands the scope of practice for dental hygienists by allowing hygienists to work under less restrictive supervision settings and allowing the practice of two additional functions: manual curettage in conjunction with scaling and root planing and administering local anesthesia. A more detailed discussion of the regulation of dental hygienists in Maryland is featured in **Chapter 2** of this document.

Typically, both dentists and dental hygienists must pass the Northeast Regional Board (NERB) examinations as well as a Maryland jurisprudence examination offered by the board in order to qualify for licensure. Dentists and dental hygienists hold licenses valid for two years.

Dental assistants are employed by dentists to assist in the performance of dental services within the mouth under the direct supervision of the dentists. Dental assistants are not licensed by the board (unless they are certified dental radiation technologists); however, the board issues a Maryland certification card to dental assistants who successfully pass the Dental Assisting National Board Maryland Only Examination. This card is issued one time only, upon passage of the examination, and is not subject to renewal.

Dental radiation technologists (typically dental assistants with additional training) are certified by the board to perform the placement or exposure of dental radiographs. Dental radiation technologists must take a board-approved radiology course and pass a radiology examination. Radiation technologists, like dentists and dental hygienists, must renew every two years.

History and Current Structure of the State Board of Dental Examiners

In 1839 two prominent Baltimore dental practitioners, Dr. Horace H. Hayden and Dr. Chapin A. Harris, applied for a charter from the Maryland General Assembly to establish an independent dental school that would award a new degree, the Doctor of Dental Surgery. The General Assembly granted the charter in 1840, establishing the first dental school in the world, the Baltimore College of Dental Surgery (now the Dental School of the University of Maryland).

More than four decades later, the General Assembly passed legislation to formally regulate the practice of dentistry. Legislation in 1884 established the State Board of Dental Examiners to:

- limit the practice of dentistry to those who are competent to engage in it;
- maintain a registry of certified practitioners;
- provide reasonable opportunity to qualified persons who wish to practice in Maryland;
- support an acceptable standard of dental practice; and
- protect the public interest.

In 1947 the board's regulatory authority was expanded to include dental hygienists. In keeping with its original charges, the board currently regulates dentists, dental hygienists, dental assistants, dental radiation technologists, and the practice of dentistry and dental hygiene in Maryland.

Along with 17 other health occupations boards, the Board of Dental Examiners operates under the Office of the Secretary of the Department of Health and Mental Hygiene (DHMH). Although DHMH provides administrative and policy support, almost all day-to-day activities are managed by the board and its staff. Board staff consists of a total of 16.0 permanent positions and 1.0 contractual position. Staff positions include an executive director, a dental compliance officer, a licensing coordinator, three investigators, and office support personnel.

The mission of the board is to protect the citizens of Maryland and to promote quality health care in the field of dentistry and dental hygiene by:

- licensing dentists and dental hygienists and certifying dental radiation technologists;

- setting standards for the practice of dentistry through regulations and proposed legislation; and
- receiving and investigating complaints from the public regarding the practice of dentistry.

Board Member Composition

BDE is composed of 16 members, of whom 9 are licensed dentists, 4 are licensed dental hygienists, and 3 are consumers. Board members serve staggered terms of four years and may not be appointed for more than two consecutive terms. However, members may remain on the board until a replacement is appointed. The board currently operates with a president, president-elect, and a secretary-treasurer. **Appendix 1** shows the composition of dental boards across the country, including whether or not a dental hygienist serves on the board.

The board meets on the first and third Wednesday of each month and accomplishes the bulk of its work through 15 committees: Anesthesia Evaluation, Applications, Bloodborne Pathogen, Bylaws, Case Management, Case Resolution Conference, Dental Hygiene, Discipline Review, Emergency Response, Legislative Action, Nominations, Scope of Practice, Triage, Executive, and Rules and Regulations. Committee composition is largely prescribed in the board bylaws, with appointments made by the president. Additionally, ad hoc committees are formed as issues arise and currently include an ad hoc committee to address the board's complaint backlog and one to explore the licensing and complaint software system.

The Dental Well-being Committee (also known as the Dental Rehabilitation Committee) is not composed of board members but is an important part of the board's complaint resolution process in some cases. It is a component of the Maryland State Dental Association (MSDA) and provides assistance to any provider of dental care in need of treatment and rehabilitation for alcoholism; drug abuse; chemical dependency; or other physical, emotional, or mental condition. A similar committee is run for dental hygienists by the Maryland Dental Hygienists' Association (MDHA). The board provides funding for both well-being committees for all licensees it refers.

2009 Sunset Review

Section 8-408 of the State Government Article sets out the requirements of a sunset evaluation report including issues to be addressed such as the study of the accountability, efficiency, and effectiveness of agency operations and finances. This report fulfills DLS' obligation to provide a comprehensive review of BDE to assist the General Assembly in determining an appropriate termination date for the board.

Issues

Rather than focus on whether there is a continued need for State regulation or involvement, this evaluation focuses on whether the board complies with statutory policy objectives. The full evaluation explores issues that were raised in previous sunset evaluations, as well as a 2007 DHMH Office of the Inspector General (OIG) report which found inconsistencies in the way in which the board imposed disciplinary sanctions. DLS notes that it did not review the data on which the OIG based its findings. Therefore, this report does not confirm or contest the findings contained in that report. The specific issues addressed in this report include:

- the timeliness of the licensure – including the addition of online renewal – and complaint processes;
- the effectiveness of the License 2000 software system to accurately capture licensees and track the lifecycle of disciplinary cases;
- the collection of racial and ethnic data on licensees, in particular individuals disciplined by the board;
- management of the board's fund balance; and
- consumer and licensee access to the board and related information through the board phone system and web site.

Research Activities

DLS utilized several standard research activities to complete the full evaluation of the board.

- **Literature and Document Reviews –** DLS reviewed several sources of literature on the regulation and the practice of dentistry, including but not limited to the National Conference of State Legislatures (NCSL); literature from pertinent State and national professional associations, such as the American Dental Hygienists' Association and the American Association of Dental Examiners; the Annotated Code of Maryland; the Code of Maryland Regulations (COMAR); internal board documents such as administrative policies, annual reports, and board minutes; other evaluations of the organization and management of the board; complaint and licensing files; and the board's financial records.

- **Structured Interviews –** Numerous structured interviews were conducted to supplement the literature and data review of the board. All members of BDE, board staff, officials from DHMH, as well as representatives from MDHA, MSDA, and the Maryland Dental Society were interviewed for this report. These interviews focused on staff

responsibilities, workload, licensure processes, disciplinary procedures, customer service, resources available on the board web site, the board's relationship with DHMH staff and other boards, and its relationship with professional associations. Responses are not quoted or included as an appendix to this report but were used to identify potential problems with board management and operations, the administrative process, organizational structure, and statutory authority.

- **Site Visits/Observation** – DLS also attended semimonthly meetings of the board, including Triage Committee meetings, Discipline Review Committee meetings, and case resolution conferences to gain a better understanding of the issues confronting the board and the disciplinary process.

- **File Review** – DLS conducted a file review of the board's licensing and complaint files to better understand how information is organized and tracked. The file review included reviewing 30 hard copy case files as well as file information included in License 2000.

Report Organization

Chapter 1 of this report is a review of the organization and history of BDE. **Chapter 2** explains statutory and regulatory issues facing the board including recent legislative changes and the regulation of dental hygienists. **Chapter 3** describes steps that the board has taken to address past DHMH reports and legislative requirements. **Chapter 4** outlines issues related to the complaint resolution process. **Chapter 5** addresses administrative issues including the licensing process, board meetings, the annual budget of the board, staff, file maintenance, and customer service. **Chapter 6** describes issues surrounding License 2000 since this software system has been a chronic problem for the board and impedes it from fulfilling certain statutory requirements. **Chapter 7** summarizes and concludes the report.

As supplements to the report, five appendices are included. **Appendix 1** displays the composition of dental boards across the country, including whether or not a dental hygienist serves on the board. **Appendix 2** is a list of the 24 recommendations submitted by the Task Force on the Discipline of Health Care Professionals and Improved Patient Care for implementation by health occupations boards. **Appendix 3** lists 29 states identified by the American Dental Hygienists' Association as allowing direct access to dental hygienists (*i.e.,* a dental hygienist can initiate treatment without the specific authorization and/or presence of a dentist). **Appendix 4** contains draft legislation to implement the statutory recommendations contained in this report. The State Board of Dental Examiners reviewed a draft of this report and provided the written comments included as **Appendix 5**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect this published version of the report.

Chapter 2. Statutory and Regulatory Issues

Legislative Changes Since the 2004 Sunset Evaluation

Since the full sunset evaluation of the State Board of Dental Examiners (BDE) in 2004, several statutory changes, shown in **Exhibit 2.1,** have affected board operations. Three of those statutory changes also affected the practice of dental hygiene, which is discussed later in this chapter.

One significant change occurred through Chapter 373 of 2005, which, in addition to extending the termination date of the board to July 1, 2011, added another licensed dental hygienist to the board membership. As noted in **Chapter 1**, four licensed dental hygienists now serve on the board.

Chapters 211 and 212 of 2008

As a result of concerns raised during the 2007 session, the Governor directed the Department of Health and Mental Hygiene's (DHMH) Office of the Inspector General (OIG) to audit BDE disciplinary records to determine whether any bias or unfairness existed in the disciplinary process and sanctioning outcomes produced by the board for the period of January 1, 2002, through December 31, 2006. During its review, OIG found inconsistencies with the way in which sanctions were imposed across racial lines, staffing shortages that contributed to complaint processing delays, software inefficiencies that limited proper documentation of the life cycles of cases, as well as operational challenges that impeded the disciplinary process.

Of the findings produced by OIG's report, the most concerning pertained to allegations of racial and ethnic discrimination in the complaint resolution process. Specifically, the report concluded "that either (1) there is inequality in the severity of the allegations by race or (2) there is inequality in the sanctioning process by race." To address this issue, the OIG report recommended that the board collect race and ethnicity data on all licensee applications, develop a concise tracking system that has standard definitions and written guidelines to be applied to all cases, and be able to manipulate compliance data with a software system to analyze trends.

Exhibit 2.1

Major Legislative Changes Since the 2004 Sunset Evaluation

Year	Chapter	Change
2005	373	Extends the termination date of the board from July 1, 2006, to July 1, 2011. Adds another licensed dental hygienist to board membership. Requires the board to report on progress in implementing recommendations in the 2004 sunset evaluation report.
2006	469	Alters the requirements for limited licenses to practice dentistry, examinations, teacher's licenses, and hearing notifications, as well as board members' terms.
2007	165	Allows a dental hygienist who is authorized to practice under a licensed dentist's general supervision in a government-owned and -operated facility or public health department to apply fluoride, mouth rinse, or varnish. The facility in which the dental hygienist is authorized to practice does not have to first satisfy existing statutory requirements related to the diagnosis and treatment of the patient.
2008	211/212	Establishes a new process to nominate licensee board members to serve on BDE and requires the board to adopt new regulations to guide the disciplinary process and meet other requirements, including reporting on its implementation of the bill by December 31, 2008. Board members must be appointed from a list of names submitted by the board, and individuals appointed to the board have to reasonably reflect the geographic, racial, ethnic, cultural, and gender diversity of the State. Establishes a Task Force on the Discipline of Health Care Professionals and Improved Patient Care.
2008	316	Authorizes dental hygienists who are permanent or contractual employees of the federal government, a State or local government, or a federally qualified health center, and working in specified facilities, to apply fluoride and sealants under the general supervision of a licensed dentist. Expands the types of facilities that such a dental hygienist may practice in under general supervision, specifies that these facilities are not required to obtain a general supervision waiver, and repeals the requirement that a dentist or physician evaluate or diagnose a patient before a dental hygienist may treat the patient in these facilities.
2009	566	Expands the scope of practice for a dental hygienist by adding two functions that a dental hygienist may perform: manual curettage in conjunction with scaling and root planing and administering local anesthesia through infiltration. Authorizes BDE to adopt regulations governing the education, training, evaluation, and administration associated with the expanded scope of practice. In addition, a dental hygienist is allowed more flexibility in unsupervised clinical hours that he or she may work.

Source: Laws of Maryland

Findings from the OIG report led to Chapters 211 and 212 of 2008, which mandated significant changes in the board's disciplinary and data collection processes as well as the nomination process for new board members. The provisions regarding the board's disciplinary and data tracking processes are very specific and require the board to:

- collect race, gender, and ethnicity information on all licensees during the application process;
- adopt new regulations for the rules of procedure for the disciplinary process, including guidelines for complaints, guidelines for investigations, a severity ranking system for substantiated complaints and guidelines for corresponding degrees of sanctions, guidelines for probationary periods, an appeals process, and guidelines for confidentiality including the removal of the name and address from the disciplinary and complaint documents that come before the board;
- develop a methodology of tracking the status of all complaints from the initial allegation through sanctions and final action and keep records of the information for future audits;
- develop a database so that data can be analyzed in a variety of ways and subjectivity and individual bias is reduced;
- institute the development, use, and routine review of a comprehensive status report as a monitoring tool for all disciplinary cases; and
- implement a case audit that studies selected cases, de-identifying files, and using outside experts.

The board's progress on the implementation of the disciplinary process is discussed in **Chapter 4**, and its implementation of the nomination process is discussed in **Chapter 5**.

Chapters 211 and 212 also established the Task Force on the Discipline of Health Care Professionals and Improved Patient Care, staffed by DHMH, the health occupations boards, and the Office of the Attorney General (OAG). The task force was charged with issuing recommendations regarding the following issues: practices and procedures supporting the fundamental goals and objectives of the disciplinary programs of the health occupations boards; potential changes to the organizational structure of the health occupations boards and the relationship of all boards to DHMH; and measures that otherwise enhance the fair, consistent, and speedy resolution of complaints concerning substandard, illegal, or unethical practices by health care professionals. The task force submitted its report on February 2, 2009, which included the 24 recommendations listed in **Appendix 2**.

New Board Nomination Process Needs to Be Refined

Chapters 211 and 212 of 2008 changed the way that licensees are nominated for vacant board positions. Prior to this statutory change, the Governor appointed dentist and dental hygienist board members, with the advice of the Secretary of Health and Mental Hygiene, from a

list of names submitted by the Maryland State Dental Association and the Maryland Dental Society or the Maryland Dental Hygienists' Association, as appropriate. The list of names was chosen by a majority of the professionals present at a meeting held by the appropriate organization.

Chapters 211 and 212 require the board to mail a written solicitation for nominations to fill the vacancy to each licensed dentist and each State dental organization affiliated with a national organization. In addition, the board has to conduct a balloting process so that each dentist licensed by the State can vote to select the names of the licensed dentists to be submitted to the Governor. Likewise, for each licensed dental hygienist vacancy, the board has to mail a written solicitation for nominations to fill the vacancy to each licensed dental hygienist and each State dental hygienist organization affiliated with a national organization. In addition, the board has to conduct a balloting process so that each dental hygienist licensed by the State can vote to select the names of the licensed dental hygienists to be submitted to the Governor.

The board implemented the new nomination process in 2009. However, mailing the required solicitations to each licensee and each affiliated organization necessitated the *entire* staff working together for two full days in order to compile, stuff, and send the solicitations, at a cost of $17,784. In addition, there was only one balloting site in the State located near BDE headquarters. Since the licensees who wished to vote had to go to the site in person on the designated voting day, very few licensees actually voted, and yet two staff members were required to monitor the voting process for the entire day. The availability of only one balloting station most likely contributed to the low turnout since licensees from other parts of the State may have been unable to vote in person.

BDE is not prohibited by statute from conducting the voting process online and reports that it is considering this option to increase voter participation. However, BDE does not have the statutory authority to conduct the solicitation process online. In order to honor the intent of the legislation while making the process less cumbersome for staff and more accessible to licensees who wish to vote, DLS recommends that statute be amended to allow for online solicitation for nominations for board vacancies.

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.

Recusal Policy Should Be Extended to the Dental Compliance Officer

Regulations for the health occupations boards (Code of Maryland Regulations (COMAR) 10.31.01.03 - .04) and for BDE (COMAR 10.44.07.30) detail the recusal policy for board members and staff investigators. An investigator is prohibited from conducting or participating

in an investigation of a complaint in which he or she may have a conflict of interest. Similarly, board members must recuse themselves from board proceedings should they have a personal or professional connection to any licensee facing disciplinary sanctions by the board.

As a matter of board policy, the dental compliance officer must be a formally trained dentist in order to review complaints that are received by the board. The dental compliance officer also manages the investigative team and makes recommendations to the board about the direction of cases. Because the position has to be filled by a dentist, conflicts of interests may arise with fellow dentists or dental professionals who used to be colleagues or classmates.

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

Nationally, Supervision Statutes for Dental Hygienists Trend Toward Less Supervision

Dental hygienists have been regulated by the board for more than 60 years. Historically, a dental hygienist has practiced under the indirect supervision of a dentist, which means the dentist authorizes the procedure and remains in the office while it is being performed. To more efficiently serve patients and promote proper preventive oral health care, dentistry practices have trended toward permitting hygienists to work under less restrictive supervisory requirements.

Dental hygiene practices in Maryland have also followed this trend, demonstrated by three legislative changes since the 2004 sunset evaluation that have also expanded dental hygienists' scope of practice. First, Chapter 165 of 2007 allows a dental hygienist who is authorized to practice under a licensed dentist's general supervision in a government-owned and -operated facility or public health department to apply fluoride, mouth rinse, or varnish. The facility in which the dental hygienist is authorized to practice does not have to first satisfy existing statutory requirements related to the diagnosis and treatment of the patient. Second, Chapter 316 of 2008 authorizes a dental hygienist who is a permanent or contractual employee of the federal government, a State or local government, or a federally qualified health center, and working in specified facilities, to apply fluoride and sealants under the general supervision of a licensed dentist. The Act also expands the types of facilities that such a dental hygienist may practice in under general supervision, specifies that these facilities are not required to obtain a general supervision waiver, and repeals the requirement that a dentist or physician evaluate or diagnose a patient before a dental hygienist can treat the patient in these facilities.

Third, Chapter 566 of 2009 expands the scope of practice for a dental hygienist by adding two functions that a dental hygienist can perform: manual curettage in conjunction with scaling and root planing and administering local anesthesia through infiltration. Chapter 566 also allows more flexibility in unsupervised clinical hours that a dental hygienist can work in a private dental

office by making the 60% threshold applicable to any given calendar week applicable to a three-month period instead. Prior to Chapter 566, the number of unsupervised clinical hours worked by a supervised dental hygienist in any given calendar week had to be less than 60% of the dental hygienist's total hours.

There is some concern in the dental hygiene community that the State's general supervision laws are still too restrictive and limit a hygienist's ability to provide greater access to dental care. According to the American Dental Hygienists' Association (ADHA), 29 states allow for some form of "direct access," which means that a dental hygienist may initiate treatment based on his or her assessment of a patient's needs without the specific authorization of a dentist and may treat the patient without the presence of a dentist. However, the level of direct access varies a great deal from state to state. For example, direct access in Idaho is limited to a hygienist providing services in hospitals, long-term care facilities, public health facilities, health or migrant clinics, or other board-approved settings if a dentist affiliated with the setting authorizes services. However, in Colorado, a hygienist may provide oral prophylaxis and preventive therapeutic services unsupervised in any setting and may own a dental hygiene practice. The 29 states identified by ADHA as allowing direct access as well as a brief description of each state law can be found in **Appendix 3**. Although Maryland is not included on ADHA's list, the board believes that it should be included given that the State now allows dental hygienists to practice under general supervision in public health facilities without a waiver and without the requirement that a physician or dentist first evaluate or diagnose a patient.

Statute Does Not Require the Dental Hygienist Well-being Committee to Provide Rehabilitation Services to Dental Radiation Technologists and Dental Assistants

The Dental Well-being Committee (DWBC) is the committee of the Maryland State Dental Association that evaluates and provides assistance to any provider of dental care in need of treatment and rehabilitation for alcoholism; drug abuse; chemical dependency; or other physical, emotional, or mental condition. Likewise, the Dental Hygienist Well-being Committee (DHWBC) is the committee of the Maryland Dental Hygienists' Association that evaluates and provides assistance to any dental hygienist in need of such treatment. When the board believes a licensee or certificate holder is in need of rehabilitation services as part of a disciplinary action, it refers those individuals directly to the appropriate well-being committee. A board staff member sits on each of the well-being committees, and the committees submit monthly reports, otherwise confidential, on referred cases.

While statute directs DWBC to provide assistance to any provider of dental care in need of treatment, in practice it provides assistance only to dentists. In addition, DHWBC is required by statute to evaluate and provide rehabilitation services to dental hygienists only and is not required to provide assistance to dental radiation technologists or dental assistants. However, in

practice, the board refers dental radiation technologists and dental assistants in need of rehabilitation services to DHWBC. Following discussions with relevant stakeholders, DLS believes the practice of referring dental radiation technologists and dental assistants to DHWBC, rather than DWBC, is due to the supervisory role that dentists play. Therefore, these professionals may feel uncomfortable receiving treatment from a committee of dentists, who may be potential employers. Since statute currently requires DHWBC to treat only dental hygienists, the committee does not believe it can request additional funds to treat the few dental radiation technologists and dental assistants referred to it; instead, it treats these rare cases on a *pro bono* basis. However, in light of the current practice, DHWBC should adjust its annual budget to reflect the caseload it handles.

Recommendation 3: Statute should be amended to clarify that DHWBC provides assistance to dental radiation technologists and dental assistants in addition to dental hygienists.

Statute Is Inconsistent with Regulations and Practice Concerning the Well-being Committees

The Health Occupations Article refers to the DWBC and DHWBC as the "Dentist Rehabilitation Committee" and the "Dental Hygienist Rehabilitation Committee" respectively. However, in regulations and practice, these committees are referred to as well-being committees. There should be consistency among statute, regulations, and practice.

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.

Chapter 3. Recent Scrutiny of and Subsequent Progress by the Board

Recent Scrutiny of the Board

The State Board of Dental Examiners (BDE) has been under continued scrutiny by both the Executive and Legislative Branches since the reconstitution of the board in 1994.[1] Typically, a board's authorization is extended for 10 years. However, since the board's reconstitution, it has been subject to more frequent reviews, with two full sunset evaluations in 1998 and 2004 and an Office of the Inspector General (OIG) evaluation described in **Chapter 2**. Due in part to these evaluations, there has been a heightened awareness of shortcomings in the disciplinary process for all health occupations boards, and for BDE in particular.

The Board Has Successfully Implemented the 2004 Sunset Evaluation Recommendations

The full sunset evaluation of BDE in 2004 found that the board failed to issue new and renewal licenses in a timely fashion. Additionally, it found that the board lacked sufficient staff to provide effective customer service and that limited investigative staff contributed to delays in complaint investigations. The report also recommended that the board review its license fee schedule in order to reduce its growing fund balance.

The Department of Legislative Services (DLS) finds that the board has successfully addressed the issues that were raised in the 2004 sunset report. Specifically, the board has implemented an online renewal option that has decreased the lag time between when an application is submitted and when it is issued. The board has also hired a telephone operator to address customer service deficiencies and has hired additional investigators to handle the complaint investigation caseload. Finally, fees were reduced in fiscal 2008 and 2009 as a means to spend down the board's fund balance.

Subsequent to the OIG Review, DLS Finds No Evidence of Racial or Ethnic Discrimination by the Board

As described in **Chapter 2**, OIG review of BDE records found inconsistencies with the way in which sanctions were imposed across racial lines, concluding "that either (1) there is inequality in the severity of the allegations by race or (2) there is inequality in the sanctioning process by race."

[1] Chapter 449 of 1994 reconstituted the board because of alleged improprieties and to improve the board's administrative operations. The reconstitution involved terminating the tenure of the sitting members on BDE and appointing new members to the board.

It should be noted that DLS did not look at the data set upon which the OIG report based its findings (the period of January 1, 2002, through December 31, 2006). Rather, DLS reviewed disciplinary outcomes by race and severity in the two full fiscal years following the OIG report and did not find evidence of racial or ethnic discrimination. The cases that the study team reviewed were resolved in fiscal 2008 and 2009; some of these cases were received as early as fiscal 2000 and some were received and resolved in fiscal 2009.

Exhibit 3.1 shows the distribution of cases by race for all cases that were resolved with case management, a serious sanction imposed by the board that usually includes a combination of one or more of the following consequences: suspension or probationary period, a civil fine, mandated educational or ethical courses, or *pro bono* service. Some cases resulting in case management stem from serious violations of the Maryland Dentistry Act, while others are less serious violations such as practicing without a license due to a failure to renew in a timely manner.

Exhibit 3.1

Distribution of Disciplinary Cases by Race, Case Management (CM)

Fiscal 2008-2009

Race	Total Cases	Total Resulting in CM	As % of All CM cases	As % of Total Complaints Against that Race	Total # of Licensees in FY 2009
African American	75	1	1.64%	1.33%	1,467
American Indian	17	0	0.00%	0.00%	158
Asian	42	4	6.56%	9.52%	688
Caucasian	378	35	57.38%	9.26%	7,466
Hispanic	7	0	0.00%	0.00%	369
Pacific Islander	1	1	1.64%	100.00%	79
Other	28	3	4.92%	10.71%	454
Not Specified	111	17	27.87%	15.32%	3,541
Total	**659**	**61**	**100.00%**	**9.26%**	**14,222**

Notes: "Not specified" indicates that the licensee chose not to provide information on race. The number of licensees by race is for fiscal 2009 only and does not include dental assistants.

Source: State Board of Dental Examiners

As a follow up to the issues raised in the 2007 OIG report, Chapters 211 and 212 of 2008 were enacted to, in part, address disciplinary issues within the dental board specifically, but to

also take a comprehensive look at disciplinary practices among all the health occupations boards. For the comprehensive study, the legislation authorized the creation of the Task Force on the Discipline of Health Care Professionals and Improved Patient Care. The task force was charged with issuing recommendations regarding the disciplinary programs and organizational structure of the health occupations boards. The task force submitted its recommendations in February 2009, and legislation was subsequently introduced at the 2009 session. However, the task force recommendations were not mandated as the legislation did not pass. Even so, the board implemented some of them voluntarily. The details of the legislation, including the task force and statutory changes for BDE, are discussed in **Chapter 4**.

Changes Implemented by the Board

In the midst of scrutiny during the past two years, BDE has taken proactive steps to address problems identified in the OIG report and issues identified by the task force. DLS recognizes the board's hard work and steps that it has taken to improve its licensing and complaint resolution processes. Examples of these steps are described in the rest of this chapter.

Disciplinary Process Improvements

To streamline the disciplinary process, the board established a Triage Committee – consisting of three board members, the dental compliance officer, and the dental compliance secretary – that looks at all complaint cases the board receives. The Triage Committee has proved an effective tool to reduce the amount of work facing the Discipline Review Committee by providing a first level of review and prioritizing complaints.

In response to the allegations of racial and ethnic discrimination, BDE has implemented a redacting policy to eliminate the possibility of discrimination in the early stages of the complaint review process. When a complaint is received by the board, the compliance staff redacts (blacks out) all identifying information before it is sent to the Triage Committee for review. The redacting policy is a labor-intensive process but ensures that a committee recommendation to pursue or close a case is based solely on the merits of the case. However, if a case does move forward and records are requested, identifying information cannot be redacted from those original dental files. Therefore, a licensee's name, address, and practice is available to the board in the latter part of the disciplinary process when a final decision is made.

Like BDE, many of the larger health occupations boards handle a substantial number of complaints and often have trouble processing them in a reasonable period of time which can result in a backlog. In December 2008, the board created an ad hoc committee to address the backlog by developing a review process by which lingering cases are identified, reviewed, and a final decision is reached. This process has significantly reduced the number of backlog cases pending before the board, which totaled 156 prior to the committee's creation. A full discussion of the Backlog Committee and review process is contained in **Chapter 4**.

In order to avoid a future backlog where cases languish at a certain stage – investigation, Office of the Attorney General (OAG), staff processing, etc. – the dental compliance officer instituted a compliance tracking report which contains all cases opened in the current fiscal year. The tracking report is an ongoing tool that is submitted to the board each month for review to hold staff accountable for implementing sanctions approved by members of the board; avoid a backlog of cases by tracking each until it is formally closed; and ensure that no case slips through the cracks. Dental compliance staff also presents a more basic quarterly report of complaints that were opened in previous fiscal years but are still pending. **Chapter 4** of this report describes the compliance tracking reports in more detail.

Another change the board implemented to help facilitate the disciplinary process was to create guidelines for clinical practice reviews to standardize the reporting format for licensees contracted to serve as expert witnesses during investigations or monitoring of board orders. The practice review guidelines also provide a written explanation of contractor responsibilities, payment information, confidentiality issues, and procedures, as well as instructions that licensees can refer to if they are contracted to serve as an expert reviewer. It also standardizes the report format that the expert witness submits and the board uses to evaluate a practitioner.

Communication between OAG and Board Investigators Is Improving

Investigators from BDE regularly attend semimonthly meetings with OAG to discuss general investigative issues and be educated on information needed to prosecute a case. DLS believes these meetings are a helpful way to maintain an open and constant line of communication between the board and OAG in order to expeditiously handle disciplinary cases.

Licensing and Compliance Units Have Implemented Staff Evaluations

State employee evaluations are required by State law, according to § 7-501 of the State Personnel and Pensions Article. However, previous executive directors have failed to administer biannual employee evaluations. In October 2008, the dental compliance officer and licensing coordinator reinstated employee evaluations for employees under their direct supervision on a biannual basis. Evaluations can foster personal staff development and help supervisors evaluate the role that individuals play in an office. A further discussion of staff evaluations – which have not been extended to administrative staff – is included in **Chapter 5**.

Licensing Unit Has Improved Since 2004 Sunset Evaluation Report

The 2004 sunset report found that BDE failed to issue licenses and certificates in a timely manner. Additionally, incomplete applications received by the board were not handled in an efficient manner. Board staff did not keep a record of missing items from a licensee's application, thereby contributing to a considerable delay in processing applications. In some

instances two months elapsed before the board received all necessary documents. In the meantime, practitioners were allowed to continue to practice on an expired license. During this time, board staff failed to issue cease and desist orders for those practicing beyond the 30-day grace period. Since then, BDE has greatly improved its licensing process by instituting an incomplete application checklist and following up directly with applicants to notify them of missing documents. Also, the board purchased an online licensing system, discussed in further detail in **Chapter 5**, which has expedited the licensing process.

DLS finds that the licensing unit now consistently meets goals set forth in the budget's Managing for Results goals accountability process and provides adequate customer service to licensees who are requesting a new or renewal license or certificate. In interviews with dental associations, DLS found that licensees generally have a positive view of the licensing process. The addition of online renewal, despite a few kinks in the system, has added value to licensees by further reducing the amount of time taken to issue a license.

Board Engages in Public Outreach

A recommendation from the task force in 2009 cited the need for greater outreach to the public. The board has proactively engaged the public in informational sessions and through board handouts. For example, the dental compliance officer instituted a "Knock Knock" program to raise awareness about the board and educate associations and other interested groups about the board's role in the dental community. Also, board staff put together a take-home bag for children to be distributed at the Maryland State Fair.

Training New Board Members

The dental compliance officer created a welcome packet for all new board members. The packet includes general information (organizational chart, staff listing, board member contact information, and committee appointment list); discipline unit information; licensing unit information; and administrative information (State regulations, ethics requirements, BDE bylaws, and other pertinent information). The welcome packet provides new board members – five of whom have been appointed since June 2008 – with valuable information needed to begin work on the board.

Moving Forward

Although the board has taken positive steps to improve its operations, many areas in need of improvement still exist, particularly as they relate to fulfilling requirements involving the disciplinary process. The remainder of this report focuses on areas that can be improved to ensure that board responsibilities are undertaken in a more efficient manner.

Chapter 4. Complaint Resolution Process

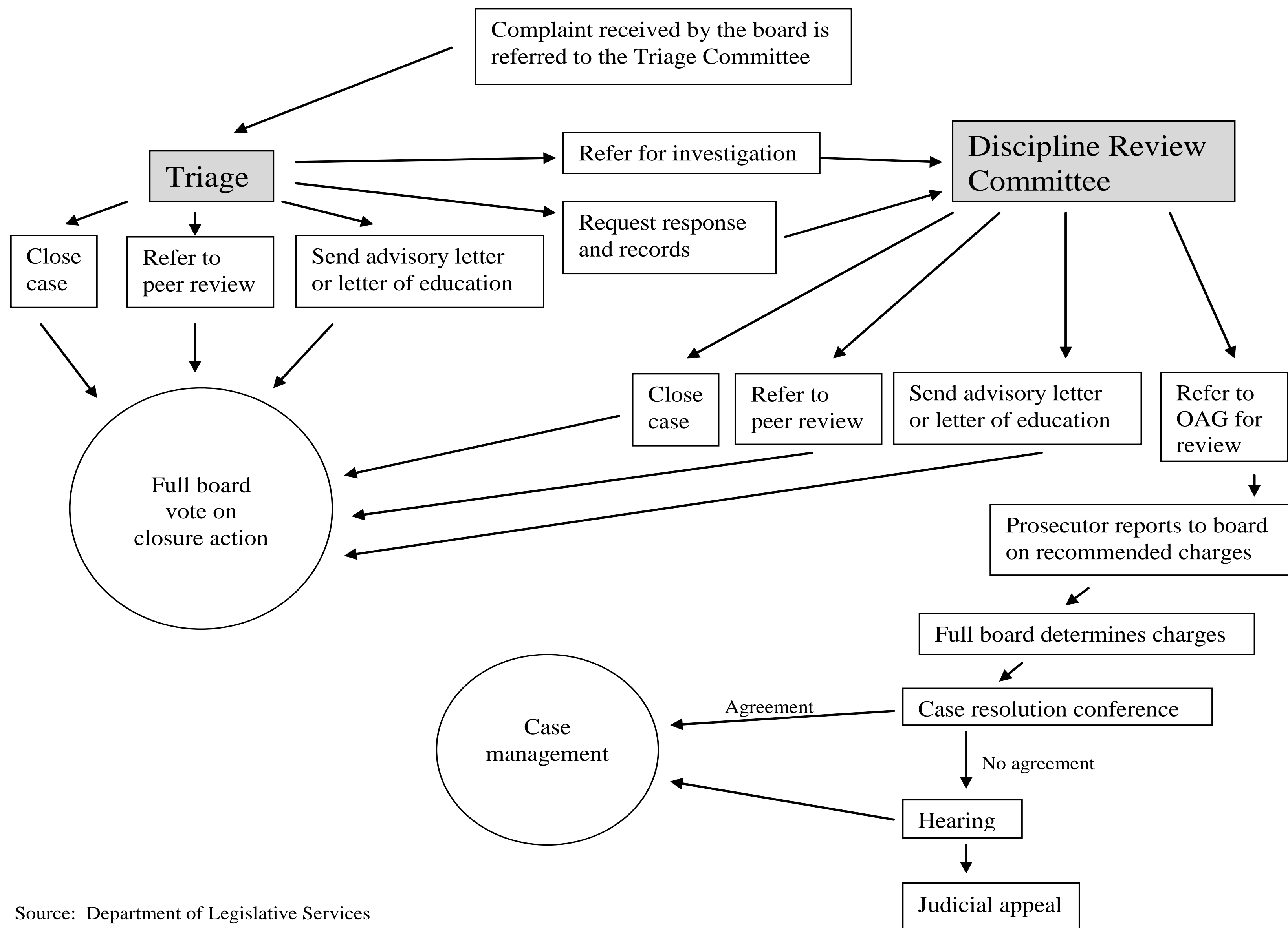
One of the State Board of Dental Examiners' (BDE) most important and time-consuming responsibilities is to investigate and act upon complaints against licensees. Cases handled by the board range from simple standard-of-care cases to those that involve complex standard-of-care issues, insurance fraud, federal Centers for Disease Control and Prevention violations, or sexual assault charges. Complex cases and those of a more serious nature usually take more time since they often involve requesting and reviewing multiple sets of records and an extensive investigation.

The procedure used by the board to resolve complaints is outlined in **Exhibit 4.1**. After the board's Triage Committee reviews a complaint, the committee may refer it for substantive investigation or request additional records from the licensee and/or other involved parties. As shown in the exhibit, not all cases are handled by the board investigator; the board may either close a complaint without taking any disciplinary action or resolve the case informally based on the information received from the complaint file alone. Informal actions taken by the board include referring a case to peer review or sanctioning a licensee by sending him or her a letter of education or advisory letter. If a complaint is referred for substantive investigation, the board's investigator or other designated personnel examines the case and presents the findings to the board's Discipline Review Committee (DRC). The board then decides if the complaint is within its jurisdiction and either closes the case without action, takes informal disciplinary action, or refers the case to the Office of the Attorney General (OAG) for prosecution.

Once OAG reviews the case and reports to the board on recommended charges, the board determines the charges it wishes to bring based in part on OAG recommendations. The board then offers the licensee the opportunity to settle the matter via an informal case resolution conference (CRC), during which CRC Committee members and the charged licensee try to come to an agreement regarding the conditions of a consent order – a public document to resolve a case that typically includes sanction(s). However, if no agreement is reached in CRC, the case goes to a formal hearing, where the licensee is acquitted or suspended, put on probation, or issued any other appropriate disposition by the board.

The Department of Legislative Services (DLS) notes that in reality the complaint resolution process is more complicated and does not always proceed as smoothly as shown in Exhibit 4.1 for a number of reasons. For example, if the board does not receive requested records, it must send another request. If the request is ignored again, the board must then issue a subpoena. In some cases DRC requests more records to review or requests further investigation before making a recommendation to the full board on a case. Or, as described in more detail later in this chapter, sometimes a case that the board refers to OAG for prosecution is returned to the board for more investigative work. All of these activities take additional time.

Exhibit 4.1
State Board of Dental Examiners – Complaint Resolution Process



Source: Department of Legislative Services

The Board Has Significantly Reduced the Number of Pending Complaints in Fiscal 2010

As shown in **Exhibit 4.2**, on average, the board has received about 281 new complaints annually from fiscal 2005 through 2009.[2] In fiscal 2009, the board received 264 new complaints against licensees while it continued to investigate 228 complaints carried over from previous years. Until fiscal 2010, the number of complaints carried over from previous years was exceedingly high – nearly matching or, in some cases, exceeding the number of new complaints received. The high number of pending complaints was due at least in part to the board's investigative staff retention history and a vacant dental compliance officer (DCO) position for most of fiscal 2008. However, the board now has a fully staffed compliance unit after two investigators were hired in September and October of 2008. While the fully staffed compliance unit has certainly contributed to the significant drop in pending complaint cases in fiscal 2010 – as shown in **Exhibit 4.3** – the board has taken further steps to reduce its pending complaints, which are discussed below.

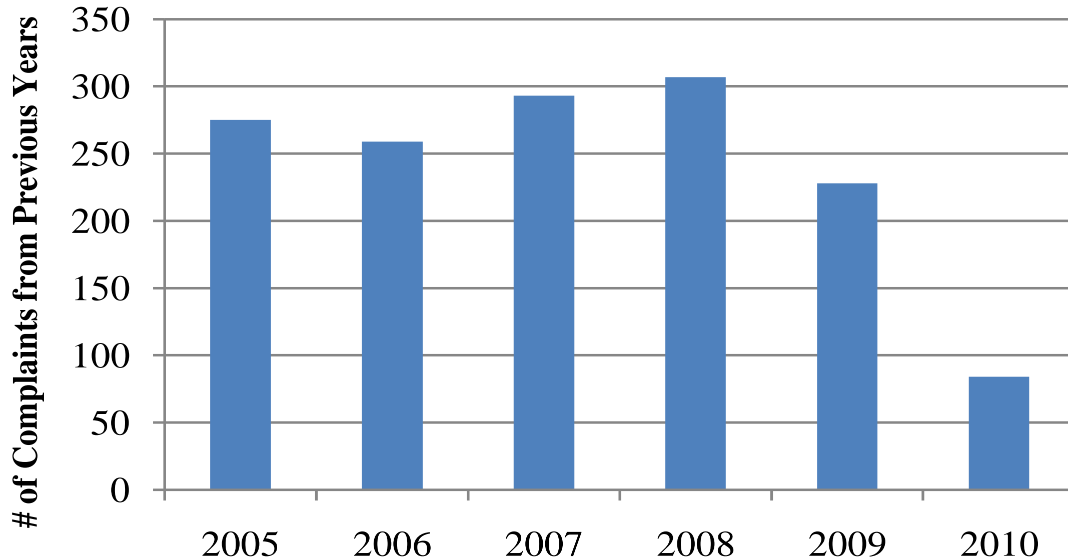
Exhibit 4.2
Complaint Volume – State Board of Dental Examiners
Fiscal 2005-2010

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
New Complaints	275	253	316	295	264	N/A
Pending Complaints	275	259	293	307	228	84
Total Complaints	**550**	**512**	**609**	**602**	**492**	**N/A**

Source: State Board of Dental Examiners

[2] Note that the total number of new complaints in fiscal 2010 is not yet available since the fiscal year does not end until June 30, 2011.

Exhibit 4.3
Pending Complaints
Fiscal 2005-2010



Source: State Board of Dental Examiners

Ad Hoc Committee Develops Process to Resolve Backlog Cases

Recognizing the need to address its backlog of complaint cases, the board created a Backlog Committee in December 2008 – consisting of five board members and staffed by DCO and board counsel – to find ways to expedite the resolution of its backlog cases. The board agreed to allow the Backlog Committee to determine the course of action for backlog cases. Compliance staff identified and pulled case files from cases that were open prior to fiscal 2008, which totaled 156 cases. Board members and DCO reviewed the cases and prioritized them using a number of factors including egregiousness of the complaint, complaint category (*e.g.*, standard of care, substance abuse), and whether or not subsequent complaints had been made against a respondent (a licensee against whom a complaint has been made).

Based on this prioritization, in January 2009, the committee closed over half of the 156 backlog cases without the full vote of the board. This committee action explains part of the decrease in pending complaints in fiscal 2010, shown in Exhibit 4.3. Closed cases included ones that had been referred to investigation and that, for various reasons, had not yet resulted in further action, as well as cases in which a respondent did not comply with a board's request for records and in which the board had not followed up with a subpoena. **Exhibit 4.4** provides a summary of the backlog cases closed by the committee.

Exhibit 4.4
Summary of Cases Closed by Backlog Committee in January 2009

Board vote to take final action – never carried out		39
Letters of education	*14*	
Advisory letters	*25*	
Other cases that required further action that was never carried out (*e.g.*, response and records, investigation)		25
Case closed for other reasons (*e.g.*, board sanction letter, closed case that was on administrative hold)		23
Total		**87**

Source: State Board of Dental Examiners

Staff Failed to Carry Out Board Directed Actions Related to Complaints in Some Instances

As shown in Exhibit 4.4, 39 of the cases that the committee closed were cases in which the board, after completing its investigation, had previously taken a final vote to sanction a respondent by sending him or her a letter of education or advisory letter closing the case. Since the board took a final vote to sanction the licensee in these cases, one would expect that the cases would not have been included in the backlog. While board members write sanctioning letters on occasion, staff is generally responsible for implementing the board's decision by writing and sending a letter to the dental professional involved based on an outline provided by the board member who reviewed the case. However, in those cases, board staff failed to carry out the board's final vote by not sending the letters to the respondents, nor did staff send the closure letters to the complainants. Since the sanction had not been carried out, those cases were still listed as open cases.

Therefore, with the committee's January 2009 decision, those cases were closed by sending closure letters to the complainant and respondent over the course of the next few months rather than sending the sanctioning letter that the board had previously voted to send.

Letters of education and advisory letters are both informal, nonpublic actions issued by the board and defined in regulations (Code of Maryland Regulations 10.44.07.02). Letters of education are issued to respondents by the board if the board does not believe that the licensee's conduct rose to the level of a violation of the Maryland Dentistry Act, and in which the board

educates the licensee concerning the laws and standards of the practice of dentistry or dental hygiene. Advisory letters are more serious in nature, issued when the board has a basis to charge the licensee with disciplinary violations but closes the case by advising the licensee of the basis to charge and admonishes the licensee not to repeat the conduct. The board requires the licensee to notify it of the advisory letter's receipt. In cases where a letter of education or advisory letter is sent to a respondent, the board also sends a letter to the complainant advising him or her that, after investigation, the board has closed the case.

DLS recognizes that the compliance unit was not fully staffed for a significant period of time, which contributed to the backlog. DLS further recognizes that, before DCO initiated a report showing the status of open cases, board members were unaware that staff had not sent the letters. In addition, writing letters of education and advisory letters can be time consuming. However, board staff receives a note from the board reviewer highlighting the violations that must be addressed in the letter, and board staff uses a letter "template" as a guide. Since the board was created in part to protect the public interest, closing cases that, after investigation, the board believed warranted a sanction contradicts this purpose.

Closure letters sent to respondents and complainants contain language indicating that the board "considers this case closed, but reserves the right to reexamine it." Therefore, despite the fact that closure letters have already been sent in these 39 cases, the board can ensure accountability and help avoid future violations by sending letters indicating that it has exercised its right to reexamine the case, followed by the appropriate sanctioning language.

Recommendation 5: Board 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.

Board Should Be Able to Carry Out Final Sanctions in a Timely Manner

As highlighted by the Backlog Committee's decision to close cases on which the board had previously voted to send a letter of education or advisory letter, letters often are not sent for a year or more. In one instance, over three years elapsed from the time the board voted to send a letter on a particular case to when the case was actually closed by the Backlog Committee. And yet, these informal sanctioning letters are the most common sanctions imposed by the board and are, therefore, an important part of the complaint resolution process. As shown in **Exhibit 4.5**, the number of sanctioning letters that the board votes to send varies a great deal from year to year, but yields an annual average of 56 letters out of all complaints received in each of fiscal 2005 through 2009. Note that this number does not include letters that the board votes to send on complaints received in previous years, so the actual number of letters sent in those years may be higher. However, based on these numbers, if board staff completes five such letters per month, staff would keep pace with the board's annual average of voting to send 56 informal sanctioning letters per year.

Exhibit 4.5

Votes Resulting in Sanctioning Letters Based on New Complaints Received

Fiscal 2005-2009

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	Average
Advisory Letters and Letters of Education	60	58	33	90	38	56

Note: These numbers represent action taken by the board, not necessarily implementation by staff.

Source: State Board of Dental Examiners

Again, while DLS recognizes that informal sanctioning letters are time consuming given the file review and statutory language involved, the board member reviewing the case assists by making a note highlighting the violations that must be addressed in the letter, and board staff uses a letter "template" as a guide. Given this support, DLS believes that board staff should be able to complete these letters within 30 to 45 days of the board's final vote. Allowing these letters to remain unwritten for an extended period after a final board decision is rendered inflates the board's complaint backlog. More important, licensees continue to practice without the benefit of addressing board concerns that affect their practice.

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.

Other Ways to Expedite the Complaint Resolution Process

As mentioned in **Chapter 3**, the board has taken steps to expedite the complaint resolution process, such as establishing a Triage Committee, which reviews all complaint cases received by the board, categorizes those cases, and reduces the workload of the Discipline Review Committee. The establishment of the Triage Committee has been an effective tool in expediting the complaint resolution process. However, DLS identified other areas where the board could also improve efficiency; the board recognizes some of these as well.

Board and OAG Beginning to Work Together More Constructively

If, after a complaint has been investigated, the board votes to charge a licensee for a violation of the Maryland Dentistry Act, the board refers the case to OAG to be charged. However, according to OAG, cases referred by the board (and other boards) do not always contain enough information to prosecute a case. Therefore, OAG must return those cases to the board to gather more information – which delays the process.

To address this issue, the prosecuting OAG's office started holding semimonthly "investigator meetings" in May 2007 to discuss general investigative issues and to educate investigators from different boards on information needed to prosecute a case. As mentioned in **Chapter 3**, the prosecuting OAG's office indicated that the dental board has been very receptive to the idea and that investigators have attended the meetings regularly.

In addition, the prosecuting OAG's office, though understaffed, has indicated a willingness to attend the board's DRC meetings to advise the board on information that will be needed to prosecute particular cases. The board has been equally receptive to this idea since having a prosecutor at DRC meetings working in an advisory role should help guide the board's investigative work and reduce the number of cases that have to be returned to the board for more investigation.

Recommendation 7: The prosecuting OAG's office should send a representative to serve as an advisor in all DRC meetings.

The Maryland Dentistry Act Does Not Include "the Failure to Comply with an Investigation of the Board" as a Grounds for Discipline

The Maryland Dentistry Act specifies 31 different grounds for dentist discipline and 17 different grounds for dental hygienist discipline. However, the Act does not include "the failure to comply with an investigation of the board" as a grounds for discipline for dentists or dental hygienists. A review of statutory provisions for the other health occupations in Maryland shows that nine practice acts include the "failure to comply with an investigation of the board" as a grounds for discipline.[3]

As noted earlier in this chapter, one of the primary functions of the board is to investigate complaints regarding alleged incompetent or unethical conduct by licensees and certificate holders. Under current law, the board is authorized to subpoena testimony and place individuals under oath to ensure that the evidence is competent and reliable. Such evidence ultimately may be the basis upon which formal charges are issued. The board's responsibility to investigate matters thoroughly requires full cooperation from those who are the subject of an investigation.

[3] The health occupations that include failure to comply with a board's investigation as grounds for discipline include nurses, pharmacists, physical therapists, physicians, physician assistants, podiatrists, professional counselors and therapists, psychologists, and social workers.

Moreover, the Maryland application for dental licensure includes as part of the release and certification a statement that the applicant agrees to "fully cooperate with any request for information or with any investigation related to my dental practice as a licensed dentist in the State of Maryland, including the subpoena of documents or records or the inspection of my dental practice." Likewise, the Maryland application for dental hygienist licensure includes a similar statement. While the certification statement on the application for licensure is important, providing BDE with another tool to assist in fulfilling its responsibility to protect the public merits consideration.

Licensure for the practice of dentistry and dental hygiene is an agreement between the State and a licensee, and in exchange for the benefits of being licensed, licensees agree to be regulated by the State. The State has an interest in ensuring that licensees meet and uphold certain standards established by the State to practice dentistry and dental hygiene. Licensing is a privilege, not a right. The board's responsibilities of licensing and discipline exist for the protection of the public. The failure to cooperate with an investigation undermines the investigative and disciplinary process and, therefore, frustrates the board's mandate to protect the public. The failure to cooperate with a lawful investigation of the board should be a separate ground for discipline.

Indeed, as mentioned earlier, failure to comply with an investigation is grounds for discipline according to the statutes of nine other health occupations. Therefore, the Maryland Dentistry Act is inconsistent with some of the other health occupations practice acts and its own certification statement. Although failure to cooperate is a more recent trend and is relatively rare, it has the potential to become a larger problem in the future.

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

Expert Witnesses Difficult to Secure in Some Cases

Expert witnesses are an important part of the complaint resolution process in certain complex cases where the board must determine allegations such as fraud and competency in standard-of-care cases. Expert witnesses are licensed dentists, dental hygienists, or other licensed health care workers (depending on the case) and are paid by the board on an as-needed basis to review dental offices for compliance with infection control guidelines, dental patient records, radiographs, insurance claims, etc. during the investigative process. Expert witnesses are paid $75 per hour, with a $3,000 limit per case.

The board does not have an effective means of securing expert witnesses and sometimes has trouble doing so. In cases where the number of dentists in a particular specialty is small, such as pediatric dentistry, securing an expert witness is particularly difficult. While expert

witnesses are paid the hourly fee, it is generally not a sufficient incentive for busy dentists and other health care professionals to participate. Board members and the dental compliance officer spend unnecessary time soliciting dentists to serve as expert witnesses. This practice is time consuming and delays the complaint resolution process.

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.

Board Has Not Implemented All of the Disciplinary and Data Collection Provisions of Chapters 211 and 212 of 2008

Chapters 211 and 212 of 2008, which resulted from the OIG report mentioned earlier, mandated significant changes in the board's disciplinary and data collection processes, nomination process, and established the Task Force on the Discipline of Health Care Professionals and Improved Patient Care. The board has implemented the new nomination process, which is discussed in **Chapter 5**.

However, as shown in **Exhibit 4.6**, while the board has implemented some of Chapter 211 and 212's data collection and disciplinary requirements, it has yet to address others, such as adopting specified regulations for the rules of procedure for the disciplinary process and collecting race and ethnicity information on its initial applications (it has begun collecting this information on renewal applications).

In its report to the General Assembly regarding its implementation of the Acts' requirements, the board noted that since the Acts created the task force to (in part) make recommendations regarding the disciplinary processes of all health occupations boards, the board would delay its disciplinary regulation revision until the passage of legislation anticipated to be generated from task force recommendations during the 2009 legislative session.

While the board was correct in assuming that legislation would be generated from task force recommendations, HB 1275 of 2009, largely based on those recommendations, failed to pass the Senate after passing the House of Delegates. However, the requirements of Chapters 211 and 212 still stand.

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.

Exhibit 4.6

Disciplinary and Data Requirements of Chapters 211 and 212 Implementation Status

Requirement	Board Has Implemented	Board Has Not Implemented
Collect race, gender, and ethnicity information on all licensees during the application process	The board has begun to collect this information on renewal license applications	The board has not begun to collect this information on initial license applications
Adopt new regulations for the rules of procedure for the disciplinary process including 1) guidelines for complaints, 2) guidelines for investigations, 3) a severity ranking system for substantiated complaints and guidelines for corresponding degrees of sanctions, 4) guidelines for probationary periods, 5) an appeals process, 6) and guidelines for confidentiality including the removal of the name and address from the disciplinary and complaint documents that come before the board	The board has begun redacting names from complaints that come before the Triage Committee to satisfy requirement number 6	The board has not yet implemented numbers 1 through 5
Develop a methodology of tracking the status of all complaints from the initial allegation through to sanctions and final action and keep records of the information for future audits	X	
Develop a database so that data can be analyzed in a variety of ways and subjectivity and individual bias is reduced		X
Institute the development, use, and routine review of a comprehensive status report as a monitoring tool for all disciplinary cases	X	
Implement a case audit that studies selected cases, de-identifying files and using outside experts		X

Source: State Board of Dental Examiners

Board's Newly Implemented Complaint Tracking System Could Be Improved

As discussed in **Chapter 3**, DCO instituted a compliance tracking report which contains all cases opened in the current fiscal year. The tracking report is submitted to the board each month for review to help ensure that sanctions approved by the board are carried out by staff and avoid a backlog of cases by tracking each until its closure. DCO also presents a more basic quarterly report that shows the percentage of complaints opened in previous fiscal years that have been closed. While these tracking reports are a step in the right direction, alone they do not meet the requirements of Chapters 211 and 212, as mentioned above. Further, since the quarterly report shows only the percentage of complaints opened in previous years that have been *closed*, board members cannot see at what stage cases from previous years may be delayed and cannot, therefore, help identify any trend or pattern that might be delaying the complaint resolution process.

Part of the reason that the requirements of Chapters 211 and 212 have not been met is that the board has not updated its software system, License 2000, which does not currently have the capability to manipulate data in a helpful way. Therefore, even the tracking report recently instituted by DCO is time consuming for staff. A further discussion of License 2000 can be found in **Chapter 6**.

Chapter 5. Administrative Issues

Although the Department of Legislative Services (DLS) found that the State Board of Dental Examiners (BDE) has implemented administrative changes that have improved board operations, several issues still warrant further discussion in this report. This chapter explores issues surrounding adequate licensing goals, file maintenance, staffing priorities, the nomination and training of new board members, customer service, and the annual budget of the board.

Licensing Unit Consistently Meets Expectations

Licensing is one of the core functions of the board. With the authority to issue and revoke licenses, the board can enforce standards of care for the dental industry. Thus, licensing allows the board to meet its statutory obligation to regulate and discipline dental professionals. As shown in **Exhibit 5.1**, the board issues a variety of licenses, permits, and certificates generally renewable on a two-year cycle. For example, to practice, dentists must hold one of the five types of practitioner licenses. In order to administer general anesthesia or parenteral sedation, or to dispense prescription drugs, dentists and the facility in which they practice must also hold the appropriate permit. Dental hygienists must also hold one of five types of licenses issued in order to practice. In addition to licenses, general supervision waivers may be granted to certain facilities for dental hygienists by application or by report. Dental radiation technologists need to obtain a certificate from the board in order to take dental x-rays. Dental assistants are unique in that certificates are only issued once, whereas certificates and licenses for other dental professionals are issued biennially.

As mentioned in **Chapter 3**, the 2004 sunset evaluation cited various findings concerning the initial and renewal licensure process at BDE. The report found that BDE struggled to meet its Managing for Results (MFR) licensing goals[4] and suggested that the board expedite its processing of incomplete applications for new licensure and renewal licensure by tracking applications that have been pending for more than 30 days and closing incomplete applications after a reasonable period.

In response, BDE now includes an application checklist for all new and renewal licenses in order to track applications that are incomplete when submitted. The licensing unit then sends notification to the applicant with the list of missing documents needed to process the licensure application. This has resulted in a more organized system of tracking incomplete applications. Applications are kept in an active status for up to 60 days, after which they are filed as closed.

[4] According to the Department of Health and Mental Hygiene, the MFR goals for BDE include issuing 100% of initial licensure and certificate applications within 30 days and issuing 100% of renewal licenses and certificates within seven days.

Exhibit 5.1
Licenses, Permits, and Certificates Issued by the Board

Practitioner	Type of License, Permit, or Certificate	Type of Practice	Projected Number in FY 2010
Dentist	General License	General practice	4,905
	Limited License	Practice limited to one year, for graduates of foreign schools	42
	Teacher's License	May teach dentistry only	20
	Volunteer's License	May practice general dentistry, but may not accept compensation	6
	Retired Volunteer's License	May practice general dentistry, but may not accept compensation	0
	General Anesthesia Permit	May administer general anesthesia	167
	Facility Permit	Allows facility to be used for general anesthesia	161
	Parenteral Sedation Permit	May administer parenteral sedation	30
	Facility Permit	Allows facility to be used for parenteral sedation	33
	Dispensing Prescription Drug Permit	Permits dentist to dispense prescription drugs from the place of practice	53
Dental Hygienist	General License	General practice	2,965
	Teacher's License	May teach dental hygiene only	1
	Volunteer's License	May practice general dental hygiene, but may not accept compensation	0
	Retired Volunteer's License	May practice general dental hygiene, but may not accept compensation	0
	Temporary License	For hygienists licensed in another state, pending MD exam results	0
	General Supervision Waiver by Application		5
	General Supervision Waiver by Report		15
Dental Radiation Technologist	Individuals other than Dental Hygienists or Dentists – Certificate	Permits individual to take x-rays (dental radiology)	5,630
Dental Assistant	Certificate	Permits individual to provide chair-side and administrative assistance	3,755

Source: State Board of Dental Examiners

The 2004 sunset evaluation also recommended that the board consider changing its renewal period from a spring-summer renewal period to a rolling renewal process throughout the year to create a more efficient system and to ease the burden on staff of heavy licensure time periods. Although this recommendation was considered by previous executive directors, the policy has yet to be implemented. The board should examine the policy of the Board of Physicians as an example of ongoing licensure renewal and consider the change after it has addressed more pressing administrative issues, such as updating its software 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.

BDE also purchased an online licensing system to allow licensees to renew online instead of submitting a paper application; licensees were able to use the system for the first time in the 2008 renewal period. **Exhibit 5.2** shows the distribution of licensees that took advantage of online renewal in 2008 and 2009.

Exhibit 5.2

Utilization of Online Renewal for 2008 and 2009

Online Dental Renewals

	Total Renewed Online	% of Total Dentists that Renewed
2008	2,154	90.1%
2009	2,170	85.3%

Online Dental Hygienist Renewals

	Total Renewed Online	% Total Dental Hygienists that Renewed
2008	1,204	91.4%
2009	1,244	87.7%

Source: State Board of Dental Examiners

The system has greatly expedited the renewal process and has helped BDE meet its MFR goals for renewal licensure; less than 15% of licensees chose not to renew online in either 2008 or 2009. The exhibit shows that the percentage of renewals processed online fell in 2009. The board purchased a new online licensing system for the 2009 renewal period and experienced a few glitches in the system, which accounts for the drop.

Some of the glitches experienced with the new system were simple user error, and others were problems that were easily fixed. However, a more serious problem that persists is the board's inability to view or print the original renewal application to retain explanations of responses to character and fitness questions that indicate whether an individual has been the subject of a disciplinary action in another state, which could be grounds for suspension or denial of a license in Maryland. The system administrator is currently trying to resolve this problem.

Board's Recordkeeping Needs Improvement

Accurate recordkeeping is a vital tool used to help the board monitor the licensure status of dental professionals and track complaint cases. With the exception of the online renewal process, almost all licensing information and disciplinary information comes to the board in hard copy form. Once the staff receives the information, a file is created and housed in the licensing unit if it pertains to an application, or in the compliance unit if it pertains to a disciplinary case. From that point, staff enters the licensing or complaint information into License 2000. To maintain accurate files, the contents of the hard copy file must correspond to the information entered into the electronic file in License 2000.

However, DLS found inconsistencies in the License 2000 files and the hard copy files. For instance, the dates recorded in the board's hard copy files did not necessarily correspond to dates recorded in License 2000. Also, some licensing applications that were identified as pending in License 2000 were actually closed and filed as such in the hard copy files. License 2000 is only useful and effective in tracking licensing and complaint information if the data entered by staff is accurate and up to date.

File review by DLS also revealed inconsistencies in the type of information included in each file. In some cases the hard copy complaint files appeared to be missing key correspondence between the board and the licensee or complainant. This could be attributed to the large size of the compliance files that the board keeps. However, a consistent file organizational structure would make it easier to find key documents in large files.

Finally, paper files for compliance are maintained in as many as five different offices depending on where the complaint is in the disciplinary process. To locate a particular file, staff may have to check several offices before it is found. If space becomes available in the offices adjacent to BDE's office space, currently occupied by the State Board of Occupational Therapists (OT board), BDE should consider creating a central file room to ensure proper tracking of each file. Additionally, a system could be developed in which staff members could sign out material when they remove a file from the central filing room. This system would not preclude staff from having multiple files checked out for an extended period of time but would allow other members to know where a file is located.

The OT board, with which BDE shares a contract for License 2000 through a company called Systems Automation, recently purchased a digital imaging system from Systems Automation. The digital imaging system will allow the OT board to transition to a paperless filing system. BDE should also explore switching to a paperless system that would reduce the amount of space that BDE files require.

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.

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.

Staffing Issues Persist Due in Large Part to High Turnover of Executive Directors

Staffing issues have plagued the board in recent years, most directly related to the chronic turnover of the executive director position. The board has had four different executive directors in the last five years; most recently, the position became vacant in July 2009 and was filled in October 2009. While the position was vacant, the dental compliance officer and the legal assistant acted as co-interim executive directors.

Turnover in the position has created a dysfunctional working atmosphere for staff in that there has not been consistent leadership and management. DLS believes that this has contributed to low staff morale and has resulted in some staff members focusing on their own projects rather than working as a team when necessary to accomplish the responsibilities of the board. The following is a list of issues that the new executive director should tackle:

- **Conduct Staff Evaluations** – All State employees in skilled service, professional service, and management service must have their performance evaluated on a regular basis. The evaluation process is designed to facilitate communication between employees and supervisors.

  Prior to 2008, BDE staff did not receive performance evaluations on a regular basis. In fact, some staff had not received a performance evaluation in more than 10 years. In October 2008, the Department of Health and Mental Hygiene (DHMH) sent a representative to the board to train the managers to conduct evaluations. Consequently, the dental compliance officer and the licensing coordinator have instituted biannual evaluations for staff members in the compliance unit and the licensing unit, respectively. However, the previous executive director failed to institute a similar policy for the six remaining staff members.

- **Conduct Cross Training and Develop Procedure Manuals** – With a few exceptions, staff members are not cross trained to perform another staff member's job or function. If a staff member were to leave quickly or have an unexpected absence from work, the remaining staff would have a difficult time completing certain tasks that had previously been handled by only one person. Additionally, there are no procedure manuals that describe the responsibility of each function and the assignment of tasks within that function. It would be helpful to have a clearly written set of guidelines for each unit.

  Board staff is in the process of developing procedure manuals and cross training sessions. The new executive director should ensure that procedure manuals are completed and cross training is provided for all units of BDE.

- **Evaluate the Distribution of Staff Resources** – The executive director should evaluate the distribution of staff to ensure that the level is appropriate for the amount of work facing each unit. Employee evaluations will help in this determination as they can be used to measure how much time each individual spends at a particular task and what types of tasks the individual is assigned. For example, one staff member was reassigned to the compliance unit in June 2009 from the administration unit. However, that individual still spends about 75% of her time completing administrative duties and only 25% of the time is devoted to compliance tasks. The compliance unit often struggles to complete its work facilitating the complaint resolution process in a timely manner and could benefit from greater use of that person.

- **Develop Disciplinary Guidelines Required by Chapters 211 and 212 of 2008** – As noted in **Chapter 4**, the board has implemented some of the requirements set forth in Chapters 211 and 212 of 2008, such as changing its nomination process and developing a tool to track cases from inception through closure, but has yet to address others. For instance, the board has not adopted new regulations for the rules of procedure for the disciplinary process, including the mandated development of sanctioning guidelines. The executive director should make it a priority to carry out the statutory requirements established by Chapters 211 and 212 of 2008.

- **Upgrade License 2000** – The licensing and compliance tracking system continues to present problems for the staff in its everyday usage. Vital updates and maintenance to License 2000 have fallen through the cracks as executive directors have not been at the board long enough to understand the system and implement meaningful changes. **Chapter 6** explains the specific problems presented by the current system and the suggested improvements.

DLS recognizes that the dental compliance officer and the legal assistant have contributed an enormous amount of work in the absence of an executive director. In addition to

their own duties, they have taken on the duties of the executive director which include personnel, management, budget, and the approval of subpoenas for investigations.

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

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.

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.

Board Could Improve the Availability of Information for Licensees and the Public

The board provides a valuable service to both the public and the professionals that it regulates. Its mission statement is to protect the public and advance the profession of dentistry in Maryland. For this purpose, customer service and information available on its web site can be enhanced to better serve the public and its licensees.

Though Recently Improved, BDE Web Site Could Be Even More Helpful

BDE's web site offers many resources to the public including complaint forms, notice of public meetings, and a verification system to allow consumers to access a practitioner's licensure status and professional background.

Public orders are public documents issued by the board against licensees or certificate holders that have violated the Maryland Dentistry Act. Currently, public orders are published in the annual newsletter, which is also available on the web site. However, the newsletter is only published once a year. The Task Force on the Discipline of Health Care Professionals and Improved Patient Care made a recommendation that each board make available on its web site the final order for each licensee who is disciplined by the board. Instead of waiting for the newsletters, public orders should be published on the web site so that consumers have ready access to public orders taken by the board. A change such as this would also reduce the workload of board staff, which currently has to send out this information individually upon request.

Licensing and certification forms are available online for easy renewal for licensees. However, DLS found that the form available on the board's web site to renew a permit for either general anesthesia and/or parenteral sedation is from the 2004 renewal period. Because the board is now relying heavily on online license renewal, it is imperative that all forms be accurate and up to date.

Finally, staff records both open and closed sessions of the board's semimonthly meetings through meeting minutes. Board staff should make the meeting minutes from the open sessions available on the web site for both licensees and the public.

Board's Newsletter Is Not Timely

Although customer service has improved with the addition of a telephone operator, there are still areas where the board could provide better service to both licensees and the public. The newsletter is one instance where the board can greatly improve its service to licensees. Unfortunately, the newsletter, which can keep licensees apprised of the board's activity, is only published once a year in the spring. Further, in 2009, the newsletter was not published until August 2009. The 1998 sunset review recommended publishing the newsletter at least biannually; DLS still believes the board should maximize its use of the newsletter – a well established and inexpensive public relations tool. If the board simplified its newsletter to include only critical and timely information, biannual publication of the newsletter would be more feasible. Additionally, BDE should consider online-only publication as a cost saving measure.

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

Recommendation 18: Board staff should ensure that all forms are updated regularly.

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

Board Member Issues

Board Should Continue to Build on Training for New Members

When new board members are elected, they receive a brief training that DHMH provides to new board members of all health occupations boards. To supplement that training and to provide information specific to the dental board, BDE created a welcome packet, in 2008, for new board members which contains a great deal of information that members need in order to understand board functions and the licensees they regulate.

In addition, DLS observed that the more experienced members are generally good about explaining board processes to newer members. DLS also recognizes that much of what board members have to learn is best learned "on the job" and requires time. However, since there are so many board regulations and policies to navigate, the board should continue to build on its existing training by assigning a designated mentor to new board members to help them become effective members of the board more quickly.

Board Meetings

While attending board meetings, DLS noted that files for cases under review by the full board were not readily available in the board room. In most cases, the Discipline Review Committee (DRC) had reviewed and made an initial decision on the file at the meeting two weeks prior. Convening two weeks later, the full board often had questions about the specifics of the case before voting on a final decision. Therefore, if a board member had a question about a particular case that the DRC reviewer could not recall, a staff member had to retrieve the file and bring it into the board room for review. DLS believes that it would be beneficial to pull those files that will be discussed by the full board in the event that there are questions about the specifics of the case.

Board Is Actively Lowering Annual Fund Balance

The board became self-supporting in 1992 when the General Assembly established special funds for most of the health occupations boards. BDE's special fund is supported entirely by fees collected from licensees and certificate holders. The 2004 sunset evaluation report found that the board's fund balance at the time was excessive and recommended spending down the balance to come into line with the DHMH-recommended fund balance target of 20% of BDE's annual expenditures.

Cognizant of its fund balance, BDE has proactively taken steps to lower its annual fund balance. However, attempts to spend down its fund balance have taken longer than expected due to a steady increase in regulated professionals. While the board has instituted temporary and permanent reductions in licensing fees, discussed below, the resulting revenue reduction has not offset the revenue increase from the larger number of dental professionals. At the end of fiscal 2009, the board's balance was $940,683; that represents 49.6% of its operating budget for fiscal 2009. **Exhibit 5.3** shows revenues, expenditures, and the ending fund balance for BDE from fiscal 2003 through 2010.

Exhibit 5.3
Fiscal Status of the State Board of Dental Examiners
Fiscal 2003-2010

	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	Projected FY 2010
Starting Fund Balance	$177,122	$547,847	$858,626	$1,205,724	$1,286,762	$1,345,509	$1,108,411	$940,683
Revenues Collected	1,702,175	1,618,044	1,744,123	1,583,259	1,699,697	1,327,771	1,727,135	1,665,640
Total Funds	**$1,879,297**	**$2,165,891**	**$2,602,749**	**$2,788,983**	**$2,986,459**	**$2,673,280**	**$2,835,546**	**$2,606,323**
Total Expenditures	**$1,331,448**	**$1,283,727**	**$1,397,025**	**$1,502,220**	**$1,640,950**	**$1,564,869**	**$1,894,863**	**$2,033,816**
Direct Costs	998,614	962,272	1,039,232	1,163,969	1,298,111	1,171,858	1,532,607	1,675,908
Indirect Costs	332,834	321,455	357,793	338,251	342,839	393,011	362,256	357,908
Ending Fund Balance	**$547,847**	**$882,164**	**$1,205,724**	**$1,286,762**	**$1,345,509**	**$1,108,411**	**$940,683**	**$572,507**
Balance as % of Expenditures	41.1%	68.7%	86.3%	85.7%	82.0%	70.8%	49.6%	28.1%
Target Fund Balance ($)	$266,290	$256,745	$279,405	$300,444	$328,190	$312,974	$378,973	$406,763
Target Fund Balance as %	20.00%	20.00%	20.00%	20.00%	20.00%	20.00%	20.00%	20.00%

Notes: Numbers may not sum to total due to rounding. Fiscal 2003 through 2009 are actual; fiscal 2010 is projected. The beginning balance for fiscal 2005 is lower than the closing balance for fiscal 2004 due to an accounting change beginning in fiscal 2005.

Source: State Board of Dental Examiners

Expenditures Have Surpassed Revenues

Beginning in fiscal 2008, the board's expenditures surpassed its revenues, essential to spending down its fund balance. In fact, from fiscal 2007 to 2010, the board has increased its expenditures by $392,866, or 24%. At the same time, projected revenues for fiscal 2010 have decreased by $34,057 from the fiscal 2007 actual revenues. **Exhibit 5.4** shows the foregone revenues and increased expenditures that have resulted in a lower fund balance for BDE. However, it is important to note that, if the trend continues, BDE may need to revisit its fiscal strategy to maintain a sufficient fund balance including determining which, if any, fees should be raised in the future to keep pace with ongoing expenditures.

The loss in revenue is due to permanent fee reductions for dental hygienists beginning in fiscal 2008 and radiation technologists in fiscal 2009 as well as temporary fee reductions for dental renewal licenses in fiscal 2008 and 2009. In fiscal 2008 and 2009, foregone fee collection based on the reductions equaled almost $600,000.

The increase in the board's budgeted expenditures is due in part to increasing the per diem rate for board members beginning in fiscal 2008, filling vacant positions in fiscal 2009 (telephone operator and two investigators), an increasing need for general anesthesia and parenteral sedation evaluators between fiscal 2007 and 2010, and purchasing a replacement online licensing system in fiscal 2009.

Possible changes to the fiscal 2010 budget will affect the ending fund balance. First, regulations are being promulgated for dental hygienists to perform local anesthesia and manual curettage. A licensing fee associated with this new designation may increase the board's revenues in fiscal 2010. At the same time, board administrative costs may increase to approve the new permits. Also, the board is contemplating purchasing a digital imaging system to transition from paper files to electronic files. The estimated cost for an imaging system is $20,000. The board has also discussed reinstating the maintenance contract for License 2000; that contract could run as high as $30,000. Alternately, the board may decide to purchase a new system entirely, the cost of which is unknown, but likely high. Finally, BDE is considering adopting the space vacated by the OT board, should the OT board move out of the building. Rent costs would increase if BDE decides to use the space. All of these costs are not yet set, but may be necessary at some point in fiscal 2010, pushing expenditures far beyond the revenue that sustains the board.

Exhibit 5.4

Foregone Revenue and Increased Expenditures for the Board

Foregone Revenue

Fiscal Year	Item	Cost
Fiscal 2008	Fee reduction for new and renewal dental hygiene licenses (permanent reduction)	Lost revenue in FY 08 and FY 09 ($227,950)
	Fee reduction for renewal dentist license (temporary reduction)	Lost revenue in FY 08 and FY 09 ($237,300)
Fiscal 2009	Fee reduction for renewal dental radiation technologist certificate (permanent reduction)	Lost revenue in FY 09 ($132,000)
	Total	**($597,250)**

Increased Expenditures

Fiscal Year	Item	Cost
Fiscal 2009	Per diem rate increase for board members	From FY 07 to FY 10: $30,100
	General Anesthesia Evaluators and Parenteral Sedation Evaluators	From FY 07 to FY 10: $46,525
	Purchase MyLicense Egov (one-time)	$93,500
	Hiring staff members*	$185,481
	Total	**$355,606**

*Does not include replacing new executive director.
Source: State Board of Dental Examiners and Department of Legislative Services

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.

Chapter 6. License 2000

In the year 2000, the State Board of Dental Examiners (BDE) purchased a system, in conjunction with the State Board of Occupational Therapists, called License 2000. Its primary function, to track licensees regulated by the board, was expanded to include the tracking of disciplinary cases as well. An effective software system is crucial to the work of the board because it provides a tool to track licensees and certificate holders in the State and to determine whether or not they are in compliance with licensing deadlines, continuing education requirements, and the laws and regulations that guide the practice of dentistry in Maryland. A software system also helps staff process complaints that are made against licensees and certificate holders. Unfortunately, BDE has experienced many problems with the system since its purchase in 2000, particularly as it relates to the tracking of complaints against regulated professionals.

Both the 2004 full sunset evaluation report and the 2008 preliminary evaluation of BDE cited ongoing problems with License 2000 – yet the board has not updated the system or purchased a new one – so problems persist. With the help of board staff, the Department of Legislative Services (DLS) identified a number of issues that could be addressed by either upgrading the current system or replacing it with one that better suits the needs of the board.

The Board Has Not Updated License 2000 to Make It User Friendly for Staff

Ideally, a system would allow staff to work more efficiently than they would if using a manual filing and tracking system. An effective system should enable, not hinder, staff to keep accurate records, produce more work in less time, and allow for the easy manipulation of data. However, this is not the case with License 2000. In fact, the system actually hinders staff productivity in a number of ways:

- **Staff cannot access licensing and compliance information on the same screen.** License 2000 does not allow staff to view a licensee's complaint history and licensing information on one screen. This design is necessary to keep complaint information confidential; licensing and administrative staff are not able to access complaint information. However, it is cumbersome for compliance staff, who must search for licensing information for respondents separately.

- **License 2000 does not allow users to print directly from the screen.** When compiling files for compliance cases, staff has to copy the screen and paste it into another document in order to print. This extra step wastes time.

- **License 2000 does not record out-of-state disciplinary sanctions that may be pertinent to Maryland licensees.** Many practitioners in Maryland are licensed and practice in multiple jurisdictions such as Virginia and Washington, DC. Licensees are required to disclose any sanctions incurred in other states, since that may signal grounds for disciplinary action in Maryland. However, as discussed in **Chapter 5**, License 2000 does not keep a record of sanctions imposed in other states for each licensee even though this information is submitted by licensees on renewal applications.

- **The system does not alert staff when steps in the compliance process are due.** License 2000 does not "prompt" staff to take action on a specific complaint at a specific time. For example, if the board sends a respondent a request for records and does not receive them by the date specified, staff must send a second request. While second requests are often sent out the day after the records are due, this is not always the case. Sometimes weeks pass before a second request is sent to a respondent.

The Board Has Not Updated License 2000 to Help It Comply with Chapters 211 and 212 of 2008

Chapter 4 of this report details the requirements of Chapters 211 and 212 of 2008 as they relate to data manipulation and the tracking of complaints. In order for the board to fully comply with some of those requirements without consuming an inordinate amount of staff time, an update to License 2000 is needed. Specifically, License 2000 impedes the board from enacting the following three requirements of Chapters 211 and 212:

- **The Acts require the board to develop a methodology of tracking the status of all complaints from the initial allegation through final action and keep records of the information for future audits.** However, License 2000 is not capable of generating a "flow chart" or report illustrating how long a complaint has remained at each step in the disciplinary process (*e.g.*, response and records, investigation). The system cannot be used as a tool to determine whether complaints tend to stall at one stage more often than another.

- **The Acts require the board to develop a database to analyze data in a variety of ways in order to reduce subjectivity and individual bias**. Again, License 2000's data manipulation capabilities are limited. When DLS requested data reports for this sunset review, board staff often had to use supplemental software to generate the requested information. This process is more time consuming than it would be if License 2000 had better data manipulation capability.

- **The Acts require the board to institute the development, use, and routine review of a comprehensive status report as a monitoring tool for all disciplinary cases.** As

mentioned in **Chapter 4**, the compliance officer has instituted a "tracking report" to keep board members informed of the status of cases and to prevent a backlog. However, since License 2000 cannot generate such a report, compiling this information is time consuming for staff.

Tracking Compliance with Case Management Is Difficult and Inefficient

Complaints that are referred to case management are handled in a separate software system (Microsoft Access) and are no longer tracked in License 2000 once referred to case management. Thus, it is difficult to track a complaint that has been referred to case management from inception to closure. This problem was cited in the 2004 sunset evaluation report, the 2008 preliminary evaluation, and in the 2007 OIG report, but it has yet to be addressed by the board. The fact that a complaint referred to case management is tracked in two different software systems further compounds the board's inability to manipulate and analyze complaint data in a useful way.

Moving Forward

The board recognizes the need for changes and/or improvements to License 2000. As a result, and as noted in **Chapter 1**, the board created an ad hoc committee to address problems with License 2000. Further action has not yet been taken.

Recommendation 21: The board should consult with the administrators of the License 2000 system to determine whether the system can be upgraded to perform the following tasks:

1. **grant a higher level of access to compliance staff that allows the full history of a licensee, including licensing and compliance data, to appear on one screen so that compliance staff does not have to run two different searches;**

2. **include sanctioning data from renewals in the licensee's License 2000 file so that staff does not have to look it up in a different program;**

3. **allow the easy manipulation of data so that the board can identify and address trends that delay the complaint resolution process and meet the data requirements of Chapters 211 and 212 of 2008 using minimal staff time;**

4. **provide a mechanism for alerting staff of pertinent due dates to ensure that all actions are taken in a timely manner and that staff time is used effectively by offering prompts for action; and**

5. allow for the tracking of cases referred to case management to fully track complaints from inception to closure.

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.

Chapter 7. Conclusion

The State Board of Dental Examiners consists of 16 dedicated people who diligently perform their duties with respect for the significant responsibility with which they are tasked. It is somewhat ironic that the statute reads that the board must meet at least twice a year (§ 4-204(a)(1) of the Health Occupations Article) when in fact the board meets twice a month and many members contribute far more of their time in other ways. Board members appear to balance a generally amiable internal relationship with healthy skepticism and respectful discussion over issues facing the board.

The board is highly cognizant that it has been an object of great criticism in recent years and has taken many steps to address concerns raised. However, there is still work to be done. Following the 2007 Office of the Inspector General report, legislation passed during the 2008 legislative session that mandated the board make a number of changes based on that report. And as noted in **Chapter 4**, while the board made some of those changes, and some that went above and beyond those included in the law, it has yet to address others. **Chapter 4** includes a recommendation for the board to make those changes, as well as some additional ones that the Department of Legislative Services (DLS) believes will improve or resolve lingering problems.

The board has struggled in recent years to retain administrative staff, particularly in the upper levels of management; the board has seen four executive directors in the past five years. This has undoubtedly affected staff morale and board operations. However, DLS believes that the current administrative staff is a highly capable one, making prospects for improving board operations generally good. The compliance unit in particular has made a number of recent administrative changes (discussed in **Chapter 4**) that should improve the complaint resolution process. However, these and other changes recommended by DLS will take time to implement and yield results.

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.

DLS has recommended a significant number of changes to the operations of the board. While DLS acknowledges that the recommendations will not completely resolve all operational problems, it believes that collectively the recommendations can significantly improve them. However the board, like any other organization, must tackle new challenges as they arise. If it fails to do so, new problems will certainly emerge and undermine any progress made by these or any other recommended improvements. Nevertheless, for the time being, these changes should help the board provide better services to both its licensees and the consumers of dental services in Maryland.

Appendix 1. Dental Boards Across the Country

	Status	Total Membership	DDS/ DMD	DH	Public	Other Voting	Term Length	# of Consecutive Terms
AL	Independent	6	5	1	0		5 years	0
AK	Semi-autonomous	9	6	2	1		4 years	2
AZ	Independent	11	6	2	3		4 years	2
AR	Independent	9	6	1	2		5 years	No limit
CA	Independent	11	8	1	2		4 years	2
CO	Semi-autonomous	13	7	3	3		4 years	2
CT	Subordinate	9	6	0	3		4 years	2
DE*	Semi-autonomous	9	5	1	3		3 years	2
DC	Semi-autonomous	7	5	1	1		1-3 years	3
FL	Semi-autonomous	11	7	2	2		4 years	2
GA	Semi-autonomous	11	9	1	1		5 years	2
HI	Semi-autonomous	12	8	2	2		4 years	2
ID	Independent	8	5	2	1		5 years	Not stated
IL	Advisory	11	8	2	1		4 years	2
IN	Semi-autonomous	11	9	1	1		3 years	3
IA	Independent	9	5	2	2		3 years	3
KS	Independent	9	6	2	1		4 years	2
KY	Independent	9	7	1	1		4 years	2
LA	Independent	14	13	1	0		5 years	2
ME	Independent	9	5	2	1	1	5 years	2
MD	Independent	16	9	4	3		4 years	2
MA	Independent	10	6	1	2	1	5 years	2
MI	Subordinate	19	10	4	3	2	4 years	2 full and 1 partial
MN	Independent	9	5	1	2	1	4 years	2
MS	Independent	8	7	1	0		6 years	0
MO	Independent	7	5	1	1		5 years	Not stated
MT	Semi-autonomous	10	5	2	2	1	5 years	0
NE	Subordinate	10	6	2	2		5 years	2

	Status	Total Membership	DDS/ DMD	DH	Public	Other Voting	Term Length	# of Consecutive Terms
NV	Independent	11	7	3	1		3 years	0
NH	Independent	9	6	2	1		5 years	2
NJ	Independent	12	8	1	2	1	4 years	0
NM	Independent	9	5	2	2		5 years or less	2
NY	Advisory	18	13	3	3	1	5 years	2
NC	Independent	8	6	1	1		3 years	2
ND	Independent	7	5	1	1		5 years	2
OH	Independent	13	9	3	1		4 years	2
OK	Independent	11	8	1	2		3 years	3
OR	Independent	9	6	2	1		4 years	2
PA	Semi-autonomous	13	7	1	2	3	6 years	2
PR	Independent	7	7	0	0		5 years	2
RI	Semi-autonomous	12	6	2	4		3 years	2
SC	Semi-autonomous	9	7	1	1		6 years	0
SD	Semi-autonomous	7	5	1	1		3 years	3
TN	Semi-autonomous	11	7	2	1	1	3 years	3
TX	Independent	15	8	2	5		6 years	1
UT	Advisory	9	6	2	1		4 years	2
VT	Semi-autonomous	9	5	2	2		5 years	2
VA	Semi-autonomous	10	7	2	1		4 years	2
VI	Advisory	5	5	0	0		4 years	0
WA**	Semi-autonomous						4 years	2
DQAC		16	12		2	2		
DHEC		4		3	1			
WV	Semi-autonomous	9	6	1	1	1	5 years	2
WI	Semi-autonomous	11	6	3	2		4 years	2
WY	Independent	6	5	1	0		4 years	2

* Delaware also has a three-person dental hygiene advisory committee.
**Washington has two separate boards for dentists (Dental Quality Assurance Commission) and dental hygienists (Dental Hygiene Examining Committee).

Source: American Association of Dental Examiners

Appendix 2. Recommendations of the Task Force on the Discipline of Health Care Professionals and Improved Patient Care

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1. Charging Committee

To the extent practicable, each board should have a subcommittee which will decide whether charges should be brought against a licensee. The members of this subcommittee shall not participate in any hearing on the charges or any final decision by the board on the charges or sanctions imposed based on those charges. Only members of this subcommittee can participate in investigations and pre-adjudication case resolution conferences.

2. Timeliness of Charges

- Absent unusual circumstances, boards should not charge based solely on events that occurred more than six years before the initiating complaint.

- The six-year timeframe should not apply to cases involving criminal convictions, sexual misconduct and other boundary violations, reciprocal discipline matters, and ongoing substance abuse.

- This six years begins to run at the later of:
  - actual discovery by the complainant of the facts complained of; or
  - the date when a reasonable person, if exercising due diligence, should have discovered the facts complained of.

- Unusual circumstances include:
  - fraudulent concealment by the licensee of material information;
  - repressed memory by the patient; and
  - acts that occurred while a patient was a minor.

3. Board Membership

All licensees should be notified of board vacancies. Such notice can be achieved by an e-mail to all licensees or a notice on the board's web page.

4. Peer Review

In standard-of-care cases where peer review is conducted, licensees under investigation should be given the opportunity to review the preliminary peer review written report and the opportunity to respond to questions from or concerns expressed by the peer reviewer prior to the final peer review report being sent to the board. The manner of communication (in-person meeting, telephone conference, or written communication) between the licensee and peer reviewer shall be determined at the discretion of the board. Neither board members nor defense counsel shall be permitted to participate in an in-person meeting of a licensee and peer reviewer.

5. Single Case – Standard of Care

All boards shall be given the authority to adopt, and should adopt, a program in which practitioners who commit a single standard-of-care violation are provided with training, mentoring, or another form of remediation rather than requiring the practitioner to participate in a formal hearing.

6. Sanctioning Guidelines

- Each board should adopt specific sanctioning guidelines that will be applied to that board and used to increase uniformity in board sanctions for similar infractions. All guidelines should conform to a general framework or incorporate a common set of elements.

- This framework should include:
  - a range of sanctions for each type of infraction (this can be done based on historical data or a normative process); and
  - a list of mitigating and aggravating circumstances that may be used to decide when the sanction should fall within the range of sanctions or whether the sanction should fall outside the established range.

- Sanctioning guidelines should be used throughout the entire discipline process – during both formal and informal proceedings.

7. Timeliness – Board Resources

Boards should be able to use their own financial resources to hire staff needed within State personnel guidelines. This should include the ability of boards to use their resources to obtain additional personnel time from the Office of the Attorney General (OAG).

8. Collection of Racial and Ethnic Background Data

All boards should collect racial/ethnic identity information on a mandatory basis as part of their licensing application process.

9. Secretary of Health and Mental Hygiene – Appointment of Board Executive Directors

The Secretary of Health and Mental Hygiene shall have the authority to confirm the appointment of the executive director of all health occupations boards.

Recommendations requiring legislative authority to authorize action by the Secretary of Health and Mental Hygiene:

10. 18 Months for Decision to Charge

As a rule, a board should complete its investigation and the Charging Committee should vote on whether to charge within 18 months of the date a complaint is filed with the board. Delays caused by or requested by the licensee will toll this time period.

11. 90 Days to Issue Charges after Decision to Charge

After the board has voted to charge, absent good cause, charges should be issued no later than 90 days after the decision to charge.

12. 90 Days – Minimum Time from Charges to Hearing

Once charges have been issued by the board, a hearing on those charges shall be set no earlier than 90 days from the date the charges are served on the licensee, except at the request of the licensee. The administrative prosecutor shall make reasonable efforts to contact the licensee or counsel (where the licensee is represented by counsel known to the board) to arrange for (a) reasonable, agreed-upon hearing date(s) prior to the issuance of the hearing notice.

13. 90 Days to Issue Decision

Absent good cause shown, the board should render its decision within 90 days of the later of:

- the receipt of an opinion from the Office of Administrative Hearings; or
- the final day of any hearing before the board (including a hearing on exceptions to a proposed opinion from an administrative law judge).

Recommendations requiring action by the Secretary of Health and Mental Hygiene with no legislative authority required:

14. Uniform Procedural Rules for Contested Cases

The Secretary shall convene a working group including representatives from OAG, the health occupations boards, and other relevant stakeholders to develop a set of uniform procedures for contested cases for adoption by all health occupations boards.

15. Data Collection

Boards should collect data relating to the age of cases at various stages of the disciplinary process.

16. Data Collection – Integration with StateStat

The data collection framework included in Appendix K should be integrated with the data currently collected by StateStat.

Recommendations requiring individual board action:

17. Office of the Attorney General – Separation of Functions

The Policy of the Office of the Attorney General regarding separation of functions (OAG Policies & Procedures - Admin. Adjud. Proceedings 5.0) should be made publicly available.

18. Communication Timeframes

With the exception of the Board of Physicians and Board of Nursing, each board should adopt the following timelines and guidelines for communication with complainants and respondents:

- The complainant and respondent should be notified of the receipt of a complaint within seven days of the receipt of that complaint.
- A status update should be sent to the respondent and the complainant within 90 days of the receipt of the complaint.
- After disposition, a final notification letter should be sent to the complainant and the respondent within seven days of completion of the case.

The Board of Physicians and the Board of Nursing should establish their own timeframes for each of the above actions.

19. Model Letter Format

All boards should follow a model letter format (consistent with the letters provided in Appendix D) when corresponding with complainants and respondents.

20. Training Materials

Each board should develop training materials and processes for new board members above and beyond what the Department of Health and Mental Hygiene (DHMH) currently provides.

21. Prioritization of Cases

Each board should develop guidelines on timeliness for prioritization, investigation, and prosecution of cases.

22. Information Available on Board Websites – Aggregate Data

The data on disciplinary actions that the task force has recommended for inclusion in the StateStat data should be made available through each board's web site.

23. Data Regarding Individual Practitioners

Each board shall make available on its web site the final order for each licensee who is disciplined by the board after _______ (specify date).

24. Public Information about Boards

The health occupations boards and the DHMH Public Information Office should be encouraged to utilize various methods, including for example, flyers in practitioner offices, public notices of board meetings, televised board meetings on cable TV, and outreach to the public through speakers to groups and organizations, to inform the public how and when to contact the boards and how boards function.

Source: February 2009 Report of the Task Force on the Discipline of Health Care Professionals and Improved Patient Care

Appendix 3. States that Allow Some Form of Direct Access to Dental Hygienists

Alaska	A dental hygienist may provide services according to a board-approved collaborative agreement in any setting. A dentist need not examine, diagnose, or be present. The dental hygienist must have 4,000 hours of experience during the five years preceding the agreement.
Arizona	A dental hygienist working under contract for schools, public health settings, and institutions may screen and apply fluoride unsupervised.
California	A dental hygienist may screen and apply fluoride and sealants unsupervised in government public health programs. In addition, a dental hygienist endorsed as a registered dental hygienist in alternative practice (RDHAP) may provide services without supervision for homebound persons, at schools, residential facilities, institutions, and in dental health professional shortage areas for up to 18 months – more if the patient obtains a prescription from a dentist or physician. A dental hygienist may own an alternative dental hygiene practice. RDHAP must have three years of clinical practice experience and have completed a 150-hour special course and exam.
Colorado	A dental hygienist may provide oral prophylaxis and preventive therapeutic services unsupervised in any setting. A dental hygienist may also own a dental hygiene practice.
Connecticut	A dental hygienist may practice in institutions, public health facilities, group homes, and schools without supervision. A dental hygienist must have two years of experience.
Idaho	A dental hygienist may provide services in hospitals, long-term care facilities, public health facilities, health or migrant clinics, or other board-approved settings if a dentist affiliated with the setting authorizes services. The dental hygienist must be an employee of the facility or obtain extended care. The dental hygienist must have a permit and 1,000 hours of experience in the last two years.

Iowa	A dental hygienist may provide services based on standing orders and a written agreement with a dentist in schools, Head Start settings, federally qualified health centers, public heath vans, free clinics, community health centers, and public health programs. The dental hygienist must have three years clinical experience and submit an annual report.
Kansas	A dental hygienist with an extended-care permit may treat patients in schools, Head Start programs, state correctional institutions, local health departments, indigent care clinics, adult care homes, hospital long-term units, or at the home of homebound persons on medical assistance. The dental hygienist must have 1,800 hours of experience and an agreement with a sponsoring dentist.
Maine	A dental hygienist licensed in independent practice may practice without supervision by a dentist in any setting. The dental hygienist must have a bachelor's degree and 2,000 hours of clinical practice in a private setting during the two preceding years, or an associate's degree and 6,000 hours of clinical practice experience in a private setting during the six preceding years.
Massachusetts	A public health dental hygienist may provide dental hygiene services in public health settings without supervision under a collaborative agreement. The dental hygienist must have three years of clinical practice experience in a public health setting and training as determined by the Department of Public Health.
Michigan	A dental hygienist may provide dental hygiene services for a two-year period to patients through a "grantee health agency." A grantee health agency must be a public or nonprofit entity, school, or nursing home that employs or contracts with at least one dentist or dental hygienist and provides care to an underserved population. A dentist must be designated as a supervising dentist – to be available for consultation when necessary.
Minnesota	A dental hygienist may provide dental hygiene services in specified health care facilities that serve uninsured individuals or health care public program recipients without supervision under a collaborative agreement with a licensed dentist. The dental hygienist must have 2,400 hours of clinical experience in the past 18 months or a career total of 3,000 hours, including at least 200 hours of clinical practice in two of the past three years. Specific continuing education and certification requirements also apply.
Missouri	A dental hygienist may provide oral prophylaxis, sealants, and fluoride services in public health settings to Medicaid eligible children without supervision. The dental hygienist must have three years of experience.

Montana	A dental hygienist with a limited access permit may provide specified services without the authorization of a dentist provided he or she follows protocols established by the state board and refers any patients needing dental treatment to a dentist. Services may be provided in federally funded health centers and clinics; nursing homes; extended-care facilities; home health agencies; group homes for the elderly, disabled, and youth; Head Start programs; migrant work facilities; and local and state public health facilities. Services include oral prophylaxis, fluoride, polish restorations, root planing, sealants, oral cancer screening, exposing radiographs, and charting.
Nebraska	A dental hygienist may provide specified services in a public health setting or a health care or related facility unsupervised if authorized by the Department of Health. The dental hygienist must have 3,000 hours of experience in at least four of the last five years, as well as professional liability insurance.
New Hampshire	Under public health supervision a dental hygienist may provide procedures authorized by a dentist in a public or private school, hospital or institution, or residence of a homebound patient provided the dentist reviews patient records once in a 12-month period.
New Mexico	A dental hygienist may provide services unsupervised under a collaborative agreement with a licensed dentist. A dental hygienist may own or manage a collaborative dental hygiene practice. The dental hygienist must have 2,400 hours of active practice in the previous 18 months or 3,000 practice hours in two of the past three years.
New York	If a supervising dentist is available for consultation, diagnosis and evaluation, and has authorized the dental hygienist to perform the services, a dental hygienist may work in any setting (private or public) and perform dental hygiene duties without a dental examination or need to refer a patient to a dentist.
Nevada	A dental hygienist – with approval – may work as a public health dental hygienist in schools, community centers, hospitals, nursing homes, and other locations as the state dental health officer deems appropriate without supervision.
Oklahoma	A dentist may authorize in writing a dental hygienist to perform services one time on a patient in a setting outside the office prior to any dentist contact/exam if the hygienist refers the patient back to the authorizing dentist.

Oregon	A dental hygienist with a limited-access permit may provide services in a variety of limited-access settings such as extended-care facilities, facilities for the mentally ill or disabled, correctional facilities, schools and pre-schools, and job training centers. The dental hygienist must refer the patient to a licensed dentist annually. The dental hygienist must obtain continuing education hours beyond what is required for all dental hygienists.
Pennsylvania	A dental hygienist may provide services in a variety of public health settings without the supervision or prior authorization of a dentist. The dental hygienist must have 3,600 hours of experience, complete five hours of continuing education during each licensure period, and carry liability insurance.
Rhode Island	A dental hygienist working under a dentist's general supervision can initiate dental hygiene treatment to residents of nursing facilities as long as they document the initial oral health screening for the supervising dentist and nursing facility. A dental hygienist may also practice unsupervised dental hygiene in nursing facilities.
South Carolina	A dental hygienist employed by or contacted through the Department of Health and Environment Control may provide services under general supervision that do not require prior examination by a dentist in settings such as schools or nursing homes. The dental hygienist must carry professional liability insurance.
Texas	A dental hygienist practicing in a nursing facility or school-based health center may provide services unsupervised as long as those services have been delegated by a dentist and the dental hygienist refers the patient to a dentist following treatment. The dental hygienist may not perform a second set of services until the patient has been examined by a dentist. The dental hygienist must have two years of practice experience.
Vermont	A dental hygienist may provide services in public health settings under a general supervision agreement with a dentist. The agreement requires that the supervising dentist review all patient records. The dental hygienist must have three years of clinical practice experience.
Washington	A "school endorsed" dental hygienist may assess for and apply sealants and fluoride varnishes in community-based sealant programs carried out in schools. In addition, a dental hygienist may provide specified services in hospitals, nursing homes, home health agencies, group homes, state institutions under the Department of Health and Human Services, jails, and public health facilities unsupervised provided the dental hygienist refers the patient to a dentist for treatment and needed care. The dental hygienist must have two years of clinical experience within the last five years.

West Virginia	A dental hygienist may provide services in hospitals, schools, correctional facilities, jails, community clinics, long-term care facilities, nursing homes, home health agencies, group homes, state institutions under the Department of Health and Human Resources, public health facilities, homebound settings, and Accredited Dental Hygiene Education programs without supervision. The dental hygienist must have two years and 3,000 hours of clinical dental hygiene experience and additional continuing education hours.
Wisconsin	A dental hygienist may provide services in a public or private school, a dental or dental hygiene school, or a facility owned by a local health department without supervision.

Source: American Dental Hygienists' Association

Appendix 4. Draft Legislation

J2 0lr0767

Bill No.: ____________________

Requested: ____________________

Committee: ____________________

By: **Leave Blank**

Drafted by: Campbell
Typed by: Carol
Stored – 10/29/09
Proofread by ✓
Checked by ✓

A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Dental Examiners – Sunset Extension and Revisions**

3 FOR the purpose of continuing the State Board of Dental Examiners in accordance
4 with the provisions of the Maryland Program Evaluation Act (sunset law) by
5 extending to a certain date the termination provisions relating to the statutory
6 and regulatory authority of the Board; requiring that an evaluation of the Board
7 and the statutes and regulations that relate to the Board be performed on or
8 before a certain date; authorizing the solicitation of nominations for certain
9 Board vacancies to be sent by electronic mail; expanding the grounds for
10 discipline for a dentist and dental hygienist; altering certain defined terms;
11 expanding the services of a certain committee to certain dental professionals;
12 making technical changes; requiring the Board to report to certain committees
13 of the General Assembly on or before a certain date; and generally relating to
14 the State Board of Dental Examiners.

15 BY repealing and reenacting, with amendments,
16 Article – Health Occupations
17 Section 4–202(b), 4–315(a)(30) and (31) and (b)(16) and (17), 4–501.1, 4–508,
18 and 4–702
19 Annotated Code of Maryland
20 (2009 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

1 BY adding to
2 Article – Health Occupations
3 Section 4–315(a)(32) and (b)(18)
4 Annotated Code of Maryland
5 (2009 Replacement Volume)

6 BY repealing and reenacting, without amendments,
7 Article – State Government
8 Section 8–403(a)
9 Annotated Code of Maryland
10 (2009 Replacement Volume)

11 BY repealing and reenacting, with amendments,
12 Article – State Government
13 Section 8–403(b)(16)
14 Annotated Code of Maryland
15 (2009 Replacement Volume)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Health Occupations**

19 4–202.

20 (b) (1) For each licensed dentist vacancy, the Board shall:

21 (i) Send by **ELECTRONIC** mail **OR REGULAR MAIL** a **[**written**]**
22 solicitation for nominations to fill the vacancy to:

23 1. Each dentist licensed by the Board; and

24 2. Each State dental organization affiliated with a
25 national organization; and

26 (ii) Conduct a balloting process by which each dentist licensed
27 by the State is eligible to vote to select the names of the licensed dentists to be
28 submitted to the Governor.

1 (2) For each licensed dental hygienist vacancy, the Board shall:

2 (i) Send by **ELECTRONIC** mail **OR REGULAR MAIL** a [written]
3 solicitation for nominations to fill the vacancy to:

4 1. Each dental hygienist licensed by the Board; and

5 2. Each State dental hygienist organization affiliated
6 with a national organization; and

7 (ii) Conduct a balloting process by which each dental hygienist
8 licensed by the State is eligible to vote to select the names of the licensed dental
9 hygienists to be submitted to the Governor.

10 (3) The Board shall develop guidelines for the solicitation of
11 nominations and balloting process that to the extent possible will result in the overall
12 composition of the Board reasonably reflecting the geographic, racial, ethnic, and
13 gender diversity of the State.

14 4–315.

15 (a) Subject to the hearing provisions of § 4–318 of this subtitle, the Board
16 may deny a general license to practice dentistry, a limited license to practice dentistry,
17 or a teacher's license to practice dentistry to any applicant, reprimand any licensed
18 dentist, place any licensed dentist on probation, or suspend or revoke the license of
19 any licensed dentist, if the applicant or licensee:

20 (30) Fails to begin to fulfill a public service requirement within 1 year
21 of when the assignment is to begin that was a condition of the applicant or licensee
22 receiving State or federal loans or scholarships for the applicant's or licensee's dental
23 education; [or]

24 (31) Fails to comply with any Board order; **OR**

25 **(32) FAILS TO COMPLY WITH AN INVESTIGATION OF THE BOARD.**

1 (b) Subject to the hearing provisions of § 4–318 of this subtitle, the Board
2 may deny a general license to practice dental hygiene, a teacher's license to practice
3 dental hygiene, or a temporary license to practice dental hygiene to any applicant,
4 reprimand any licensed dental hygienist, place any licensed dental hygienist on
5 probation, or suspend or revoke the license of any licensed dental hygienist, if the
6 applicant or licensee:

7 (16) Except in an emergency life–threatening situation where it is not
8 feasible or practicable, fails to comply with the Centers for Disease [Control's]
9 **CONTROL AND PREVENTION'S** guidelines on universal precautions; [or]

10 (17) Fails to comply with any Board order**; OR**

11 **(18) FAILS TO COMPLY WITH AN INVESTIGATION OF THE BOARD.**

12 4–501.1.

13 (a) In this section, ["Dentist Rehabilitation] **"DENTAL WELL–BEING**
14 Committee" means the committee of the Maryland State Dental Association that
15 evaluates and provides assistance to any provider of dental care in need of treatment
16 and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical,
17 emotional, or mental condition.

18 (b) (1) Subject to the provisions of paragraph (2) of this subsection, the
19 Maryland State Dental Association shall appoint the members of the [Dentist
20 Rehabilitation] **DENTAL WELL–BEING** Committee.

21 (2) At least one member of the [Dentist Rehabilitation] **DENTAL**
22 **WELL–BEING** Committee shall be a member of the Maryland Dental Society.

23 (c) The Board shall fund the budget of the [Dentist Rehabilitation] **DENTAL**
24 **WELL–BEING** Committee as provided in § 4–207 of this title.

25 (d) The Legislative Auditor shall audit the accounts and transactions of the
26 [Dentist Rehabilitation] **DENTAL WELL–BEING** Committee as provided in § 2–1220
27 of the State Government Article.

28 4–508.

1 (a) In this section, "Dental [Hygienist Rehabilitation] **HYGIENE**
2 **WELL–BEING** Committee" means the committee of the Maryland Dental Hygienists'
3 Association that evaluates and provides assistance to any dental hygienist**, DENTAL**
4 **RADIATION TECHNOLOGIST, OR DENTAL ASSISTANT** in need of treatment and
5 rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical,
6 emotional, or mental condition.

7 (b) The Maryland Dental Hygienists' Association shall appoint the members
8 of the Dental [Hygienist Rehabilitation] **HYGIENE WELL–BEING** Committee.

9 (c) The Board shall fund the budget of the Dental [Hygienist Rehabilitation]
10 **HYGIENE WELL–BEING** Committee as provided in § 4–207 of this title.

11 (d) The Legislative Auditor shall audit the accounts and transactions of the
12 Dental [Hygienist Rehabilitation] **HYGIENE WELL–BEING** Committee as provided in
13 § 2–1220 of the State Government Article.

14 (e) (1) Except as otherwise provided in this subsection, the proceedings,
15 records, and files of the Dental [Hygienist Rehabilitation] **HYGIENE WELL–BEING**
16 Committee are not discoverable and are not admissible in evidence in any civil action
17 arising out of matters that are being or have been reviewed and evaluated by the
18 Dental [Hygienist Rehabilitation] **HYGIENE WELL–BEING** Committee.

19 (2) Paragraph (1) of this subsection does not apply to any record or
20 document that is considered by the Dental [Hygienist Rehabilitation] **HYGIENE**
21 **WELL–BEING** Committee and that otherwise would be subject to discovery or
22 introduction into evidence in a civil action.

23 (3) For purposes of this subsection, civil action does not include a
24 proceeding before the Board or judicial review of a proceeding before the Board.

25 (f) A person who acts in good faith and within the scope of jurisdiction of a
26 Dental [Hygienist Rehabilitation] **HYGIENE WELL–BEING** Committee is not civilly
27 liable for any action as a member of the Dental [Hygienist Rehabilitation] **HYGIENE**
28 **WELL–BEING** Committee or for giving information to, participating in, or
29 contributing to the function of the [Rehabilitation] **WELL–BEING** Committee.

1 4–702.

2 Subject to the evaluation and reestablishment provisions of the Program
3 Evaluation Act, this title and all rules and regulations adopted under this title shall
4 terminate and be of no effect after July 1, [2011] **2021**.

5 **Article – State Government**

6 8–403.

7 (a) On or before December 15 of the 2nd year before the evaluation date of a
8 governmental activity or unit, the Legislative Policy Committee, based on a
9 preliminary evaluation, may waive as unnecessary the evaluation required under this
10 section.

11 (b) Except as otherwise provided in subsection (a) of this section, on or before
12 the evaluation date for the following governmental activities or units, an evaluation
13 shall be made of the following governmental activities or units and the statutes and
14 regulations that relate to the governmental activities or units:

15 (16) Dental Examiners, State Board of (§ 4–201 of the Health
16 Occupations Article: July 1, [2010] **2020**);

17 SECTION 2. AND BE IT FURTHER ENACTED, That the State Board of
18 Dental Examiners shall report to the Senate Education, Health, and Environmental
19 Affairs Committee and the House Health and Government Operations Committee on
20 or before October 1, 2011, in accordance with § 2–1246 of the State Government
21 Article, on the implementation of recommendations of the Department of Legislative
22 Services contained in the sunset evaluation report dated October 2009.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 June 1, 2010.

Appendix 5. Written Comments of the State Board of Dental Examiners

STATE OF MARYLAND
DHMH Maryland State Board of Dental Examiners
Maryland Department of Health and Mental Hygiene
Spring Grove Hospital Center • Benjamin Rush Building
55 Wade Avenue / Tulip Drive • Catonsville, Maryland 21228
Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

The Board wishes to offer the following response to the recommendations presented by the Department of Legislative Services in its October 2009 Sunset Review: Evaluation of the State Board of Dental Examiners.

Recommendation 1: Statute should be amended to allow the nomination process to be conducted electronically. This would allow board staff to send an e-mail alert to all licensees and certificate holders, to 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 Board supports amending the statute so that licensees may be notified by e-mail rather than by mail as presently mandated by law. However, even under an electronic balloting system those licensees who do not have e-mail addresses, have access to a computer, or choose not to use a computer should be provided with the opportunity to cast a paper ballot. Approximately 8% of dentists and dental hygienists do not have an e-mail address on file with the Board. The Board is preparing to conduct elections electronically for the upcoming year with the option to use a paper ballot.

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

Response: The dental compliance officer has recused herself in all previous cases when the recusal was appropriate. She will continue to do so. The Board will amend COMAR 10.44.07.30 to include the Dental Compliance Officer.

Recommendation 3: Statute should be amended to clarify that DHWBC provides assistance to dental radiation technologists and dental assistants in addition to dental hygienists.

Response: The Board concurs with this recommendation.

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 Board concurs with this recommendation.

Recommendation 5: Board 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 does not concur with this recommendation. The Board appointed several members to the Backlog Work Group to review all open cases. The decisions to close the 39 cases were based upon a careful review of these cases. Each case was weighed against several factors, including the type of complaint, the licensee's history of complaints and violations, and the potential for harm to the public. The Board believes that admonishment of a licensee several years after the incident would not be useful if no similar complaints were received.

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 entire complaint file, along with patient records, must be reviewed in detail prior to drafting a letter of education or an advisory letter. The following process occurs:

- The Disciplinary Review Committee makes a recommendation concerning the case
- A Board member familiar with the issues prepares a preliminary draft with the salient points
- The secretary of the Compliance Unit formats the letter into "final" form
- The secretary forwards the letter to the Dental Compliance Officer who reviews the letter, case file and patient records, and forwards any corrections back to secretary
- The secretary makes the necessary corrections and forwards the letter to Board Counsel and the Dental Compliance Officer for review
- Board counsel and the Dental Compliance Officer forward the letter with any corrections to the secretary for finalizing and mailing

Because of the time involved in this process, the Board believes that a more reasonable time frame would be 45-60 days. The Board will strive to complete all such letters within that time frame.

Recommendation 7: The prosecuting OAG's office should send a representative to serve as an advisor in all DRC meetings.

Response: The Board concurs with this recommendation.

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

Response: The Board will support this general recommendation and will review any such bill that implements the recommendation.

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 concurs with the majority of this recommendation. There are presently15 dentists with varying specialties serving as reviewers and expert witnesses under an annual contract with the Board. The Board will review possible recruitment techniques including contacting the University of Maryland Dental School and dental associations to secure additional expert witnesses.

The Board believes that the compensation received by expert witnesses is the primary deterrent to enlisting new experts. Given the potential to earn greater per hour income elsewhere, dentists, especially specialists, are hesitant to become experts. The Board will explore the possibility of increasing the amount of compensation.

The Board respectfully disagrees that it should offer continuing education credits 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 ethnic information on all licensees during the application process, and meet the law's data manipulation requirement.

Response: The Board concurs with this recommendation. The Board will promulgate regulations for the rules of procedure for the disciplinary process in accordance with HB 811. The Board is collecting racial and ethnic information on all renewals and will begin to collect this information on all initial applications.

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's current renewal process is very efficient. However, the Board will evaluate the potential for improved efficiencies resulting from the conversion to a year round renewal process.

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: The Board concurs with this recommendation. Management will audit a certain percentage of files on a semi-annual basis to ensure accurate record-keeping.

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: The Board concurs with this recommendation. All case files underwent a significant change commencing on July 1, 2009. All files opened after July 1, 2009 have a standard organizational structure.

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

Response: The Board concurs with this recommendation. As of October 8, 2008, all compliance unit staff and licensing unit staff have received performance evaluations. In the future, all administration unit staff will receive evaluations.

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 Board concurs with this recommendation. Policies and procedures have already been written for many job responsibilities and will continue to be written until completed. The staff has begun cross training employees within each unit and across units.

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 Board concurs with this recommendation. The executive director will review staff responsibilities to determine if resources may be better distributed according to workload.

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

Response: The Board concurs with the recommendation. Copies of recent public Orders will be uploaded to the web in a timely manner. Because the Board has hundreds of public orders that span over 30 years, the Board will begin by including the most recent orders. This will include both public Consent Orders and Final Orders.

Recommendation 18: Board staff should ensure that all forms are updated regularly.

Response: The Board concurs with the recommendation. The Board will review forms placed on its website to ensure that they are accurate. New forms or changes in forms will be uploaded in a timely manner.

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

Response: The Board will strive to publish newsletters bi-annually. However this may prove to be a difficult task. The cost of printing and mailing a newsletter to approximately ten thousand licensees is over $20,000. The Board will explore placing the newsletter on its website in lieu to mailing to eliminate some of the cost. In addition, the newsletter is labor- intensive. Board members and staff spend a significant amount of time composing and editing each issue.

Recommendation 20: The board should continue to reduce its fund balance to a more responsible 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: The Board concurs with the recommendation that it should maintain a proper fund balance. The Board constantly monitors its fund balance to ensure that it is within acceptable parameters.

Recommendation 21: The board should consult with the administrators of the License 2000 system to determine whether the system can be upgraded to perform the following tasks:

1. **grant a higher level of access to compliance staff that allows the full history of a licensee, including licensing and compliance data, to appear on one screen so that compliance staff does not have to run two different searches;**
2. **include sanctioning data from renewals in the licensee's License 2000 file so that staff does not have to look it up in a different program;**
3. **allow the easy manipulation of data so that the board can identify and address trends that delay the complaint process, and assist the board in meeting the data requirements of Chapter 211 and 212 of 2008 using minimal staff time;**
4. **provide a mechanism for alerting staff of due dates to ensure that all actions are taken in a timely manner and that staff time is used effectively by offering prompts for action; and**
5. **Allow for the tracking of cases referred to case management to fully track complaints from inception to closure.**

Response: The Board concurs that the License 2000 software is deficient in its capabilities related to disciplinary action and case management. The Board has developed an IT Working Group to help address License 2000 issues. The Work Group and Board have been in constant communication with the proprietors of License 2000 in attempts to improve its efficiency. If the system proves to be inefficient or its improvement costs become unreasonable, the Board will review other licensing and compliance tracking systems. The Board will also schedule staff training with the current System Automation representative from Licensing 2000 to ensure that the Board is receiving all the benefit it can from the software system.

Recommendation 22: DLS recommends that legislation be enacted to extend the termination date for the board by 10 years to July 1, 2021. Additionally, DLS recommends the adoption of uncodified language requiring the Board to report 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 by October 1, 2011.

Response: The Board agrees with the recommendation to extend the termination date for the board to July 1, 2021. The Board also agrees to report to the Senate Education, Health, and Environmental Affairs and House Health and Government Operations Committees on the implementation status of non-statutory recommendations made by the DLS and adopted by the Committees.

Additional Comments:

The Board is concerned with the comments on page 11 titled "Nationally, Supervision Statutes for Dental Hygienists Trend Toward Less Supervision." In part the sunset review language states:

> "There is some concern in the dental hygiene community that the State's general supervision laws are still too restrictive and limit a hygienist's ability to provide greater access to dental care. According to the American Dental Hygienists' Association (ADHA), 29 states allow for some form of "direct access," which means that a dental hygienist can initiate treatment based on his or her assessment of a patient's needs without the specific authorization of a dentist, and treat the patient without the presence of a dentist."

The Board notes that although Maryland is not one of the states listed in Appendix 3. "States that Allow Some Form of Direct Access to Dental Hygienists" Maryland should certainly have been included. House Bill 1280, Chapter 316, Laws of 2008 clearly allows in certain public health facilities, "direct access" to dental hygiene care without the presence of a dentist, and without a prior authorization, examination, or diagnosis by a physician or dentist. Qualifying facilities need only report to the Board; there is no requirement that they seek a waiver. Respectfully therefore, the Sunset Review's inference that Maryland does not allow such direct access is misplaced.