

Preliminary Evaluation of the State Board of Dental Examiners

Recommendation: Full Evaluation

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a statutory schedule as part of sunset review. 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 typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Dental Examiners (BDE) 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 did extend the termination date to July 1, 2011, and required the board to report on its progress implementing recommendations of the 2004 evaluation.

More recently, the board has been under a great deal of scrutiny surrounding an Office of the Inspector General’s (OIG) review of board disciplinary operations and sanctioning outcomes. The OIG report, released in December 2007, found inconsistencies in the sanctioning process and other logistical challenges that impede the disciplinary process within BDE. That report will be discussed in more detail later in this report. In addition, the board is undergoing a transition in staff leadership, with a new executive director and new dental compliance officer having joined the staff in early 2008.

In conducting its preliminary evaluation, DLS staff reviewed annual reports for the past five years, minutes for board meetings, the Maryland Dentistry Act and related regulations, the prior full sunset reviews of the board, and the operating budget of the board. In addition, DLS staff conducted interviews with the executive director and staff, attended two board meetings, and reviewed the OIG report.

BDE reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 2**. Appropriate factual corrections and clarifications have been made throughout the document.

The Practice of Dentistry in Maryland

The mission of the State Board of Dental Examiners 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. As shown in **Exhibit 1**, in fiscal 2008, about 17,500 licenses, registrations, and certificates were held by dentists, dental hygienists, dental radiation technologists, and other dental professionals, up from about 15,000 in fiscal 2005.

Exhibit 1 Regulated Dental Professionals Fiscal 2005-2008

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Dentist	4,888	5,146	5,347	5,576
Dental Teacher	17	19	20	21
Limited Dental	23	33	21	36
Dental Hygienist	2,763	2,819	2,916	3,068
Dental Radiation Technologist	4,492	4,595	4,802	5,285
Qualified Dental Assistant	2,817	3,026	3,284	3,513
Retired Volunteer Dentist	3	2	2	2
Volunteer Dentist	1	2	2	2
Total	15,004	15,642	16,394	17,503

Source: State Board of Dental Examiners

Dentists and dental hygienists must be licensed by the board. Dentists are the proprietors of dental practices who perform diagnosis, treatment, and 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. Both dentists and dental hygienists must pass the National Board Dental Examination, the Northeast Regional Board examinations, and a Maryland jurisprudence examination offered by the board in order to qualify for licensure.

Dental assistants are employed by dentists to assist in the performance of dental services within the mouth under the direct supervision of dentists. Though not licensed by the board, dental assistants are issued a Maryland registration card after successfully passing the Dental Assisting National Board examination. This card is issued one time only, upon passage of the examination, and is not subject to renewal. Since the card is only issued one time and has no

expiration date, it is unclear how many card holders are active dental assistants. Therefore, the number of dental assistants shown in Exhibit 1 is a likely overstatement of the actual number of practicing dental assistants.

Dental radiation technologists are certified by the board (they are typically dental assistants with additional training) to perform the placement or exposure of dental radiographs. Dental radiation technologists must take a board-approved radiology course and pass a radiology examination.

The State Board of Dental Examiners 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.

Statutory and Other Changes Affecting the Board Since 2004 Sunset Review

Since the full evaluation in 2004, several statutory changes have affected board operations. As shown in **Exhibit 2**, 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.

Chapter 212 of 2008, which resulted from the OIG report briefly mentioned above, requires significant changes in the board's disciplinary process. As shown in Exhibit 2, the law requires the board to establish a new process to nominate licensee board members and requires the board to adopt new regulations to guide the disciplinary process. Since the board has until December 31, 2008, to report on its progress in meeting these requirements, an update on implementation is not included in this review. Chapter 212 also establishes the Task Force on the Discipline of Health Care Professionals and Improved Patient Care, staffed by the Department of Health and Mental Hygiene and health occupations boards in conjunction with the Office of the Attorney General (OAG). The task force held its first meeting on September 26, 2008.

In addition, Chapter 357 of 2004, which passed prior to the publication of the 2004 sunset review, required the board to develop regulations concerning the administration of sedation by licensed dentists. The board adopted its proposed regulations in June 2008.

Exhibit 2
Major Legislative Changes Since the 2004 Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2005	373	<p>Extends termination date of the board by five years to July 1, 2011.</p> <p>Adds another licensed dental hygienist to board membership, whose term ends in 2009.</p> <p>Requires the board to report on its progress in implementing recommendations in the 2004 sunset evaluation report.</p>
2006	469	Changes 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 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	212	<p>Establishes a new process to nominate licensee board members to serve on the State Board of Dental Examiners 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.</p> <p>Establishes a Task Force on the Discipline of Health Care Professionals and Improved Patient Care, staffed by the Department of Health and Mental Hygiene and health occupations boards in conjunction with the Office of the Attorney General.</p>

Source: Laws of Maryland

Board Complaint Resolution

The board investigates and acts upon complaints against licensees. After a complaint has been considered by the board, it may be referred for substantive investigation. However, not all cases are handled by the board investigator; the board has the option to close a complaint without taking any disciplinary action or resolve the case informally based on the information received

from the complaint file alone. 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. The board then decides if the complaint is within its jurisdiction and either closes the case without action, takes disciplinary action, or refers the case to the Office of the Attorney General for prosecution.

Exhibit 3 shows actions taken by the board on complaints that were received in fiscal 2004 through 2008. The numbers listed do not reflect the total number of actions taken by the board in that particular year. Rather, they only reflect action taken on *complaints received during that particular fiscal year*. For example, at the close of fiscal 2005, 31 complaints *that had been received* in fiscal 2005 were referred to OAG for prosecution. The total number of complaints referred to OAG in fiscal 2005 should be much higher, since referrals to OAG were likely made on complaints received prior to fiscal 2005.

Exhibit 3
Action Taken by the Board on New Complaints Received
Fiscal 2004-2008

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Total New Complaints Received	343	275	253	316	295
Closed Initially	45	46	24	31	52
Forwarded to Peer Review	36	9	9	17	20
Additional Records Requested	135	99	53	141	155
Referred for Investigation	51	30	51	57	27
Referred to OAG for Prosecution	20	31	24	16	12
Sent Advisory Letter/ Education Letter	46	60	58	33	36
Referred to Case Management	8	22	12	27	7
Closed After Investigation	91	138	117	89	49

Notes: Numbers listed in this exhibit do not reflect the total number of actions taken by the board in that fiscal year. Rather, they only reflect action taken on complaints that were *received during that particular fiscal year*. In addition, the actions taken do not sum to the number of complaints received as multiple actions may have been taken on a complaint.

Source: State Board of Dental Examiners

As shown in **Exhibit 4**, on average, the board has received about 296 new complaints annually over the past five years. In fiscal 2008, the board received 295 new complaints against licensees while it continued to investigate 182 complaints carried over from the previous year. The board has made a concerted effort to adjudicate complaints in a timely manner, but it still carries a significant backlog. Though this backlog is due at least in part to the board's investigative staff retention history and a vacant compliance officer position for most of fiscal 2008, an examination of the entire complaint process should be conducted in a full evaluation to examine additional ways to expedite the process in an equitable manner.

Exhibit 4
Complaint Volume – State Board of Dental Examiners
Fiscal 2004-2008

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
New Complaints	343	275	253	316	295
Pending Complaints	176	115	142	126	182
Total Complaints	519	390	395	442	477

Source: State Board of Dental Examiners

Limited Investigative Staff

Over the past four years, the board generally has been operating with only one full-time investigator to handle complaints that often involve complex standard-of-care issues, insurance fraud, Centers for Disease Control and Prevention violations, or sexual assault charges. Filling and keeping qualified investigators has been a chronic problem for the board and many other health occupations boards. During the 2004 sunset review, BDE had only one full-time investigator on staff. In March 2006, a second investigator was hired, and a third in May 2006. However, two of the investigators resigned in May and September 2007, again leaving the board with only one investigator. In September and October 2008, two new investigators began working for BDE, bringing the total to three.

The board believes that it loses potential applicants to the Board of Physicians, which offers higher investigator salaries than other health occupations boards, including BDE. Unlike other health occupations boards, the Board of Physicians has independent salary-setting authority that is vested in the Secretary of Health and Mental Hygiene. In 2007 the Secretary of Health and Mental Hygiene reclassified the investigative positions at the Board of Physicians, which effectively increased the salaries for its investigative staff. The Board of Physicians cited hiring difficulties as well as complex medical malpractice issues which made the reclassification necessary. However, the change exacerbated already existing salary differentials between the Board of Physicians and other health occupations boards.

Triage Committee

In June 2007, the board created a Triage Committee in an effort to expedite the complaint resolution process. The Triage Committee meets once a month on board disciplinary meeting days to review complaints and make action recommendations to the Disciplinary Review Committee. Triage Committee recommendations include requesting a response and patient records from the licensee, referring the case for investigation, closing the case without action, sending an advisory letter to the licensee, or referring the case to peer review for mediation. The board hopes the Triage Committee will accelerate the complaint resolution process by taking some of the initial complaint review load from the Disciplinary Review Committee. A full evaluation should include an assessment of how the Triage Committee is expediting the complaint resolution process.

License 2000

According to the executive director, the board recently made a decision to purchase software to update its automated licensure system (License 2000). While the current system works relatively well for initial licensing activities, it does not work as well for complaints and compliance, where it can be cumbersome for board staff to navigate. In addition, since the license renewal system that licensees can use to renew online is not compatible with License 2000, renewal data have to be entered manually. The board plans to integrate the renewal system with License 2000, saving staff time and reducing possible entry errors.

The board reports that it returns an incomplete application to the applicant immediately. However, the board does not record when it receives the incomplete application, when it sends one back to the applicant, or what is missing in the application. This could cause problems in the event that an applicant disputes the timing or completeness of his or her application. The board has identified this as a problem and plans to start recording this information in License 2000. The executive director indicates that the new record will include a checklist of documents missing from the application packet.

In addition, complaints that are referred to case management are handled in a separate software system 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. OIG also found that License 2000 does not effectively capture and reflect the life cycle of cases processed.

Given that the board recently decided to purchase an updated software system to be installed by January 2009, a full evaluation should look at how the updates are helping board staff improve licensing and complaint resolution activities. The board estimates the updates to cost about \$75,000.

Redacting Policy

Another issue related to the complaint resolution process is a redaction policy recently implemented by the board. In response to a recommendation made in the OIG report, the board implemented this new redaction policy to alleviate concerns about inequalities in board sanctions across racial lines. The policy, first implemented in July 2008, requires the Compliance Secretary to black out the names and addresses of all dental professionals named in the initial complaint documents to eliminate bias when making sanctioning decisions. Since the Triage Committee handles initial complaints, it does not see the names of licensees on which a complaint has been made when it makes its recommendation to the board on whether to request a response and records from the licensee, refer the case for investigation, close the case without action, send an advisory letter to the licensee, or refer the case to peer review.

However, if the board requests additional records from the licensee to help make a disciplinary decision, the records received from licensees cannot be altered. Therefore, complaints that require further investigation *do* include the name of the licensee involved. When the board votes on how to handle a complaint at this stage, the licensee in question is known to all board members. Because of this restriction, DLS believes that a full evaluation should take a closer look at the redaction policy in relation to the record restriction and how it is affecting the sanctioning process and its outcomes.

Board Fund Balance

The board became self supporting in 1992 when the General Assembly established special funds for most of the health occupations boards. The board's special fund is supported entirely by fees collected from licensees and certificate holders. The 2004 sunset review noted that the board's fund balance of \$882,164 in fiscal 2004 was excessively high. As shown in **Exhibit 5**, the board's fund balance remains above the generally recommended 20 percent threshold for health occupations boards of its size. The fiscal 2008 ending fund balance is \$1,105,991, which is about 71 percent of the board's expenditures for that year. By year-end fiscal 2009, the balance is expected to be less, at \$812,871, but still more than adequate to handle board activities.

Exhibit 5
Fiscal History of the State Board of Dental Examiners
Fiscal 2003-2009

	<u>2003</u>	<u>2004</u>	<u>2005*</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>Projected 2009</u>
Beginning Fund Balance	\$177,122	\$547,847	\$858,626	\$1,205,724	\$1,286,762	\$1,345,509	\$1,105,991
Revenues Collected	1,702,175	1,618,044	1,744,123	1,583,259	1,699,697	1,325,351	1,584,365
Total Funds Available	\$1,879,297	\$2,165,891	\$2,602,749	\$2,788,983	\$2,986,459	\$2,670,860	\$2,690,356
Total Expenditures	\$1,331,448	\$1,283,727	\$1,397,025	\$1,502,220	\$1,640,950	\$1,564,869	\$1,877,485
Direct Costs	998,614	962,272	1,039,232	1,163,969	1,298,111	1,219,368	1,562,737
Indirect Costs	332,834	321,455	357,793	338,251	342,839	345,501	314,748
Ending Fund Balance	\$547,847	\$882,164	\$1,205,724	\$1,286,762	\$1,345,509	\$1,105,991	\$812,871
Balance as % of Expenditures	41%	69%	86%	86%	82%	71%	43%
Target Fund Balance	\$266,290	\$256,745	\$279,405	\$300,444	\$328,190	\$312,974	\$375,497

*The beginning balance for fiscal 2005 is lower than the closing balance for fiscal 2004 due to an accounting change beginning in fiscal 2005.

Note: Numbers may not sum to total due to rounding.

Source: State Board of Dental Examiners; Department of Health and Mental Hygiene

Maintaining a fund balance is important to allow the board to keep fees at the same level for several years. This way fees do not have to be raised for each renewal period to keep pace with inflation. Further, because BDE's licensure activity occurs on a biennial basis, revenues are alternately high in one year and low in another. The ability to carry over a fund balance allows the board to cover its direct costs as well as the indirect costs charged by the Department of Health and Mental Hygiene in both years of the licensing cycle. Accordingly, revenues and expenditures for the board should be assessed on a two-year basis. A fund balance also allows the board to make necessary software upgrades, which the board plans to purchase and install by January 2009 at a cost of \$75,000. However, a surplus of *around* 20 percent should be sufficient for a board of this size – well below BDE's surplus which has exceeded 40 percent since 2003.

As part of the 2004 sunset review report, DLS recommended that the board examine its schedule of fees, and if necessary, reduce licensure fees to spend down its excessive fund balance. DLS further recommended that the board pay particular attention to initial application fees for dental hygienists, which seemed prohibitive for that profession. The board did such an examination but did not reduce its fees until 2007, when it reduced dental hygienist application and renewal fees from \$375 to \$275 and from \$185 to \$135, respectively. The board also reduced the renewal fee for dental radiation technologists from \$75 to \$50 that same year. License and renewal fees assessed by the board are shown in **Exhibit 6**. The fee reductions have reduced the board's fund balance over the past few years and will continue to reduce the fund balance over time, eventually below the 20 percent recommendation, necessitating another fee increase or spending reduction.

As mentioned above, maintaining a fund balance that is neither deficient nor excessive is not an easy task without adjusting fees every year. Given that such frequent adjustments are undesirable and impractical, it is expected that the board's balance will swell and deflate over time. However, given the board's excessive fund balance over the past five years, a full evaluation should review the board's approach to keeping the fund balance within a reasonable range.

Exhibit 6
Schedule of Fees – State Board of Dental Examiners

<u>Type of License, Certificate, or Permit</u>	<u>Fee in 2008</u>	<u>Fee in 2004</u>
Dentist Application	\$450	\$450
Dentist Limited License	225	225
Dentist Teacher's License	225	225
Dentist License Renewal	365*	415
Dentist Inactive License	150	150
Dental Hygienist Application	275	375
Dental Hygienist Teacher's License	225	225
Dental Hygienist License Renewal	135	185
Dental Hygienist Inactive License	75	75
Dental Radiation Technologist Certification	20	20
Dental Radiation Technologist Renewal	50	75
General Anesthesia Permit Application	1,050	1,050
General Anesthesia Permit Renewal	450	450
Parenteral Sedation Permit Application	1,050	1,050
Parenteral Sedation Permit Renewal	450	450
Facility Permit Application	1,050	1,050
Facility Permit Renewal	450	450

*The board reduced this fee for the 2008 and 2009 renewal period only. The reduction will be eliminated beginning with the 2010 renewal cycle, reverting back to the \$415 fee.

Source: State Board of Dental Examiners; Code of Maryland Regulations

Customer Service

In the 2004 sunset evaluation report, DLS noted that the board had difficulty responding to licensees. The board had received complaints from licensees about their inability to contact board staff, and several professional associations indicated that they had received complaints from their licensees about difficulty in reaching the board. In addition, the board's web site was not conducive to making inquiries to the board.

The board's executive director recognizes that, since no one person is dedicated to answering the phone, individuals calling the board to make inquiries frequently get the board's voicemail. DLS experienced this same problem when calling the board's main number, which was

often directed to voicemail. However, the board recently hired a new telephone operator, the position of which was unfrozen by the Department of Budget and Management in July 2008. The operator began work in October 2008. The executive director also indicates that the board is in the process of updating the web site in order to make the site more user friendly and facilitate licensee inquiries. A full evaluation should look at how the new telephone operator and updated web site are affecting customer service.

Report of the Office of Inspector General

Pursuant to the directive of Governor Martin O'Malley, the Department of Health and Mental Hygiene's Office of the Inspector General audited the disciplinary records of the Maryland State Board of Dental Examiners for the period of January 1, 2002, through December 31, 2006. The purpose of the audit was to determine whether any bias or inequities exist in the disciplinary process and sanctioning outcomes produced by the board. In order to accomplish this task, four main questions were posed:

- (1) Did the board award licenses within the bounds of legislative statutory authority?
- (2) Were sanctions and remedial measures imposed uniformly upon licensees regardless of race?
- (3) Did race or ethnicity factor into the severity of sanctions, particularly for similar violations?
- (4) Are there other operational constraints within the disciplinary process that contribute to disciplinary inequities?

OIG found the board to be in compliance with licensing procedures for qualified individuals; however, the report found inconsistencies with the way in which sanctions were imposed across racial lines, staffing shortages that contribute to prolonged processing time of cases, software inefficiencies that limit proper documentation of the life cycles of cases, as well as operational challenges that impede the disciplinary process.

Among the central findings of the report, OIG found that the board's collection system is not well suited for analyzing patterns in the handling of complaints which may lead to inequality in the sanctioning process along racial lines. For example, between fiscal 2002 and 2007, African Americans received disciplinary sanctions at a rate of 1.9 times higher than Caucasians. The report concluded that either there is inequality in the severity of the allegations by race or there is inequality in the sanctioning process by race.

In response to the findings of the OIG report, the legislature ordered that a task force be formed to study the disciplinary practices across all health occupations boards. As mentioned earlier, Chapter 212 of 2008 establishes the Task Force on the Discipline of Health Care Professionals and Improved Patient Care and requires it to issue recommendations that will improve and enhance the disciplinary practices of the boards and further protect the public and health care professionals in Maryland. The task force, which held its first meeting in September 2008, will directly address many of the issues raised in the OIG report on the board.

For a full summary of the findings, recommendations, and corrective BDE actions that resulted from the OIG study, see **Appendix 1**.

Recommendations

There is a continued need for regulation of the dental industry in the State to protect the public. **However, given the concerns raised in this evaluation and in the OIG report, the Department of Legislative Services recommends a full evaluation of the State Board of Dental Examiners to address the following issues:**

- ***Complaint Resolution Process:*** A full evaluation should look at the complaint resolution process to assess whether board efforts to expedite the complaint resolution process are effective and equitable. This would include an assessment of the Triage Committee, License 2000 updates, redaction policy, and the fully staffed investigative team. The evaluation should look at how these policies, updates, activities, and staffing levels are either improving or hindering the complaint resolution process. A full evaluation could also examine the chronic problem of investigator recruitment and retention within the board. In addition, a full evaluation could assess further impacts on the board related to the OIG report and the pending task force report.
- ***Fund Balance:*** A full evaluation should look at how the board is balancing its finances, taking into account expenditures on three new staff members whose positions had been vacant for a year or more (two investigators and one telephone operator). In addition, the evaluation should look at how the board is accounting for the cost of implementing the software updates it recently decided to purchase. While the board's current fund balance is high, it could be quickly reduced by paying the salaries of new staff and the costs associated with software updates.
- ***Customer Service:*** A full evaluation should look at customer service issues given the addition of a full-time telephone operator and updated web site.

DLS notes that new staff leadership is working to make improvements that address OIG concerns and improve board functions. For example, the board recently created a welcome packet for new board members. The packet contains a great deal of information that members need to understand board functions and the licensees they regulate.

Appendix 1. **OIG Findings, Recommendations, and Related Board Actions**

OIG Findings

- The board’s tracking system is not well suited for analyzing patterns in the processing of complaints, which may lead to inequality in sanctioning outcomes, both in total number and severity, across racial lines.

OIG Recommendations

- The board should collect ethnicity and race data on all licensees upon application.
- The board should utilize the Maryland official standard method for collecting race and ethnicity data.
- The board should develop a concise methodology of tracking the status of all allegations from start to finish, including specific written guidelines and standard definitions.
- The board should develop a database with a software program that analyzes the data in a multivariate manner to reduce subjectivity and individual bias.
- The board should consider a case-audit process that studies selected cases, de-identifying files, and using outside experts.
- All health occupations boards may need to review their process for handling allegations and develop a similar system.

Board Actions

- Applications for new and renewal licenses have been revised to include race and ethnicity data.
- Race and ethnicity data will be stored in the licensure databank.
- New redaction policy has been implemented which requires the Compliance Secretary to black out the names and addresses of all dental professionals named in the initial complaint documents.
- Task Force on the Discipline of Health Care Professionals and Improved Patient Care, established by Chapter 212 of 2008, sets up a framework for discussing and developing measures that will enhance and improve the disciplinary programs of the health occupations boards.
- The board is still considering substantive changes to its licensing and complaint collection software, License 2000.

OIG Findings

- Staffing shortages impede the board’s ability to properly process cases.

OIG Recommendations

- The board should fill the vacant dental compliance officer position as well as the two vacant investigative staff positions.

Board Actions

- The board has since filled both the dental compliance officer as well as the executive director positions.
- A contractual paralegal was hired in February 2008 to help alleviate the workload on other members of the discipline unit. However, that position was vacated in August 2008.
- Two new investigators have been hired.
- An additional office assistant position was unfrozen by the Department of Budget and Management in July 2008 and filled in October 2008.

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- License 2000 does not effectively capture and reflect the life cycle of cases processed.

- The board should explore the possibility of re-engineering License 2000 to more accurately track and report the full life cycle of disciplinary cases handled.

- The board has not yet made a decision as to how to update or modify License 2000.

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- Lag time of caseloads is not properly monitored or reported to the full board.

- The board should institute the development, use, and routine review of a comprehensive status report as a monitoring tool for all disciplinary cases processed.

- A Backlog Committee has been established and reports monthly to the board.
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OIG Findings

- No “statute of limitations” is required on the processing of cases.

OIG Recommendations

- Legislation should be enacted that allows the board to demonstrate delays outside of its control but requires disciplinary actions to be completed within a given time period.

Board Actions

- Task Force on the Discipline of Health Care Professionals and Improved Patient Care will address this issue to identify appropriate timeframes in which to process complaint cases.

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- There is no formal sanctioning guideline or scoring tool in place that would facilitate similar sanctions for similar violations.

- The board should work with Attorney General’s Office and DLS to develop and implement sanctioning guidelines.

- Task Force on the Discipline of Health Care Professionals and Improved Patient Care will address this issue.

Source: Department of Health and Mental Hygiene, Office of the Inspector General, *Review of the Maryland State Board of Dental Examiners FY 2002 through FY 2007*; State Board of Dental Examiners

**Appendix 2. 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

December 3, 2008

Ms. Laura J. McCarty
Legislative Manager
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Annapolis, Maryland 21401-1991

Re: Preliminary Evaluation of the State Board of Dental Examiners

Dear Ms. McCarty:

On behalf of the Maryland State Board of Dental Examiners ("the Board") we would like to thank the Department of Legislative Services, Office of Policy Analysis, and their legislative analysts for the Preliminary Evaluation of the State Board of Dental Examiners under cover of November 18, 2008. Please accept this letter as the response of the Board to several of the issues discussed in the evaluation.

As noted in the Board's responses below, the Board is pleased that it has made significant progress toward implementing many of the recommendations of the evaluation. (Page numbers in the Board's responses refer to the page number of the Preliminary Evaluation.)

Preliminary Evaluation Comment:

License 2000

"The Board reports that it returns incomplete applications to the applicant immediately. However, the Board does not record when it receives the incomplete applications, when it sends one back to the applicant, or what is missing in the application." (p.7)

Board Response:

The Board is now tracking the process of returning incomplete applications. Its licensing unit makes copies of incomplete applications, records when they are received, notes the items missing as well as the date when the application is returned to the applicant.

Preliminary Evaluation Comment:

“In addition, complaints that are referred to case management are handled in a separate software system and are no longer tracked in License 2000 once referred to case management. This makes it difficult to track a complaint that has been referred to case management from inception to closure. OIG also found that License 2000 does not effectively capture and reflect the life cycle of cases processed.

Given that the board recently decided to purchase an updated software system to be installed by January 2009, a full evaluation should look at how the updates are helping board staff improve licensing and complaint activities.” (p.7)

Board Response:

The Preliminary Evaluation notes that “While the Current system [License 2000] works relatively well for initial licensing activities, it does not work well for complaints and compliance, where it can be cumbersome for board staff to navigate.” The Board agrees with this assessment of the current system’s limitations. The Board will make every effort to ensure that the updated software adequately captures the life cycle of its disciplinary cases, including those in case management.

Redacting Policy

Preliminary Evaluation Comment:

“Another issue related to the complaint resolution process is a redaction policy recently implemented by the Board. In response to a recommendation made in the OIG report, the Board implemented this new redaction policy to alleviate concerns about inequalities in board sanctions across racial lines. The policy, first implemented in July 2008, requires the Compliance Secretary to black out the names and addresses of all dental professionals named in the initial complaint documents to eliminate bias when making sanctioning decisions. Since the Triage Committee handles initial complaints, it does not see the names of the licensees on which a complaint has been made when it makes its recommendations to the board on whether to request a response and records from the licensee, refer the case for investigation, close the case without action, send an advisory letter to the licensee, or refer the case to peer review.

However, if the Board requests additional records from the licensee to help make a disciplinary decision, the records received from licensees cannot be altered. Therefore, complaints that require further investigation *do* include the name of the licensee involved, meaning that when the board votes on how to handle a complaint at this stage, the licensee in question is known to all board members. Because of this restriction, DLS believes that a full evaluation should take a

closer look at the redaction policy in relation to the record restriction and how it is affecting the sanctioning process and its outcomes.” (p.8)

Board Response:

The Board has implemented the redaction policy on initial complaints as a result of the OIG recommendations. Once the Board receives the response to a complaint from a licensee and the patient’s original records, it could redact the licensee’s name from both a copy of the response and a copy of the records. Ultimately however, the Board would be at a disadvantage if it was unaware of the identity of the licensee since the licensee’s past disciplinary history is significant in determining if disciplinary action was justified in the matter before it. For example, a licensee with a history of formal or informal disciplinary action for the same offense may justifiably be treated differently than a licensee with no prior violations. In addition, knowledge of the severity of past offenses is also significant in determining the appropriate disciplinary action.

Board Fund Balance

Preliminary Evaluation Comment:

“The fiscal 2008 ending fund balance is \$1,105,991, which is about 71 percent of the board’s expenditures for that year. By year-end fiscal 2009, the balance is expected to be less, at \$812,871, but still more than adequate to handle board activities.” (p.8)

“However, a surplus of *around* 20 percent should be sufficient for a board of this size – well below BDE’s surplus which has exceeded 40 percent since 2003.”

“...[The Board] did not reduce its fees until 2007, when it reduced dental hygienist application and renewal fees from \$375 to \$275 and from \$185 to \$135 respectively. The Board also reduced the renewal fee for dental radiation technologists from \$75 to \$50 that same year. The fee reductions have reduced the board’s fund balance over the past few years and will continue to reduce the fund balance over time, eventually below the 20 percent recommendation, necessitating another fee increase or spending reduction.”

However, given the board’s excessive fund balance over the past five years, a full evaluation should review the board’s approach to keeping the fund balance within a reasonable range.” (p.10)

Board Response:

As the Preliminary Evaluation acknowledges, the Board has already reduced its more significant fees to help reduce its fund balance. The Board’s reduction in licensing and renewal fees for dental hygienists, reduction in renewal fees for dental radiation technologists, as well as its reduction in renewal fees for dentists will aid in reducing the fund balance. In addition, the Board’s hiring of additional needed staff as recommended in the OIG report, will aid in this effort. The Board will continue to monitor its fund balance and future projections in an attempt to keep the balance within an acceptable range.

Customer Service

Preliminary Evaluation Comment:

"In the 2004 Sunset evaluation report, DLS noted that the board had difficulty responding to licensees. The board had received complaints from licensees about their inability to contact board staff, and several professional associations indicated that they had received complaints from their licensees about the difficulty in reaching the board." (p.11)

"[The] Board recently hired a new telephone operator, the position of which was unfrozen by the Department of Budget and Management in July 2008. The operator began work in October 2008." (p.12)

Board Response:

The Board has implemented the recommendation. Telephone calls are being handled in an efficient manner by a dedicated telephone operator. Any prior difficulties in communicating with Board staff should now be greatly reduced.

Appendix 2. OIG Findings, Recommendations, and Related Board Actions

OIG Findings:

"The board's tracking system is not well suited for analyzing patterns in the processing of complaints, which may lead to inequality in sanctioning outcomes, both in total number and severity, across racial lines." (p.17)

Board Response:

As recommended by the OIG and as mandated by SB 764 and HB 811 (Chapters 211 and 212 respectively of the Laws of 2008) the Board has already begun to collect race, gender, and ethnicity information on all renewal applications based on the Maryland official standard method for collecting race, gender, and ethnicity information. The Board is in the process of changing its initial applications to incorporate the change. In addition, the Board's new redaction policy will ensure that the Board's Triage Committee will be unaware of the licensee's identity prior to the Board's vote on its initial action.

The Board's purchase of new software should help make its data collection efforts more efficient.

OIG Findings:

"Applications for new and renewal licenses have been revised to include race and ethnicity data." (p.17)

Board Response: As previously stated, the Board has revised its renewal applications to capture the requested data and is in the process of revising its initial applications to do so.

“Staffing shortages impede the board’s ability to properly process cases.” (p.18)

Board Response:

The Board has recently filled several vacancies and added additional staff. A new Executive Director and Dental Compliance Officer have been hired, as well as two additional investigators bringing the total number of investigators to three. The Board has also hired a telephone operator and an Administrative Aide.

OIG Findings:

“License 2000 does not effectively capture and reflect the life cycle of cases processed.” (p.18)

Board Response:

As previously noted the Board’s present software system does not allow the Board to adequately track the life cycle of its disciplinary cases. The Board is exploring other alternatives.

OIG Findings:

“No statute of limitations” is required on the processing of cases.” (p.19)

Board Response:

The Board is required to follow the existing law regarding its investigation of complaints. Because there is no existing statute of limitations regarding the filing of complaints with the Board, the Board would be in violation of the law if it refused to accept a complaint based upon the date of the underlying occurrence. With respect to the processing of complaints, the Board hopes to expedite the handling of its backlog of cases with the hiring of two new investigators.

Please note the following are the corrections to or inaccuracies contained in the Preliminary Evaluation:

The present Board President is J. Timothy Modic, D.D.S. (November 18, 2008 cover letter)

Both dentists and dental hygienists must pass the National Board Dental Examination, the Northeast Regional Board examinations as well as a Maryland jurisprudence examination offered by the Board in order to qualify for licensure. (p.2)

The Board issues a registration card to dental assistants, not a certification card. (p.3)

The two Board investigators recently hired began work in September and October 2008 respectively. (p.6)

The contractual paralegal was hired but is no longer working for the Board (p.18)

In addition to the new hires identified in the Preliminary Evaluation, the Board also hired an Administrative Aide. The following is the complete list of recent hires and their present status:

Second investigator began work in September 2008;

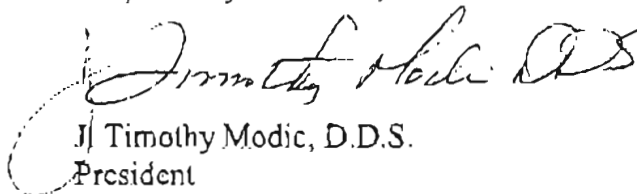
Third investigator began work in October 2008;

Telephone operator began work in October 2008;

Administrative assistant began work in October 2008; and

Contractual paralegal was hired in February 2008 but is no longer working for the Board.

Respectfully submitted,

Handwritten signature of J. Timothy Modic, D.D.S. in cursive script, enclosed in a circular stamp.

J. Timothy Modic, D.D.S.
President

Handwritten signature of Larry J. Gray, Sr. in cursive script.

Larry J. Gray, Sr.
Executive Director

cc: Secretary John M. Colmers
Mr. Richard A. Proctor
Mr. Karl S. Aro
Mr. Warren G. Deschenaux
Richard Bloom, Esq.